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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia's relationship with the World Trade Organisation

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JOINT COMMITTEE ON TREATIES

Thursday, 26 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 Cooney, Ludwig and Schacht and Mr Baird, Mr Byrne and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

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

WITNESSES

DAVIS, Mr Brent, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry	639
EVANS, Mr Neville Raymond, Executive Officer, WMC Resources Ltd.....	639
FORAN, Mr Matthew, Government Relations Manager, AWB Ltd	639
KING, Mrs Ellen, Member, Wool Council of Australia	639
MADDOCK, Dr Rodney, Chief Economist, Business Council of Australia	639
TAYLOR, Mr David, Chief Executive Officer, Ardmona Foods Ltd	639
TEHAN, Mr Robert, Executive Member, Wool Council of Australia	639

Committee met at 2.11 p.m.

DAVIS, Mr Brent, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry

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FORAN, Mr Matthew, Government Relations Manager, AWB Ltd

KING, Mrs Ellen, Member, Wool Council of Australia

MADDOCK, Dr Rodney, Chief Economist, Business Council of Australia

TAYLOR, Mr David, Chief Executive Officer, Ardmona Foods Ltd

TEHAN, Mr Robert, Executive Member, Wool Council of Australia

ACTING CHAIR (Senator Cooney)—I declare open this meeting of the Joint Standing Committee on Treaties. I welcome witnesses, members of the public and the media to this hearing into Australia's relationship with the World Trade Organisation. The committee is getting towards 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 World Trade Organisation; the transparency and accountability of World Trade Organisation operations and decisions; ways Australia can best represent our interests in dispute resolution processes of the World Trade Organisation; the relationship between the World Trade Organisation and regional economic agreements; and how World Trade Organisation agreements impact on environment, human rights and labour standards.

Today's hearing is in the form of a roundtable discussion looking at business exporters in the World Trade Organisation—and producers, might I say, because we have people like Ellen King here, who is from the Wool Council. I am very pleased to see you. Throughout the committee's inquiry we have held a number of roundtable forums, in addition to normal public hearings, in order to have focused discussions on key issues in our inquiry. We would like to begin this roundtable forum with statements of up to five minutes from each of you outlining your views on Australia and the World Trade Organisation. We will then move to free flowing discussion involving the committee and all participants. I advise all participants that today's hearings are proceedings of the parliament and warrant the same respect as the proceedings of the House and the Senate.

Mr Evans—I work at WMC and I have been involved in trade and environment issues, particularly the WTO and its detractors and of course the significance of Kyoto on the WTO, for quite some years.

Dr Maddock—I am the Chief Economist of the Business Council of Australia. I have mainly worked on economic issues to do with Australia's development.

Mr Davis—I am the Director of Trade and International Affairs at the Australian Chamber of Commerce and Industry. ACCI's engagement in international affairs is well known. I also from time to time teach trade law at the Australian National University.

Mr Taylor—I am Chief Executive of Ardmona Foods. Ardmona is a major exporter, and the perspective I would share would be one of very much the lay person involved with a company that has been involved in exports for about 80 years.

Mr Tehan—I represent the Wool Council of Australia, which is a commodity council of the National Farmers Federation—a federation of state farm organisations. Through the Wool Council, Mrs King and I are members of the trade policy committee.

Mrs King—Just to follow on from that, 90 per cent of our product is exported—that is \$3 billion to the Australian economy, so it is vital that we are very interested and involved in this process.

Mr Foran—I am the government relations manager for AWB Ltd, the former Australian Wheat Board. We have a long history in participating in the formulation of Australia's trade policy agenda as it relates to agriculture.

ACTING CHAIR—We have two people from RMIT who would like to film us. Is this for a project? Would you like to come up to a microphone?

Ms Green—For channel 31. We want to show the WTO's side of the issue on globalisation instead of having a one-sided documentary on globalisation.

ACTING CHAIR—Does anyone have any objection? We are running an inquiry into the WTO and these people have come along to contribute. Is that the sort of thing you want?

Ms Green—Yes.

ACTING CHAIR—Everybody is happy with that.

Mr Tehan—Will there be an opportunity for somebody to vet the production before it goes to air or becomes public?

Ms Green—If that is how you would like it, yes. I can give you my contact number or I can get your contact number.

Mr Tehan—Just so that it is not misused or used in a way that any participant would think inappropriate. I am not volunteering to do it but I wondered whether somebody might do it.

ACTING CHAIR—How do you feel about it? If there is any problem with it, we can stop it. Would you like to have a think about it for a while?

Mr Tehan—I would not like to put a stop to it.

Mr BAIRD—I am sure that we all consider it is appropriate that both sides of the issues are addressed. It is more the issue of it being edited where it does not give comments in full context.

Ms Green—I will not subvert what you say in the documentary. I am going to show both sides equally.

Mr BAIRD—We are from the joint treaties committee of the parliament and we do not have a position. These representatives are from organisations who may be for or against the WTO and we will wait and see.

Ms Green—That is what I want to show.

ACTING CHAIR—Could you identify yourself for the sake of *Hansard*?

Ms Green—I am from RMIT. I do video production, and I am also working with SKY television, which is on channel 31.

ACTING CHAIR—Mr Foran, do you mind if we go back the other way? Are you able to go first?

Mr Foran—No problem at all.

Mr BAIRD—Are we going to have an opportunity for five minutes each?

ACTING CHAIR—Yes.

Mr BAIRD—That is a good idea.

ACTING CHAIR—It does not have to be five minutes.

Mr Foran—I will be very quick because I think the true value is probably in the open discussion around the table. For us the issue of the WTO is possibly a bit narrow. Market access generally is not an issue for us. Dispute resolution is not necessarily an issue for us; the issue for us is getting our competitors to the table and making commitments to trade reform and reducing the level of support to their farmers.

I thought I would very quickly throw out a couple of statistics that put our interest into some perspective. We produce around 20 million tonnes of wheat per annum. We export around about 16 to 18 million tonnes, obviously depending on the crop size. The average return is about \$A4 billion which goes back to Australian farmers and which obviously into the balance of trade. We represent about four per cent of world wheat production, but we represent about 20 per cent of world wheat trade.

Global agriculture, particularly grains, is one of the most heavily distorted markets in the world. If you look at OECD producer support estimates for 2000, that bears it out very quickly. In Europe the PSE is around 710 ECU per hectare; in the US it is about \$US228 per hectare in

terms of support. If you look at the US specifically, last year there was \$US20 million worth of support to farmers in that country.

Mr BAIRD—Is that on wheat?

Mr Foran—No, that is agricultural support in general. The safest limb you could go out on is that that is going to remain the same or increase.

Mr BAIRD—How much is that—\$20 million?

Mr Foran—Sorry, no, \$20 billion.

Mr BAIRD—That would be a dollar each otherwise.

Mr Foran—On that level, the proportion of farm incomes which were represented by government support was around 49 per cent. That is in stark contrast to Australia. I think as a country we are a middleweight in terms of economic power, and we are playing in a heavyweight's game at the moment—there is no doubt. I think organisations like the World Trade Organisation and our participation in groups like the Cairns Group give us a level of influence and a voice in these sorts of forums, which is probably greater than our economic might would otherwise allow us to have. So these bodies are very important for us to participate in.

I will speak very quickly in terms of the prospect for a new World Trade Organisation round, because I think that is important in the context. We saw Seattle, and there are numerous reasons why Seattle failed and why the WTO failed to get a new round off. I think first and foremost there were huge gulfs between the various countries in terms of negotiating an agenda. Four months ago, I probably would have said there is not a great deal of hope in having a new round kicking off in Qatar later on this year. I think things are still reasonably shaky, but certainly the election of the Bush administration in the US has breathed some new life into that process, and I think we can be a little bit more optimistic about the prospects of a full blown multilateral round at the moment.

In terms of our participation in the process, from AWB's perspective and the wheat industry's perspective, we are heavily reliant on exports. Around 80 per cent of our product is exported. We have very limited ability on a one-to-one basis to influence the trade agenda I think, so the benefits from trade liberalisation in the World Trade Organisation context are very significant for our organisation.

Mr BAIRD—What percentage is exported?

Mr Foran—Eighty per cent of Australian wheat production is exported. So obviously on that basis, and as a final note from me, our continued participation in the WTO is extremely important and to push very hard for new multilateral rounds is extremely important.

Mrs King—Firstly, I commend the committee for coming here and inviting us to appear at this hearing. We think this is a good opportunity for people in our position to participate. As wool growers, we are starting to understand a lot more the potential of making progress in this

area, and we do appreciate the progress that has been made. In my area I can see how it can assist producers of wool in Australia and subsequently, by improving their incomes, can generate wealth back into the rural communities. Why it is significant is that it is a \$3 billion export, and to see that grow and to see that wealth generated back into the rural communities is a very important issue.

