



TT March 2003
Submission No: 28

Senator the Hon Peter Cook

Senator for Western Australia
Australian Labor Party

Mr Kim Wilkie
Deputy Chair of the Joint Treaties Committee
Parliament House
CANBERRA ACT 2600

Dear Kim

Re: Singapore-Australia Free Trade Agreement

Last week I mentioned to you my concerns about the Investor State Provision in the Singapore Free Trade Agreement. I now attach the relevant Hansard from Senate Estimates of 3rd June that covers the questioning of DFAT on this provision.

My concern is at three levels. Firstly, Australia has never entered into an Investor State Provision with a developed country before. Classically, those provisions are with developing countries where the rule of law is questionable and where protection of Australia's investments are at risk. That's not the situation with Singapore. To include an Investor State Provision in a bilateral agreement between two developed countries is new policy and this is admitted by DFAT in the Hansard. Why such a provision is necessary is not explained adequately by the argument that it is to guard against expropriation.

Secondly, the US is seeking an Investor State Provision in our bilateral FTA with them. By including it in the Singapore FTA, we are establishing a precedent we must concede to the United States. This will create a big headache for the Australian Government, particularly State Governments. The draft US Investor State clause has its home in NAFTA. Under this provision – infamously – US companies have sued the Canadian Government and provincial governments, many of them successfully achieving settlements that would otherwise not apply. Usually under WTO rules if a country does not observe the conditions of a treaty the injured party takes the matter up on a country-to-country basis with the WTO disputes panel. Investor State clauses enable private companies to sue governments where those private companies believe that a government has not honoured the provisions of the agreement. Why we should be extremely cautious about setting a precedent for the United States is because US companies use litigation not just as a means of seeking a redress, if they are injured, but as a weapon to impose legal costs and other political costs against government where they disapprove of policy. This is certainly the case in NAFTA.

Thirdly, DFAT agree that while the Singapore FTA exposes each State and Territory government to potential litigation by private Singaporean companies, and if we do a US FTA with American companies, none of the States have explicitly consented to exposing themselves in this way. Given the failure of the Commonwealth to obtain explicit consent from the States and Territories to accept liability on trade matters, I believe the treaty should not be allowed through until explicit consent has been obtained.

In those circumstances I think it entirely appropriate for the Committee to make a finding that, subject to your view of the treaty, it should not go forward unless each of the States consent in writing to acceptance of the legal liability imposed by the Investor States clause in the agreement.

I'd be happy to put a submission to the Committee along these lines if you think it necessary.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Cook', with a long, sweeping flourish extending to the right.

PETER COOK

23 June 2003

Senator COOK —Onto the fabled Australia-Korea free trade agreement that the Prime Minister announced three years ago, which has quickly moved from being a free trade agreement to a joint working study, how is that moving? Is that moving about the same speed or slower than the Japanese one?

Mr McLean —There has been no formal process of negotiation. We raised it with the Koreans during the annual MJTEC—the joint ministerial economic dialogue. The answer that we got was pretty blunt—that because of their agricultural lobby or their agricultural sector's lack of enthusiasm about the liberalisation of that sector they really cannot contemplate an FTA. The added element that was made to us, I think in April last year, was that there was a forthcoming presidential election. That has now been held. So we will certainly be raising the matter again with them, probably in advance of the joint ministerial talks when they are held—we hope later this year—with a view to having another go.

Senator COOK —For the time being, this prime ministerial promise of a free trade agreement remains unkept.

Mr Deady —It is not for lack of will or interest from the Australian point of view.

Senator COOK —I understand. Chair, perhaps I should indicate to the officers how I would like to complete my examination of this part of the estimates. If there are officers who are not encompassed by my interests, then they can go and do a constructive job back in the department and those that are encompassed can do a constructive job here in the parliament. I want to ask a few questions about the Australia-Singapore free trade agreement, then I want to focus on the round and then I will conclude with some questions—Mr Deady will be pleased to know—on the Australia-US free trade agreement. I do not have questions on any other subject. Starting with the Australia-Singapore free trade agreement, can someone tell me exactly what the legal position is with this agreement as of now?

