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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia's relationship with the World Trade Organisation

FRIDAY, 27 APRIL 2001

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JOINT COMMITTEE ON TREATIES

Friday, 27 April 2001

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

Senators and members in attendance: Senators Coonan, Cooney, Ludwig and Schacht and Mr Adams, Mr Andrew Thomson and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

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

WITNESSES

ATKINSON, Mr Jeffrey, Advocacy Coordinator, Trade, Oxfam Community Aid Abroad..................441

BALE, Mr William, Solicitor General, Tasmanian Government..398

BEARD, Ms Jennifer, Board Member, Institute for Comparative and International Law, University of Melbourne...417

CAMPBELL, Mr Alan Eric, General Manager, Trade, Marketing and Major Events, Department of State Development..398

DURBRIDGE, Mr Robert Stuart, Federal Secretary, Australian Education Union.............................441

EVANS, Mr Kim, Secretary, Department of Primary Industries, Water and Environment.................398

FARRAN, Mr Andrew Charles Cunningham (Private capacity)..432

GEMMELL, Mr Andrew (Private capacity)..470

GRECH, Mr Jacob (Private capacity)..470

GRIFFITHS, Mr Alan Frank (Private capacity)..470

HALL, Mr Roger William, Principal Management Officer, Marine Farming, Department of Primary Industries, Water and Environment..398

HOBBS, Mr Jeremy, Executive Director, Oxfam Community Aid Abroad..441

HOWE, Mr John, Research Fellow, Centre for Employment and Labour Relations Law, Institute for Comparative and International Law, University of Melbourne 417

MANSFIELD, Mr William Clements, Assistant Secretary, Australian Council of Trade Unions 441

McCORMACK, Mr Denis Myles (Private capacity)... 470

MEDICA, Ms Karen , Member, Executive Committee, United Nations Association of Australia 441

MURPHY, Mr Edward Francis, National Assistant Secretary, National Tertiary Education Union.. 441

O'CONNELL, Ms Genevieve (Private capacity) 470

O'ROURKE, Ms Anne, Assistant Secretary, Liberty Victoria 441

PAHUJA, Ms Sundhya, Lecturer, Law School, Institute for Comparative and International Law, University of Melbourne 417

RIMINGTON, Ms Mary (Private capacity)... 470

SHARP, Mr Roger (Private capacity)... 470

Subcommittee met at 9.04 a.m.

CHAIR—I declare open this hearing of the Joint Standing Committee on Treaties.

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

That the supplementary submission from Mr Andrew Farran be received as evidence to the committee's inquiry into Australia's relationship with the WTO and be authorised for publication.

Resolved (on motion by Mr Wilkie):

That the submission from the National Tertiary Education Union be received as evidence to the committee's inquiry into Australia and the WTO and be authorised for publication.

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

That the following submission be received as evidence to the committee's inquiry into Australia's extradition law, policy and practice and be authorised for publication: submission No. 22 from Mr David Bennett QC, the Solicitor-General.

CHAIR—I welcome witnesses and members of the public and media to this eighth hearing into Australia's relationship with the World Trade Organisation. The committee is almost at the end of the evidence gathering phase of the inquiry. At hearings across Australia we have heard evidence on the opportunities for community involvement in developing Australia's negotiating position for the WTO, the transparency and accountability of WTO operations and decisions, ways Australia can best represent our interests in dispute resolution processes of the WTO, the relationship between the WTO and regional economic agreements, and how WTO agreements impact on environment, human rights and labour standards.

[9.05 a.m.]

BALE, Mr William, Solicitor General, Tasmanian Government

CAMPBELL, Mr Alan Eric, General Manager, Trade, Marketing and Major Events, Department of State Development

EVANS, Mr Kim, Secretary, Department of Primary Industries, Water and Environment

HALL, Mr Roger William, Principal Management Officer, Marine Farming, Department of Primary Industries, Water and Environment

CHAIR—Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and Senate. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. Would any of you like to make an introductory statement?

Mr Evans—Tasmania appreciates the invitation and opportunity to participate in these hearings and support its submission to the inquiry. I propose to make some general comments in support of our submission; I do not intend to go through it in any detail. I specifically understand that your committee has an interest in the issues surrounding the importation of Canadian salmon. We will be happy to answer questions in relation to that. If we are unable to provide you with any answers, we will take the questions on notice, if that is okay, and provide responses as soon as possible.

The first point the Tasmanian government would like to make is that we are generally supportive of the principles of free trade which underpin Australia's membership of the World Trade Organisation. Tasmania is a net exporter and per capita is an important contributor to the nation's export performance. Tasmania, therefore, has a vested interest in an effective and equitable international trading regime. As stated in its submission, Tasmania is supportive of Australia maintaining an active involvement in the WTO and considers it necessary for it to be more proactive in terms of its engagement on some fronts.

The Australian Constitution provides for the Commonwealth to represent the interests of the states in matters relating to trade and other matters. This is a fundamental point that goes to the requirement for the Commonwealth to more fully and actively engage the states in the Commonwealth's dealings with the WTO. It is the states' view that the Commonwealth cannot properly represent the states' interests without involving and engaging the states in a stronger partnership.

The implementation of WTO agreements at the domestic level is also constrained by the Constitution. Tasmania has recent experience in examination of this aspect in respect of the importation of Canadian salmon. These experiences again highlight the need for a stronger involvement of the states in WTO related matters. Indeed, as a result of our recent experience with salmon, we believe that there needs to be greater emphasis placed on fully utilising the existing provisions of WTO agreements to get better outcomes for Australia and, in particular, for particular regions of Australia. An example is in respect of the provisions for adaptation of

quarantine measures to regional conditions under the World Trade Organisation's SPS agreement.

The Commonwealth has tended to treat the Australian response to WTO requirements as requiring one set of quarantine measures to apply throughout Australia. Quarantine issues relating to salmon diseases are an example of where this is totally inappropriate in our view. Tasmania has a wide range of ecosystems from tropical to Antarctic and these are variably sensitive to the risks of introduction and consequences of disease in exotic species posed by trade. As stated in the Tasmanian submission, the WTO's SPS agreement recognises the need for adaptation of quarantine measures to those different regional conditions within the importing country. Full utilisation of these provisions is necessary to avoid risk to domestic values and loss of community support.

Tasmania contends that the Commonwealth should adopt an approach whereby it develops partnerships with the state and territory governments in discharging its WTO responsibilities. These partnerships should extend to include the state representatives as part of the WTO delegations and as parties to the negotiations in order to bring a much greater degree of regional knowledge to the table. This is considered to be particularly necessary in the dispute settling processes of the WTO. That partnership should extend not only to the implementation of WTO related treaties but also to determining the Commonwealth's position in terms of negotiating the policy position for those matters. At that point I will close our opening comments and invite questions.

CHAIR—Would anyone else at the table like to speak from their particular perspective on the constitutional issue, for instance?

Mr Bale—I am pleased to just answer any questions in that direction that might arise, Madam Chair.

CHAIR—All right then.

Mr ADAMS—I think the Western Australian government gave evidence to this committee that there does not seem to be too much informal connection between this committee and the two parliaments when dealing with these issues which are becoming bigger and bigger in relation to the states' responsibilities versus the Commonwealth's and impinge on the constitutional matters as well in that area. How do you think we can improve those, especially in light of the salmon case? What involvement was there between the Tasmanian government and the Commonwealth departments in relation to that in the early stages?

Mr Evans—As I said in my opening comments, improvements need to be at two levels. If I can relate my comments principally to the quarantine aspects of world trade. Firstly, in the implementation of the WTO agreements in terms of their operation, there needs to be far closer involvement of the states, particularly in terms of taking into account those regional differences and details that are peculiar to individual states or regions. The Commonwealth needs to engage the states in a way that ensures that those peculiarities are properly understood and taken into account in the way in which we implement the SPS agreement within the country. So this issue of regional adaptation is particularly important, and the SPS agreement provides for those. So that is critical in terms of the implementation of the agreements.

Mr ADAMS—That is AQIS engaging the state at an early stage?

Mr Evans—That is correct. That involvement needs to happen at a far earlier point. When an application, for example, is made to import product into Australia, the states need to be actively involved at that initial point in identifying critical issues that will affect the country's quarantine status to ensure that we are given maximum opportunity to input into that process. That engagement needs to continue throughout the process to ensure that the process is both transparent and that state governments maintain confidence in that process throughout its duration. That relationship also extends to the stakeholders; it is not just a matter for state and territory governments. Affected industries in particular need to be involved from the outset if they are to have confidence at the end of the day in the decisions taken by the Commonwealth. There are moves within Biosecurity Australia to improve those processes. It is fair to say that as yet we have not seen them fully in operation; so the level of confidence that I know the Commonwealth is trying to work towards does not yet exist, particularly with the industry and stakeholder groups in Tasmania, for example.

That is in terms of the operation of agreements. There is another level where the states need to be more fully involved and that is in terms of policy settings that govern the operation of those agreements. A good example would be in terms of the determination of Australia's appropriate level of protection. There has been a unilateral Commonwealth decision to determine Australia's ALOP. The Commonwealth has not fully appreciated, in our view, the regional differences that exist across the country and the need to incorporate and have regard to those regional differences in the way the ALOP is expressed. To do that there needs to be more full level engagement and involvement of the states in setting up the ALOP and from there the policies which will govern the use of the SPS agreement in terms of the sorts of arrangements we might put in place to make decisions in relation to regional adaptations.

Mr ADAMS—The risk assessment?

Mr Evans—The import risk assessment part of the overall process is in our view very much at the operational end of the process; it is not part of the policy setting process. We would wish to be involved in the implementation of the import risk assessment more fully as well as in setting the policy environment in which we conduct those import risk assessments, and that relates to the setting of ALOP and the policies governing regional adaptations.

Mr Bale—On a broader plain, Western Australia's submission that there has been a low level of cooperation between the states and the Commonwealth is historically quite correct. It has been deplorably low. In the 15 years that I have served in my present office, there have been some slight signs of improvement but—

Senator SCHACHT—From the states or the Commonwealth?

Mr Bale—The states have tried. The states would like to be involved. It has been very difficult to get involvement at any level. There are three levels: the negotiation of international agreements; the implementation within the country domestically of international agreements; and dispute resolution arising out of international agreements. Traditionally, the Commonwealth have regarded each of these areas, very jealously, as their own bailiwick. That has sometimes worked very well but has sometimes led to conflict and mistrust between the states and the

Commonwealth, which has not been beneficial. I suggest, consistent with our submission, that there is room for improvement and room for much greater levels of cooperation at all of those stages in the process.

CHAIR—How would you see that happening? This is obviously a submission that interests us very much. What came out of the Western Australian discussion was of great interest to the committee and it was pointed out there that, for instance, compared to negotiations on Kyoto, the states are very much more involved and the processes are much more formal. What kind of process or mechanism would you see as advancing the consultation process?

Mr Bale—Let us start with the negotiation level: the negotiation of treaties. It has traditionally been thought that only the Commonwealth has officers who are equipped to do that. With respect, that is nonsense. Let me give one example of a matter in which I was involved. Between 1986 and 1993, I three times attended, as Solicitor General and as a member of Australia's delegation to LOSPREPCOM—the Law of the Sea Preparatory Commission. You had to back the Law of the Sea treaty with all the relevant legal agreements to bring it into force. It was brought into force in 1993-94. The states were involved over a period of some 10 years in providing active legal support to the committee. We travelled overseas and were on the subcommittees, and I believe that everyone recognised that the contribution of the states towards Australia's involvement in that exercise was valuable. There is no reason at all why appropriate expertise—and it will not always be legal expertise; it may well come from other areas—should not be equally valuable in the negotiation of Australia's other international agreements and obligations, whatever form they might take.

So far as the implementation is concerned, the High Court has said that a treaty or international agreement has no standing unless it is brought into force here under our domestic law. That domestic law is going to impact upon the states and the people of the states in the same way as it will impact upon the Commonwealth—after all, the Commonwealth is made up of the states and their peoples. It is the states and the peoples of the states that are involved in trade; the Commonwealth is not a trader. The only things the Commonwealth have to trade is its currency—and it does not do very well with that—and its stamps. Apart from that, it is a regulator.

Senator SCHACHT—Mr Bale, are you a Tasmanian first or an Australian first?

Mr Bale—Both.

Senator SCHACHT—Which is first in your mind?

Mr Bale—I am a member of the country of Australia.

Senator SCHACHT—Then you are a Tasmanian second?

Mr Bale—I am a member of the state of Tasmania as a component part of the country.

Senator SCHACHT—When you go overseas, do you say you are an Australian or a Tasmanian?

Mr Bale—An Australian.

Senator SCHACHT—Of course. Thank you.

Mr Bale—In the implementation, therefore, there needs to be a close level of involvement. The Commonwealth—the central government—does not have the opportunity, and could not be expected to have the opportunity, to have the close knowledge of many of the things that go on at a regional level that might be valuable in detailing the way in which Australia's obligations internationally are going to be implemented domestically. There is precedent for Australia to have, as part of its panels for dispute resolution, people from outside the Commonwealth government—limited precedent, but there is precedent. I believe that there is room for others than Commonwealth bureaucrats to be involved at all levels.

CHAIR—What mechanism would be available to the Tasmanian government to bring forward a dispute if you wanted to initiate one?

Mr Bale—It would be done through the Commonwealth.

CHAIR—Yes, I know. But what is the mechanism for communicating between the Tasmanian government and the Commonwealth?

Mr Bale—Normally, that would be done through a committee in the Department of Premier and Cabinet. There is a small treaties committee involved directly in all negotiations with the Commonwealth on treaty matters. It is only a small group of people and they would normally feed out to the various agencies or if need be beyond government in order to get the information necessary to make a submission.

CHAIR—Does the Tasmanian government feel confident it can bring forward a dispute if it wants to with DFAT? For example, can you say, 'Some Tasmanian industry is being adversely impacted here. We want you to consider looking at doing something for us'?

Mr Bale—I think it would be quite confident that it could bring the matter to the attention of DFAT. I could not answer as to its confidence as to what response it would get.

CHAIR—What is the mechanism? Is it from this unit?

Mr Bale—It would come from Premier and Cabinet, yes.

Mr ANDREW THOMSON—In terms of the WTO agreement, going down through the Commonwealth constitutional powers and to the residual state powers, correct me if I am wrong but it seems clear that the powers for quarantine and trade and commerce are exclusively enumerated in section 51. In a formal sense, there is a scheme, is there not, for giving the Commonwealth and the states a delineation of their legal roles in this matter?

Mr Bale—I think in the area of quarantine, it is very clear that the Commonwealth has not legislated or purported to exercise its powers exclusively. All states have quarantine laws. Indeed, if you look at the recent Gene Technology Act, it is perfectly clear that those powers

again are not intended to be exclusive. So, to the extent that your proposition is that the Commonwealth has exclusive power, it clearly has not. It could have made its exercise of power exclusive by an intention to cover the field. I think it is well accepted that it has not intended to do that. The states and the Commonwealth legislate, obviously because of section 109 of the Constitution, to the extent that if a Commonwealth exercise of power was inconsistent with an exercise of a state's legislative power the Commonwealth power would prevail.

Mr ANDREW THOMSON—In terms of the SPS agreement where the obligation is on the Commonwealth government as the signatory to that treaty, how can we fulfil these obligations properly if there is a two-tier system of quarantine within Australia?

Mr Bale—If we take the SPS agreement as an example, there is no legislation at the moment by the Commonwealth in which that has been brought into effect in this country. Its principles have been adopted and they are accepted by the states. Under the SPS agreement, one of the things that is the province of the Commonwealth is to establish an appropriate level of protection—the ALOP—for whatever product you are concerned with. The second step in that process is to determine appropriate measures to achieve the ALOP.

As far as salmon is concerned, if we can take that as an example, Tasmania was not consulted on either of those issues: either establishing the ALOP or establishing the appropriate measures for protection. The concern in relation to appropriate measures for protection—which are not legislated for—is that in fixing them the Commonwealth, for reasons best known to itself, has chosen not to adopt the clear provisions of the SPS agreement that allow for regional considerations to be taken into account.

Mr ANDREW THOMSON—I appreciate that the expertise in matters of agriculture is certainly greater at a state level than in the Commonwealth departments. In the logical scheme of things, questions as to technical matters—which can be crucial in these disputes—the responsible Commonwealth official would have to go to the state department of agriculture, especially where a regional industry was involved, such as salmon in Tasmania.

Going beyond that, I have some trouble with this notion that the state of Tasmania has any role in determining the policy on these matters of quarantine, in the sense that we have the treaty and there is an obligation on the Commonwealth government. Why should we not as a committee recommend that the Commonwealth government cover the field in terms of these quarantine issues—policy and so forth—and that you still give your expertise at the state level on technical matters, rather than having this confusion? Why shouldn't we be simpler and more clear about it?

Mr Bale—I think the principal problem with that would be that so much of quarantine issues have a regional concern and application, rather than a national concern and application. If it is simply a matter of letting the Commonwealth establish the principles—the framework, if you like—and letting there be input from the states as to how those principles are to be implemented differentially according to the particular needs of particular areas of Australia, then I guess there is not too much problem with that. Apples is another topical issue where there are regional concerns. I think genetically modified organisms is another area of concern, and you could probably expand the list. In detailing how obligations and, in this particular instance, quarantine principles are to be applied, it is a mistake—in our contention—to simply take a broad brush

approach. You have got to look at the regional issues and get input from the regions if your laws are going to work effectively.

Mr ANDREW THOMSON—Doesn't that make every state government a mini Commonwealth government? We have a federal parliament that we elect from all states and districts and so forth. Therefore, is that not established, with its government and cabinet, to resolve these differences and to present one policy to meet one obligation in one treaty, rather than a big jigsaw.

Mr Bale—With respect, no. What it makes is a better informed Commonwealth with an appropriate level of negotiation when making the decisions which it must make.