Mr Tehan—The comments made by Mr Foran are some that I would strongly support and which will be reiterated by Lyall Howard of the National Farmers Federation hearing in Canberra. The wool industry has come through very tough times indeed, and I am heartened to say that perhaps we are on the brink of some sort of recovery at the moment. I am not certain that we even exceeded the wheat industry's export receipts last year, but I think we went pretty close to it. It is still an important export earner with some 70,000 woolgrowers in the country and the multiplier effect through the regional areas is enormous by way of providing jobs out in the regional areas. It is very important that an industry that has 98 per cent of its product consumed overseas keeps a pretty close eye on what happens in the way of tariff trade barriers. Our relationship with the WTO is very important. The wool industry, previously through AWRAP but now through Australian Wool Innovations, AWI, has a terrific relationship with the government in advancing the cause of Australian wool growers. We have access to government officers and advice from government officers. It has been a remarkable history of cooperation in an effort to achieve trade liberalisation.

I would like just to list a few successes that we have had in recent times. We have achieved tariff reductions in India, Korea, Mexico and the United States. We have achieved improved market access—that is lower tariffs—on wool fibre, textiles and clothing. We have increased import quota volumes for raw wool and wool tops in negotiations on China's accession to the WTO.

Mr BAIRD—Was that through the WTO or through government-to-government negotiations?

Mr Tehan—Government-to-government, but as a result of the Uruguay Round there has been a reduction in quotas which is scheduled to be completed by 2005. As a result of negotiations relating to China's accession to the WTO, there has been a vastly increased quota allowed to Australian product into that country. Yes, it is through negotiations involving the WTO. There are a number of other issues in that area and you will have access to this document. It is part of a submission provided to you.

In summary, we are happy with the relationship that we have at the moment. We would be very concerned if issues that were outside the trade agenda became involved with discussion on trade talks. By that I mean when we have some 143 governments trying to achieve trade liberalisation, to invoke clauses relating to labour standards and conditions or environmental conditions on top of what is already a very difficult agenda would make the whole thing just too cumbersome. We would rather see that those issues, which we are very greatly concerned about, are properly dealt with in the correct forum—that is, labour conditions and standards are dealt with by the International Labour Organisation or through the United Nations and the appropriate agency there and environmental circumstances or conditions are dealt with in the Kyoto summit or conference and not linked directly to the outcome of WTO negotiations. Thank you.

Mr Taylor—My comments very much represent the views of Ardmona, although from time to time I will talk about the canned fruit industry as a whole but not in terms of representing the canned fruit industry per se. The perspective that I will put into these discussions will contrast with those of some of my colleagues, in that we are in the value added side of the industry which contrasts with wheat, wool and dairy—the traditional large commodities in Australia. ‘Value add’ is a concept on which it is worth while spending a little bit of time. From Ardmona’s point of view, we will buy \$25 million worth of fruit and turn it into \$165 million worth of sales. That very much highlights the role that value add plays in our industry.

Mr BAIRD—Does all the fruit come from Australia?

Mr Taylor—All the fruit comes from Australia. The value add is very important to Australia, because it highlights the number of people who are carried along with our industry and, therefore, participate in the export activity that is ultimately generated. One of the obvious things is that processed food has only recently got onto the WTO agenda. Historically, the broad commodities were the key focus of our WTO efforts from Australia, and processed food has only recently got onto the agenda, albeit that the issues have been confronting our industry for decades.

We are a major exporter of canned fruit. Seventy per cent of Australia’s canned fruit production goes onto export markets. Australia would have about five per cent of the world’s canned fruit production. In export markets, market access is one of our important issues. Market access is a very diverse topic, but for us the key issues are duties and direct manufacturing subsidies—it is not our ability to get into the markets; it is our ability to be commercial within those markets.

To get some of those issues into perspective, if we export to the EU the tariff rate is 19.2 per cent. If we export to the United States, the tariff rate for fruit cocktail is 14.9 per cent, for peaches it is 17 per cent, for pears it is 15.3 per cent and for apricots it is 29.8 per cent. That contrasts with Australia at five per cent, or zero for developing countries. In addition, they get direct manufacturing subsidy and, even though significant efforts have been made at WTO level over distortive trade arrangements, the EU recently announced their direct subsidy arrangements for the current year: peaches went up by 15.4 per cent and pears went up by 42.5 per cent. From time to time during the period of the WTO, the Americans were able to introduce targeted export assistance programs as they deemed necessary.

All of those things contrast with the constraint that we feel if we talk about any of the same issues being used to assist Australia in any shape or form. Those comments are not meant in any way to be negative; they are just observations on the complexity of the world trade arena, the job that is in front of us and, from the processed food industry, the fact that we have been waiting 25 years, or whatever it is, to get onto the agenda. There is a lot of work to be done to offset some of those impediments to which I have briefly referred.

Mr Davis—I think the Australian Chamber of Commerce and Industry is fairly well on the public record as an organisation that strongly supports the World Trade Organisation. We have been in Seattle, and we belong to the International Chamber of Commerce that has a permanent presence in Geneva, through Arthur Dunkel, the former chief executive. We have an ongoing

engagement in these things which, at the moment, constitutes about 40 per cent of my continuing workload.

Our support for the WTO system is very simple: it is about the rule of law in international trade. If we did not have the WTO there would be no rule of law in international trade. What you would have is a matter of conjecture. I do not know whether you would quite have the law of the jungle, but I should think that we would have a much less advantageous or structured trading system than we have at the moment. Also, of course, there are substantial economic dividends. As we say in our submission, the dividends of the Uruguay Round were worth about \$A330 billion to the world economy. We get our share of that, which is about \$5 billion.

If we can get half of the leftover trade barriers reduced, it will be another kick-start to the world economy of about \$660 billion. Our share of that is probably another \$9 billion. I could cite aggregate figures until the cows came home, but the one that probably has greatest resonance in the electorate is that, to date, trade reform has been worth an income tax cut of about \$1,000. That is a concept that just about everyone can understand. Of course, we can go much further than that: if we can do more, we can have more tax cuts. If we go very boldly out of whatever may come from Qatar, we could have tax cuts equivalent to \$3,000 or \$4,000. That is a strong inducement by anyone's imagination.

What is our agenda? We would like to see a new comprehensive round launched. We have set an agenda—it is in our paper. In respect of investment trading services, we think investment needs to be looked at. We are also working on issues like government procurement, and I know the chairman has raised the issue of dispute settlement, so we can talk about that at some length. When we go into any round, we have to ask: what is our national interest? Ultimately that is what our government is there to advance domestically but also internationally. Our national interest is that rules based system. I think we can argue the toss about what those rules should be, but I think essentially we do need those rules.

I have heard others from the private sector talk about market access issues, and I think every one of them raised is quite genuine from their point of view. I think the tale will be quite interesting, whether we come out with new rules based negotiations or just a market access type round. I have had dialogues with Mr Moore, the Director-General of the WTO. Our latest briefing from Geneva, not from Mr Moore but from the representatives of the ICC, the International Chamber of Commerce, is that it is delicately poised at the moment. Yes-no to a round; yes-no to rules or market access or both. So I cannot enlighten the committee about what is going to be launched from the desert.

Ultimately I guess from Australia's point of view I think it is a question of what we call TINA—there is no alternative. You need a WTO; you need a rules based system; and you need an effective rules based system. We are a large island at the bottom of the world that accounts for about one per cent of the world's population and declining, and about 1½ per cent of the world economy and holding steady. Our interests are not served by becoming an economic island or letting the WTO system corrode away either through accident, omission or commission. The chairman observed at the outset things like REAs, DSMs and social issues. We can talk about those at length.

I recall on the social issues question a dinner hosted by the High Commissioner of Bangladesh, who said, 'The best thing the First World can do for the Third World is give us a new round and give us access to the big markets in the United States and Japan.' That will do more for them than anything else imaginable. So if we want to help developing countries, if we want to get them out of poverty, we need to give them access to markets and give them rules that they can use so that little countries like the Maldives, Qatar, Mali and Yemen can go into the dispute settlement mechanism and stand up on intellectual merit. They can take on the EU; take on the United States, if that is what they want to do, and prospectively China. China will be the biggest issue outside of the round, but its presence is to be welcomed because it will bring a massive economy—probably one of the strongest growing economies—into the rules based system. I think that can only be a plus. If the chairman wants to walk through some of these issues separately, I am happy to do that in this time.

Dr Maddock—My point is that for a small country like Australia trade is extremely important. We specialise in things and import a wide range of things, so trade is absolutely fundamental to our wellbeing. The system of rules governing trade is extremely important to small countries, because we would not have the power and influence in the absence of rules to get the same sort of protection that we do out of the rules based system. So it is very important for small countries and countries such as Australia that we do have a strong and clear rules based system.

We think this round is particularly important for the elimination of barriers to trade generally and substantial liberalisation in services. These are the main things that we look for out of the current coming round. On the broader social issues and the contextual issues, we would be opposed to any fundamental change to the mandate of the WTO. We think that very often people who are arguing for changes to the mandate are actually suggesting that the whole process be slowed down. That works very much against the interests of Australia and the interests of other smaller and more isolated economies. We think that confusing the objectives of the WTO will work against the interests of the small, the weak and the isolated. So we are strongly in favour of keeping it focused and keeping it on track.

As to how Australia should be represented in the process or whether there should be procedural changes, our fundamental view is that the parliament is in a position to represent Australia and the government through the parliament should make these sorts of decisions, and the other groups who claim to represent particular interest groups, such as our own, most appropriately should respond through the formal mechanisms of hearings, submissions and the standard sorts of devices that we have. We would be quite unhappy if there were substantial changes to the procedures to allow other people to have substantial roles.