Mr Deady —I finalised the negotiations with Singapore at the end of last year. I believe there is legislation up on the hill this week in relation to the changes to the Customs Act required under the FTA to introduce the tariff concessions that would apply to Singapore following the entry into force of the free trade agreement. That is the only legislative change required.

FOREIGN AFFAIRS AND TRADE PORTFOLIO: Department of Foreign Affairs and Trade

Senator COOK —What is the exact legal status of this agreement at the moment? Is it formally concluded between the two countries?

Mr Deady —The negotiations are concluded and the agreement was signed by Mr Vaile and George Yeo back in February.

Senator COOK —When does it actually come into force?

Mr Deady —It comes into force once both countries have concluded the implementation process as required under the two systems. Once those treaty processes have concluded and any legislative changes required are made, then the governments of Australia and Singapore will notify each other of a specific date to bring it into force.

Senator COOK —Was it intended to bring it into force from 1 July?

Mr Deady —No, there was never a specific date. The language of the agreement says that once the legislative procedures have concluded in both countries, the agreement would then enter into force—that is the situation.

Senator COOK —If the parliament enacts the legislation and then you communicate it to the Singaporean government, and they have done similarly in the interim period, then the agreement comes into force on a date to be fixed?

Mr Deady —That is correct.

Senator COOK —What if the parliament does not enact the legislation? What happens then?

Mr Deady —Until the processes are concluded, that second step of the government notifying the Singaporean government of a date of entry into force would not be possible. The legislative requirements to bring the agreement into place would not be concluded. So until that is done, you cannot fulfil that second part of the obligation.

Senator COOK —It does not come into force?

Mr Deady —No.

Senator COOK —What if the parliament declined to ever enact the changes to the Customs Act that you have proposed? Would you go back and renegotiate those provisions?

Mr Deady —That is a hypothetical question and I do not think it is for me to answer. We have negotiated the agreement, it has been signed and the legislation has been put up to the hill bringing in those tariff changes—that is the only legislative change required. I do not think I can add any more to that.

Senator COOK —So they have been enacted on the presumption that the parliament will do the will of the executive and make the legislative changes?

Mr Varghese —That is normal treaty practice in Australia, as I am sure you would be aware.

Senator COOK —Yes, I am aware.

Mr Varghese —Before we ratify a treaty, in many cases it requires the implementing legislation.

Senator COOK —Yes, I am aware of that. But we have a treaties committee in the parliament. In the presentation that you have made, no account was made of what the treaties committee of the

parliament might say about the treaty. What standing would the recommendations of the treaties committee then have?

Mr Deady —The full treaty making processes will be gone through by the government before notification to the Singapore government to bring it into action. The legislative changes could be made, and the JSCOT process, as I understand it, could certainly be continuing after legislation was passed. That has happened in the past, as I also understand it, in relation to other treaties.

Senator COOK —Which is an elegant way of saying that the treaties committee can offer commentary but it cannot vary or change any element of the treaty.

Mr Deady —That is correct, yes.

Senator COOK —In negotiating the Singapore-Australia free trade agreement, did we have any regard for provisions in the Singapore-US free trade agreement?

Mr Deady —We negotiated the agreement obviously on our own, as a bilateral agreement between Australia and Singapore. The United States were negotiating with Singapore at the same time. We actually concluded our negotiations prior to the United States-Singapore negotiations concluding. There were a couple of elements of our agreement with Singapore where we did conclude, on the basis that, if Singapore extended further concessions to the United States in concluding that agreement, they would flow automatically through to Australia. There were two or three issues where that was the case.

Senator COOK —That is what you would characterise as an MFN clause.

Mr Deady —Essentially, yes.

Senator COOK —But, if they gave an advantage to the United States that they had not given to us, then they would give it to us.

Mr Deady —That is right.

Senator COOK —Does the US have a similar MFN clause in theirs?

Mr Deady —As a general principle, the US has MFN clauses in its bilateral agreements but, as I said, we concluded prior to the negotiations with the United States. I am not sure that they negotiated the outcome that they negotiated.