Mr ANDREW THOMSON—I appreciate your view and I am very much for state rights and the devolution of power. I think that is a very healthy thing. I just have a difficulty about this sort of dual system. The edges seem very blurred to me. But I will defer to my colleagues.

Mr WILKIE—With the Canadian salmon incident, what do you think are the key lessons to be learnt out of that for Australia?

Mr Hall—I think it comes back to there being some common understanding between the Commonwealth government and the states which have a particular interest in that commodity and having a clear understanding of what this term 'ALOP'—appropriate level of protection—means. Also, doing an actuarial assessment of the spread of risk across the country and seeing what provisions of the SPS agreement you can use to recognise those differences. You may have already been told the Commonwealth definition of Australia's appropriate level of protection. In respect of Canadian salmon—and I think this goes across the board—Australia's appropriate level of protection, as determined by the Commonwealth government without any consultation, is: a high or very conservative level of protection aimed at reducing risk to very low levels, while not based on a zero risk approach. I do not know what that means. It can mean many things. If there was more confidence from the states on how the Commonwealth would interpret that definition then that might ease the problem quite a lot.

Mr ADAMS—For the record, it is probably important to state which states farm salmon: Tasmania is the only state.

Mr Hall—Not quite. There are a few salmon being grown in South Australia now and there are some being grown in freshwater—a handful—in Victoria. Clearly, the vast majority are in Tasmania. It is really using the tools that are at our disposal, as opposed to being told, 'This is the definition,' and we will interpret it our way.

Senator LUDWIG—In your submission, you argue that major industry sectors are directly affected by the WTO policy. Without going into a whole number of them, which are the major industries you say are directly affected?

Mr Campbell—Obviously, in the whole agricultural products area there are significant issues. We already have the salmon; we have had apple access to Japan, which was very positive; and beef to Korea, which is very positive. This whole food and primary industry sector has certainly a big issue in the WTO agreement. Then you get timber. I noticed the submission

from one of the forest industry councils on their problems with timber. So it can extend across quite a range of products.

Senator LUDWIG—Do you believe that there is a widespread understanding amongst the Tasmanian industries that you mentioned, or in those sectors, about the WTO? Have you done any work on gauging whether they understand the process?

Mr Campbell—In a state like Tasmania, where we have some significant companies and a lot of smaller, medium-sized companies that are not necessarily closely tied with some sort of industry association and the national level, I certainly think that some of those small and medium enterprises are not very familiar with issues surrounding the World Trade Organisation.

Mr Evans—If I can add to Alan's answer, it is very variable, of course. The Tasmanian salmon industry, because of its involvement in the Canadian salmon issue, is acutely aware of the WTO provisions.

Senator LUDWIG—I was hoping that we could exclude them from that answer. I imagined they would.

Mr Evans—The apple industry, because of its active involvement in seeking access to Taiwan and Japan for red Fuji apples, also has developed a very good understanding of the WTO rules. The remaining primary industry sectors would have some understanding but it would be variable and in some cases very limited.

Senator LUDWIG—I was interested in particular in your government's approach. What useful information about the WTO have you provided to these business sectors that might not fully understand the WTO but might butt against it in the future? Do you provide linkages between DFAT and the WTO processes so that they can understand what will happen? Rather, what seems to be the case from my perspective—unless you can correct me—where industry runs up against it, they seem to learn on the run, such as the Tasmanian salmon case and the apple case as well. What I was interested in—and perhaps you can take it on notice and have a look at it—was what you are doing now in terms of helping businesses understand the WTO processes, given that it is a Commonwealth responsibility. You say you have a role in all of this. I want to examine what role you can have and whether or not you do provide linkages and all of those things that are intros to business so that they do understand the WTO.

Mr Evans—That is a good point and one where we would see again that the states do have an active role in partnership with the Commonwealth. As I said at the outset, Tasmania is a net exporter of its products, particularly food. Access to export markets is therefore critical, and therefore it is in the best interests of Tasmanian industries to understand the export environment in which it operates. So there is a need to continually improve the understanding and knowledge of Tasmanian industries in terms of that environment. It is under regular discussion between, say, AFFA in the Commonwealth and my agency, for example, how we improve community and industry understanding of WTO related matters. Certainly that is something that we do need to further concentrate on into the future.

Mr Bale—Perhaps we could take the senator's question on notice and then provide some specific information as to what is done at present.

Senator LUDWIG—I am happy for you to take it on notice.

CHAIR—I think we are all very interested in what mechanism you see is needed. Should it be sectoral or should there be some oversight consultation process? It is an issue that keeps coming through, and we really would like to be able to consider in this committee how effective the consultation process is—whether it should be ad hoc or formal; whether it is something that can be adequately dealt with through the sectoral committees and interaction between the Commonwealth and the state. Perhaps you could address those issues as well as Senator Ludwig's rather thoughtful question.

Mr ADAMS—DFAT has taken on a lot more confrontational role with NGOs, the ACTU, and maybe some industries that were not involved with negotiation in the past. There is the debate about who actually goes and negotiates, which is government to elected democratic government—the actual input in those areas.

Senator SCHACHT—Mr Bale, I was a bit intrigued by your comment that the regional areas or the states have got all the expertise in raising these issues. I point out to you on the salmon issue that it was very successfully raised and debated in the federal parliament, both formally and informally, because of the contribution of Tasmanian members of parliament—particularly my colleague Mr Adams, who has done a fantastic job in promoting sales of salmon among members of parliament all around Australia—and therefore there was a very informed debate. Just because we sit in Canberra does not mean that we are unable to pick up the issues vis-a-vis a state government. So I do not accept that the representative arrangements of the Commonwealth government and the Commonwealth parliament are not working well. They are working very well on these issues.

Mr Bale—I have obviously been unclear in what I said. Firstly, I did not for a moment suggest—I trust—that all expertise in these matters lies with the states. All I was trying to say was that in matters that raise issues which are particularly regional, there are often in those regions—

Senator SCHACHT—But there are federal members of parliament who represent those regions. Mr Adams is a case in point.

Mr Bale—Of course, but there is often special expertise in the regional areas. Secondly, I was not commenting at all on what goes on in parliament. I was talking about what happens at an administrative, bureaucratic level.

Senator SCHACHT—Let me turn to that now. In your submission, in section 4 at the bottom of page 4, you mention the establishment of the treaties council, comprising the Prime Minister, premiers and chief ministers. How often has that met?

Mr Bale—I cannot say. I do not know.

Senator SCHACHT—But doesn't your Premier know?

Mr Bale—He probably does, but I do not.

Senator SCHACHT—You ought to take that on notice. I find it interesting that you list one of the consultative processes there as one where your Premier is directly represented, yet you cannot give us any information about how often he has been to a meeting.

Mr Bale—I can certainly get that information, but it is not part of my brief.

Senator SCHACHT—I think it should be. On the next point: Mr Hall, you are representing the Tasmanian agriculture department. How often does the standing council of agricultural ministers meet?

Mr Hall—Twice a year.

Senator SCHACHT—Have you used the opportunity at that forum, with all the state primary industry or agriculture ministers present, to raise issues about the salmon case or any other issues on quarantine?

Mr Evans—My minister raises it at every ARMCANZ meeting.

Senator SCHACHT—So that process is working?

Mr Evans—No. He would not suggest that it is working; he would suggest that, despite the fact that he raises it, his concerns are not properly listened to—

Senator SCHACHT—By the other ministers?

Mr Evans—By the Commonwealth minister.

Senator SCHACHT—Do the other state ministers support your minister?

Mr Evans—Without getting into the specifics of the salmon case, the general issue of the relationship is one that is supported by the other ministers.

Senator SCHACHT—As I understand it, Canada might take some action against us on the importation of beef. Canada impose a penalty. We want their market to be open to Australian beef. Would you think that the Queensland minister—Queensland is the major beef state of Australia—might say, 'On balance, I am interested more in protecting the interests of my beef farmers than the Tasmania salmon industry'?

Mr Evans—I would not be able to answer that, I am sorry.

Senator SCHACHT—Can you check whether that was in any debates? Your minister would be able to report on it. Have other states raised other issues?

Mr Evans—I can say that, in the debates at which I have been present, that issue has not been raised. The debates have been about the application of the SPS agreement and about the policy settings; that is, the determination of Australia's appropriate level of protection and the

use of regional adaptations to determine measures to govern whether we are achieving that appropriate level of protection.

Senator SCHACHT—The next level up, underneath the ministers, is a standing committee of the primary industry heads of department from all around Australia. How often do they meet?

Mr Evans—We meet formally twice a year.

Senator SCHACHT—Are you the representative on that committee?

Mr Evans—Yes.

Senator SCHACHT—Very good.

Mr Evans—We have tended to meet in recent times, because of things like foot-and-mouth disease and BSE, on a far more frequent basis.

Senator SCHACHT—And at those meetings in the last three or four years since the salmon case, as Mr Adams and others have correctly raised it, how many times have you raised it at the standing committee of heads of department?

Mr Evans—Every meeting.

Senator SCHACHT—And what has been the response of the Commonwealth to your raising it at the heads of department level?

Mr Evans—I think it is fair to say that we are slowly making some progress. At the most recent meeting of ministers, as a result of discussions at standing committee level, a process was agreed to investigate how we might improve the relationships between the—

Senator SCHACHT—At the meetings you have attended, have any of the other state heads of department of primary industry raised issues and said, ‘It’s all very well about salmon, giving it quarantine arrangements, et cetera’—you are concerned about that—have other states said, ‘But there are consequences for our state in another industry being restricted in retaliation’?

Mr Evans—No.

Senator SCHACHT—So you can tell me that all the other states have supported Tasmania on the issue of quarantine arrangements for salmon?

Mr Evans—No, that is not what I said. I said—

Senator SCHACHT—I am asking you: have they done that?

Mr Evans—We do not discuss the specifics of individual cases; we talk about how we undertake import risk assessments and specific—

Senator SCHACHT—But Mr Evans, if the heads of the primary industry departments of Australia cannot discuss a particular issue, is that not a weakness of the consultative process that is already there? You are there at the table—can you not put on the agenda the salmon case and a particular reason why it is important to Tasmania?

Mr Evans—We do that and we talk about how we are going to manage New Zealand's application for the importation of apples, and we will often talk about the science.

Senator SCHACHT—This will be illuminating: how many of you at the meeting were scientists? You had your technical people in with you.

Mr Evans—We have presentations from scientists. So, to that extent, we would talk about those sorts of issues.

Senator SCHACHT—I find this a little intriguing. Quite rightly the salmon industry, backed by the Tasmanian government at a political level, has conducted a public campaign, but it seems to me that at the standing committee level of heads of department, something else is going on where you say you cannot and you do not raise the individual issue of salmon and the importance to Tasmania. I find that odd.

Mr Evans—I raise that consistently, but not in terms of seeking agreements from my colleagues who would not be informed about the specific details of the science sufficiently to make informed decisions. That is an unrealistic position.

Senator SCHACHT—This is contradictory.

Mr Evans—No, a process is in train to reach points at which we can make those decisions. My interest is in ensuring that those processes are transparent, that the Tasmanian interests are properly taken into account, and that those processes are operated in a stronger partnership relationship than has existed until now.

Senator SCHACHT—But in your submission generally, you raise the lack of consultation and appropriate forums. You are at the forum and, better than most, you have a chance to raise the issue, to thump the table and demand action. It does not seem to be happening too much.

Mr Evans—It is a common cry, no matter where you go; you can consult with someone, but if they do not feel that they have been heard, then they do not feel that they have been consulted.

Senator SCHACHT—Has your government issued any statement to the effect that, as a result of the discussions at heads of department level or at ministerial level, you are not satisfied with the support you are getting from other states on salmon?

Mr Evans—My minister has made a number of statements in relation to the issue of salmon.

Senator SCHACHT—Has he sought a vote at either your level or at ministerial level as to whether the other states support you on salmon? Has he actually sought a show of hands? That is something we understand in politics; you either win or you lose.

Mr Evans—They are not voting committees and it is not realistic to expect ministers to sit around a table and discuss the science and vote on science based decisions.

Senator SCHACHT—Why not? It is a democracy, isn't it? You are asking for more consultation and a bigger influence, but you are not willing to ask for a vote at either your committee level or at ministerial level. I find that odd because this is really an important issue for Tasmania. Do you have an answer to that?

Mr Evans—I hear your point; I do not agree with it.

Senator SCHACHT—What is the point of twice a year having these meetings of agriculture ministers who are responsible, in your case for salmon, and at your own level, if you do not make a decision?

Mr Evans—Because the decision is not taken at those meetings.

Senator SCHACHT—But don't you think that, if there were a vote of the states that overwhelmingly said, 'We think Tasmania has a good case,' and this was voted on by the ministers at the agricultural council meeting, that would place some weight on the Commonwealth that this was the view of all the other states as well, backing Tasmania?

Mr Evans—I do not think that the Commonwealth would agree, and nor would we agree, that these science based decisions are best taken by votes around the table. They are best taken on the basis of the science.

Senator SCHACHT—Mr Evans, we have been lobbying in the federal parliament, as members of parliament who are not scientists, to support your view, technically and scientifically, about the quarantine issues for salmon. If we have to vote on allowing or disallowing a regulation on this, and we have to put our hands up, I cannot see why the state ministers cannot do it—you do have advisers next to you with the scientific advice. Do you see my point?

Mr Evans—I can see your point, but it is not something I can directly influence or confront.

Senator SCHACHT—Can I ask you to draw this issue about better use of the forums you already have to the attention of your minister to get a response from him?

Mr Evans—I can make that point to him.

Senator SCHACHT—I now go to section 5. I think you make some good points here. I am not totally antagonistic to these states, though I believe they should be restructured or abolished in the longer term for the better government of Australia, but you do make a very good point at section 5.

CHAIR—Senator Schacht—

Senator SCHACHT—I always have to go on the record, Senator Coonan, that there is at least one of us.

CHAIR—Okay, Senator Schacht, I was just going to remind you to get back to your point.

Senator SCHACHT—You say, 'The Commonwealth has advised Tasmania previously that there is no opportunity for any observers to be present at WTO dispute settlement proceedings.' Have the Commonwealth given you any sensible reason why you cannot be there, other than they do not like you?

Mr Hall—I went to Geneva twice when the dispute settlement proceedings were on. The DFAT representatives there said that we simply were not allowed in the building on the first occasion.

Senator SCHACHT—Don't tell me you fell for that line from Foggy Bottom? You should have given that a big heave-ho.

Mr Hall—On the second occasion we got into the building, but we were told that we were not part of the Australian delegation and we could not go into the room.

Senator SCHACHT—What was the reason? Did they quote to you some protocol under the WTO for why you could not be present?

Mr Hall—Not specifically. It was simply that, unless you were part of the member country delegation, you were not privy to it.

Senator SCHACHT—So that was the reason: unless you are formally nominated to be part of the delegation?

Mr Hall—Yes.

Senator SCHACHT—Before you turned up and spent the airfare, did Tasmania seek from the federal government to be nominated to be a member of the delegation representing Australia, not Tasmania?

Mr Hall—Yes.

Senator SCHACHT—That was before you went. What was the answer they gave in writing to that request?

Mr Hall—In writing?

Senator SCHACHT—Did they give it to you in writing?

Mr Hall—I cannot recall, but the answer that we got was that, no, we could not be part of the delegation but we could come along as observers.

Senator SCHACHT—But when you got there, they would not let you in as observers.

Mr Hall—They would keep us briefed, but we could not be present at the dispute.

CHAIR—That is a consent issue, isn't it, from the other parties?

Senator SCHACHT—That is what I am going to get to.

CHAIR—Sorry.

Senator SCHACHT—Before you went, you asked the Commonwealth and they said, 'No, you can't be present,' but you still went anyway. On the first day, they did not let you in the building, and on the second day you got into the building but you could not go to the meeting. Can you check with your minister and provide to the committee the correspondence between you and the federal government on this issue, because I find it rather interesting actually?

Mr ADAMS—I think at that time you should be aware that there was a political process going on as well. There was a political debate as well going on in the public. So going to Geneva may also have been a political exercise.

Senator SCHACHT—I understand that. Mr Evans, can you provide that to us? I thought you would have put it in writing.

Mr Evans—If we have something, we will provide it. We can provide whatever details that we do have in relation to that matter. I can say though in response to the question from Senator Ludwig that both the Tasmanian government and the Tasmania industry, despite the fact that it was not represented formally on the panel, made a judgment that our interests were best served by being there listening to, even second hand, the feedback from the Commonwealth delegation on a daily basis.

Senator SCHACHT—Is there a particular reason why the actual meetings of the panels are held in camera and observers are excluded? Is there some commercial-in-confidence issue? Is there some sovereignty issue? Or is it basically comfortable for bureaucrats to have everyone excluded?

Mr Hall—I would simply rely on the advice we got from DFAT officers there. I have not seen any specific rules, but I am told that unless you are part of it—

Senator SCHACHT—Have you written to get that clarified from DFAT? I suggest you should.

CHAIR—The current rules provide that unless all of the parties consent there are no observer rights.

Senator SCHACHT—Mr Bale has obviously been a member of a delegation representing Australia on a legal matter. Did you at any stage request in writing that someone from Tasmania with the technical knowledge be part of the delegation to represent Australia?

Mr Hall—I cannot remember what we have got in writing. I will have to check back over the records.

Senator SCHACHT—I remember that in some WTO delegations at one of the earlier rounds, wherever it was held, the Americans put film producers, on behalf of the film industry in America, at the table to debate the services issues in TRIPS. So it was both a political thing for America—the President wanted the support of Hollywood, I suspect—and it put people there who knew all the issues. That is what the Americans did. So I am not averse to the good idea of technical people turning up, so long as they are representing Australia.