On the issue of dispute resolution, we echo the point again taken by ACCI that a good clear strong dispute resolution is the best defence of small and isolated economies and that Australia needs to work hard to understand how to use the mechanism better. In some cases we think other countries have worked dispute resolution mechanisms better than we have. It is quite important for us to focus on making the best use of those mechanisms.

Mr Evans—I am grateful for the opportunity to be here today because it gives me the chance to draw to the attention of JSCOT a speech given a week ago by Mr Jan Pronk, the Dutch Environment Minister and President of the Sixth Session of the Conference of the Parties to the

UNFC³—or FCCC, as it was called this morning. Mr Pronk's speech was given at a conference held in Washington sponsored by the Pew Centre on Global Climate Change. He made similar remarks at a press conference at the National Press Club in Washington the next day. He attacked in the most vehement terms the Bush administration's decision to walk away from the Kyoto protocol and he went on to threaten trade sanctions against the US if it did not return to the Kyoto family. That of course is the point of collision with the WTO.

Mr Pronk described himself as the guardian of the multilateral process. He said that policy reviews were to be expected when countries change governments, but this review must be within 'the international framework' and 'no one country has the right to make a unilateral decision to abandon Kyoto'. Pronk said he was also willing to make large concessions to the US position in order to keep 'the family' together. He said his personal view was that everything is on the table except for the protocol itself—that is, targets and timetables. The point that emerges is that Mr Pronk is willing to do almost anything to save the Kyoto negotiations.

I raise this because this speech is unprecedented to my knowledge in its frankness concerning the real Kyoto agenda. Prior to the 1997 Kyoto conference, European and North American greens were using the threat of trade sanctions against any country which refused to sign the Kyoto protocol. You may recall at this time that the Australian government was very vigorously pursuing what it called a policy of differentiation. The Europeans were deeply hostile about that, but the Australian government kept on with it. 'Differentiation' was that there was not to be a uniform, across-the-board eight per cent reduction; the targets which were to be negotiated at Kyoto had to be tailored to meet individual requirements. That was the Australian position and Meg McDonald, who led the negotiations, was—regrettably, in my view—successful in getting differentiation accepted as the way in which Kyoto was going to be drafted.

The point I make about the 1997 debate was that, although many commentators kept on using the threat of trade sanctions as a reason why Australia had to accept the Kyoto protocol, not one government minister came out and said, 'Trade sanctions are not on. We are members of the WTO. Trade sanctions are totally against the rules of the WTO.' Not one minister said that. Robert Gottlieb, who I cite in this document, is probably the most eminent of the commentators who kept talking about trade sanctions. This goes to the heart of the WTO. Article I of the GATT, which was negotiated back in 1947, sets up the most favoured nation principle as the basis on which the whole GATT structure was to be built. Article I is designed to protect the sovereignty of the members. In other words, it is totally illegal under the GATT structure and under the WTO rules to single out a country and impose trade sanctions on it because you do not like what it is doing with respect to, for example, carbon dioxide emissions.

So if the Kyoto agreement is to become internationally accepted and if it is to be enforced through the use of trade sanctions—which of course is what they have been talking about, but not so openly as in the last week—then of course that means, inexorably, the end of the WTO. The WTO is built firmly and solidly on the principle that sovereign members of the WTO have it within their sovereign rights to decide their own domestic policies—be they on carbon dioxide emissions, on labour market regulations, on environmental policy or whatever. The WTO is about, as Brent said, setting up a system of rules which are in the end if not enforceable then at least able to be taken to a court of public opinion in the international community to seek redress. It is about trade and not about anything else. This is where Kyoto and the WTO are on a

direct collision course and why I have maintained for years that if Kyoto gets up then we are looking at the end of the WTO.

With respect to what Mr Pronk said in Washington, I do not know whether or not he knows that what he said is totally contrary to the obligations which Holland has to the WTO as a result of its membership. If he does know then he should at the same time be laying down the framework or laying down the procedure whereby the European Union will withdraw from the WTO. If they said that, everybody would know where they stood and we could make contingency plans. In this context, I also cite the words which President Chirac of France said at The Hague in November last year at the beginning of the COP6, in which he spoke of the Kyoto protocol as a 'genuine instrument of global governance'. Once again, global governance is, as the Europeans understand it, a new world order in which they call the shots—centred probably in Bonn because that is where the Kyoto secretariat is based. It will enable them to play the same sorts of trade games that they have been running for years and years and which they are under pressure all the time, because of the WTO structure, to dismantle. The CAP is under continuing pressure but only because of the WTO and the Cairns group. They are under pressure to start to pull it down.

The term which is used to describe the demands of the Americans and the Europeans to use the WTO as an instrument of imperial domination is 'linkage'. The idea is that you link any new negotiations for trade liberalisation with the acceptance of extraterritorial power with respect to the environment in the case of Europe or labour market regulations with respect to the United States. Seattle collapsed because the developing countries, quite rightly, said, 'We're not going to buy linkage.' The Australian government, to its great credit, supported India and the other developing countries 100 per cent in that position. It would spark the beginning of the end of the WTO if we said, 'Yes, we will give way on environment and labour markets,' because if you give way on those two issues, where are you going to draw the line? How are you going to, for example, hold back on family planning policy—because that is a big push within the United Nations circles, particularly in European circles? We cannot give ground on linkage. I think the issue is still in the balance, as to what is going to happen at the next round of negotiations. It is something on which we cannot compromise. I will wind up on that note. I hope we are going to have good discussion.

Mr Tehan—I heard my colleague on the left infer that our particular industry was not into value adding. I would just like to correct that, because some 45 per cent of our product is exported in a value added form. That puts us in a different category when it comes to trade barriers also. When wool is exported as a raw product, we do not face too many trade barriers, but once it is converted into top or yarn, then it comes under a different category and we are into the textiles sector. So we have a problem in that area in that we are not members of the ITCB, or we, as wool growers, do not have a very good forum to present ourselves. That is why we rely on the government area.

Mr BAIRD—Mr Davis, I think you were involved as an observer or part of the delegation in Seattle. Would you mind telling us what that experience was like? Did you think it was a worthwhile operation and do you think there were benefits from being involved as an observer? I have spoken to some unofficially who thought it was a waste of time. I would like, seeing you were there, to get your impressions.

Mr Davis—I have heard of dorothy dixers, but that one seems to have flames on it. My chief executive, Mark Paterson, attended for us as part of a delegation led by the Minister for Trade, Mark Vaile. There were some other industry people there; indeed Senator Cook, from the opposition party, also attended.

The report back from my chief executive, plus speaking to others from other national chambers, told us several things. The first is to debunk the myth that the protesters killed the outcome in Seattle; that is totally untrue. The protesters were an interesting diversion and theatre but of no substance in the final outcome in Seattle. There were several problems in the outcomes from Seattle. Firstly, key governments turned up underprepared—notably the Americans, who did not have a clear idea of what their objective was. The then chair, Ambassador Barshefsky, could not work out whether she was chairing the meeting or representing the United States, nor could some people in the meetings work out what she was doing at any point. It seemed to be a very fluid situation.

The value of attending I guess is always a judgment. One could take the view that, by the time you get to a conference, everything is so highly orchestrated it does not matter and the outcomes are more or less known. The other side of the equation is that the governments do tend to look to the private sector especially for specialised advice. I recall the remarks of Senator Cook: business trades; government does not. Government is there to work with business to advance Australia's national interests.

Are we going to go to Qatar? At the moment we have it diarised. We will go if we believe we can add value. How do we add value? We work with our sister national chambers, of which there are about 240 around the world. At the moment, we are looking into setting up an alliance of leading national chambers to work out what our common agenda is in the run-up to Qatar, but it is only something in development. We are speaking to the developed countries at the moment. We have had some discussions with the developing countries. I guess our challenges mirror those of governments. There are commonalities within, and there are differences within. On balance, at the moment if we see we can add value, we will go to Qatar.

Mr BAIRD—Also as a general question, which you all might like to come in on, how do we move on from the lessons we have learnt from Seattle?

Mr Evans—I will comment on the Seattle issue because I was there. From my own perspective it was worth while indeed. I think it is quite clear that, although the demonstrators caused a huge amount of upheaval, and certainly it was a humiliation for the United States as the host country, the thing that killed the Seattle talks was President Clinton's intervention at his lunchtime press conference on Wednesday, 1 December, when he, in effect, said to the developing countries, 'If you do not accept linkage on labour market, there is no deal.' The developing countries quite rightly in my view said, 'Well, there's no deal.' That is such a gross infringement of their sovereign rights; for a president of another country to impose that kind of condition is just insufferable. I think private sector representation at these particular things is useful and it is a matter of judgment on any particular occasion whether a particular firm or particular organisation wishes to go.

Mr BAIRD—In terms of lessons, I suppose linkage would be one of them. What else did we learn? Not to hold another one in Seattle?