Senator COOK —Okay. So under this MFN clause, if there was an advantage in the American one that is not in ours, then it comes to ours.

Mr Deady —That is correct.

Senator COOK —Does that mean that the provisions in the Singapore-US free trade agreement relating to labour standards will now come to the Australia-Singapore free trade agreement?

Mr Deady —No. There was no broad MFN clause in our agreement with Singapore. Certainly, those additional concessions and commitments that the United States negotiated, on things like the labour environment, are not part of and are not carried forward into our agreement.

Senator COOK —But you have just said that, if there is anything advantageous in theirs that is not in ours, it flows to ours.

Mr Deady —There are a number of specific elements or specific commitments that we made with Singapore that we said that we would sign off on that basis. We would conclude our negotiations

Senator COOK —Onto the fabled Australia-Korea free trade agreement that the Prime Minister announced three years ago, which has quickly moved from being a free trade agreement to a joint working study, how is that moving? Is that moving about the same speed or slower than the Japanese one?

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FOREIGN AFFAIRS AND TRADE PORTFOLIO: Department of Foreign Affairs and Trade

Mr Deady —In the Singapore-Australia agreement, it means that a Singapore investor operating in Australia could take action against the government of Australia if Australia breached the elements of that investment chapter in the Singapore-Australia agreement. The commitments that Australia has made in the Singapore-Australia investment chapter are in relation to national treatment. We agree that we will afford a Singapore investor in Australia no less favourable treatment than an Australian investor, and in relation to expropriation, if that asset was expropriated, the Singapore investor would have recourse to action against the expropriation.

Senator COOK —And vice versa?

Mr Deady —Yes.

Senator COOK —An Australian company could take action against the Singaporean government?

Mr Deady —Exactly, yes. It is a reciprocal commitment.

Senator COOK —You say we have 19 of these in what forms of agreement?

Mr Deady —In investment promotion and protection agreements—IPPAs.

Senator COOK —My understanding is that we have them essentially with developing countries, where we or a third party might be concerned that the rule of law, or the ability to enforce the law, in those countries is less than satisfactory from our point of view, and we put them in to protect basically Australian investment for that reason. That has been the policy of the department?

Mr Deady —Broadly, I think that is correct. Since it is part of the investment promotion element, it is useful for the developing country as part of the investment protection that they are committing to in those agreements.

Senator COOK —But we have not put them into agreements between developed countries.

Mr Deady —No, we do not have any IPPAs with a developed country.

Senator COOK —How do we regard Singapore?

Mr Deady —We thought there was value in having an investor state dispute article with Singapore. They are, as you said, a feature of most of these FTAs. We thought there was an element of improved, enhanced transparency for both countries to have that sort of provision in the Singapore-Australia Free Trade Agreement. Singapore is not an OECD member, but of course it has a very highly sophisticated economy; that is correct.

Senator COOK —We would regard it as a developed country, wouldn't we?

Mr Deady —I think we would, yes.

Senator COOK —Even though the Australian dollar is appreciating, I think the Singaporean dollar is still slightly above us in value. Where did the impetus come from to include this provision in the Australian-Singapore agreement? Did it come from our side or the Singapore side?

Mr Deady —It was not an area of great contention between us. I think we both saw this as an element of a useful article to have. Basically it reflects the very strong legal systems in both countries. That is the normal recourse. If an investor did have a dispute over these two commitments, as I said, the normal recourse would be to the domestic courts. It also explicitly identifies some third

party arbitration, and that is what the commitment is here—that we are prepared to automatically agree to resolve these disputes through a specific time frame through these international bodies, if that is what it comes to. So it is a binding commitment on both sides to move to those arbitration and international investment dispute settlement mechanisms if a dispute arises. It is a commitment that I think is valuable in that sense.

Senator COOK —Thank you for your opinion. I was asking whether we proposed it or the Singaporeans proposed it—or did it spring organically out of the conversation?