On the issue of representing regions, America has 50 states and we are going to be in trade arguments with America for a long time to come. It would be chaotic if the Americans can turn up with 50 different states' regions being represented on every different issue. For example, if they turn up with representatives on sugar cane we will get nowhere on trying to reduce the tariff barriers on the export of Australian sugar. It will just mean that everything is clogged up. Do you think if we start this process, and everyone else does, it will actually jam the whole system of trying to get a reasonable outcome on both sides for freer trade which helps Tasmania?

Mr Bale—I agree with you entirely—to have regional representation would be a nonsense. After all, we are concerned with states' parties at conventions, and in any sort of international negotiation, and the states' party is Australia. Our concern is to ensure that the particular delegations are as best informed as they can be. That information might come in two ways: it might come in appropriate briefings prior to involvement in whatever it is; it might come in particular cases in broadening the pool from which the Commonwealth draws its delegates to include personnel, expertise, whatever, from a broader spectrum than in the past.

Senator SCHACHT—So long as you understand that, in the end, the Commonwealth has got to represent all of Australia.

Mr Bale—Yes.

Senator SCHACHT—Mr Hall, when you were being excluded from that building, which I found it hilarious to hear about—I would have ignored the foreign affairs department, by the way, and just gone into the building—

Mr Hall—We have respect for them.

Senator SCHACHT—Gee, you are doing well! How long did the meetings take—were they over two or three days?

Mr Hall—There were two occasions, with quite an interval of time between them. The first one was discussions, prior to dispute, and the second one was dispute in front of the panel. They each took about two to three days.

Senator SCHACHT—At the end of each day, did the foreign affairs department make any effort to at least come out and talk to you in detail?

Mr Hall—Yes.

Senator SCHACHT—So you are happy with that level of consultation?

Mr Hall—And they also asked questions to help them into the next day.

Mr ADAMS—To put this in some historical perspective, the Tasmanian government had no input into the signing of the treaty or to the WTO. What input did the salmon industry and the Tasmanian government have in the negotiations that took place for the agreement to increase the beef quota to Canada at the expense of importing Canadian salmon and pork into Australia? In answering that you might therefore put some historical perspective into Senator Schacht's questions.

Mr Evans—We are not aware of any official linkage between the two.

Mr ADAMS—So Tasmanian industry and government, as a state government, had no input into the beginning of these negotiations?

Mr Evans—No.

Mr ADAMS—It found itself in a position of having one of its early development industries replacing some of its older industries under threat from imported salmon and it had to respond to that from a government perspective. But I also think the industry was in the same position. Is that correct? You have got to say yes or no.

Mr Evans—Yes.

Mr ADAMS—I am sorry if I am leading the witness, Chair.

CHAIR—I think there was unanimous agreement actually with the statement. The *Hansard* should record four vigorous nods.

Senator SCHACHT—Mr Evans, you said that you were not aware of any linkage between negotiations about Canadian beef quotas and salmon. Do you mean that there was no evidence that the Canadians put anything on the table to say, 'Unless you change your quarantine arrangements, we will not change our beef quota arrangements'?

Mr Evans—We can all have suspicions, but the Commonwealth has vigorously defended those two decisions as being independent of each other.

Senator SCHACHT—We can all have our suspicions that trade operates a bit differently, but there is no formal connection. If there were, I think that would be a dispute at the WTO.

Mr ADAMS—Mr Bale, you indicated that the Tasmanian position on treaties is to have a small unit in the premier's department?

Mr Bale—Yes.

Mr ADAMS—Can you give us an indication of how that works. Are there any political linkages—is there a committee of the upper or lower houses of parliament or a joint committee that looks at treaties that this committee advises the premier's department on? I think this committee writes to the premier's department of every state informing them of the treaties it has tabled in the House, which we then undertake to look at. I take it that unit then looks at that but there is no political level looking at those treaties?

Mr Bale—That would be my understanding. I am not aware of any formal political linkage. As I understand it, any treaty material that comes into Tasmania is directed firstly to the Department of Premier and Cabinet. There is a committee there of two or three persons whose responsibility it is to look at the material that is provided and seek such advice in relation to it as it considers appropriate. So there might be input from other government instrumentalities and agencies or it might go out to appropriate involved interests in the private sector. Whatever input was received would be collated and a response then made to the appropriate body in Canberra.

Mr ADAMS—We have had a lot of submissions from legal professions in Australia seeking formal representation of industry through legal firms to be able to give advice and build up expertise on the WTO processes. What is your opinion of that?

Mr Bale—I think it perhaps suggests that there is not a particularly clear recognition that Australia is the states' party to these sorts of dealings. As I discussed with Senator Schacht recently, you are in the situation that you cannot have whole groups of regional interests or particular interests represented in these sorts of bodies. I think the legal profession does have within it some expertise which might well be utilised as part of Australia's teams, and so do other professions and other businesses. In other words, I think that Australia's delegations need not necessarily consist solely of Commonwealth bureaucrats or scientists, but that is a judgment that the Commonwealth must make. I think it would be good if the field, the pool, from which it could draw could be larger.

Senator SCHACHT—I would have thought it was more of interest to the law profession to find another way to make money for itself at very exorbitant rates, representing their sectional interests in a forum like the WTO in Geneva. It would be a wonderful money earner for a small group of QCs and lawyers.

CHAIR—Not at government rates, it would not be.

Mr Bale—Senator, the record will show that you said that and not I.

Senator SCHACHT—I know you are a member of the profession and I do not want you to get kicked out of it or expelled from the Law Council.

CHAIR—But I think the issue with a lot of these submissions has been—if I can just interpolate here—that a lot of legal firms have seen that they need to have much greater access to the processes and a greater understanding in order to advise their clients. If you are representing industry groups or large corporations who might be interested in a subsidy or arrangement that is going to fall foul of the WTO, you would need not only to be turning up in Geneva and arguing about it but to have an input into the development of policy so that you can more properly advise your clients. That seems, I think, to some members of the committee to have been quite a compelling theme from various members of the legal profession.

Mr Bale—I think that is both fair and legitimate, with respect, Madam Chair, and I suspect that that is certainly one of the factors. I suspect there might be other considerations as well but, so far as that is a factor, I think it is perfectly legitimate.

CHAIR—Any other questions for the Tasmanian government? You are already taking a couple of matters on notice. Please, each of you, feel free if you want to add a note out of the discussion that has come today. You are very welcome to do so. We are very pleased to have had you here and to have had your thoughts and your submissions. We do understand the importance to Australia and particularly to the state of Tasmania of the impact of the WTO. Thank you very much.

[10.15 a.m.]

BEARD, Ms Jennifer, Board Member, Institute for Comparative and International Law, University of Melbourne

HOWE, Mr John, Research Fellow, Centre for Employment and Labour Relations Law, Institute for Comparative and International Law, University of Melbourne

PAHUJA, Ms Sundhya, Lecturer, Law School, Institute for Comparative and International Law, University of Melbourne

CHAIR—I formally welcome representatives from the Institute for Comparative and International Law. I understand that the institute is based at the University of Melbourne in the Faculty of Law. Would each of you or one of you like to make an opening statement? You can assume that we have read your submission, but we would be grateful if you would like to highlight and draw out the issues that you want to bring to the committee's attention more specifically.

Ms Pahuja—I would like to thank you and members of the committee for allowing us to make submissions today. As you remarked, we are all from the University of Melbourne Law School. We were three of the four authors of the submission provided to you under the umbrella of the Institute for Comparative and International Law. I would like to say at the outset—and this was the reason for my hesitation earlier—that the institute does not have a single or unified position on Australia's relationship with the WTO, so we are not purporting to be representative of a position of the institute. Indeed, each of the three of us here have different backgrounds and areas of expertise. I would request your permission, Madam Chair, that after I have made some introductory remarks each of my two colleagues could set out their background.

CHAIR—You are welcome to do that.

Ms Pahuja—Thank you. My own area is public international law more broadly. I would not call myself a technical trade lawyer. The interest that I have is one which I think the three of us share, which is that we are interested in the extent to which apparently technical free trade agreements impact upon the social, economic and cultural lives of citizens—in this instance Australian citizens—and the ways in which democratic rights of Australians could be affected by our entry into the nature of these agreements.

In our submission, as you know, we outline some case studies based on two agreements, which come under the umbrella of the suite of agreements negotiated under the auspices of the WTO. We show, we hope, how these apparently technical free trade agreements can impact upon human rights and upon the capacity of Australia to legislate domestically to address issues of social concern.

The agreements that we used as case studies are the agreement on sanitary and phytosanitary measures, or the SPS agreement, and the agreement on subsidies and countervailing measures, or the SCM agreement. The common thread of each of these case studies is that, in each instance, measures taken in good faith—and in one case after years of community debate and consultation with no protectionist intention, we think, but rather variously to safeguard public

health, protect local foodstocks from disease and to promote regional employment—were all ruled impermissible and in breach of the various WTO agreements by the panels and appellate body of the WTO. This is because in our view the jurisprudence being developed by the dispute resolution bodies of the WTO ensures that arguments about economic efficiency take precedence over a commitment to social concerns such as regional and rural development, human rights, consumer protection, environmental standards and chosen methods of addressing unemployment issues. This is because measures, which are interpreted as amounting to restrictions on trade, are construed very broadly, whereas permissible exceptions to those measures are construed very narrowly in a consistent and ongoing basis.

As many commentators point out—and I think many of the people making submissions to you have pointed out—as we see an increased legalism pervading a WTO process, more and more gaps that state party governments, including Australia, may have thought to be unnegotiated areas—that is, areas where there is not substantive agreement—get filled in through the interpretation of the treaty provisions by the panel and appellate body. And they are filled in in a particular way.

Responding to this concern, we made a series of recommendations in our written submission, and I would like to touch upon a couple of those now and leave the rest to the written submission. We are happy to take questions on those. The first issue I want to raise is that of the composition of panels. We want to draw that out because it is not an issue that many people raise, but we believe it is an important issue and that Australia should play a leading role in trying to develop a consensus on the need for a broader composition of dispute settlement panels and the appellate body.

We outline on page 13 of our written submission the way in which panels are currently established, and the process itself is not particularly problematic to us. However, the criterion for who may be selected to be on any particular panels are, in our view, too restrictive. Currently, panel membership is limited to people who have expertise in trade law or policy only. We believe the procedure could be made more legitimate if, when exceptions to the obligations contained in the treaty are being considered, experts in the areas of those exceptions are allowed to constitute panel members, even if they do not necessarily have expertise in the area of trade law or policy. For example, a scientific expert or expert in environmental sustainability could be included in the panel if that exception were relied upon. We think an alteration to the composition of panels in that way would go some way towards balancing the demands of free trade and legitimate social measures which a nation state might enter into because its citizenry, in particular, has urged it to enter into.

The second recommendation relates to Australian sovereignty and democratic participation, and particularly the formulation of negotiating positions of the Australian government. In our written submissions we urge that Australia adopt a more transparent democratic process in formulating its negotiating positions, particularly on future directions for various agreements which will come under the WTO umbrella. We remarked that there were relatively good levels of consultation with various industry groups but relatively little with the broader public. I noticed that, on 3 April, Mark Vaile announced a process of public consultation was to be undertaken in relation to formulating Australia's policy with respect to its negotiating position in the upcoming ministerial rounds in Qatar, and that is a welcome initiative, as is the

establishment—also announced on 3 April—of a WTO advisory panel which is supposed to be drawn from academia, NGOs, industry groups, community members and the media.

These are both steps in the right direction—although, the DFAT web site says that the composition of the body will be announced in May or June and I am not sure that leaves much time for that body to meet to make recommendations to government and for the government to take those recommendations on board before the formal negotiating process begins in November. Of course, the informal negotiation process will have begun well before that date, so I am not sure whether those consultative mechanisms will have much effect in this round. In any case, they are welcome initiatives. I noticed on the web site that under the heading 'Australia's trade agenda in 2001' there were fairly clear statements about Australia's policy direction and the position it was going to take. I hope those measures about community consultation are more than public relations.

In our view, if such consultations are genuinely carried out and are directed at seeking input, they would add something valuable to Australia's participation in the WTO and they would go some way towards curing the democratic deficit which seems to be emerging in the relationship between Australia and the WTO. Our third and final recommendation is that Australia should support moves to ensure that commitments which we have already undertaken under multilateral human rights, labour and environmental agreements are allowed to be compatible with the obligations that we have under the WTO—I should say it the other way round that WTO agreements should be held to be compatible with those agreements.

This is for two reasons. Firstly, because we are still bound by these agreements—even as we are members of the WTO—and we entered into many of these agreements for good reason. Secondly—it may seem paradoxical, but it is true—by agreeing multilaterally on labour and environmental standards we are actually protecting our sovereignty. What I mean by that is that we are helping to prevent the creation of an environment in which nation states are competing with each other for essentially mobile investment capital, by lowering regulatory standards and effectively allowing the wellbeing of our citizens to subsidise the investor.

Mr Howe—I should say initially that I am not a trade lawyer either—much less so even than Sundhya. My area of expertise is labour and employment law and policy. I would like to speak briefly about one aspect of our submission—the potential impact of free trade agreements—and, in particular, the WTO dispute resolution procedures on federal and state government assistance to industry in Australia. As you would know, assistance to industry which is offered by federal, state and even local governments in Australia is directed towards various objectives. First, it is broadly used to attract new industry to Australia or to encourage the establishment of new industry in Australia or particular regions of Australia. Second, it is used to help existing industries expand their operations or at the very least to help existing industries stay in business and continue to employ people. Obviously, that is a very topical subject at the moment, especially in Victoria—every week we seem to have another company closing its doors and laying off large numbers of people.

As such, I think properly administered industry assistance is an important avenue through which the federal government and state governments have been able to facilitate economic growth and the creation of new jobs. It is an important aspect of Australian sovereignty. In many cases, industry assistance—in addition to these broader objectives—is used to achieve

important socioeconomic policy objectives, for the creation of employment in economically depressed areas and for the improvement of Australia's skills base, by attracting new industries which will give our workers experience in new technologies and encouraging environmentally sustainable industry. As you will see in our submission, we are concerned about the impact on industry assistance which addresses these sorts of objectives, by reference to the decision of the WTO dispute resolution panel in the Howe Leather case. Might I say here that there is no relation.

One of the reasons identified by the Australian government in this decision about providing assistance to Howe Leather—and obviously the point of contention was that it was exporting automotive leather to the United States—was that it is a very important employer in the northern suburbs of Melbourne. One of the goals of the federal government in providing this assistance was to ensure that Howe Leather continued operating on its present scale. Of course, given that Howe Leather's business extensively relied on exports, it needed to continue to be able to export to maintain its scale of operation. The panel's decision in this case was effectively that, if one of the impacts of a subsidy was to enhance exports, it was a prohibitive subsidy—even though there might have been more overarching and altruistic objectives behind the assistance. In our submission we say this has enormous implications in Australian industry.

CHAIR—How do you reconcile those two objectives?

Mr Howe—How do you mean 'reconcile'?

CHAIR—How do you reconcile the fact that on the one hand you have said it is to continue to export but there might be other altruistic objectives. How do you reconcile the two?

Mr Howe—I do not get the impression in the decision that there was any attempt at reconciliation. I agree that there is a tension between those two objectives but—

CHAIR—I was just interested to know what you would suggest and how you would get that right.

Mr Howe—I do not have any particular suggestions on how to get it right. My concern in looking at the decision was that I do not get the impression that the panel worked through that process of reconciliation. I would have at least liked them to say how important Howe leather is as an employer in that region—the northern suburbs of Melbourne.

CHAIR—I understand. I just wanted you to clarify that.

Mr Howe—I am aware that not all of the—

Senator SCHACHT—The Americans could probably point to a region somewhere in America with high unemployment. They could say that a leather industry established in south-west Mississippi, the poorest state in America, would be very good for employment of underemployed or unemployed black people in a state with high unemployment of 40 per cent. Is it not a reasonable objective for the Americans to say, 'Just a moment. We have got to look after our people first. Therefore we will stop the Australian imports and create some jobs for a leather tannery in south-west Mississippi.' How do you balance that argument?

Mr Howe—Is it a proper forum to be balancing that under a debate about free trade? It is interesting that, if the whole idea of the WTO and free trade is meant to assist less developed countries in their ability to generate economic growth, you are having this argument between Australia and the United States about free trade rules.

Senator LUDWIG—Are you saying that that is not the role of the WTO?

Mr Howe—It is one of the rationales behind it.

Senator LUDWIG—If that is what you think, that is fine. I was trying to elucidate—

CHAIR—I am very sorry for breaking in on this. Mr Howe, finish your statement. I will try and control my colleagues and then we will come to you.

Senator SCHACHT—We were following your leadership.

Mr Howe—I am not saying that is my view about the WTO. I am saying it is a rationale that has often been put forward for free trade.

CHAIR—Finish your statement, Mr Howe, and we will come to Ms Beard and then have a discussion.

Mr Howe—I am aware that not all of the WTO panel decisions have adopted such a broad interpretation of prohibited subsidy. However, there is no guarantee that future panels will not adopt such a broad construction in individual cases. I want to draw your attention to the example that we used in the submission to indicate the potential impact of these panel decisions, and that was the Victorian Regional Infrastructure Development Fund, which is a program designed to attract new industry to economically depressed regions in Victoria. The fund seeks to facilitate the creation of jobs in ecologically sustainable industries in these regions. These objectives would not otherwise conflict with WTO agreements except to the extent that the fund also contemplates the encouragement of industries that are able to export and compete in the global market. I realise that is hard to avoid in these times, which thereby creates a potential conflict under the SEM agreement. I wanted to raise that issue, and obviously it has already generated some interest.

Ms Beard—I will just make a short statement. My expertise is like Sundhya Pahuja's; it lies within public international law. I have a particular interest in development and obviously I also have a particular interest in trade. I would just like to add two things in relation to Sundhya's comment. She referred to the legalisation of the WTO process. Particularly, I would also say that there is a technocratisation of trade law in legal decision making which affects the sort of knowledge that is used to interpret the principles of trade. It also seems to institutionalise a hierarchy of knowledge—a point we make in our submission.