Mr Evans—The reason they are going to Qatar is that it is not going to be easy for demonstrators to disrupt it. It means that every future meeting of the WTO will have to take place in a location which can be defended, in some sense, from people flying in from all over the world. In the case of Seattle, many thousands of students from the most expensive universities in the world gained course credits for demonstrating in Seattle. The WTO cannot afford to be subjected to this sort of behaviour.

Mr Davis—The recent exercise you saw in Quebec City with the Free Trade Area of the Americas agreement shows that the theatre in the streets can be a marginal issue if there is a political will amongst the leaders to go forward. You can just close the curtains and then the street protests become irrelevant. That is not to say some of those messages do not deserve to be heard; it is just the way the messages are put that is the more important issue. This comes back to Mr Baird's question: how do you engage the NGOs in the run-up to Qatar? If I omit that, I am sure he will remind me to comment on it.

I think the main lessons from Seattle are: first and foremost, the chair has to be neutral and remember their task is to be the chair; and, second, there needs to be maximum preparation at the officials level—and we have had a run of good ambassadors at WTO Geneva post. But ultimately officials can only push it so far, and they will get to a point where they have exhausted their authority. They will go to the edge, but ultimately it is a matter of political will.

Mr Baird's question about linkages is absolutely correct. Part of the problem was that everybody saw things as being in silos in Seattle, that every little pot was separate; it is not. Everything is linked to everything else. That is the advantage of a comprehensive round: within reason, you can trade off some difficult things in your left pocket for what you pick up in the right pocket. So you go back and say, 'We really didn't want to do this in this area but, by goodness, we got some terrific advantages over here.' I think the problem in Seattle was that a lot of people saw it as individual cans or packets rather than a holistic picture. So I think the real question is: will there be sufficient political will? To come back to Mr Evans's point: what shadow will be cast over it by what might be called ancillary issues, like the environment, labour and so on?

Mr BAIRD—Thank you.

Senator LUDWIG—You would be aware of the major criticisms that are put to you, which come, I guess, from trade unions and various groups. I am looking at one of the submissions we got today which categorises many of the issues: for example, the inability of the WTO in the linkage argument to link call over standards; the inability of the WTO to be able to deal with the transparency or non-transparency of the WTO operations; the inability of the WTO to look at the broader argument of having civil society participate in the WTO round; and the inability of the WTO to have an improved dispute handling procedure that allows NGOs to make representations to the WTO either as an *amicus curiae* brief or alternatively as a participant in the hearings themselves. They are, in summary form, some of the key criticisms that have been levelled at the WTO and, indirectly, at participants.

Do you have a view about some of those issues? Can you accept them, or do you think they are matters that the WTO should deal with? There is also the issue of your level of participation, because the WTO is government to government. It is a question of how much this government,

or any government for that matter, involves the key industry bodies in the process—what their feedback is like, what their consultative mechanisms are and whether there is any room for improvement.

I have covered quite a large area. It is a public forum, and I am just throwing it open. They are the issues that are raised continually. The arguments drift over those key points. We are given either pro or negative arguments about these issues. For argument's sake, if we attach core labour standards, it will harm the developing countries' ability to utilise the system because, as they said, there will be an attack on their sovereignty. Their argument is that, effectively, it is a terrible shame to see people employed in sweatshops on small wages. Those are compelling pictures that are brought to mind and, at the end of the day, we need to know that the report we produce embodies all of those issues.

Dr Maddock—On the issue of transparency of process, we think there are grounds for greater transparency, as in almost all areas of government operation. On the issue of allowing other groups, such as NGOs, to have some formal process in the debate, we think that is quite inconsistent with the design of the whole process. This is a government process where the government is the representative of Australia and, if Australians are concerned about the Australian position, they should talk to their government because the government is the people's representative in that context. It is quite clear that the issue comes back to how the government interacts with its citizens, so the last part of your question about how we or other groups are involved is the most important area for discussion within the country.

We have a range of forums. Committees such as this are one of the mechanisms while submissions are the more formal forum. Our organisation has been quite happy with the processes by which we have been involved, but if other groups have not been, then we suggest that we fix it here and make sure that our government represents the views of Australians in those forums. If other groups are allowed to intervene at some later stage or have some formal status, then probably all our groups will want informal status and we would finish up having thousands of different non-government organisations trying to get involved, all with different sorts of agendas. The whole reason for doing it through governments is to simplify that process.

Mr BAIRD—There was a recommendation from Western Australia that discussions by various representative groups should be made within each country, but then the government should formally take those representations on board.

Dr Maddock—That is the one that we favour.

Mr Davis—Senator Ludwig has put a rich package of issues in front of us which could entertain us for a day on their own. I guess you have to start with the essential question: what is the WTO? It is not an organisation like the UN. Ultimately it is a bottom-up contract; that is all it is. The WTO system is a contract, a single undertaking. If you ask many of the critics of the WTO to name the 18 instruments, they would probably fall apart after No. 2. Bearing in mind that, as Dr Maddock said, it is a contract, the dispute settlement process is about the law of standing. Obviously, under contract, as the lawyers amongst us would well know, the parties to the contract are the primary interlocutors on those matters.

As Dr Maddock rightly observed, the NGOs, the business community and the environmental representatives are not party to that contract; the only parties to the contract are the sovereign national governments. Not even the state governments in Australia are party to those contracts. I will leave aside the question of the binding of some national governments under WTO because that is a discussion line all of itself. As has been observed, if anyone wants to complain, there is a process called the dispute settlement mechanism. Australian complainants get involved through the dispute investigations enforcement mechanism which exists within the Department of Foreign Affairs and Trade. Whether or not that is adequately promoted is something the committee can discuss with DFAT.

On transparency, the system is probably more transparent than most. You can help yourself to many of the national government papers put into WTO from the Internet. I point my law students to that all the time and they can usually be downloaded fairly quickly with a modicum of capacity on the Internet. It is pretty well all there. Where there are restrictions, they are put on by governments. The WTO rarely classifies anything of itself; the classifications are made by governments so critics of the WTO should fault national governments.

On NGO engagement, if they have an intellectual position, they can put it. The WTO is looking to Qatar to have a forum for NGOs to come along, sit inside and participate. I believe the Department of Foreign Affairs and Trade is looking at one. Previously there was a dialogue forum where the business community sat down with the trade unions, some social activists, agenda people and some environmentalists. There was a vigorous exchange of views, and I do not know whether we got very far beyond the vigorous exchange of views.

On labour standards, Senator Ludwig talked about the ILO. The ILO is a fundamentally different operation from the WTO. As I said, the WTO is a contract. When the parties enter into agreements under the ILO it is selective and you can choose which ones you want to be in. The WTO operates under a single undertaking—it is all or nothing, with a few exceptions at the margin. So you cannot cherry pick the bits you like and the bits you do not like. If you want to join up, you sign up to everything. That is one of the challenges confronting countries like China. Our view remains that the ILO is best placed to deal with those issues—they have the superior competence and they have a longer history. Not every member of the WTO is in the ILO; not every ILO member is a member of the WTO. The ILO governments choose. If you imputed ILO instruments into the WTO, would ILO governments be comfortable with the dispute mechanisms oversighting them?

I know that the environmental lobby is very upset with the dispute settlement mechanism because of the tuna dolphin case where there was a tension between trade and the environment. And the World Trade Organisation—and I emphasise the word ‘trade’—decided the matter on trade matters, unsurprisingly. I would suggest that if ILO matters got into that you would see a trade organisation defining such matters through a trade prism—and that is understandable. So, if one wants to look at the enforceability of labour standards, I would suggest that the best approach for a committee would be to ask: why is it that governments don’t want ILO matters binding? Why is it that governments don’t want dispute settlement in the ILO? That, to me, is a more interesting question.

Mr BAIRD—Do you think that the dispute settlement process should have more resources and more emphasis?

Mr Davis—In Geneva or in Australia?

Senator LUDWIG—Can I come back to that? Has anyone participated in a dispute and a dispute settlement procedure? We had the opportunity in WA to hear from a public servant about his involvement. He was a panellist in a trade dispute. It was a particularly insightful look at how the process goes and the benefits that flow from it—that is a short way of putting it. Has anyone around this table been involved in a dispute settlement procedure or had some indirect involvement in it?

Mr Davis—Is that from the Australia or the Geneva angle? There are only about two or three Australians who have been involved as Australian panellists. I can name them if you wish. We have been involved in advising DFAT on one matter. The facts basically did not fit within the law, so there was a misfit and the matter did not proceed.

Mr BAIRD—What is your view of the dispute settlement process there?

Mr Davis—We monitor them. There are three case types: where we are the applicant, where we are the defendant and where we are a third party intervener. It is reasonably transparent. It is not a court of competent jurisdiction operating as one would under the strict rule of law. The panel tends to comprise a lawyer, an economist and a trade policy expert. The advantage is that we have had a 180 degree turnaround in the way the system works. It is not widely known that, under the old Uruguay Round system, to get a panel decision enforced all the members had to agree to it. If you were the party that lost then, guess what, you went into a veto. Now there is 180 degree turnaround. The panel system still continues but, to get a panel decision overturned by the membership of the whole, it has to be a unanimous decision. So it is a lot harder to overturn a decision.