Mr Deady —As I mentioned, it is certainly part of our IPPAs, and in that context it was seen as a useful additional element in the Singapore-Australia FTA. It was in our agreements, so we brought that to the table. But it was not a contentious issue. It was not an article that was argued over at great length.

Senator COOK —So we were the proposer?

Mr Deady —Yes.

Senator COOK —As I said earlier, chapter 11 in NAFTA is somewhat infamous. If you accept the case that Singapore is a developed economy, this would be the first occasion that Australia has concluded such a provision between two developed economies. That is a fair call, isn't it?

Mr Deady —Yes.

Senator COOK —What did industry say about this when you consulted them?

Mr Deady —There wasn't a great deal of reaction from industry on this. I think again they are used to these provisions, as I mentioned, as part of the IPPAs. There was no strong reaction either way to this article. I think it was understood that, as part of a free trade agreement between Australia and Singapore, this was a useful additional commitment to include. No-one has significant problems. No-one has identified particular issues that we needed to specifically have this with Singapore but, again as an additional commitment and as a binding commitment, it was thought useful. I think that is reflected in a fairly benign reaction from Australian industry.

Senator COOK —So you did consult with industry about it?

Mr Deady —We consulted with industry across all aspects of the negotiations. We certainly informed them in our discussions and our consultations that this was an element of the agreement. As I said, there was no strong reaction, or certainly no negative reaction, from industry about having it there. Again, there is some value in the sense that this is a commitment and an automaticity that flows if there is such a dispute for an Australian investor operating in Singapore.

Senator COOK —As I heard your words, you informed them that this was an element of the agreement—words to that effect. Did you invite them to agree or disagree with whether it should be in or out, or was it a matter of, 'Look, folks, this is a fait accompli; let's move on to the next subject'?

Mr Deady —It was an element of the overall chapter on investment that we were negotiating with Singapore. It was in that context that we had discussions with the industry: these are the key elements of the chapter and these are the commitments that we are taking; we are agreeing to provide national treatment to Singapore investors. As I say, that is what the investor state dispute mechanism refers to in this agreement—the specific commitments of that chapter. There are two things: national treatment in how we would treat a Singapore investor and vice versa; and expropriations. Certainly, with regard to expropriation there were some issues in relation to Singapore that we did have some positive or some offensive interests in pursuing as part of these negotiations. There are aspects of Singapore law in relation to expropriation, particularly of land, that were of concern to Australian industry, and these are the things we tried to address through that chapter, including this investor

state dispute article.

Senator COOK —I think this is quite significant, Mr Deady. It is true, isn't it, that in the WTO disputes are between the governments of countries? I think you nodded in the affirmative.

Mr Deady —Yes; that is true.

Senator COOK —But in fact Singapore is not a developing country. We have insisted on this provision in the past to protect our obvious interest where the legal systems of a developing country may not be as effective as in a developed country. We have now crossed the border and had one with a developed country enabling businesses in another economy to sue our government.

Mr Deady —That is correct, in relation to the two commitments that are part of that chapter which, as I said, are national treatment and expropriation—not nearly as wide as the NAFTA chapter 11 that you mentioned before.

Senator COOK —And they can sue state governments?

Mr Deady —The obligations would apply to state governments; yes, that is right.

Senator COOK —And did state governments agree to that?

Mr Deady —The state governments understand the investor state dispute. They understand the investment chapter and the obligations under that for national treatment and expropriation. They understand the investor state dispute mechanism. We have written to the states. They had some questions, including on this, which we answered very fully, I believe. The other thing I should say is that, as we have talked about before, the negative list also cuts in here.

Senator COOK —Yes.

Mr Deady —If we have reserved against these commitments then of course there is no recourse of the Singapore investor against something that we have reserved against this chapter.

FOREIGN AFFAIRS AND TRADE PORTFOLIO: Department of Foreign Affairs and Trade

Senator COOK —What I am asking is this question: explicitly, did state governments say, 'We agree,' or was the consultation that you have described similar to the consultation with industry, saying, 'This is what the deal is'?

Mr Deady —We have had these discussions with the states and we outlined what was there. The state governments, as we negotiated as part of this, are still completing their reservations list in relation to the services and investment chapters. They understand these obligations that we have negotiated.