The second point I would like to add is that we commend DFAT on the consultations, particularly given that they have now sought to include community or non-commercial interests. They seem to be trying, as they say in their statement, to communicate trade benefits rather than to listen to what people have to say and to engage with them. More time might be spent

listening and really engaging and addressing concerns instead of just trying to convince people that they are wrong or have the wrong idea.

CHAIR—The WTO is really a set of rules and there are some exemptions. I am interested to know how you apply those rules by taking into account all the issues you say are important. Even if you enlarge the panel and have people there ranging from environmental specialists through to people with specific social science expertise, they still have to apply a set of rules to which member countries have signed up. If you are always looking for exemptions, you might as well not have them; it is just not going to work. How do you develop some principled position towards taking all these other issues into account?

Ms Pahuja—I agree that the task of trying to balance the competing demands is very difficult, but at the moment we find that in the WTO there is a very particular way in which disputes are resolved, and that is with an emphasis only on the idea of the least trade restrictive measures possible.

CHAIR—But, in all fairness to it, is that not what the WTO is supposed to do?

Mr ANDREW THOMSON—What is wrong with that?

Ms Pahuja—What is wrong with that is that trade does not exist in a vacuum and the entire regulatory environment of any state which is trading is affected by the idea of the least trade restrictive measures possible. There are often competing demands which have to be reconciled domestically with the least trade restrictive measures. For example, there are concerns about public health, environmental degradation, unemployment and labour standards. If there are exemptions in the treaty, as there are in article 20, which allow the states to impose measures which might be classified in a pure sense as restrictive on trade, and which allow states to plead that they have good reasons for imposing those restrictions, those reasons have to be heard with the same degree of openness as arguments about restrictions on trade.

An attempt needs to be made to balance that. I am not saying that that is easy, but one way to do that is to include reference in the WTO treaties to agreements entered into under other multilateral agreements. I am in no way advocating using the WTO as an enforcement mechanism for obligations under other agreements, but if a state were to say to the WTO, 'We have taken this measure in pursuit of an obligation we have, for example, under a multilateral environmental agreement, therefore we should not be held to be in breach of this other, equal status commitment,' that should be a legitimate basis to plead a defence to the allegation of trade restrictive—

CHAIR—I understand your point. One of the difficulties is that nobody makes anyone belong to the WTO. One hundred and forty countries now want to belong and all sorts of countries are queuing up. If countries always invoke some reasons why they should not have to comply, they are not going to be regarded as a member of the WTO; they might as well drop out. There is a real difficulty conceptually here with trying to change the principles of the way the WTO operates. If you throw it all out and you go back to everybody having a problem with some other country, you will never have free trade. That might be a different argument, but I am not hearing from you any principled way in which you can still have the WTO and the principles on which the WTO operates, whereby 140 countries want to belong, including

predominantly developing countries which do not want all those reasons why they cannot comply—they want to comply; they want to be part of it.

Ms Pahuja—What I am trying to suggest is that most of the time free trade, or trade which is conducted under the auspices of the WTO, is conducted without much of a problem. Part of what happens is that, when a state tries to argue that it should be allowed to exercise one of the agreed exemptions that are already in the treaty, it is not given any scope to make that argument. That is what I am saying. The exemptions are already in the treaty, and the way in which the dispute resolution bodies are applying those exemptions is in fact too narrow. One of the difficulties is that we talk about free trade, but we do not have a system of free trade. Everybody is very familiar with the enormous agricultural subsidies that Europe and the United States give. Developing countries would be much happier to have actual free trade and the removal of subsidies on agriculture than they would mind if the minimum standards were adhered to in relation to certain other areas like human rights

CHAIR—You defeat your own argument, because, if you like, the large trading blocs that do not comply—for instance, on beef hormones and bananas—are the EU and the United States. Nobody has to comply if they do not want to. In a sense, there is no ultimate enforcement mechanism. In the end, there is just finger-pointing. You can have subsidies, you can do all sorts of things, you can put up barriers and you can impose a lot of things, but basically you comply only if you want to. It seems to me that developing countries are more anxious to comply than some of the larger trading blocs are, because they like free trade—they see it as a great benefit, surely.

Mr Howe—The governments of those countries might favour free trade.

Senator SCHACHT—Post the Second World War, because of the gradual extension of free trade, or freer trade between countries, has the quality of life got better or worse for more people in the world?

Mr Howe—I do not have access to the figures, but I imagine that in general it has probably got better—incrementally, I suppose—but whether you can say that that is solely because of free trade, I do not know.

Senator SCHACHT—China has wished to join the WTO since it has opened up its economy, and it has accepted trading arrangements. I do not think that there is any doubt—even anecdotally—that those who have visited China in the past 15 years have seen extraordinary improvements in the standard of living of at least a significant section of the country. There is still awful poverty.

CHAIR—They still have a long way to go.

Senator SCHACHT—They still have a long way to go, but if they cannot trade they will go back to the old Mao idea of a wall around the whole country.

Ms Pahuja—We are not arguing that free trade is not a legitimate objective. We are saying that it is not the only objective that a society has a right to pursue, and that it has to be pursued in conjunction with other social objectives in which we democratically believe.

CHAIR—Everyone around the table accepts that; it is a matter of how you do it. How do you get the balance right? What are the rules whereby you apply this? Should they take precedence in the end?

Senator SCHACHT—You have mentioned human rights. I am a member of the human rights committee of this parliament, and I have been on it for a long time. I will argue political human rights in China, as I did only 10 days ago in respect of the Tibetan situation, and I got the usual answers that I have got for 15 years. The Chinese response is that in the last 20 years they have improved human rights in respect of food, health and education for hundreds of millions of people. I say, 'That's great, but I want to look at political human rights.' In the broad scope, we have made the changes and, therefore, a lot more people in the world are living better, including people in China. They argue that if they can get access to markets, which might put our textile business out of business, for them a lot more people in the total world sum end up with better living conditions. Where does that put the argument about human rights? Is it a net sum for the total world, or are we worried only about the human rights in our own country and the rest can look after themselves?

Ms Pahuja—As I said, we are not arguing that there should be a threshold requirement for entry into the WTO on the basis of compliance with human rights obligations. We are not saying that the WTO should be used as a de facto enforcement mechanism for any, for example, civil or political rights. What we are saying is that, if a state seeks to comply with international obligations in areas other than trade, then they should not be prevented from doing that by the obligations which they have signed up to under the WTO convention.

Senator SCHACHT—We might say, cynically, that a lot of countries would then find that a very convenient way to raise non-tariff barriers to free trade. Last year, Mr Adams and I were in Poland. They have a 450-euro subsidy per tonne to protect their sugar beet industries. If Australian sugar cane growers in Queensland could access that market at that price they would be in Nirvana. When we raised this with their officials, their response was, 'If we let that happen, in whole sections of the rural countryside of Poland sugar beet farmers would go out of business.' It is a social issue. What is the balance? Do we worry about the income of sugarcane growers in Australia, who are doing it tough at the moment, or do we worry about the living standards of the Polish farmer who is getting a subsidy and protection? What is the balance? Which one do you go for?

Ms Beard—It is an incredibly complex and very difficult question. It is also one that we cannot solve in the short term. It is a long-term problem and it is also a global problem. I think that the WTO and other multilateral treaty bodies provide a wonderful opportunity, as multilateral bodies, to address these issues, but they are not issues that are easy or that we can fix quickly. Perhaps, if we do put in a bottom line which is a bottom line based on human dignity and basic needs that is a starting point, rather than allowing countries to use human exploitation, for example, and environmental degradation as a negative subsidy, so to speak.

Mr ADAMS—That was a very good point in your submission about the negative subsidy. That was the first time I had seen that articulated in that way and it is a very good point. It is one that I have been trying to articulate for some time and you did very well. Knowing the tanning industry—and we used to represent tannery workers—a lot of tanneries moved to Third World countries because of the pollution that the old processes used to have. Therefore, we took

it out of developed countries and put the problem somewhere else until we technically were able to solve it with the new chemical processes of closed loops. We did not do much for anybody during that process and it was certainly a negative. In the forestry industry, it is the same thing. We have some very good practices to look after the forests although we still have arguments about it. There are other parts of the world where we import forestry products from, which do not have any obligation whatsoever, and which therefore have a great deal of advantage in economic terms when competing against us. There is a bit of a one-sided debate that we might not solve here, but there are certainly other issues that we need to start to tack on to this debate.

Ms Beard—Within the subsidies agreement there are certain exceptions. Again, it is the larger countries that have negotiated these exceptions for themselves. They are exceptions based on, for example, regional development and so forth. That is something that the Australian government should be going in on and hitting hard so that these exceptions are broadly interpreted and available multilaterally.

Mr ADAMS—Yes. The EU, America, Canada and Japan have been the four that have set the agenda and they have set it for themselves. The rest of us have tacked on and have had to have our input. We have probably, as a country, had more input for our size because we have some wonderful people.

CHAIR—We are also so dependent on exports. This country would go up the spout if we did not find export markets.

Ms Pahuja—Can I just make one point, Mr Adams, in relation to your comment about negative subsidies. The negative subsidies point is incredibly important because it shows the point that I was making earlier—that is, it is not a question of adding environment to trade or human rights to trade, but it shows that the entire regulatory environment in which any company operates and from which it trades is already part of the trading environment. So it is not a question of bringing things in that are unconnected; it is a question of recognising the fact that those things are already connected. I take your point, Madam Chair, about the difficulty of drawing the balancing line, and I do not have the solution. Basically, what I am saying is that we just have to acknowledge that those issues are already connected.

Senator LUDWIG—It is interesting that in your submission you mentioned the SPS agreement, or a similar agreement. Do you have a view about whether or not we should have a sanitary and phytosanitary agreement?

Ms Beard—I think that is a particularly important question for Australia, given that we are an island and we have always historically been very lucky to be able to decide what comes in and out of our country in terms of protecting our environment.

Senator LUDWIG—You are saying that it constrains decision making about public health and safety issues. Therefore, are you saying that it should or should not exist? The question that flows from that of course is: how do you then prevent countries from using quarantine measures as de facto tariff barriers?

Ms Beard—That gets back a lot to the interpretation and how the agreement is interpreted, because a lot of quarantine issues are in fact as much cultural as they are scientific. A lot of

them have to do with consumer rights and what consumers are prepared to accept as consumable—different cultures eat different things. It is not only about scientific risks but also about what consumers or citizens want available or not available to them. I think the agreement is an important one. The issues are not ones that are going to go away if we do not have an agreement, so it is better to have it on the table perhaps than not on the table.

Senator LUDWIG—We agree then that there should be an agreement.

Ms Pahuja—There is no harm in an agreement per se.

Senator LUDWIG—How do you then justify your complaint that it constrains decision making about public health and safety issues? I am curious as to whether you are for or against it, and I am giving you the opportunity to explain your position, but I am no wiser at this point.

Ms Pahuja—The person who is most knowledgeable about the SPS part of our submission is Dr Orford, who is not here.

Senator LUDWIG—By all means, take it on notice and you can come back to me later. I am happy with that, if you want to think about that a little bit further and give a more considered response.

Ms Beard—Our main concern is not the agreement itself or the words or the text of the agreement but the way it has been interpreted by the panel. It is the interpretation that concerns us—for example, the exceptions that it is finding. In relation to one of the hormones, for example, it just said, 'If there is no scientific evidence available, then we will let it through.'

Senator LUDWIG—I think it is interpreting the document as written rather than trying to—

Ms Pahuja—That is partly our point.

Senator LUDWIG—Are you saying then that your criticism is not about the agreement but about the panel? You started off by criticising the SPS agreement, but now you seem to be criticising—and I am aware that you might want to take this on notice—the panel's expertise in interpreting the agreement or its lack of latitude in interpreting the agreement. I wonder where we are going to there?

Mr Howe—It is certainly an important aspect of our submission. In a way, there are two different elements of our submission. One important aspect of our submission was the nature and composition of the panel and how transparent its decision making processes are.

Ms Pahuja—Also, how restrictive its interpretations are, because my suspicion—and I do not have any evidence on which to base this really except for observation—is that state parties negotiating these agreements do not expect some of the interpretations that are given to those agreements by the panel and appellate bodies. They do not expect them to be interpreted so restrictively and they do not expect the exemptions or exceptions to be constrained so narrowly. I do not think that all of the measures that states have argued for within the exceptions have been cynically argued. I think states have been surprised. That is why we are saying that we

have to pay attention to the ways in which these agreements are interpreted by the dispute resolution body.

Senator LUDWIG—How would you do that? I say that because, having read a number of High Court decisions, sometimes I do not agree with them either, but unfortunately that is the law now as written. I might have a complaint about that too, but I am willing to accept that that is the process we will put in place, the High Court judges are independent and fair and the decision is now the law. If I then say, ‘I don’t much fancy it,’ what do I do next? What are you suggesting?

Ms Beard—For example, as a lawyer in Australia, I could seek leave to provide an amicus curiae to the High Court in Australia. At the WTO here, again, it decides, but it does not provide reasons for why it will or will not accept submissions from interested or expert opinion. So I think it then gets down to having a very close look at who these people are who are making the decisions, where the interests lie, where the balance of evidence is. For example, the burden of proof in these agreements is not expressly set out, so how is that being decided? I think there are a lot of ways in which you could look at how these decisions are being made.

Senator LUDWIG—So you would argue for a more legalistic process?

Ms Beard—Not necessarily, but a more transparent approach.

Senator LUDWIG—In relation to NGOs making amicus curiae briefs—I am a practical person—how would you then determine which NGO could make one, given the range and number of NGOs and their range of interests?

Senator SCHACHT—Or cancel each other out.

Senator LUDWIG—I am more hopeful than that. There is, you would agree, many NGOs and many would seek to make amicus curiae briefs. Already we have heard from a panellist in WA who received a brief which was 38 kilograms in weight. I asked him the same question about NGO representation. He understood that they might want to make a submission, but he would prefer it to come through the government because 38 kilograms was big enough as it was. There is the ability to actually look at the merits of the argument. If it then was to increase, he could not guess by how much if NGOs had unending time, and then you had the time constraints about how long it then runs for if NGOs want to make amicus curiae briefs. Then if you open it up for NGOs, you may open it up for other industry bodies to make representation. I suspect the Tasmanian government would also like to make an amicus curiae brief. The WA government did not go so far as to say that, but I may not have asked that question. If I had asked it, I suspect they would have said yes. Where do you stop? Or do you then say that the NGOs will come up with one NGO that will make an amicus curiae brief? I do not think that is imaginable.

Ms Beard—Perhaps it is time that the NGOs, for example, are subjected to the same sorts of rules and procedures that states are subjected to in terms of accountability and having to come together with one voice.

Senator LUDWIG—You can’t be serious though?

Ms Beard—You could have industry groups and non-profit groups, for example.

Mr Howe—We are making a distinction between NGOs and industry groups.

Senator LUDWIG—But you do not even think NGOs are going to come together as one under a formal framework even if we put rules.

Ms Pahuja—They might not like that, but if you said there was—

Senator LUDWIG—I am not defending NGOs, but I think I will get a letter if I do not.

Ms Pahuja—No, what I am saying is that, for example, there are different places in—

CHAIR—Order, Senator Schacht!

Senator SCHACHT—Sorry, we were having a bit of an argument on the side.

Mr ADAMS—Let us broaden it out. The argument has come up in our discussions that industry was in Seattle with government. There was no representation from environment or labour, but industry was there, capital was there, corporate was there. There was not the representation across the society of Australia in that area. I think that has been identified by DFAT and the minister: there has to be more input and pour that in. I think processes are pretty easy to sort out. The government sets up a process and says the NGO that wants to have input or whatever.

Senator LUDWIG—They do not say representation as part of government. I do not think there is any complaint about that. It is up to government to be able to determine the representation. The difference in this argument is whether NGOs have amicus curiae as a right. That is the difference.

CHAIR—And which ones, which is the critical thing.

Ms Pahuja—I think the question of participating in delegations is a little different, but in the recent asbestos case, for example, the appellate body called for NGO submissions. It made an open call and got 26 submissions. If the appellate body were required to give reasons for its refusal to a request for leave to file the brief, in my view that would go quite a long way. So it is not a point of receiving the brief. In Australia you cannot have a judicial decision without giving published reasons. That is part of ideas of justice and transparency.

CHAIR—Shouldn’t the process really go through governments? We all seem to forget here that we are dealing with government to government. That is what the WTO is, and every Australian citizen has access to the government in one way, shape or form. Even if you toss out the existing government at the next election, every citizen in Australia has some means of accessing government. Isn’t it really a process whereby we look at who the NGOs are in Australia, how representative they are and what process would give them input into this, rather than worrying about the cases? You could do it through your government, who then has to of course balance our national interest.

Ms Pahuja—That is right. I think there are several levels at which broader participation could be implemented, and implementation of that participation at any of those levels would be a good thing. For example, when we are talking about the dispute settlement procedure, if we were interested in national NGO participation, we would need to see some consideration of how Australia lets people know that it is involved in a dispute, which it does not currently do or ask for submissions in relation to that dispute. So there is no opportunity at a national level for non-industry participation in submissions. I think in some of the situations we have seen go before the dispute settlement bodies in relation to various states, participation by national NGOs probably would have strengthened the government's case because more evidence could have been given in a particular example. So it is not necessarily that participation is required only at a global or international level, but that there is no scope for that domestically anyway.

Mr ANDREW THOMSON—In relation to the subsidies section of the submission, what is your view on the difference between actionable and non-actionable subsidies? Are you satisfied with the scope for domestic policy making under the latter?

Mr Howe—Under the non-actionable subsidies?

Mr ANDREW THOMSON—Yes.

Mr Howe—It is an interesting point, because regional assistance subsidies are non-actionable subsidies, as I understand it, yet they could be caught if they are under the prohibited subsidy arm if they in some way enhance exports in conflict with another member of the WTO. I think that is something that has to be addressed in some way.