The challenge for Australia in the DSM is to pick our fights carefully, I guess. The matters we are engaged in tend to be from the agriculture side—beef, seafood and the like. We have had some engagements as a third party intervener. We have questioned whether some of those were the right ones to be in. At the moment they are ongoing. I think we have to be careful not to make a nuisance of ourselves and to pick our engagements very carefully.

Senator LUDWIG—Are we doing enough? In terms of the dispute settling procedures, people have suggested to us that Australia is not putting its best foot forward, it is not utilising its expertise and that we can fight above our weight but we are not. In fact, what we tend to do is adopt an approach where we become a party—in other words, a third party—to the dispute rather than a primary litigant, if that is the right word to use. Rather than wear you out, Mr Davis—although I am quite happy for you to answer—is there anyone else who has a view about this?

Mr Evans—I can intervene, not so much on whether Australia could play a more active role within the dispute settlement procedures but to make a more general comment on the significance of the shrimp turtle decision. The brief history of that is that the United States banned imports of shrimp from Thailand and other countries—

ACTING CHAIR—If I could interrupt for a moment, are you leaving, Dr Maddock?

Dr Maddock—Yes, I am sorry.

ACTING CHAIR—I just want to thank you for coming and for your contribution. I know you have to keep business going, but thank you for representing the Business Council of Australia.

Dr Maddock—Thank you. You have our submission?

ACTING CHAIR—Yes, thanks very much. I am sorry, Mr Evans.

Mr Evans—The shrimp turtle case was a long, drawn out case in which the United States banned imports of shrimp from Thailand and other countries in that region on the grounds that they were catching shrimp without using TEDs—turtle exclusion devices—which were compulsory in the Gulf of Texas. The argument was that in catching shrimp without these devices, turtles were killed and this was unacceptable. The case went through a disputes panel, which upheld the appeal by Thailand on the grounds that historically the WTO and the GATT had never accepted that production or processing methods can be used as an instrument for banning imports. It then went to the newly created body, the appellate body, which was part of the trade-off to the change in the rules which Brent Davis described earlier.

The appellate body, I regret to say, now seems to see itself as a sort of Supreme Court. There are five people on it, picked from all over the world. They upheld the appeal by the defendant, Thailand, but did so on grounds which gave a great deal of misgivings to the countries who were involved in that case. It went into the preamble of the WTO and said that because the phrase ‘sustainable development’ appears in that preamble, if the United States had informed all the countries in the region that it was going to ban imports of shrimp caught without these turtle exclusion devices on the grounds that without these devices sustainable development would not be upheld, then they would have had legitimate grounds for banning the imports of this material. This has caused huge concern, particularly within the developing countries, because they see it as the thin edge of the wedge in using environmental criteria as a means of blocking imports. I know our DFAT people are fully briefed on all of this, but it is the case of such great moment that it is worth introducing it into this debate.

ACTING CHAIR—I want to ask about something you said, Mr Evans, and follow on from what you said, Mr Davis, and get you to tease it out for me because it is raised again and again. You said that you have to look at this issue in terms of a contract. If you concede contracts are a particular sort of relationship between two bodies and if you say it is rules based, then—going to your issue, Mr Evans—don’t you have to cop what the system says? In other words, we have a panel and an appeal body, which is a classic set-up for courts where contracts are normally interpreted and then facts are attached to them, so haven’t we in a certain sense got to expect the sort of thing that you are a bit disappointed in, given that it is a rules based system with a structure to interpret those rules?

Mr Evans—The complaint against the appellate body in reaching into the preamble and plucking out the words ‘sustainable development’ in order to establish a foundation, if you like, for environmental discrimination is that the members never agreed to it. In other words, the whole structure of WTO law and GATT law has been based on the consent of the members to be bound by the rules. In doing what the appellate body did, they went well beyond what the

members had agreed to in the Uruguay Round when they established the appellate body. That is the bone of contention.

ACTING CHAIR—What I am saying is that the High Court is never wrong, because—

Mr Evans—The High Court is above the law!

ACTING CHAIR—It is not above the law; it is the law. One of the problems I see in all this is that, as you said, Mr Davis, this is an agreement between governments. If I were an Australian wheat board or a wool council or a processed fruit body or a person who sells lamb or leather or whatever, I am not sure that I would be greatly confident in the way a government that is not well versed in those areas could represent me. Why shouldn't there be an ability in the World Trade Organisation for a body to go directly to a body like the panel or the appellate board and be represented by some of the quite outstanding lawyers we have in the country? Why shouldn't that be done?

Mr Davis—The most obvious answer to that is that you would have very few members of the WTO if they believed that other parties could litigate against them. I imagine there would be quite a few sovereign national governments who would abhor the idea of being the defendant against McDonald's or Greenpeace or Friends of the Earth or the Chamber of Commerce or anyone else, because we are not a party to the instrument. The contract is between governments, and governments are the ones who have to deliver under the contract and advance it. The process is still fairly legal.

If Ardmona—represented here by the gentleman sitting next to me—had a grievance, the process at law would be that they would go to legal counsel and legal counsel would say whether on balance they had an arguable case or not. They would then take the advice to proceed or abandon. The system is similar in Australia, except there is another filter that comes in, known as politics or diplomacy. Using Ardmona again as an example, if they felt that they were aggrieved because there was a wrong under the WTO, they would go to the Department of Foreign Affairs and Trade, who has principal carriage of this, and they would form an opinion on law based on whether it was an actionable matter. However, a political filter would come in, especially if it was a bilateral matter.

I have a colleague who would say that it can then get lost in the 'wiggle room' of politics. Governments, of course, are not immune from politics in these matters, and diplomacy is just a form of politics. I think the risk of allowing any non-contracting party to take litigation through the DSM is so great as to be out of proportion to any benefit you may get. I believe it would kill the WTO. I think the Australian government would seriously think twice about whether it wanted to walk away. Also, you would not be sure whether the matter was pertaining to the instrument or other agendas being progressed. The law of standing is probably well known to many. Vexatious litigation, of course, is probably well known to many. Unfortunately, I would think that the self-starting automatic processes of the WTO really would just make it untenable and intolerable to sovereign governments.

ACTING CHAIR—I ask this in that context because tomorrow morning we will be hearing from the Tasmanian government. It will no doubt be raising issues such as the salmon issue. Just suppose, for example—and I do not know; I am not suggesting anything one way or the other

on this—that the federal government did not produce the evidence and did not press the case that should have been pressed for Tasmania. Isn't that an injustice for Tasmania? How can you and I contract matters which may affect Mr Foran, Mrs King, Mr Tehan or Mr Taylor and simply say, 'This is privy to your contract,' even though you are the ones that are going to be affected? If you look at it in terms of contractual relationships, we are contracting not our own rights but other people's rights. We are saying to them, 'Not only are they your rights, but you are not going to have a say in how they are litigated.'

Mr Taylor—I suspect there are elements of that which have been occurring all the time. I suspect that when these negotiations take place overseas there are going to be a great many instances where priorities—I think that is the word that was used before—are established and somebody's cards are thrown in to gain what is deemed to be a greater benefit somewhere else. If your cards are thrown in, then you may feel aggrieved exactly as you have outlined, not in a legal sense necessarily in terms of wanting to defend a particular situation but, nonetheless, in a negotiation your cards have been thrown in by your own government with a view of a grander good.

ACTING CHAIR—How would you feel like going back to Shepparton and saying that the preserved fruit industry has now gone but sugar cane in Queensland is going to do well?

Mr Taylor—I suspect that those examples are exactly how we feel at this point in time 20 years down the track. That is exactly right. I suppose then it is a matter of each industry representing its cause in helping to influence the priorities that the Australian government ultimately negotiates around. It will not be win, win, win everywhere. There will always be some priorities and some things that are doable, I suspect.

ACTING CHAIR—Shouldn't you have the right to at least make a contribution to what the government puts? Shouldn't you be able to get such experts including, if you like, lawyers to help you with that?

Mr Taylor—I agree totally. I think the point that Mr Davis is making is that you make it to the government, and the government ultimately establishes the priorities and then goes forward with its priorities into that world forum.

ACTING CHAIR—If the government are negligent in the way they present their case, should you be entitled to sue them?

Mr Taylor—I am sure there are many people—

Mr Davis—I believe the legal profession has an answer to that.

Mr Evans—Could I make one point about the issues you are canvassing, Acting Chair? I do not believe it is accurate to imagine the government in these negotiations trading off sugar against canned fruits. What they are negotiating is changes to rules. The rules are supposed to be always in the direction of improved liberalisation of trade. Trade is seen by the WTO as essentially an unmitigated good. The history of the last 50 years shows that that is true. The growth in international trade since the last war is of the order of fourteenfold, and it has been a very strong driver of the growth in world prosperity, particularly amongst developing countries.

You are always going to have debates about rules and there will be people who can see twists and turns in the rules that will advantage them and disadvantage their competitors. That game will always be played. But I think it is the rules that we have to be concerned about rather than interests.

ACTING CHAIR—But the rules have effects. Some evidence we have had is that Japan, for example, are very reluctant to give up protection of their agricultural industry.

Mr Evans—They are totally reluctant.

ACTING CHAIR—A lot of people would say that that is all right because it is the rules we are interested in and not the effect.