Senator COOK —They understand them, but do they agree to them?

Mr Deady —We have negotiated them, as we negotiate all these trade agreements, as the federal government on behalf of all the state governments. In this particular area with a negative list, the state governments have the capacity to reserve if they have any sensitivities in particular areas and they can reserve against this national treatment commitment. We are still discussing with the states any reservations they might have. Again, in the discussions that I have had with the states, and in the discussions through the various other consultative mechanisms on the SAFTA, they have not registered a concern to me. They have asked questions about the investor state aspects of it, as they have about other aspects of the agreement, but they have not said that this is an area that they have a problem with.

Senator COOK —But they have not specifically agreed, have they?

Mr Deady —I can only say again that the federal government has negotiated on behalf of the Commonwealth of Australia in this and these are the commitments that the federal government has entered into.

Senator COOK —Yes. I am not challenging your constitutional right to do that, I am simply asking: since this exposes the state governments to the potential of litigation when previously they were not so exposed, did they specifically agree to do that or not? The answer seems to be that they were consulted and they understand fully, but the answer also seems to be no, they did not specifically say yes. That is right, isn't it? They did not explicitly say yes.

Mr Deady —No, they didn't explicitly say yes, but they have the right to reserve particular aspects of policies or programs that they wish to and there is already a rule of law in Australia that a Singapore investor operating in Australia has rights before the courts now, so I am not sure that this extends things terribly far, which was the point of your earlier question: why do you need it for developed countries? That is perhaps semi-valid but there are some other aspects of this that we thought were very useful for Australian investors operating in Singapore.

Senator COOK —There has been set bipartisan policy in this area for a long time. We have now deviated from that by going developed country to developed country, but that is a debate we are having. Let me go to my next question: in the objectives of the Australia-Singapore Free Trade Agreement, as announced by the department or as it may have been as announced by the minister, where did it say that we would seek an investor state dispute settlement provision like this?

Mr Deady —I am not sure. I would have to take on notice whether there was ever a statement of objectives in that regard.

Senator COOK —Would you please do that.

Mr Deady —I think what was stated was the desire to commence negotiations with Singapore on a free trade agreement, a comprehensive agreement certainly, including services and investment, but I cannot recall any specific set of objectives that were announced by the government at that time. We

can look at that.

Senator COOK —This goes to transparency and that may be a matter that causes some interest. You are the negotiator for the Australia-US Free Trade Agreement as well?

Mr Deady —Yes, Senator.

Senator COOK —Is this a provision that the US wants in the Australia-US Free Trade Agreement?

Mr Deady —We are still at the early stages of the negotiations with the United States on the broad architecture and framework of that agreement. We have had two face-to-face sessions with the United States on the services and investment chapters. This is an area where we are still in detailed discussions with the United States. No decision has been taken by ourselves or by the United States on whether we do need an investor state provision in the US-Australia Free Trade Agreement. It genuinely is an open question as to whether we believe we need such an article or provision in an agreement between Australia and the United States.

Senator COOK —But it is a feature of all the US FTAs.

Mr Deady —It is.

Senator COOK —And most notably of NAFTA?

Mr Deady —That is correct. I think it was actually the US-Mexico aspect of NAFTA. I do not think it was an aspect of the original CUSTA. It was a NAFTA addition, again probably driven primarily by US-Mexico, Canada-Mexico aspects of those negotiations.

Senator COOK —It is a mechanism that has been exercised. We know how litigious the United States is but this is a mechanism that has been exercised in the case of NAFTA.

Mr Deady —There have been cases taken, yes, not just by the United States though but certainly by Canada.

Senator COOK —If I understand your answer correctly, in the case of the Australia-US free trade agreement we are in preliminary stages and it is too soon to call whether or not the Americans will seek such a provision from us.

Mr Deady —That is correct. We are still discussing with the Americans whether we need that provision in the US-Australia FTA.

Senator COOK —Are we going to seek it from them?