Mr ANDREW THOMSON—If the subsidy at a particular market causes damage to, for example, Australian producers, then that is okay? You would loosen the rules?

Mr Howe—I think my point about this is that there needs to be some sort of debate within this dispute resolution procedure about that balancing act and about the competing interests, which I do not think is happening. I do not think there is a right answer. In relation to the example you give, I am not going to say to you, 'No, we should abandon Australia's interest.' All I am saying is that there does need to be a transparent discussion about those competing interests and how to reconcile them in the particular case, which I do not think is happening. That is our point.

There needs to be some sort of debate within this dispute resolution procedure about that balancing act and about the competing interests, and I do not think that is happening. I do not think there is a right answer. I am not going to say to you that we should abandon Australia's interest in that particular example that you give. All I am saying is that there does need to be a transparent discussion about those competing interests and how to reconcile them in a particular case, which I do not think is happening.

Mr ANDREW THOMSON—In the normal application of the law, which I assume you teach at the institute—do any of you teach students at the university?

Ms Beard—Yes.

Mr Howe—Yes, we all do, but as we made clear, we have different areas, not international trade.

Mr ANDREW THOMSON—I appreciate that but, as a general principle, when you teach the application of law, I assume you explain that the judges and so forth that one might appear before in jurisdictions within Australia do not have debates about policy as they apply the law. Evidence is given as to facts, law is determined, it is applied, there is a verdict given, judgments are written and so forth. And yet you do not support that approach in dispute resolution for trade. You obviously want a more policy based discussion rather than an outcome. Is that right?

Mr Howe—I think I am the best person to answer that because I am teaching a compulsory first year law subject called History and Philosophy of Law at the moment. We are teaching students that, since the Mabo decision, the courts do apply policy considerations in their decisions while considering evidence and the existing law but that, since the Mason High Court, the appellate courts in Australia have taken a much broader approach to decision making and they will look at policy considerations in making their decisions. So it is not inconsistent at all with what we are teaching now at law school. Perhaps in the 1970s, or even before Mabo, you might not have taken that approach, but I think appellate decision making has changed quite a lot in the last 20 years.

Ms Beard—Could I just add that the decisions of the WTO panels have legislative effects as well, within Australia, so they may actually oblige Australia to make laws or change laws. So the effects of those international decisions are slightly different to the effects of domestic court decisions, perhaps.

Mr ANDREW THOMSON—Of course, the state has the right not to observe the obligations that arise under the agreement. If the state chooses not to observe them, as the EC regularly does, then what happens? There is not war.

Ms Pahuja—With no disrespect intended, it is partly fallacious to say that the decisions are being made neutrally. Part of what we are saying is that you cannot really say the decisions are being made neutrally, because they are not; they are being made with a particular emphasis on the facilitation of the least trade restrictive measures possible, at the expense of other interests. What we are saying is that, because the treaty is not clear—and this was my point earlier—the states are possibly thinking that there are gaps in areas where there has not been negotiation, and these are now being filled in by the interpretation of these treaties by dispute resolution bodies.

So part of the interest that some people have in constitutionalising the WTO and strengthening the dispute resolution procedures is exactly to do with that—they know there is not enough substantive agreement and they think that the lacunae will be filled by the dispute resolution body. But that is not an appropriate place for that to be happening. There needs to be a policy debate and people need to agree on the balance to be struck. We are not saying that the balance has to be struck in a particular way; we are saying that we need to agree democratically on how the balance has to be struck, and know that that is where we are striking the balance. We should not leave it to be interpreted so technically and narrowly.

Mr ANDREW THOMSON—The thrust of the submission then—which you are asking us to us accept—is that we should have less free trade, vaguer rules, and possibly as a result of that, lower growth, smaller farms, I notice, and less science in the process. That is also criticised; you called it an 'institutionalised hierarchy of knowledge', I think. The submission also seems to advocate more subsidies, and hence more spoiled markets and of course more NGO dominance in the process. Are these things that you feel we should accept?

Ms Pahuja—I do not agree with the conclusions that you are drawing out in that manner.

Mr ANDREW THOMSON—These are the things that I have distilled from your submission and there is very little that you can do about my distillation of them, but that is what I will take with me. I will not trouble you any more. Please go ahead.

CHAIR—Thank you, Mr Thomson. One of the factors that we look at when we look at treaties—and this committee looks at them all the time—is the fact that often the language is deliberately obscure. That has been the basis upon which states parties can agree. I do not know how we can be so much more specific in the agreements. That is just one of the givens of international law, as you would all be aware.

Senator SCHACHT—Do you support the idea that Australia should ratify the establishment of an international criminal court? It is a body that we are also looking at as a treaty. It is an international body and many people are saying that we are going to have to give up some of our sovereignty—

CHAIR—Senator Schacht, we are straying slightly from—

Senator SCHACHT—You have raised concerns about the process in the WTO. We have another treaty before us, which is to establish an international criminal court. Some people are concerned that that also affects sovereignty. Is your organisation in favour of international organisations that have obligations on member states, or do you think we should withdraw from the WTO and also the others that we have signed up to?

Ms Beard—I have not submitted that we should withdraw from the WTO or any other international treaty. I think they offer a great opportunity, particularly in the—

Senator SCHACHT—So, by and large, you are in favour of international treaty arrangements which have obligations, but you want to change some of the obligations.

Ms Beard—I think Australia could approach it in a more democratic but also perhaps a cleverer way sometimes.

Mr Howe—We are encouraging Australia to engage with the treaty processes and with those organisations. It is the scope of that engagement that we have been trying to address in our submissions.

CHAIR—We are running over time. As no member of the committee has one last burning question, I thank you very much for your submission and for coming along today and sharing your ideas with us. We appreciate it very much.

[11.15 a.m.]

FARRAN, Mr Andrew Charles Cunningham (Private capacity)

CHAIR—We welcome you to this public hearing of our inquiry into Australia's relationship with the WTO. We have your submission. Would you care to make an opening statement or draw out for the committee any particular points that you would like us to consider?

Mr Farran—I appreciate that time is short. I will keep my statement to a minimum. As I have been out of circulation somewhat in the last 10 years or so, living mostly in Britain, perhaps very few people have any idea where I am coming from. Very briefly I would say that I have been involved in watching or following GATT matters for some time, since I joined the Department of External Affairs in 1962. At that stage the Kennedy Round was under way. I had various positions with the department affecting or involved with international trade. When I left the department in the 1970s, I was an academic at Monash University. I taught international law, international trade law and, indeed, I initiated a graduate program in international trade law and in international organisations.

In the latter years at Monash I was also invited by the Australian government to be an adviser during the Uruguay Round. I was on the Trade Negotiation Advisory Group and the Trade in Services Advisory Group. Since then I have been following the GATT/World Trade Organisation issues fairly closely. I have been in business primarily in the last 10 years. I am a little more detached now. I cannot cite all the GATT articles by number off by heart as I used to be able to do. That is my background in brief in this respect.

My concern in Australia's case is as a debtor country and dependent on exports. Australia, more than any other country, has every reason to take a global view, perspective and attitude. We do not belong to any particular region. There is no one region that we can join and feel viable. We are not in the EU, though people have often suggested that we should join. The Asian countries have some reservations about us for one reason or another. There are discussions about joining free trade areas with other groupings. I might briefly say something about that also.

Essentially, having no home apart from where we are, we have a vested interest in maintaining, sustaining and upholding a global, multilateral, open, non-discriminatory trading system with all its problems and shortcomings. That is where our interests primarily lie. The tendency to talk about free trade areas is of some concern because they can undermine the global, multilateral system, particularly if they are implemented in an imperfect way. Article 24 of the GATT is rather loosely worded. At first it was not thought it was going to be a serious concern but it does provide that any free trade area arrangement must involve substantially all the trade of a country. The difference between a customs union and a free trade area is that there are no trade barriers among the members and they have a common external tariff. The free trade arrangement is where they have no trade barriers but they have maintained their respective external trade barriers vis-a-vis the rest of the world. If the areas of trade that are included in the free trade arrangement are limited, it becomes very discriminatory for non-members and eventually it will involve the unravelling of the multilateral trading system. We have to be very careful when we contemplate free trade areas.

Institutionally the GATT has undergone enormous evolution since its inception. All the organisations which are often the target of protests have been around for a very long time, but it is only in recent times that their profile seems to have risen or been raised by them. The GATT has sought to adapt to change. Indeed, the Uruguay Round was a major breakthrough in terms of the extent of its coverage and its concerns. It is probably true to say that intergovernmental organisations have not evolved or developed to the extent commensurate with the nature of the problems affecting the world.

When I joined Foreign Affairs, or External Affairs as it was then called, in 1962 the world population was about three billion. It is now six billion, and by 2025 it will be nine billion. This requires an enormous amount of organisation, concentration, concern and sophistication on the part of global or international bodies. I would say for the most part they have not evolved or developed to that extent. There are all sorts of problems with this. Very often the participation in a given organisation involves a bureaucracy in the national government separate from the bureaucracies that are involved with other organisations. The rivalries that are there are bad enough to cope with, but then you also have the differences amongst governments in the organisation we are talking about.

The GATT—now the WTO—has spent a lot of time debating its objects and purposes, reviewing its workings and looking at the problems and so forth. Indeed, that is why these ministerial meetings are so enormously important, because they can take the process a stage further. The delegates of the GATT or the WTO are not themselves empowered necessarily to undertake major changes that would respond to world problems, but the ministerial meetings are. So the very people who are complaining about the shortcomings, deficiencies and so forth of the WTO in particular are the people who are frustrated. The Seattle fiasco was an enormous setback to the development of the WTO and other associated organisations. Every time they tried to meet to address world problems they had to go through these battlelines as it were. So I think that is a concern.

Beyond that, I would say that many people who criticise international or intergovernmental organisations very often, when questioned, do not really know a great deal about them. They do not really know what their limitations are, let alone their objects and purposes. They do not understand the nature of compromise that has to occur at the diplomatic level, the very diverse interests involved and so forth. What the WTO has done in response to this—and I mentioned this in my first submission—is to create a web site in which there is an enormous amount of information.

Indeed, the amount of information on trade matters is incredible in itself. For instance, the EU has 80,000 pages of regulations and rules, which any aspiring new entrant has to not only read and understand but implement. I do not think the GATT have 80,000 pages exactly, but what they have done is to put all the public information—and the public information is very extensive—on the web site and it is available and accessible. That includes the decisions under the dispute settlement process—it is all there. Have you asked the people who have been appearing before you if they have ever accessed those web sites in an endeavour to inform themselves? We had three University of Melbourne people here. As I told you, I taught at Monash University for 15 years, and I was astonished to hear some of the things they said. I am not being critical; I am just stating a fact—I think.

CHAIR—I defy anyone to stay awake reading panel decisions.

Mr Farran—There is a lot of interest in those.

Senator SCHACHT—Too right. They were from the Institute of Comparative International Law. Is that a Melbourne University front?

Mr Farran—They said it was.

Senator SCHACHT—I see; I did not catch that.

CHAIR—In fairness they said that they did not represent it; they said they were from it.

Senator SCHACHT—They are on the payroll at Melbourne University.

Mr Farran—No, one of them taught a first year subject. It has a different name—in my day it was called 'Introduction to Legal Method'.

Mr ANDREW THOMSON—It is 'History and Philosophy of Law'.

Mr Farran—Everything derives from the Mabo decision about which there can be a certain amount of criticism, I think. Certainly some of the High Court judges of the past would have turned over a few times wherever they are.

CHAIR—It is an interesting benchmark, though, between Mabo and post-Mabo.

Mr Farran—Yes, it is—it is a watershed of sorts. In conclusion, I acknowledge of course that the adjustment process for individual countries within the economies of individual countries in meeting every other country's expectations—bearing in mind that the GATT is both a rule based and a consensus process—is enormous and difficult. In this modern age, where information is available if people want to use it and where the media is so powerful, the complexities of it are perhaps not always appreciated. Very complex issues are sometimes reduced to one or two sentences, if that. I think that is a problem in terms of disseminating and improving public understanding of these things. I could say something on the dispute settlement process. If you would like to ask me questions, I am happy to answer them. Those are my introductory observations.

Mr ANDREW THOMSON—I have observed in the last few years the increasing clamour of the so-called civil society—as they describe themselves—not only the anarchist people who smash the windows, but the more sophisticated talking heads.

Senator SCHACHT—Much more violent.

Mr ANDREW THOMSON—No, there are not a lot of demonstrators. But for those of us who are interested in defending this rule based system and its integrity, this clamour is causing some political pressure on governments and even at times on officials in a subtle fashion. We

are concerned about how to address this difficulty in the short and long term. What advice would you give us about dealing with this wave of often quite unreasoned attacks on the rules?

Mr Farran—I think it is very difficult to deal with unreasoned attack. Where there is a genuine concern—and perhaps it is based on some misunderstanding or clarification—a lot more can be done and will be done by utilising the Internet, by having the information available, directing people to its existence and by showing them how they can access it. I think that is happening in the country areas with farmers on all sorts of issues. It is an amazing technology; there is a way.

During the Uruguay Round, the government formed consultative advisory groups like the Trade Negotiations Advisory Group and the Trade in Services Advisory Group. They had questions to deal with. Who would be included or excluded? What were the problems? How much confidential information can you give a body that is not governmental but advisory to the government and can you deny information to other people? They were the sorts of issues. These problems from that time are not with us now to the same extent. That is to say, through the web, you can have that information that we were getting then, plus more, available to anybody on the click of a mouse. You can also encourage people to form their groups and provide input. This also goes to the dispute settlement issue where people made points about the panels and whether or not the civil society is representative and how it can input its views and concerns.

How you educate a whole population that has such broad concerns arising in regard to the trading system is a problem for politicians. You are the people best equipped for that, I would think. I know it is enormous, but I think you can only go as far as people are receptive, or likely to be receptive, so it is a very clever operation or process to do that. A lot can be made of briefing journalists and having informed expert journalists and so forth. I think our newspapers do a very good job in that regard. The *Australian Financial Review*, the *Age* and so forth endeavour to explain these things— and the TV sometimes, but the trouble is they reduce a complex issue to a simple proposition or assertion. I think the answer has to be more through the web and the developments that are on the horizon in that respect.

Mr ANDREW THOMSON—A have a question on the trade in services and I suppose we should also include the trade related investment measures and the need to try and put a cap on arbitrary and discriminatory investment measures—I do not mean Shell Woodside entirely. This sort of thing is plainly the next part of the agenda for this kind of multilateral effort. The MAI thing collapsed in acrimony and misinformation. How would you go about improving the trade in services agreement and where would that go? We will just stick with that for the moment.

Mr Farran—The trade in services agreement was a product of the Uruguay Round and was a major move. People say, 'What does services mean?' We used to say it covers anything that you cannot drop on your foot—that is the distinction between services and goods or commodities. The first part of that process was to develop principles and standards and there was a great debate on that. That is the sort of debate that can be brought into the public arena and can be very productive. So there is an overall framework agreement, which lays down the principles and standards, and then you get into the negotiation to do with access or what sectors you are or are not going to include. It is a very free and easy arrangement at this stage, and it is all voluntary. The only pressures are from your trading partners saying, 'We will go in if you go in too,' and then whether you will accept the obligations, and even there there are escape clauses.

The WTO has now cemented this—there is a formal framework and a formal system and process in trade in services.

At the time TRIMS—trade related investment measures—was discussed and debated there was a lot of useful discussion and, again, the principles and standards were elucidated. But it was never adopted. Then there was the MAI. It will come in time. There has to be something like that because all the facets of the economic system and the trading system are not compartmentalised or unrelated, so these things have to come in in due course. But the wider it goes, the more you start to say, 'Gee, the problems of the world are huge. What about world government?' Of course, that is a no go, for obvious reasons, at this stage—maybe in 100 or 200 years time, possibly.

Then there is the question: what are the other organisations doing on matters that relate, touch on or affect trade or the ancillary areas of trade? An issue there is that memberships of these organisations are not necessarily coterminous. People say that in WTO disputes settlement they should refer to, say, the World Health Organisation or some other intergovernmental body and adopt its decisions. But what if the parties in the dispute are not members of that organisation and have had no input into its determinations? So the problem there is how you coordinate among all the organisations. The GATT/WTO has been working very closely with the World Bank and the International Monetary Fund to try to get better liaison, coordination and understanding of each other's spheres and operations. That has been advanced considerably in recent times.

As an interesting sideline, at the time of the Havana conference they envisaged an international trade organisation, but the Americans would not accept that because the trade and commerce power in the United States is held by Congress and they thought that by acknowledging an international trade organisation they were somehow delegating or giving way to the executive on trade matters. Generally at that stage the Americans were very resistant to any international pressure on their independence in trade policy formulation. While the GATT was called the GATT it really had a low profile and not too many people were interested in it—the common observation was that eyes glazed over, that it was very complex. But once it was called the World Trade Organisation, suddenly the reaction was: my God, what is this? So that has been, in a sense, a tactical error. Then again, perhaps I should not make too much of that because the trade in services agreement is called the GATS. As I go around the country I hear people in rural areas talking about the GATS and saying, 'Isn't it a frightful thing!' And I say, 'Gee, this is interesting—they have cottoned on to the GATS. Did they know much about the GATT?' Actually, country people are more aware because agricultural trade, the area that has been excluded from the world trade system to a large extent, is coming in slowly.

Mr ADAMS—There is the Cairns Group.

Mr Farran—That is the sort of thing that Australia can do to generate understanding and work towards an objective with like-minded countries, or countries with similar interests even if they are not like-minded on some issues.

Senator SCHACHT—I cannot help noting that at the back of your submission you say you once were a Liberal Movement candidate in the Senate. Does that mean you were a South Australian?

Mr Farran—No. I formed it in Victoria in 1975, at the suggestion of Steele Hall—just to show that I am not as far Right as some people might conclude from my remarks—

Senator SCHACHT—I just thought you might have been a fellow South Australian.