Mr Evans—No. The point is that we are in a position to apply constant pressure to Japan and that pressure is starting to yield results.

Mr Tehan—Just on the issue of allowing other parties to litigate on behalf of different sectors, we wool growers would be rather concerned if the government decided to go backwards on its responsibility in this area and allowed a host of international lawyers to have access to a very lucrative market and the government did not assume the responsibility that we believe it has in this area. America has gone down this track and there are a lot of very wealthy lawyers around. Please do not put us through that.

Mrs King—As has been well demonstrated, the rules are there. We do need this transparency that is there, and governments are there to govern as equitably as they can. We cannot see a better process by having something that is less transparent possibly. I understand your perspective, but I also look at the wider view here.

Mr BAIRD—This is an interesting twist, isn't it? The private sector telling government that they want them to take on their responsibility.

ACTING CHAIR—Can I get this on the record? Are you all saying: we do not want the lawyers; we want government, whomever we elect?

Mr Foran—I think there is plenty of opportunity for lawyers to be involved in the process, but it is with the individual industry in building the initial case. While I certainly would not want to comment on the government's ability or otherwise to run these cases, I suspect that a case is only as good as the preparation work that an industry puts into it in the first place.

Mr Davis—Another issue is: what outcomes do we want from a case? Traditionally, of course, one wants a penalty or a sanction. Under the DSM there are a whole lot of rules that basically say that, if you win a matter, you can seek what amounts to orders for a penalty, which usually means that you can impose a tariff premium on the goods coming in from that country to the equivalent of the damages caused to you.

Recently, one of my students pointed out that there is a very interesting twist on that and the Australian government should look at it; that is, rather than seeking to impose penalties on the goods coming in from those countries—which is anti free trade, which is what the WTO is all

about—why don't we, in seeking orders, insist on a reduction in their trade barriers in the other country? Say, for example, we take an action against Japan in an agricultural manner and we win—this is all hypothetical—current thinking would say, 'We win so therefore we'll put a tariff premium on goods coming in.' It might be motor cars, hypothetically. That is incompatible with our national agenda on free trade; it is totally sending the wrong messages. We are little protectionists when we adopt that strategy. Why don't we use it to batter down some areas in rice, for example? We have made progress on rice. We now have tariffication, which means basically we work out the value of a quota and its tariff equivalent. So I think there could be some creative thinking in the Australian government when we win matters to use any wins to bash down a few barriers in the other party. A bit of creative thinking could suit our national interest quite nicely.

ACTING CHAIR—Can I take it that, if any of us here were charged with a serious criminal offence, we would prefer to go to the government rather than a firm of lawyers for our defence? Is that what I put you down as all agreeing to?

Mr Davis—I am interested in the idea of a private prosecution of criminal offences. I know it is permissible but at the edges. If the chairman is suggesting we privatise the criminal law process, that is an intriguing idea.

ACTING CHAIR—They were talking about Frank Hardy here this morning. That was a private prosecution over *Power without glory* to start off with. It was taken over later. Anyhow, I have had enough.

Mr BYRNE—With respect to the submission that was made by Ardmona, you were talking about the tariffs that you are actually subjected to with the EU and the United States. We have got a tariff of five per cent on those particular goods, and then you have the canned fruit at 19.2 per cent in the EU, 14.9 per cent in the USA and 29.8 per cent on apricots. When are you actually anticipating that you are going to get a more level playing field with respect to these sorts of things?

Mr Taylor—I tend to refer to it as when we are old, grey-haired gentlemen actually, but I guess the process has got to start. The comment that I made at the outset was that at least processed food is now on the agenda. I think our cards have been thrown in on earlier occasions. We have signed peace clauses with the Europeans in the past on the basis that some other agenda is achieved, and that is the agreement that they can directly subsidise their agricultural industry. There are a lot of things that we have cast in stone at this time that are legal even though they are not a level playing field. It is a matter of how those issues can be undone and how, as an industry, we can advance our priorities so next time around, I guess you have to say, somebody else's cards get thrown in.

Mr BYRNE—What happens if there is an increasing move to protectionism, which may emerge in the United States, particularly if there is a global downturn and there is less likelihood of anything happening? Are you saying that, basically, we have to accept this and allow these countries to continue? What sort of process is your company going to be undertaking to ensure that there is a more equitable mix of tariff measures?

Mr Taylor—From our industry's point of view we are working within the guidelines that we have discussed here before. We are working very closely with DFAT to make sure they understand our industry's issues and to get them high on the agenda in whatever rounds of world trade discussions are in front of us. How effective we will be in that situation remains to be seen. The thing that we do say is that the processed food industry is 24 per cent of the manufacturing industry in Australia. It is a very large industry. The issue is that it is very diverse—from Coca Cola to canned fruit and everything in between. The value added issues that I spoke about before—where a company like ours will convert \$25 million of fruit into \$165 million of safes—clearly highlight the opportunities that are there. The deciduous fruit industry in Australia was once at least 10 per cent of the world's production of canned deciduous fruit. It has declined to its current position of about five per cent, albeit we are quietly growing again—very much because of these imperfections that we talk about. There is no doubt that, in a comparison of our industry with any of our competitors overseas, our growers are infinitely more competitive than the major competitor countries and the processors are equally so.

Mr BYRNE—What were the tariffs on each of those particular products in Australia, say, 10 years ago?

Mr Taylor—Ten years ago they were five per cent. We have been exposed to the cold winds of the market place for a long while.

Mr BYRNE—How long? What is the highest tariff figure we have had in, say, the past 25 years?

Mr Taylor—The highest tariff I can remember is probably about 15 per cent about 15 years ago. It was progressively quickly phased down. We are at the forefront of our low tariff arrangements. If we could have access to the market I would confidently estimate we could have 25 per cent of the world's production of canned fruit.

Mr BAIRD—What sort of access?

Mr Taylor—If we had fair access—where 'fair' is, as in those good Christian principles, where they have the same as what we have—then there is no doubt that we could have a much larger per cent. We had 10 per cent at a prior time. The Greek industry, just to get it in perspective, controls more than 80 per cent of the world's exports of canned deciduous fruit; 30 years ago they basically did not exist. They have grown totally to that perspective under the backdrop of high tariff protection—19.8 per cent—plus direct manufacturing subsidy. This is within the EU.

Mr BYRNE—Sorry to cut across you, but if the general public hear you say how that industry has developed, how are we, as politicians, supposed to say to the general public, 'Your arguments about tariffs are wrong'? You have just articulated the development of an industry hiding behind high tariff walls and protection. We are seen to be reducing protection following this trade liberalisation process and you have just, in a sense, articulated an argument to say, 'Look how this industry has developed with subsidies and high tariffs.'

Mr Taylor—There are two competing arguments. Yes, they have developed, but they have developed on a background of total inefficiency. They have two-acre farmers, trees planted using the same technology their grandfathers used and—being a bit black and white about it—if you were to talk to most of these European producers they would say, ‘In which can size do you want your peaches?’ There would be nothing about innovation or consumer issues—responsiveness, et cetera. In one sense, whilst our industry is half the size that it was, say, 15 or 20 years ago, it is breathtakingly efficient, it is innovative, it has developed technologies and done all the things the purists would say are good for you. The fact is: half the people are not here today to be part of that process.

Mr BYRNE—That is a hard process to counteract politically, though. We have some of the best and most highly competitive industries in the world—there is no doubt whatsoever about that—as a consequence of this trade liberalisation, but politically the argument is that we have just lost half the work force. Whilst one can argue that they have gone on to other things, in some cases they have not. That is the dynamic that we face politically.

Mr Taylor—Looking at where we are now, if you were to build the best of all worlds together, having been a survivor of the process, totally deregulated, with low tariff protection or no direct government support in any shape or form, our industry is pretty darn good in a world setting. If you could then build the strengths of that with the issue of the WTO and what we are looking for it to achieve in terms of trade liberalisation—I am sure that that is the right direction in which we should be going—in broad terms our competitor countries would not see which way our industry went, if only we could have access to the level playing field. We should build on where we are today: get these trade issues progressed—we have a lot of catching up to do—and allow us to build on the strengths that we have today.

Mr BYRNE—Also with respect to their inefficiencies, they are like a parabola: they can establish market share but, because they are so inefficient, eventually they will trend down and need to become more competitive. Is it a point where you can subsidise? Is this the argument that you would present to the community: in the short term they might be getting an advantage but, in the long term, because we are more competitive, we will catch the field because there will be a parabola effect for this industry?

Mr Taylor—I suspect that as long as you are allowed to continue operating in the model that you are comfortable operating in, you will continue to operate in that model: hence they have been subsidised for 30 years; they still have small, inefficient farmers; and they have an inherited system that does not lend itself to any farms getting any larger, et cetera. What brings about change? Alligators at your ankles bring about change. Until somebody puts the heat on them, they will continue to dawdle along. Subsidies have not been reinvested within their industry to set them up for the realities of a world market some time down the track; it has gone into lifestyle. The only time that they can help themselves is when the heat is applied.

Mr BYRNE—Do you think there is an inevitability in world trade that the heat will be applied in some of these sectors, or will we wait 15 or 20 years before that happens?