Mr Deady —At this stage we are still talking to industry about trying to get a sense of whether industry think that is a useful and necessary part of the agreement and we have got a very open mind. It really is one of those aspects where on both sides there is genuine research and work going into whether we do need it as part of the Australia-US FTA.

Senator COOK —So we have not made up our mind?

Mr Deady —No.

Senator COOK —We are looking at the question?

Mr Deady —Yes, Senator. Both countries are looking at this question.

Senator COOK —What is the timeline for decision?

Mr Deady —On that particular issue I do not think there is a specific time line. I think it is something we will continue to talk to the Americans and to Australian industry about to get a sense of whether we do feel there is a need for such a provision in the investment chapter. It is one of those things, as you said, which has become a feature of FTAs but it is one of those things where we believe the question at least is worth asking. All we have really done at this stage for both ourselves and the United States is to ask whether we need it in the Australia-United States FTA. We are working through those issues. We are certainly doing that here and I know that the Americans have taken that question on board to reflect on themselves.

Senator COOK —As a matter of practical reality, it crops up in all the US FTAs. They usually approach FTA negotiations with a stock of standard requests. We would be a bit surprised if that were not included in what they put to us at the end of the day, wouldn't we?

Mr Deady —I honestly think it is an open question at this point because all of the FTAs, with the exception of the Canada-United States FTA, are between the United States and developing countries. They have that article, that provision, in their Singapore agreement, yes.

Senator COOK —But we have all agreed that Singapore is a developed country.

Mr Deady —They are. They are not a member of the OECD so they are not covered by some of the commitments that we have in the OECD on investment. There were elements of Australia's investments in relation to Singapore where we did think there was some value in us getting some commitment from Singapore. That is what we pursued as part of that negotiation and that is what we achieved. They do relate significantly to that area of expropriation that I mentioned.

Senator COOK —But we are not arguing are we, Mr Deady, that Singapore is a developed country? It is not in the OECD but—

Mr Deady —The OECD is an area where there are some commitments on investment, which Australia has undertaken and which the United States has undertaken, but which Singapore has not.

FOREIGN AFFAIRS AND TRADE PORTFOLIO: Department of Foreign Affairs and Trade

Senator COOK —You may be aware that the opposition has said that it will wait for the treaties committee to report on this matter before it decides what it will do with the legislation before the parliament. Haven't we conceded it to the Americans by proxy by conceding it to a developed country like Singapore, thus flagging our willingness to do this sort of deal?

Mr Deady —I do not believe we have. We have had some particular discussions on this. We have particularly raised this question about whether, in the context of the structure of the architecture of the Australia-US FTA, we need this provision. Australia has a very open mind on that. We are not opposed to such a provision in the Australia-US FTA but we are just asking the question. We are asking it of industry and we have asked it of the United States. That really is where it is at.

With regard to the point that you make about the precedents, with one exception these agreements that the United States has are with developing countries. This is an agreement between two sophisticated developed countries with a significant rule of law in these areas. So the question we pose—do we need such a provision in this agreement?—is at this stage a genuine question, I emphasise again. No decision has been made and no position has been taken by us. My understanding is that the United States are reflecting on these ideas that we have put to them.

Senator COOK —In our objectives for the Australia-US Free Trade Agreement, we are not saying 'This is one of our objectives.'

Mr Deady —We have not explicitly said no, that we will have an investor state dispute settlement article as part of the free trade agreement with the United States.

Senator COOK —But, given your answers, it may just creep up on us.

Mr Deady —It could be an element of the outcome; I do not know. As I said, at this stage we are exploring that as we are exploring a whole raft of issues in relation to the structure and architecture of the agreement at this point.

Senator COOK —For the Australian-Thai free trade agreement, are we seeking one?

Mr Deady —I could not answer that question.

Senator COOK —I see an officer at the back of the room nodding his head in the negative.

Senator Hill —If he is going to answer a question he had better come to the table.

Mr McKinnon —When you earlier indicated what your program of questions did include, they then left. I am sorry.

Senator COOK —That is fair enough. You have corrected me; that is okay. I have nothing further on the Singapore FTA. I now want to go to the round. Does the minister intend to go to the Commonwealth Business Council meeting in London on 7 and 8 July this year?