Mr Farran—and also that I do not have the savvy of politicians because I clearly failed in that area.

Senator SCHACHT—In your submission under 'Getting views domestically' it states:

The Groups, serviced by DFAT, represented a cross-section of business and social interests, though the term civil society hadn't been coined then.

You then say:

Contributions were uneven. Least of all were those from the trade unions and more than once I drew attention to the fact that although nominally these were represented at the highest level their attendance was infrequent. Perhaps they had other ways of influencing policy!

Was this when you were in the department?

Mr Farran—No, it was when I was at Monash University. I was regarded then as some sort of trade expert because of the course that I taught and because of my background. Do not forget that at that time a Labor government was in power.

Senator SCHACHT—When was this?

Mr Farran—During the Uruguay Round. It went from 1986. There was John Dawkins as minister and then there was Neal Blewett. The trade unions had the opportunity to make input. I did comment at the time, several times. I would say, 'Mr Chairman, we are all here, but our friends from the trade unions are not. Are they not aware of where this GATT process might lead?' It has led to that and now they are kicking and screaming.

Senator SCHACHT—So you were conducting, as a job on behalf of the government, the consultative—

Mr Farran—I was a member of the Trade Negotiations Advisory Group.

Senator SCHACHT—And one of the delegated jobs you had was to have a consultative arrangement with NGOs such as trade unions.

Mr Farran—Yes, I was also a member of the Law Council of Australia's trade law committee and I conducted seminars and discussions outside the university for lawyers and for those with an interest in international law and international trade when issues such as intellectual property were being discussed and so forth. I endeavoured to make available to the legal profession all the information I was able to for those who were interested in it. As well as that, I wrote articles and things like that for general consumption.

Senator SCHACHT—And you invited the trade unions and they did not turn up?

Mr Farran—It was a minister’s group, not mine.

Senator SCHACHT—I see.

Mr Farran—This was the Australian government’s Trade Negotiations Advisory Group, appointed by the Minister for Trade. I was a member of that group.

Senator SCHACHT—And it was your observation at those meetings that the trade unions were not frequent attendees?

Mr Farran—Yes, for a while. And then they started to turn up.

Mr ADAMS—Were the states very interested at that time or were there any linkages?

Mr Farran—As I recall it, there was no involvement of states, as such.

Mr ADAMS—I am interested in this consultation because there is not a very broad debate outside in society; it is getting bigger. You had carriage in those days of GATT, to take it out to people whose areas were touched by it—lawyers advising companies, et cetera. Was that funded by government?

Mr Farran—Our activities?

Mr ADAMS—Yes.

Mr Farran—No, as far as the Law Council was concerned, they funded it. Indeed, in some cases, we charged because we would have a seminar followed by a reception or a dinner or something like that.

Mr ADAMS—But it was a process of taking what was happening at an international level to the Australian players, to interested parties, even though that might have been a narrow group?

Mr Farran—The Trade Negotiations Advisory Group had people on it who represented different agricultural commodities—sugar, dairy, and other areas. A lot was happening at that time. The Business Council of Australia was formed at that time. I had a role in facilitating the formation of the Coalition of Service Industries so that became a consultative body in its own right and was able to make input. The process started to broaden out.

Mr ADAMS—The National Farmers changed a bit—

Mr Farran—They were there, yes. They had input.

Mr ADAMS—You mentioned education, the Net and whatever. Do you think more could be done in consultation?

Mr Farran—I am a little out of touch but, if there is another round, a department like DFAT should form similar bodies. Those people who are representing different sectors should

themselves form bodies and use the Internet as a way of coordinating. They should encourage people to make inputs. So when they attend meetings, they will have a much broader and deeper understanding of their constituency and they could speak more authoritatively. Some of the people were there not to block progress but to check it from going too far. Other people wanted to move fast. We had interesting discussions because of that.

Everything is a trade-off in the long run. It is not only a trade-off within Australia but it is a trade-off now among 140 countries, so you can imagine how difficult it is. You have people knocking on the door from the outside saying, ‘We have an independent right to be here as well.’ The question is, ‘Don’t you have a government at home? Shouldn’t you be at home putting your bit in there?’ And your government can then come with your point of view.

Mr ADAMS—Their argument is that they have not had that opportunity.

Mr Farran—They should have it, but it needs to be done in a very sophisticated way now utilising all the benefits of modern technology.

CHAIR—Do you have any kind of process you could discuss with us whereby people could be selected or otherwise so that the government could be sure that they were representative and it was not just one person and a couple of dogs informing an NGO? There is a serious issue that the NGOs want to take us to task on—being transparent, accountable and accessible. They may be very good points; I am not taking issue with you. What I am saying is: how do you apply the same process to the NGOs so that the people who really do come to give evidence and otherwise put their views are representative, democratically elected and their views are distilled so that they are representative views?

Mr ADAMS—DNA.

Mr Farran—The two advisory groups that I have mentioned were advisers to the minister. It was his prerogative to decide who he wanted to seek advice from. He wanted to make it look as broad and as representative as possible. In the area of trade that has this international dimension and all this complexity, the minister of the day would be very well advised to consult the shadow minister and all the other political parties about their idea of who should be represented. There should be direct input to the minister from the major organisations within the Australian economy, whether they are metal trades, shipping people or telecommunications.

The peak bodies exist and the government knows only too well who they are. In turn, they have a duty to broadly canvass opinion and to consult so that what they are saying is truly representative of their constituency. Over and above all that, a lot of information could be available. On NGOs, the question is that, if you bring NGOs directly to the minister’s advisory group, who do you include and who do you not include? That is a very tricky matter and I think it is a political matter. But you give them every opportunity to be informed about what is happening and what proposals are under way insofar as you do not breach confidentiality to other governments. There is a big difference between formulation of principles and standards and the negotiation of access issues on the detailed subject industry to industry basis.

It is a question of how receptive the government is to all the messages that might come through the Net. I do not know how they handle that. If they get a lot of email, how do they

process all of that? It is a difficult issue. It is the same with the GATT dispute settlement situation. Various organisations want to put in what they call an amicus brief. Some of them want to sit around the table and be part of the dispute settlement situation or to make direct representations. As I understand it, what the WTO think is feasible and practicable is to make the issues of a particular dispute known and then allow any NGO to submit an amicus brief through the web if the secretariat can handle it. This is something that has to borne in mind: the WTO secretariat is one of the smallest of all the international organisations. Its task is possibly the biggest and most complex in terms of ramifications, the countries and the issues—it is enormous. But it has a relatively small secretariat, which is underfunded and stretched. To say that it is masterminding the future of the world is a slight exaggeration.

CHAIR—As a matter of interest, why do you think the WTO has become such a focus when, for instance, the ILO is not picketed, and people do not turn up when there are meetings on and suggest that there should otherwise be all sorts of NGO participation?

Mr Farran—It depends who is doing the picketing—what groups—and what is in the forefront. I think it is a well-known fact around the world that there is a particular coalition of people with anarchic tendencies who are out to destroy the system and to undermine it for all sorts of reasons. They have their reasons, possibly. The organisations they focus on most are those which they think reflect the capitalist system: the World Bank, the IMF and the World Trade Organisation. The world is full of underdeveloped and developing countries who are desperate for better trade relations, access and opportunities.

The ILO is probably not what they target because, first of all, it is a tripartite body—it actually has representatives from trade unions, governments and employers. But the ILO is not something that you really attack, frankly. You might criticise the World Health Organisation for its selective policies in some areas, and the International Telecommunications Union is another one. No, it is the capitalist institutions, as they are perceived to be, that are the targets, for the reasons I mentioned. Those who have genuine concerns for the environment, jobs and so forth have good reasons to take an interest, be concerned and be informed. They have the opportunity to both inform themselves and make a contribution—that is not lacking.

CHAIR—Thank you very much, Mr Farran. We very much appreciate that you brought to the committee considerable expertise and background in these matters and we are very grateful that you have taken the time and trouble to make a submission and to appear before us.

Mr Farran—That is a pleasure; thank you very much.

Proceedings suspended from 11.48 a.m. to 1.10 p.m.

ATKINSON, Mr Jeffrey, Advocacy Coordinator, Trade, Oxfam Community Aid Abroad

HOBBS, Mr Jeremy, Executive Director, Oxfam Community Aid Abroad

DURBRIDGE, Mr Robert Stuart, Federal Secretary, Australian Education Union

MANSFIELD, Mr William Clements, Assistant Secretary, Australian Council of Trade Unions

MEDICA, Ms Karen , Member, Executive Committee, United Nations Association of Australia

MURPHY, Mr Edward Francis, National Assistant Secretary, National Tertiary Education Union

O'ROURKE, Ms Anne, Assistant Secretary, Liberty Victoria

CHAIR—I welcome everyone to this roundtable discussion exploring the issues that we have called, loosely, free trade against fair trade—no pun intended. Throughout the committee's inquiry we have held a number of roundtable forums in addition to the normal public hearings in order to have focused discussions on key issues in our inquiry. We will begin this roundtable forum with a five-minute statement from each of the participants outlining their views on Australia and the World Trade Organisation. We will then move to what I hope will be a free-flowing discussion involving the committee and all participants. By that I mean that I am quite happy to allow, within reason, some cross-fertilisation of ideas between participants as well as with the committee

I advise all participants that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

Before we begin I have a housekeeping matter. The committee has received a request by Dechantel Green, from RMIT, to film today's proceedings. A film project is being undertaken that may be shown, I am advised, on Channel 31. My policy is to ask everyone at the table if they are happy with that. As they are, we will allow that to proceed. Permission for the filming is granted.

We will now have the short statements from each of the participants. Mr Hobbs, would you like to start?

Mr Hobbs—Our starting position is that Oxfam Community Aid Abroad is not opposed to free trade, but we are very concerned about the rules by which the trading regime around the world is currently run. We estimate that protection costs the developing world about $US700 billion per annum in lost earnings. The OECD has said that trade protection policies of developed economies retard economic growth in developing countries seven to 13 times more than development aid enhances it. So we see trade as an important antipoverty measure. But we

are also very concerned about the rules of the World Trade Organisation and the way the current trading regime works against poor countries. We think there is need for reform of the WTO and we have particular concerns about aspects of things such as the TRIPS agreement and subsidised exports.

We particularly want to note, however, that we have had very constructive discussions with both the minister, Mr Vaile, and Senator Cook about how Australia might play a constructive role in trying to reform the World Trade Organisation and hopefully, through the Cairns Group, have a significant influence on the way trade is managed in the future. It seems self-evident these days that nobody accepts unalloyed free trade without protections for vulnerable countries. In Australia people expect some protection for vulnerable industries. We think the way forward is therefore to look at issues such as special and differential treatment in a way which protects the most vulnerable countries. Some significant improvements are possible there and we have had encouraging responses from both the government and the opposition.

I will ask Mr Atkinson to address our concerns about the TRIPS, subsidised agricultural exports and special and differential treatment.

Mr Atkinson—On the question of agriculture, first of all we share the concern of the Australian government and the Cairns Group about subsidised exports and the impact this has on markets and prices of agricultural products. Our particular concern, of course, is not so much the Australian producer and exporter but vulnerable peasant farmers in developing countries. In the Philippines, for example, where corn is produced by some of the more vulnerable and smaller producers, they now have to compete with subsidised corn coming in from the US and they are losing out badly. And that story is being repeated over and over. So we share the Australian government's concern on the question of subsidised agricultural exports and we call for their abolition.

We would go a little further than the Australian government and the Cairns Group, however, and say that we are also concerned about non-subsidised exports. We are concerned about a situation in which, with increasing trade liberalisation, peasant farmers around the world are in competition with one another as well as with highly subsidised producers. For example, rice farmers in Sri Lanka are now facing hard times because, in an era of increasing liberalisation, they are forced to compete with Indian farmers. The Indian government supports its agriculture more strongly than does Sri Lanka; therefore Indian rice is available in Sri Lanka cheaper than the local product and this is having an effect on the Sri Lankan farmers. You might say that that is fair enough; that they are not competitive and therefore they should go. The problem is that rice farmers are a very large and vulnerable group; in fact, those who depend on agriculture in a country such as Sri Lanka are something like 50 per cent of the population. So we are concerned that trade liberalisation by itself, particularly in agriculture, will have a dramatic and traumatic effect on rural producers in peasant societies throughout the world as the more effective competitive producers—perhaps those in Thailand and Vietnam—win and everybody else loses. We are concerned about what this means for the rural sector in places like Sri Lanka or Indonesia.

We are calling for agriculture to be treated separately from trade in other products within the WTO because of its importance and because so many vulnerable people—anything from 50 to 70 per cent of the population in developing countries—depend on it. How should it be treated?

There are various mechanisms. It could be within the ambit of special and differential treatment, and an expansion of that. It could be by expanding the box system. You are probably aware of the green, amber and blue boxes within the agreement on agriculture, which are basically groups of exemptions. One possibility is that there be another box, to be called the food security or rural livelihoods box, as a group of exemptions to preserve vulnerable groups and rural livelihoods. Whatever the mechanism, the principle is fundamental, simple and straightforward: southern governments should have the right to protect their farmers and rural producers. This is quite different from, say, the French or Japanese governments wanting to protect theirs, because we are talking about huge numbers—anything up to 50 per cent of the population—who are very vulnerable.

In relation to TRIPS, you may be aware that Oxfam, of which we are an affiliate, have taken up the issue of TRIPS, and in particular its impact on the cost of medicines, very seriously over recent weeks. We acknowledge that there are loopholes within the TRIPS agreement, but we are concerned that there is a certain amount of bullying by more powerful governments and pharmaceutical companies to ensure that countries such as South Africa or Brazil do not use those loopholes and that patent protection for pharmaceutical products is quite stiff and severe. Our concern, of course, is that this puts up the price of pharmaceuticals. As you are probably aware, in a country such as South Africa the government authorises the local production of cheaper copies and can also authorise what are called parallel imports—that is, buying from some cheap source, such as India, instead of from the US. This has been resisted by the pharmaceutical companies. The problem with the TRIPS agreement is that it allows such things but only under exceptional circumstances. We would like to see the TRIPS agreement altered so that those things are not exceptions but are accepted as rules, that compulsory licensing and parallel imports are accepted not just in emergency situations but at any time.

The third area is special and differential treatment. The WTO recognises that weaker countries should be given special and differential treatment. But that is being interpreted at the moment within the WTO to mean that basically they all have to obey the same rules but it is just that they are given a few more years to implement them. We believe this is not good enough. It is unrealistic to expect that within, say, five years, 10 years, or whatever the additional years are, weak and vulnerable countries will be up to the same level as everybody else and will therefore be able to implement these measures in the same way. We believe that special and differential treatment should be more than just giving them a few more years to implement the measures, that there should be a ranking of countries according to their viability and that special and differential treatment should be on the basis of their need for special and differential treatment—in other words, it should be connected to a vulnerability index. So we are calling for the Australian government to support a rethinking and reframing of the whole concept of special and differential treatment. I think that is enough from me, thank you.

CHAIR—Did you want to outline at all what ‘weak and vulnerable’ is? I know you said it was an index. Who is weak and vulnerable?

Mr Atkinson—At the moment within the WTO there are only two grades of countries: you are either developed or you are developing. These are measured according to normal UN measures. I could not give you detail of how that vulnerability index would be measured; that would be something that would have to be worked out in detail later. What we are talking about is the ability of countries to implement the WTO agreements without trauma. When I talk about

trauma let me just refer quickly back to the Sri Lankan rice farmers. I found out recently that the suicide rate amongst rice farmers in Sri Lanka is incredibly high. The cost of adjustment for a country like Sri Lanka to WTO liberalisation of agriculture is very high.

CHAIR—Are you talking about agriculture as an industry sector?

Mr Atkinson—Yes.

CHAIR—So that could be the measure.

Mr Atkinson—No, I am suggesting that countries would be allocated a vulnerability index, not just for agriculture but as a nation. It would be a national measure, not a sector by sector measure.

Mr Murphy—The interest of the National Tertiary Education Union is focused on the General Agreement on Trade in Services—on both the structure of that agreement and the particular proposals that the Commonwealth has submitted to that agreement and that it is contemplating submitting to that agreement. I will comment on the structure first. The problem we have with that agreement is that we do see it against a background where tertiary education is increasingly looked at as an opportunity for transnational trade in services, where there are multimedia companies from News Corporation to the Thomson media group forging alliances with universities both here and internationally with a view to developing a market for Internet delivery on a global basis. On the other hand, in Australia itself we have 100,000 overseas students, 32 per cent of whom are not actually enrolled on an Australian campus but are studying at an Australian campus overseas. We are looking at an increasingly integrated and transnational enterprise activity. Call it whatever you wish—call it tertiary education. It is in that context that we are sensitive to both the nature of the GATS and also to whatever Australia puts forward. The problem with the nature of the GATS from our standpoint is that there is an exemption in the General Agreement on Trade in Services for services provided in the exercise of government authority. But the next clause defines services provided in the exercise of government authority as excluding any service provided on a commercial basis or provided in competition with other providers.

Public universities compete with private universities, and public universities by virtue of charging fees are operating on a commercial basis. Our first concern is that the very structure of the GATS is one in which education, which in our view should be perceived differently from trade in commodities, is not exempt from the General Agreement on Trade in Services. We are disappointed that the negotiating position adopted by the Commonwealth for the current Millennium Round of GATS negotiations is that it operates on the basis that no service or service sector should be excluded a priori from the negotiations. That therefore brings in education and tertiary education.