Mr Taylor—Old, grey-haired gentlemen—they are very comfortable with the system. If you talked to the bureaucrats who administer it, you would get no encouragement that they even

recognise that they have a problem. The first bit of change is recognising that you have the problem.

Mr BYRNE—With respect to business and, say, the political cycle, you can understand the dilemma in politics. If we say to someone, ‘You have to wait 15 years before this inequitable practice is discontinued,’ that is a very hard message to sell to the Australian community. What would you suggest to politicians with respect to marketing that message, notwithstanding the employment that has been generated because of a more liberalised environment? How does one explain that to some of the people who might have lost their jobs in the food-processing industry, in some of the more traditional industries and in other industries that have not come on stream and are in a netherworld?

Mr Taylor—In a sense, from our perspective, I do not see that it needs to be marketed per se. This is a set of rules that have been in place for a very long time. They are the rules; they are ongoing. In a global sense, we also see them as the right rules. We would endorse everything that has been said about having a set of rules within which you must operate. We have adjusted to that situation.

Mr BYRNE—Has that set of rules operated to the advantage of your specific industry in this country?

Mr Taylor—No, they have not; we are half the size that we were, and Australia has lost a lot of value added exports.

Mr BYRNE—You can understand the dilemma: you are arguing one thing, yet the people out in the street see another. They can listen to or read your testimony and say, ‘Hang on, we have just lost 50 per cent of our industry.’ You are saying that it might take 15 or 20 years before there is a resolution. You can see the difficulty of people saying, ‘Why don’t we jack up tariffs then?’

Mr Evans—Could I perhaps offer a political solution. I admit it is a very real problem you are facing. Mr Taylor talked about the increase in tariffs from the United States. In my view, the most exciting thing that has happened on the trade front in the last 10 years or more is the very real prospect of negotiating a free trade agreement with the United States. I was in Washington just a couple of weeks ago and went around the traps. In my view it is an opportunity of the kind we would never have thought possible even 12 months ago. The politics are right in terms of the Bush administration. The Howard government, I think, is very keen to get it up. There will be interest in Congress and it will be opposed, but I think we can negotiate our way around them. You are looking at access to a market of the kind that we never had even under the British Empire system.

Mr BYRNE—With respect to that point you made, we have also on another committee taken some evidence from another expert who basically said that, if we ratified that, it would operate to our disadvantage, particularly with respect to agricultural exports. That was someone I see at the vanguard of the free trade agenda.

Mr Evans—I think that is totally wrong. Agriculture is on the table in this deal. If we negotiate from the very strong position that I think we have, we have a very good chance of

getting increased sugar exports, lamb exports and canned fruit, which I did not know about. We have a huge opportunity here. Whoever was arguing that the US FTA is something that is going to be bad for us is living in some other world.

Mr BYRNE—We had to be cautious about that. He was involved in some agreements that were formulated in the 1980s.

Mr Davis—Mr Evans identified one track of getting better access for Mr Taylor's product in the US—that is, the FTA. The second is the free trade area of the Americas. This comes back to the point that everything is connected to everything else. If that instrument comes off—and 33 countries and 700-odd million people is an enormously ambitious exercise, but the political will seems to be there—then my counsel would be to say to Mr Taylor and his colleagues, 'Keep an eye on the agreement.' If his products get free trade treatment within that instrument, we get our minister commercial in Washington to go straight around the corner to the USTR and say, 'Most favoured nation—chum—give.' Quite simply, any undertakings within the free trade area of the Americas under the MFN rule in the WTO apply to us.

ACTING CHAIR—What court do you think is going to decide the issue when it arises under the agreement with America?

Mr Davis—The FTA or the US FTA?

ACTING CHAIR—Probably the Federal Court in America. The Supreme Court in America would be the one that decides what the agreement means in the end, wouldn't it?

Mr Davis—The MFN matter would be decided by the WTO's dispute settlement mechanism, but I think it is a card we can play to get better access to the US market.

Mr Taylor—We, unfortunately, had a very bad experience with those most favoured nation agreements. We had one with Canada called CANATA. When the FTA agreement was put in place with the US, we did exactly as was suggested and went with our CANATA agreement and said, 'We will have equal access into the United States.' Unfortunately, we did not get to first base.

Mrs King—An area that has concerned me for a long time is the public's general understanding of what this is all about and how easy it is for the popular press to pick an emotive story and run it on the television or wherever. I really think there is a duty of care almost to follow up and give equal information of what is in the national interest to benefit everybody rather than just a handful who seem to run the agenda. When the whole national interest is disadvantaged by some of this, I think there should be a strategy of getting a more equitable story out too.

Mr BYRNE—Notwithstanding what you have just said, it was difficult given the evidence that we have just taken from Mr Taylor with respect to that. It is a complex message that we are distilling in the community. We have just taken evidence from one of the people who were supporting that, which could be interpreted by people who are listening as an argument as to why we should not be going down that process. I guess as decision makers with respect to these

sorts of things we wear the consequences of that. As you said, you need to have a fairly powerful message.

If you were talking about trade liberalisation and its benefits, could you quantify the figures in terms of Australia since, say, 1983? I asked that question of Mike Moore in a committee hearing and could not get an answer. I guess to some extent with respect to these arguments we need fairly detailed information because, as you said, there are a lot of emotive and quite reasonable arguments out there, but there is not a huge amount of information. There is in global terms—this has benefited this and created \$300 million worth of trade—but how do you then confine that to Australia and say, ‘Because we have undertaken this, this is what has happened in terms of jobs, exports, et cetera’? Those are the sorts of figures you need to counterbalance some of the other arguments that people are legitimately articulating about loss of jobs, as just articulated by one of your witnesses.

Mr Davis—There is heaps of information like that available from the department of foreign affairs—open market matters, study. The department of foreign affairs can provide that till the cows come home: wages are 20 per cent higher in traded sectors compared to a \$1,000 tax cut, 1.7 million jobs from exports, and so on. But Mr Byrne has touched the nub of the problem, which is the political noise. The profile given to losers, as few as they may be—and I am not thinking of any particular person—tends to greatly exceed that of the winners. It has always been thus in politics, and I do not see any magical solution to that.

When you have a loser, there are two approaches. One approach is to provide adjustment assistance to them to help them move from position A to position B, and the other is just to tip them out and dump them in the lake and leave them to look after themselves. I think in Australian governments in the last 20 years we have thought about adjustment assistance. It is a second-order issue, but I think we have done better than we have in the past. We have not just thrown them to the wolves. I would accept there may be some cases where we could have done better, but at least we are aware in this country that adjustment assistance is something. Even the purists I think now accept that that is a reasonable expectation.

Mr BYRNE—I do not think that is an expectation with respect to a number of the arguments that have been put forward. Have DFAT made a submission to our committee talking about the benefit of trade?

Secretary—They did not give specific figures.

Mr BYRNE—We might want to get them on notice. I presume DFAT monitors these things.

Mr Davis—The secretariat usually get that. We have just had 30 little pamphlets on the experience of trade liberalisation in rural areas, and they are quite interesting.

Mr Foran—In terms of Mr Taylor’s experience, it takes an extraordinary amount of taxpayer money to create the sort of market share that the Europeans would have in this instance. I think the question really is: even with the tariff protection and even with modest levels of support, what would have happened to the canned fruit industry over that same period of time? I would postulate that it probably would have been exactly the same outcome, and that the policy

settings cannot operate in a vacuum. Really, the question then is: what is the best way to create the most efficient industry you can and operate in reality?

Mr BYRNE—A synopsis of what you are discussing is, in effect, that what we should be doing is pushing harder with respect to more equitable international resolution of some of these particular difficulties. I guess the response is that we have just got to keep on pushing to get that further liberalisation with our trading partners, because we have basically taken the requisite steps to make ourselves as competitive as we can be.

Mr Taylor—I guess we are prepared to take the hard edge. For example, you may have existing agreements in the canned fruit area that talk about domestic support. Then the industry grows to a stage where it becomes an exporter, and it therefore becomes export support. You have got to keep your focus on what opportunities there are, to be then taking a hard line. Of the figures we were talking about before, I think there have been 137 disputes and Australia has promoted three of them. We have to be mindful of whether there are opportunities for driving our agenda forward in a proactive way. That might be all that there were; there may be more.

Mr Davis—There is another solution, which is, almost, to revisit the red book project. Those of us who have been around would remember that 15-odd years ago the Bureau of Agricultural and Resource Economics produced a book that showed what consumers were paying at different countries and the premium over that. When that was used in the EEC—as it then was—it was very powerful in effect. You were getting ripped off at the turnstile or the checkout. I believe that some of that was tried in Japan, but the Australian government backed off for other overlaying political reasons. Just highlighting to the Japanese consumer what we charge for rice and what they are paying for rice really has a profound effect. It is a difficult issue in diplomacy to get in and do that.

Senator SCHACHT—Mr Davis, why can't the Australian Chamber of Commerce and Industry raise money out of its members via a small levy to go and put such television ads on Japanese television and European television pointing out the fact that as consumers they are being ripped off? Then it is not diplomatic.

Mr Davis—There is an option. We have been discussing of those matters. We have not resolved as yet the question of effectiveness, targeting and the like—which countries, where, what products. Again, in the agriculture sector we would probably defer to our friends at the National Farmers Federation.