Mr Gosper —That is not in the minister's travel program.

Senator COOK —This is the Commonwealth Business Council. I think Hugh Morgan is the chairman of it. It is in the nature of a ministerial forum for ACP countries, is it not?

Mr Gosper —I have not looked at the specific list of participants, but I understand that there are a number of ministers who will be participating. We ourselves are considering what high-level representation we might have, including at senior officials level.

Senator COOK —So we have not yet decided how we will be represented?

Mr Gosper —My understanding is that we have not yet decided, although we will check on that for you.

Senator COOK —But this conference has a session on agricultural trade, hasn't it?

Mr Gosper —I anticipate that it does.

Senator COOK —I am pretty sure it does. Is Fiji invited to attend Cairns Group meetings these days?

Mr Gosper —No, Fiji has not been invited to attend the Cairns Group ministers meeting over the last few years.

Senator COOK —When did Fiji leave the Cairns Group?

Mr Gosper —It is my recollection that Fiji has not been invited to attend Cairns Group ministers meetings since 2000.

Senator COOK —Did it leave or did we simply cease inviting it?

Mr Gosper —It was a decision that was the subject of discussions between us and the Fijians. The reality is that Fiji has found it very difficult over recent years to accept and articulate Cairns Group positions on particular agricultural trade issues. That of course reflects its particular interests in sugar and access to the European market.

Senator COOK —So this was a mutually agreed separation?

Mr Gosper —There were certainly discussions with Fijian ministers about this issue, and I believe that it was accepted that this was the best way to deal with the particular problem that we both faced.

Senator COOK —It was the access to the European market that was the sticking point as far they were concerned, was it?

Mr Gosper —It was their capacity to publicly accept and articulate Cairns Group positions, which they saw as somewhat counter to their interests in maintaining preferential access to the European market for sugar. As you will understand, the Cairns Group position on preferential access arrangements is that they are not a particularly efficient or effective way to grant market access.

Senator COOK —Certainly. The ACP are the African, Caribbean and Pacific countries—commonly referred to as the ACP group in the context of the WTO—is that right?

Mr Gosper —That is correct.

Senator COOK —I just want to establish what we are talking about, otherwise we are guilty of talking in jargon. Do we invite any ACP countries to attend the Cairns Group?

Mr Gosper —I do not believe any of the Cairns Group members are ACP members at the moment. We have of course invited guests to Cairns Group ministerial meetings, some of whom have been ACP members, such as Kenya.

Senator COOK —I did not think any were members but I wondered whether they had been invited as guests.

Mr Gosper —I have given you one example. Kenya is one country.

Senator COOK —Do you know whether there are any others?

Mr Gosper —We would have to check. We have also invited Uganda to meetings in the past. They may have some ACP connection.

Senator COOK —What I am coming to is this: do we have some sort of outreach program to try to encourage ACP countries to better understand the Cairns Group's role and objectives?

Mr Gosper —Absolutely. Over the last two years we have had a big program of outreach to the African countries in particular. We have taken a number of issues to talk about to members of the African block, including ACP members: agricultural trade liberalisation and the ineffective and inefficient preferential access arrangements proposed by the EU.

Senator COOK —The ACP group is African, Caribbean and Pacific countries. Many of those countries are Commonwealth countries. Many of them are also what we would call LDCs—least developed countries.

Mr Gosper —Yes, Senator.

Senator COOK —I am not sure in which guise—the guise of LDCs or ACPs—they are party to what used to be referred to as the Lome convention. Is that right?

Mr Gosper —Yes.

Senator COOK —That convention does what?

Mr Gosper —We will have to get the precise details for you, but it includes, as I understand it, preferential access arrangements.

Senator COOK —That is my understanding too. That has been replaced, hasn't it, by the Cotonou agreement?

Mr Gosper — The Cotonou agreement, yes.

Senator COOK —I keep mispronouncing it. I think you have to speak Spanish to get it right. The Cotonou agreement extends preferential access for least developed economies to Europe.