We are particularly concerned because a discussion paper going through trade and tertiary education services prepared by the secretariat for the Council for Trade in Services in 1998 identified as a trade barrier the limitation of government funding to domestic institutions. There is this notion that, if a national government only funds its domestic public providers, that is a trade barrier that violates the national treatment requirement of GATS because the same level of public funding is not available to private providers or available to overseas—foreign—

providers. To be fair, Australia to date, as a result of the 1994 Uruguay Round of GATS, has only made commitments with respect to private tertiary education. We know from talking to DFAT that the Commonwealth is planning to make a communication to the Council of Trade in Services with respect to education services generally, not just tertiary. We have yet to see that. I understand the preparation of that was waiting on an APEC report on trade and education services in the Asia-Pacific region and that that report is now out. So our first interest, to be frank, is what will be the Commonwealth proposal in this round. Our other interest is that the Council for Trade in Services has adopted negotiating guidelines for the Millennium Round of GATS negotiation, and it has identified as a priority developing a new GATS discipline which removes the trade distortive effect of subsidies, and 'subsidies' includes government funding, so we are starting from the standpoint that, if a new discipline is going to be negotiated directed at the trade distortive effects of subsidies, is government funding going to be encompassed by that discipline?

The other negotiating priority identified by the Council for Trade in Services is a new discipline pertaining to domestic regulation, specifically licensing requirements, licensing procedures, qualification requirements and technical standards. The Commonwealth has already made a formal submission to the Council for Trade in Services proposing that Australian technical standards, licensing requirements, licensing procedures and qualification requirements should be subject to a least trade restrictive test before the WTO. That proposal, which has been formally communicated, is not confined to tertiary education but it affects tertiary education because there is a national protocol on the approval of higher education providers, and that includes foreign higher education providers, and that is that accreditation is a licensing requirement within the meaning of the WTO. We were not consulted about that domestic regulation proposal from the Commonwealth; nor were the state accreditation agencies for higher education who are involved in developing the approval protocol; nor was the head of the new quality assurance agency for higher education appointed by the Commonwealth involved in that. So one threshold issue from our standpoint is establishing a broader base of consultation for the Department of Foreign Affairs and Trade or government generally before negotiating proposals are submitted to the WTO.

The final point I want to make is that our concern is not just limited to national higher education operations in Australia. In South Africa, for example, a few years ago they had 200 applications from overseas, mainly foreign private providers, to establish university or higher education campuses in South Africa. They approved only six, Monash University being the only Australian one in the group. They limited their approvals because they needed to establish and maintain the viability of a national university system in South Africa. Frankly, part of that system was collapsing. Particularly what are known historically as the black universities were collapsing in South Africa. They had lost about 40 to 50 per cent of their enrolments. Students who were previously unable to attend historically white universities shifted to that sector because they were better resourced and had better standards. In that context, a developing country needs to be able to block and issue very limited licensing requirements for predatory or commercial operations from OECD countries. So part of our concern is that most of Australia's communications to the GATS to date have focused on the need to improve access to markets for Australian export services, of which tertiary education is one. We do not believe that Australia should be pursuing that to the point where a national government in a developing country is unable to adopt restrictive regulations in order to stabilise and develop its own national tertiary

education system, or health system or whatever. So our concern goes beyond simply how it would affect our institutions; it goes to the developing world.

I will make one final comment. Friends of mine who are public servants in the Commonwealth tell me that when they put up a new proposal they have to have a regulatory impact assessment by the Office of Regulation Review. I have not seen to date any requirement that, before the Commonwealth submits a formal proposal to the Council for Trade in Services, GATS, TRIPS or the phytosanitary agreement, there is any onus on the Commonwealth to produce a regulatory impact statement about what state, local and national regulations, legislation and administrative arrangements may be at risk, disturbed or weakened by an international trade treaty picking up any of those proposals.

I have already indicated that our view is that the accreditation of universities, including private universities in this country, is covered by the domestic regulation proposal of the Commonwealth. Again, from the basis of a system for decision making, we would like to see an onus on the Commonwealth to develop a regulatory social impact statement prior to finalising proposals which are submitted to the WTO. We also believe that it would be appropriate for those proposals to be subject to some form of public consultation prior to finally being submitted by the Commonwealth to the WTO. So, while we welcome this inquiry, our concern, in short, is: have any of the proposals that have been submitted to the Council for Trade in Services to date over domestic regulation, accountancy services, financial services, engineering services, architectural services and telecommunications services gone to any parliamentary committee, let alone been subject to a regulatory impact test, let alone been subject to input by interested non-government organisations such as ours?

Mr Durbridge—We also welcome this opportunity—it is the first we have had. I think that that in itself is an amazing statement to make, given that in the Uruguay Round the service that we are involved in—the provision of public education—was listed in its secondary, vocational and higher levels. We are a body of men and women who do not believe that globalisation or world trade is a bad thing—it is a good thing. It is hardly novel, but it is placing new demands on political and economic structures. It is the terms on which that is to proceed that we are concerned about.

It is fairly amazing that somebody who represents 155,000 government school, preschool and TAFE teachers could be on this side of the table on an issue that should be concerning commercial operations and trade; but we are told that public services like education cannot be affected by the operation of the GATS—when anyone, even a lay person, can read the provision which says, ‘unless it is provided in competition with other suppliers’. Patently, in developed countries Australia has one of the most competitive education systems between the government and private sectors—albeit that the private sector is heavily subsidised by government. That these educational services were listed we believe shows an incredible lack of consultation and openness. The Canadian government is currently asking people like us, ‘Should these services be listed?’ The contrast is pretty obvious. We are concerned that the very operation of public education systems could be subject to tests or regulations.

I make the point here that this is not a federal matter—it is not a federal jurisdiction to conduct educational services—it is a state matter, and yet the federal government is putting in place measures which may well have a very powerful impact on the way those services operate.

It is not surprising that a union like ours joins with traditional critics of free trade in blue-collar associations and joins with the submissions that the ACTU will make about workers' rights in this process.

Our first point is consultation and transparency. To read it on the departmental web site after the submission has been made is hardly adequate consultation. That puts us at odds with the process with which basically we should have no argument. Commercialisation should not be an issue in the provision of public education services.

Then we had the embarrassing scene where the minister, in the presence of the WTO's chief executive, Mike Moore, announced that, because Australians do not understand and appreciate free trade enough, he is going to spend a large sum of money—the $60 million in the program—to provide students with educational materials to put right their prejudices. This is the Exporting for the Future program. When I wrote to the education ministers and asked them, 'What are you doing about this?' I received various answers, but the clearest one was from Mr Spring, who is the chief executive of the department of education in South Australia and is on the curriculum corporation board, who said that no official endorsement of the materials was given to Austrade, despite the fact that Austrade had replied to me that it has been endorsed by each of the state departments of education. We believe that if there is a case for material to be introduced into schools, there is a board and a curriculum corporation which handle these matters, and it should be done on the basis of some educational credibility; otherwise teachers will treat it in the same way as we treat material that is sent to us from other lobby groups: it will end up on the shelves, gathering dust, because it is just not accepted as an educational exercise.

We are a union that has a long history of work in international matters with our colleagues in other countries, and we are very concerned about the operation of these processes and the GATS on developing countries. We have strong institutions and public provision but, in countries in our immediate region whose economies are in crisis in many instances, this push for trade liberalisation will allow corporate interests to enter a realm that should be the realm of government. Education International, the international body to which we belong, estimates that school education alone represents a $1,000 billion market opportunity for corporate interests. It employs more than 50 million teachers and a billion students. Only a small amount of that would be a sizeable incentive for corporate interest.

We have seen, particularly with new communications and information technologies, the capacity for marketing educational services on a global scale. We have had an organisation called World School listed on our stock exchange. World School was to employ English-speaking teachers in Canada, South Africa, Australia, Britain, India, et cetera, and, on a 24-hour, commercial basis, to provide online assistance. The University of California extension school operates in nine countries and 44 US states. New technologies provide another opportunity for corporate interest. The University of California would be quite entitled to claim the same subsidies that are provided to churches and other bodies that conduct schools in Australia, and if they did not get it they would take the Australian government to court.

We demand that public education be exempted from the operation of the General Agreement on Trade in Services, and that the agreement be amended to include the right of countries to exempt these services. Governments should be able to enact the necessary domestic regulations

to safeguard and develop public services in the future and not be tied up by decisions made in the past—often in ignorance. We believe that, whatever convoluted mix of public and private funding is involved in these services, this should be the case, because we believe that education should not be a site of commercialisation. Those are the four or five points that we wish to make.

CHAIR—Thank you, Mr Durbridge.

Mr Mansfield—Just as a point of detail, I have to leave at about 3 p.m.

CHAIR—Just excuse yourself when you are ready, thank you.

Mr Mansfield—The ACTU supports fair trade, and not free trade. We have had an extensive debate within the ACTU forums over the last several years on this issue. We have participated, as you know, in a range of reforms within the Australian economy stretching back to the late 1970s, early 1980s. During the 1970s and 1980s, we changed our view quite significantly on the issue of tariff levels and issues related to tariffs. However, despite the acceptance of reform over that period, we have very serious concerns about the current trade liberalisation round being pursued by the World Trade Organisation and we are seeking that any trade liberalisation agenda should be undertaken within a level playing field in terms of labour standards—not meaning wage rates, as I will explain later, but meaning the rights of individuals in workplaces as part of the trade liberalisation agenda.

We are also seeking the acceptance of broader social factors as part of the trade liberalisation process. This is not a purely economic reform process; it is a process which has a direct effect on millions of employees in workplaces. As was explained earlier this afternoon, millions of low income earners will be affected and it cannot be seen simply within the framework of economics. There is a social impact which, in our view, is not being adequately addressed at this time.

In terms of the specifics about the World Trade Organisation and its operations, one of the union movement’s major concerns in relation to the WTO is that it is seen as a non-transparent and non-inclusive organisation in the way that it operates. It operates largely privately and it could be described as a secretive organisation which does not allow the representatives of broader civil society to take part in its functioning. However, the outcomes of its deliberations have a direct impact on many millions of people in workplaces throughout the world.

The other aspect about which we are primarily concerned in terms of the WTO’s operations relates to its refusal to date to support the inclusion of accepted international labour standards in its trade liberalisation agenda. For those two reasons in particular, the WTO suffers from a large degree of distrust among labour organisations at this time. We would encourage the Australian government, in its interaction with the WTO, to address those two key issues.

In our view, the level of concern regarding trade liberalisation matters is increasing in the community, and not decreasing, at this time. In regard to the effect of trade liberalisation and globalisation on employment standards, such as job security, casualisation, corporate closures, increases in part-time work and labour market deregulation generally, the community is becoming increasingly concerned about the issues of trade liberalisation and the maintenance of

our standard of living here in Australia. In that regard, I refer the committee to the surveys mentioned in the Australian Manufacturing Workers Union submission of September 2000 which includes reference to the fact that the majority of Australians believe that job security has become less secure in recent years. In fact, over 60 per cent of the respondents to a professionally conducted survey, in what I see are marginal electorates throughout Australia, believe that job security has become less secure and a majority believe that job insecurity will increase in the foreseeable future.

A significant proportion of people, 43 per cent, believe the tariffs should be left as they are now. Only 17.9 per cent believe Australia should decrease tariffs. Picking up Mr Durbridge's point about the campaign that is being undertaken to change the minds of Australians on those issues, it has a lot of work to do if it is going to be successful. We have a tariff probably averaging five per cent in most manufacturing areas. Contrast that to the very low wage rates and poor employment conditions that occur in other countries with which we trade. For example, if you went to Indonesia at the moment, and I am not wishing to criticise this, you would find that Indonesian manufacturing workers would probably be receiving wage rates in the order of $60 to $70 a month. Contrast that to an Australian manufacturing worker probably receiving in the order of between $1,200 and $1,800 gross per month. That is the margin of difference that occurs in terms of employment conditions. I will come back to the issue of labour rights a little bit later on in terms of how that might be affected. Not only do we have a survey by the AMWU; the Australian Industry Group, AI, conducted a survey. Their members, employers in the manufacturing sector in Australia, were polled in relation to proposals to eliminate Australia's high percentage general tariff rate, and 56 per cent of the respondents forecast that there would be reductions in employment averaging around 15 per cent if the tariff rate was in fact eliminated, and that there would be a reduction in investment also. They also illustrated non-tariff barriers in a range of countries overseas as one of the factors that inhibit their successful operation. I refer the committee certainly to the AMWU submissions in that regard.

I also endorse the references to service sector issues that were mentioned by Mr Murphy and Mr Durbridge earlier on. The ACTU shares those concerns and endorses those submissions. However, we are also particularly concerned regarding the effect of globalisation on manufacturing industry, the transfer of work to low wage economies and economies which do not respect international labour standards, the downward pressure on wage rates and employment conditions, and increasing differentials that are occurring in Australia that we all know about between the low paid and middle and higher incomes in the work force.

I might illustrate this issue about the transfer of work to low wage economies and the dilemmas that are facing some manufacturers in Australia at this point in time. Only recently the ACTU was approached by representatives of an organisation which was concerned about the closing of a small manufacturing company in one of our states. It employed only 40 employees, but a number of those employees were women who had been employed for a considerable period of time in the area of concern. They were facing competition from China. The price of their goods was being undercut by imports from China. They came to us and asked if we would agree to the transfer of some of their work to prison labour. If we were prepared to agree with that—and that prison labour would be paid $8 per day—they could maintain some of their work in Australia. If we could not agree with that, all of the work in that plant would be closed, the employees would be made redundant and the work would be transferred to China.

I am a bit critical of China because there are no recognised labour standards in China. They do not respect the right of individual workers to organise in free trade unions. Really, employees do not in effect have a right to collectively bargain. There probably is equal pay in China—I will not be critical in that regard. Discrimination in employment I would suspect does exist. There would not be, in general—although there are arguments to the contrary on this one—forced labour in China, but there are some serious deficiencies in employment in China in terms of the rights of workers to organise and bargain, and that is the mechanism whereby employees, workers, have an opportunity to share in the wealth of a country. If they have their wages and working conditions simply fixed by central decision makers, where does that leave employees in this country when more and more of our manufacturers are looking to countries like China—and China is not the only one in this category in our region—to engage in manufacturing work?

CHAIR—You are making a broader point, of course, because China is not yet in the WTO.

Mr Mansfield—It shortly will be from all reports, but that is the point I am making regarding that matter. And I do not want to single out China; there are other countries of concern, too. What we are talking about here is this linkage of the WTO's activity in trade liberalisation with our core labour standards, and I mentioned core labour standards when I was describing the situation in China. We are not asking for wage rates in Australia to be paid in China; we are not talking about the amount of annual leave in Australia being made available to Chinese workers; we are talking about fundamental rights—the right to organise, the right to bargain, no forced labour, no child labour and no discrimination in the workplace. They are the fundamental rights, and we believe they ought to be included—

Senator SCHACHT—Mr Mansfield, we are talking of a good communist government with a dictatorship of the proletariat.

Mr Mansfield—Sorry, who was saying that?

Senator SCHACHT—A minister in China I saw 10 days ago. It is an outstanding example of Marxist Leninism.

Mr Mansfield—Senator, as Mandy Rice-Davies once said, 'He would say that, wouldn't he?'

Senator SCHACHT—As a communist government I would have thought they would have looked after their workers. As a communist government they were looking after their workers. They say they do not need free trade unions because the workers run the place.

Mr Mansfield—I think it is a flippant inquiry of Senator Schacht.

CHAIR—It would not be from Senator Schacht; definitely not!

Mr Mansfield—I can tell you around this table that many of us have interacted with trade union representatives from centralised economies over a number of years, and they all argued they were living in workers' paradises and that everyone was being looked after beautifully. It was interesting that when political liberalisation came to those countries the workers left those organisations in droves and formed their own free organisations.

Senator COONEY—The interesting question might be here, Mr Mansfield: did Senator Schacht secretly half believe them?

Mr Mansfield—I would recommend that in his future life he visit a few of these countries to see for himself.

Senator SCHACHT—I have been arguing with China on human rights for 13 years.

Mr Mansfield—Just summarising, we believe there is a need for greater transparency in World Trade Organisation related matters within Australia. We need, in our view, a standing consultative forum to consider WTO matters in Australia involving unions and the ACTU, employers and non-government organisations and the government. The ad hoc consultation that goes on at the moment is far from satisfactory even though people do their best to make it work, and we need a standing forum on this issue. In the WTO itself there is a need for fundamental reforms in terms of its transparency and its inclusiveness, and it also needs—

CHAIR—What do you mean by that, exactly?

Mr Mansfield—At the moment the only institutions that are recognised as having a right of participation in the WTO are governments and not organisations representing employees, employers or non-government agencies such as the—

CHAIR—It is a government to government forum at the moment.

Mr Mansfield—It is, but that is not an adequate response to representatives of what we call civil society.

CHAIR—Just so I am understanding it, what you are saying is that there should be some broadening of the WTO—not greater consultation or participation of civil society, loosely called—with their national government that then represents them. Which is it?

Mr Mansfield—I do not see the WTO moving away from being a government forum where, in the end, governments make decisions.

CHAIR—That is all right. I am just clarifying.

Mr Mansfield—There needs to be a right of involvement of the representatives of broader civil society in the process of decision making within the WTO. That is what we are saying.

CHAIR—Within the government members?

Mr Mansfield—Ideally, within the government members. Within Australia, we see a need for a forum involving civil society, unions, ACTU and employers, interacting with government. At the international level, it would not necessarily be the ACTU having a voice but it would be the International Confederation of Free Trade Unions.

CHAIR—So you are saying that there should be a sort of supranational union representation in the WTO?

Mr Mansfield—Yes. And in appropriate cases we may even think it is important enough for us to be involved as well. That concludes our submission.

CHAIR—There was one other point I thought it would be good if you clarified for the assistance of the committee. You said the social impact is not being addressed. How is the social impact to be addressed and given weight in the WTO? Are there some criteria, in other words?

Mr Mansfield—Yes. There are two key areas of social impact that we would like to highlight, one of which goes to labour standards and the effect of WTO activity on labour standards. We believe that that can be satisfactorily addressed by the WTO, including reference to the ILO's core labour standards that I outlined, in trade agreements. The second goes to the issue of the environment and ensuring that whatever happens in terms of trade agreements it assists in the maintenance of sustainable environmental outcomes amongst member countries of the WTO. Very broadly, that is what we are referring to.