ACTING CHAIR—Could I just make a comment on what Senator Schacht said and then Mr Tehan can comment. When we were in Canberra, we were shown the magazines that the Japanese are sending around Australia putting their case, in Australia, for the protection of their agriculture. That is the sort of thing that is being suggested that we do from down here.

Mr Davis—We would be quite open to discussing that with the Department of Foreign Affairs and Trade.

ACTING CHAIR—What about doing it directly?

Mr Davis—Yes.

ACTING CHAIR—There seems to be a tremendous inclination to get to the government the whole time.

Mr Davis—Whether we went into a country and did just literature drops ourselves, whether we work with our government—

Senator SCHACHT—The literature will go in the bin. The thing that will stir them up is to put it on television. Put a 30-second ad on television. That is all you have got to do. It would be more effective than wasting the pennies on a piece of leaflet.

Mr Tehan—I am glad Senator Schacht raised the issue, because the National Farmers Federation is seeking partners within Australia and within the Cairns Group to conduct such a campaign. It would be strategically aligned with a WTO meeting of some sort, or leading up to it, with expressly this in mind—to publicise some of the issues relating to what trade barriers cost different consumers. One bit of research that we have done recently is on the duties on textiles and clothing into the United States. It cost the American consumer \$2 billion a year. That sort of information ought to be made public to the American consumer.

Senator SCHACHT—Why can't the Wool Council do this. They still have tariffs on wool into America, I understand—I forget what the structure is with the wool industry at the moment; it keeps changing every two years, two weeks, two months and I am not sure what I am dealing with anymore; I seem to have voted for them all through the parliament in every different form of government and we still do not know what we have got. You have got the levy on the growers, which is to promote Woolmark and various other things. I think just take \$10 million out and buy a series of television ads in a number of key urban areas in New York and California. You would only have to play it about twice and there would be such an uproar. First of all there would be the claim by the wool growers of America, 'Unfair!' You would get so much free publicity. You will get millions of dollars of free publicity but you will start the debate. They will try and retaliate and say they will pull out of ANZUS or something else or take their ships away or whatever else. They would say it, wouldn't they? I just think it would be a very simple thing for the bodies such as your own to put the money up. You can do it much more effectively than the diplomatic niceties of which any government has to be mindful. How much a year do you collect on the levies?

Mrs King—There might be the money there, but maybe you have voted for a structure that might find great difficulty now in its operation to perform this function.

Mr Tehan—The levy is about \$70 million. But it is specifically targeted for research and development and product innovation.

Senator SCHACHT—Isn't this a development issue—to sell wool in America? I would have thought it was lay-down misere to be described as development of the market for wool.

Mr Tehan—We would very much like the government to provide the matching money. If you could give us that commitment, we would be very happy.

Senator SCHACHT—We have voted in the Australian parliaments I forget how many times—I have been in it since 1987—when the wool industry bills have come up. At one stage

we voted for \$4 billion to underwrite the wool industry for the wool price scheme, which wrecked the wool industry for the last decade. Rather than coming to us, why don't the industry just take their own money and put these ads on and start a blue about wool: tell them that they are closing their market in America, that you cannot get in?

Mr Tehan—It was never the government's money; it was always the wool growers' money.

Senator SCHACHT—Okay, but it is your industry. I appreciate the fact that everyone wants to get a slice of the government's money. We are all the same about that. But it seems to me that if you have got \$70 million you could declare \$7 million as development of the American market and buy television ads.

Mr Tehan—I think that we would be very concerned that we would be stepping into a realm which rightly belongs to government.

Senator SCHACHT—Why would it belong to the government? The Americans claim they want freedom on services, creativity on advertising—all of these things—an open market. If you put that on and they try to take you off, you could then go to the WTO and say they were trying to stop free speech, free advertising and so on under the Fifth Amendment. You have a wonderful opportunity to absolutely create mayhem to your advantage.

ACTING CHAIR—Following what Senator Schacht said, the impression could be created—not that it has created that impression for me—that we have a trade problem throughout the world, and Australia wants to get in there and trade as a nation. Everybody is saying that the government ought to do it. People might say, 'Where is the good Australian initiative and enterprise?' The government has to run the advertising, and Australia has to run the cases before the World Trade Organisation and what have you. Do you ever get the feeling that perhaps there is something that we at various peak councils could do? Otherwise, what you become is just a lobby group.

Mr Davis—The sense of what Senator Schacht said is basically right—that is, should we advocate our case more effectively in the other market? Yes, of course we should. The discussion I have heard is: how do we go about it? Senator Schacht has one view, Mr Tehan has another view and I have another view. It is like political advertising: if there are seven people in a room you have 11 different approaches. I think the sense of what he says is right.

Senator SCHACHT—They are putting out leaflets at the moment, is that right? We all get leaflets and we chuck them in the bin. No-one reads them—no-one reads them in America; no congressman reads them. We send delegations to the US Congress every other year—Labor and Liberal—to lobby for open access. They have a nice cup of tea, say 'Thank you very much for coming', and nothing changes. The only way we are going to get it is to bloody their nose.

Mr Taylor—Isn't there a different perspective that needs to be put on it slightly? From a manufacturing point of view, as industry, we can listen to what the consumer wants, we can build products, we can build brands and we can be as efficient as we possibly can be. In broad terms, that is what industry can do. Government is responsible for controlling the economic environment that we operate within. In broad terms, the weak player in the partnership that exists at the present moment is government because, at this point in time, others can come to

our market at five per cent and we can go to their market at 20 per cent or at plus direct manufacturing subsidy. We can do so much, but you, as government, are responsible for establishing the agenda that we have to operate within, and at this stage the scales are balanced the wrong way. We are doing the products, we are doing all the innovation, and we are making sure that our industry is as efficient as it possibly can be, but the area that you have to establish is that broader environment, and it is not being done.

Senator SCHACHT—In 1989, I went to a meeting of the wine and brandy producers association in Adelaide. A bloke called Brian Croser stood up and said, ‘We have an aim by the year 2000 to get \$1 billion worth of exports in manufactured wine.’ At that stage we were exporting less than \$100 million, and only two years before we had been pulling vines out. Around the table there were astonished gasps. He then outlined, in an hour’s speech, everything that had to be done—ranging from raising capital; producing bottles, labels and corks; and the marketing of the brand name in Australia. All of those countries we are going into have various regulations on alcohol and licensing, et cetera. One thing he said was, ‘By the way, we are not coming to the government to ask for a hand-out for this; we are going to do it ourselves. One thing: don’t get in our way by forever changing the Australian tax arrangement on wine,’ which they consistently blue about. I think it was \$1,400 million last year, and in my own state it is going to crack a billion. The Riverland has gone from 17 per cent to six per cent unemployment. Clare has gone from over 12 per cent down to 1½ per cent—it has above full employment to supply the labour for the value adding.

They have not actually gone and put advertising on French television about how crook French wine is—yet—but I would not be surprised. Knowing Croser and the boys, if they need to come to that, they will. It strikes me that that industry, by good luck, good management or whatever else, has done it. You keep saying that the government has to come to the party. We can do something for you in the broader multilateral sense, but I cannot see why, in your own areas, you cannot get out on the front foot and promote yourselves and actually take head on issues such as television advertising about the quality of your food.

Mr BAIRD—It is certainly a very free market these days. It is very encouraging.

Senator SCHACHT—I do not believe in the taxpayers underwriting \$4 billion worth of wool that sticks in the shed for 10 years. I was one of the few people who voted against it in our caucus at the time, because I knew what would happen: we would be stuck with the wool and the wool growers would go broke.

Mrs King—I came with no baggage. But I did see the wine industry 20 years ago had no statutory marketing and no government interference—and it grew. We have still got a structure that is imposed by government.

Senator SCHACHT—But you all queue up: your industry comes to the parliament and knocks on the door and demands this legislation and that legislation. When that does not work, two years later they are back again.

ACTING CHAIR—You ought to be quiet while Mrs King gives her answer. Don’t interfere.

Mrs King—There is enormous potential in the industry actually to take the path you have suggested, but I still see the impediments that are there have been imposed to a certain extent by structures that have carried over from previous organisations. It is not quite as easy. We are not still as free. We have got a whole structure there that is even, I think, in some ways more difficult to deal with than what we have had in the past, because you set the rules.

Mr Davis—There is a big role for government in the wine industry, under the intellectual property component of the WTO, on protection of geographic descriptions and the like.

Senator SCHACHT—Yes, of course. But the wool industry is the dominant producer in the world market, whereas the wine industry is four per cent, and off a very low base, where it is not the dominant player, they have created great wealth in Australia. The wool industry has 80 per cent of the world market or production, and the thing's a basket case.

ACTING CHAIR—We are going to get a transcript of this sent over to South Australia. I thought that was a very powerful statement for the wine industry of South Australia. I think we could go on and I think we ought to go on. But the agreement was to close at four o'clock. I thank Hansard and all participants. You have represented the points of view of the various bodies that you represent quite magnificently.

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

That the paper presented by Mr Evans be accepted as an exhibit.

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

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

Committee adjourned at 4.04 p.m.