CHAIR—Thank you.

Senator COONEY—Could I just follow on from what you are saying about representation, because that seems to be becoming a crucial issue. Yesterday we had a similar roundtable discussion to this, which included the Business Council of Australia, the Australian Chamber of Commerce and Industry, the AWB group, Ardmona Foods, the Wool Council of Australia, the Victorian Farmers Federation and WMC Resources Ltd, and we were asking them about this issue of representation and who ought to do it. Senator Schacht will be able to correct me if I am wrong on any of this, but we were saying, 'Who do you want representing you?' and they said, 'Government'.

The issue has been raised of whether government would be completely competent—that might be the best word to use—in representing you. Say you take the issue of labour conditions. It might become an issue whether or not government could properly put that forward, given the fact that they have not had the experience. Or, with the Wool Board, there might be an issue of whether they have had enough experience. What do you say about that? How do you get over that problem that you have government representing you but perhaps not having the expertise to put the issue as you might want it put?

Mr Mansfield—I think there is a great deal to be said for the government delegation to WTO forums being broader than it has been in the past and inclusive of the major interests in the Australian society. We would certainly be supportive of the delegations including representatives of the ACTU, employers and relevant non-government organisations. That would be something which we think would enhance the ability of the consultations and decision making to properly reflect the views broadly within Australia. At the end of the day, however, the government must take the responsibility for the decision. It will not be an ACTU decision; it will not be a decision of ACCI; it will be a decision by the government. But there should be broader input both within Australia prior to WTO deliberations and also during the process of WTO meetings. I have spoken to a number of union people in other forums internationally who actually participate with their governments in WTO deliberations.

Senator COONEY—I was not here this morning, which is unfortunate, so I am not sure what Tasmania said. But take a case like the salmon case in Tasmania. Have you any thoughts on how you could have a process that would ensure a government like that in Tasmania that its case was properly presented? I suppose that is the other difficulty you have got, is it?

Mr Mansfield—Anything short of the Tasmanian government representatives who they may wish to nominate being present during the deliberations would probably be unsatisfactory to the community in Tasmania.

Senator COONEY—You could say the same sort of thing for the ACTU or the education institutions?

Mr Mansfield—Where there are substantial interests at stake affecting people who are represented by significant organisations in Australia then there is a good case to have those organisations involved in the Australian delegation to WTO forums in our view.

Senator COONEY—Present when the matter is being presented?

Mr Mansfield—Yes.

Senator SCHACHT—Does that mean that representatives of your organisation or the Business Council of Australia, if they have an interest, would be at the WTO when they are debating the issue and be part of the Australian delegation arguing the point on behalf of their sectional interest?

Mr Mansfield—I do not wish to specify how the process would work necessarily, never having been involved in these forums before.

Senator SCHACHT—Nor have we. I can understand being involved within Australia in the discussion and the process to advise the Australian government so it gets a better grip on all the technical issues involved, but when the delegation goes to Geneva or wherever they are meeting I think it gets a bit contradictory if the people who have a sectional interest are sitting at the table as part of the representatives of Australia because the Australian government might say, 'Look, we have actually heard all of your view, but you are going to be representing a broader view than the Education Union or the ACTU and that might actually compromise your organisation. You may wish to opt out before you are nailed by saying you went soft on this issue when you were right at the table.' I want to get this clear. You are arguing for the preconsultation so that the government is fully informed of all the viewpoints before the government people present their case in argument across the table in Geneva?

Mr Mansfield—I am actually arguing for two levels of involvement. One is preconsultation. There is certainly scope for a much more structured process of consultation with a standing consultative body in Australia than we have at the moment. That is point one. Point two is: on the issue of delegations to WTO forums there is in my view a good argument for representatives of the broader interests in the Australian community—specific interests like employee interests, employer interests, interests in the NGO area or environmental interests—to be part of the delegation. That is not to say that we would speak at the WTO forum, but we all understand how these things work. Within the Australian delegation there would obviously be virtually

daily consideration of what has happened in the WTO forum today, what it means for us, how we should change our line if it has to change, and so forth. You probably need the representatives of the broader interests more in the actual day-to-day hurly-burly of the WTO process than you do sitting around a table like this in Canberra trying to anticipate what is going to happen at the WTO meeting.

Senator SCHACHT—But you still reserve your right to disagree if the government took a decision, of course.

Mr Mansfield—Of course.

Mr ADAMS—I think that is a very good point because it has been raised with the committee that in Seattle the industry was there with the minister. Labor or NGOs were not represented there. There was some consultation, they were told what the main thrust was and that was all. Although we have heard from DFAT that they are now changing their policy on bringing people in, the past experience has been that only one group has gone.

CHAIR—I think we understand Mr Mansfield's point. The purpose of this, Mr Mansfield, was to make sure that you had an opportunity to say what you wanted to say and amplify your statement in case you had to go. We now have to get the rest of the statements.

Mr Mansfield—We all saw what happened in Seattle. A significant part—although not all—of the group in Seattle were labour movement people outside the forum. You can have people around the table discussing issues inside the forum or you will have them outside with placards—it is one or the other.

CHAIR—Ms O'Rourke, would you like to make a statement?

Ms O'Rourke—Liberty largely agree with the position of the ACTU—we support fair trade, not free trade. We do not think there is very much that is free about free trade. We think it is extremely interventionist, particularly, as was highlighted before, in developing countries. It is a system that pretty much does not take into consideration the different developmental stages and economic growth of the various countries but is extremely prescriptive in forcing countries to come into a system that their own economies very often do not have the capacity to compete in in the same sense that Western countries can. We also think that, like this concept of the 'free market', this term is bandied around a lot but that, whenever the free market gets into trouble, wherever it is globally, there is usually a big dose of Keynesianism in the form of public money that comes in to rescue it. So I think these terms 'free' and 'fair' need a little bit of unpacking when we talk about these sorts of issues.

Mostly, I would agree with everything that Mr Mansfield said. What we would do at Liberty, though, is to broaden his concerns into human rights generally, including labour rights, environmental rights and rights to development and self-determination. Most of the things that the previous speakers have talked about—such as the right to free public education, the right to self-determination or economic self-determination, and food security and the right to develop your own food and agricultural needs—come under international human rights conventions, but what we are seeing at the moment is a real lack of balance between economic and trade issues and those pertaining to human rights, workers rights and environmental rights. In many

instances, what is becoming apparent from the reports coming out of groups like Amnesty International and Human Rights Watch, global human rights groups, is that the denial of things like human rights, workers rights and environmental rights is in fact becoming a vital element of profitability on a global scale.

There are even things like the latest reports from British academics on the growth of slavery, particularly in the developing world, and export processing zones, in Asian countries, for example, are growing under this system of trade liberalisation and free trade rather than decreasing. Even in countries like Australia, which professes to be a liberal democratic country, what we have seen, particularly under the present government, are more attacks on the UN and human rights instruments and even a threat to withdraw Australia from adhering to many of these instruments. There is a clear lack of balance between the importance given to economic issues and the importance given to people—to their rights and how they live. This is our biggest concern. We agree with all of the statements that have been made here in relation to how the WTO works—we are concerned about accountability and transparency and its lack of inclusiveness.

We believe that in a democratic country when you have agreements that affect every person—because they are affecting health, education, telecommunications, et cetera—when their impact is so expansive, the public have a right to know what the content of these agreements is and they have a right to some sort of knowledge to make an assessment about their likely impact. We quite often hear that this is just about trade. This is just nonsense because so much work, research and various other things have been done to indicate that these trade agreements are impacting on just about every facet of life, including such basic needs as food and water. In the developing countries, it is far worse because they are not only subject to the WTO but also have the imposition of the IMF and the World Bank. Under the loans that were given out through the IMF in 2000, 12 loans to poor African countries were conditional on the privatisation of water. When you have a population there—half of which does not have access to clear water—there is a problem, whether it is under the WTO or these other institutions, about the commercialisation of basic needs.

Senator SCHACHT—The Prime Minister listed the 12 countries. Was that done by the IMF?

Ms O'Rourke—Yes.

Senator SCHACHT—Can you provide that to us?

Ms O'Rourke—I cannot today, but I can send that to you.

CHAIR—Were those countries WTO members?

Ms O'Rourke—No, they were poor African countries. My point is that whether it is the WTO, the IMF or the World Bank—

Senator SCHACHT—I want to make a point there. Australia is represented at the IMF. The next time around at the Senate estimates hearing, we are going to ask questions of Treasury about why they supported such a condition of privatisation of water.

Ms O'Rourke—Basically our concerns really are about the declining respect and adherence to people's basic needs, to basic human rights. What we are seeing under this system is that they are being pushed aside as economic factors and economic rights are given more prominence. I found this quote in a book, but I think it neatly puts how absurd the situation is. This is from Kevin Bales, a British academic, who states:

Viewed objectively, this situation is bizarre. Block the free movement of dead cows between countries and be penalised. Buy and sell human beings across national borders, abuse their human rights or workers' rights and there are no enforcement mechanisms globally, or penalties, to deal with this situation.

I think there is a lack of balance between the rights we are giving to capital and the rights we are giving to people.

Ms Medica—The United Nations mandate is about raising awareness of UN structures in the institutions and the agencies of the United Nations. In particular, we also seek ways to reform the institutes, especially where we believe that the principles of democracy are in some way undermined under the current structures. That is some background information about the organisation. The focus of our submission to the joint standing committee is on the need for greater transparency and accountability—which has been highlighted by other members of the group here today—in a meaningful way that would involve members of civil society and other non-state actors in the WTO process.

The WTO, we believe, is not actively engaged with non-government groups and major groups as stakeholders in the negotiations. To date, most member states maintain that trade deliberations might be compromised if public interest groups were allowed to participate in their work. This seems to be a total contradiction of the acceptance of a participatory process which has been marked by other UN events. It is important to note that a vibrant civil society is central to the processes of democratisation and empowerment, and the emergence of interest groups reflects the trend towards the overall development of civil society and the quest for a more democratic, transparent, accountable and enabling governance.

In response to the concerns regarding exclusion, NGOs have pressured the World Trade Organisation to ensure public access to its documents and to host forums to discuss matters of trade and related issues outside of the mainstream meetings and within. Despite these initiatives and recent attempts by the WTO secretariat to become more transparent, there has been little change in the WTO policies. Access appears to still be limited, with no process given to recognition of major international NGOs who have proven competence in some or in all of the areas of the work that the WTO is undertaking. The lack of transparent proceedings can perpetuate a secretive image of the WTO and diminish public confidence in, and support for, its work. I think that situation was very evident around Seattle and it was very evident during the WTO meetings in Melbourne recently.

What we would like to say is that the UNA should call upon the Australian government to look closely at these issues and support greater and meaningful participation of civil society in the process. We believe in particular that such an action is very much consistent with other procedures that are currently operative in the UN structures and institutions outside of the WTO. I would perhaps like to reflect on some of those. I was going to state that, in 1977 at the United Nations General Assembly special session, formal status was accorded to 12 international non-government organisations in a very unprecedented way. I think that perhaps

heralds a change in the whole UN process, where there is greater recognition that civil society has this meaningful role to play and can inform governments and really can be part of the process and work with governments for change.

We believe that non-government organisations have a major role to play in this formal way, relating to the WTO as well as in consultations with national government, and that therefore the Australian government should support those sorts of mechanisms that engage all the key stakeholders in the process. Empirical evidence suggests that greater transparency and participation do not endanger the effectiveness of an institution. If you look at that overall concept, you constantly see it at the local level right up to the international level. I think where people are involved—and there are people, umbrella groups in particular, that have great knowledge of these areas—they can actually assist government in understanding the issues because they are very broad. In an international delegation, it is very hard for a delegation to get across the whole range of issues and the whole raft of issues that are there. You can draw upon expertise from non-government organisations. We have already seen the inclusion of people, for example, from industry and the Australian Chamber of Manufactures. They would define themselves as an NGO, but an NGO's vested interest is in business. Therefore you need to have alternative NGOs that can represent other issues—for example, social and environmental issues.

I would just like to draw a little bit on my own experience because I believe it is important to look at the processes that are already out there. We have reasonably good models that can be utilised in the WTO. One that springs to mind is the Commission for Sustainable Development, since the Rio Earth Summit has always incorporated non-government representatives on Australian delegations. I, in fact, was one in 1997 at another forum as well. It was very interesting because, as being part of that delegation, you were asked for your opinion on specific matters. It was also very difficult because you had to reflect a range of interest groups—in my particular case I was there representing the Australian Council for Overseas Aid as one of its member agencies—but importantly at least the delegation were able to draw from my experiences and the meetings that had preceded my role in the delegation in trying to understand what the constituents of the non-government organisations were seeking. In addition to that, they had a member from the Australian Chamber of Commerce and Industry. They were also able to reflect well on what the business interests were. I thought it was quite a balanced process. It in no way seemed to be detrimental to the whole process. I think it gave ownership to all the groups and it was just a much better process.

The second model that is interesting to reflect on is in the human rights area. The UN Convention on the Rights of the Child has set up a committee for the rights of the child. I am aware that, within that process, they allow for alternative reporting from non-government groups, which is considered alongside the official government reports. Where there is a disparity between the reports, the committee on the rights of the child is actually able to go to the government and perhaps say that the alternative report does not seem to support what they are saying and ask them to provide greater clarification of those issues.

It is just a mechanism whereby you broaden the whole debate and you get a better overview. In my experience, I have never seen it undermine the process at all. You get a much better process. It has a precedent in the UN process. The United Nations Association cannot understand why the WTO would appear to lock out these groups when in other fora it does not

and it benefits very much from the inputs of these groups. That is the sort of thing that we would support very much. That is about it; thank you.

CHAIR—Thank you very much. We will now turn to discussion. The way I propose to do it is to ask my colleagues to ask some questions. If there is any member of the participating panel who wants to add to some answer that is being given or have some viewpoint that they want to express can you just attract my attention so that we can have a true discussion.

Senator COONEY—I want to go back to what we were discussing with Mr Mansfield. There are two things: there is the agreement itself and people have said some things about how agreements should be made. To turn to the issue of the actual rules of the World Trade Organisation itself, would anybody want to see them change and, if so, in what way? I am thinking specifically of the panel and the dispute settling mechanism, the way they go about their task of fact finding and the appellate jurisdiction.

Ms O'Rourke—I think it should reflect the principles that are so valued in democratic judicial systems. This idea that a decision that affects so many people worldwide can be adjudicated behind closed doors is contrary to all our principles of the understanding of a decision making process. Because of the impact of some of these agreements, these things should be open.

Senator COONEY—As long as it was open, you would be happy?

Ms O'Rourke—There are other problems with it but, if you are looking specifically at the whole dispute process, it should reflect normal, or what we value as, principles for decision making under the Western system of the rule of law.

Mr Murphy—I will buy into that. In terms of the questions that Senator Schacht is raising, you need to make a distinction between parties to the dispute and rights to seek leave to intervene by demonstrating that you have standing or a significant interest. The reason why I am saying that you need to make that distinction is that there is a bit of a push on within the WTO about broadening the right to take a dispute to a dispute resolution panel beyond national governments to include corporations effectively.

Senator COONEY—Or anybody other than NGOs.

Senator SCHACHT—Led by lawyers.

Mr Murphy—Indeed.

Senator COONEY—Please!

Senator SCHACHT—That is the truth.

Senator COONEY—Mr Murphy is giving an answer.

Senator SCHACHT—We know about lawyers; it is all about money and greed.

CHAIR—Senator Schacht, we have had this discussion this morning.

Mr Murphy—If you make investors or potential investors able to activate dispute resolution, a company with deep pockets would be able to take a lot of developing countries through a WTO process that developing countries do not have the resources to really deal with. The second problem is that we would not be able to have the sort of settlement that we had with the Howe Leather case, where the final deal between Australia and the US government was not that we repaid all the loans and concessions that the WTO dispute panel ordered us to repay but that we agreed to lift tariffs on some goods being imported into Australia for which there were no domestic producers. That would not have satisfied the American leather companies, which were complaining about Howe Leather taking their markets for auto leather, so the other reason we need to keep the parties to the dispute to the countries is that, otherwise, you will end up with national governments being unable to negotiate deals.

Leave to intervene is a different matter. I would have thought that, if you are going to accept international arbitration, that should include the right of non-government organisations, whether domestic or international, to seek leave to intervene—whether they get it is, like any tribunal, on the basis that they have a significant interest to be able to argue their case. That is the sort of process that I think is the appropriate one. We have to accept, for example, that the Tasmanian government, if it got standing, would be able to run an argument harder or different from the Australian government—just as we would have to accept that Greenpeace International may apply and seek standing in a dispute which pertains to whether an environmental regulation is or is not a disguised trade barrier.

Senator COONEY—Mr Atkinson, I want to say something in relation to the matter Senator Schacht raised in the chatter around the table. It does bring out the issue I am raising. It is a theme that has continued throughout this inquiry, and that is this: should you have the ability to have lawyers prepare a case for, say, Howe Leather or for the ACTU or for Liberty Victoria and to get that case to the point where it can be presented in an open tribunal before the World Trade Organisation. The point about that is that it is this question of ownership. How far do you let a particular concern or party go ahead and how far before you stop it from going ahead? Yesterday the answer seemed to be, ‘We must have the government do it, and nobody else, because we do not want lawyers involved in the situation.’ Once you get to that point, how far then can you call it a rules based organisation, and, if you are not going to have a rules based organisation, what are you going to have? If you are not going to let a particular body in because it is too economically powerful, then why do you let other bodies in? What rules of distinction do you have to decide all those issues?

CHAIR—If I can add to that: how would you enforce any of it, without rules?

Senator COONEY—You see, a lot of this comes down to when you have a problem. Take Howe Leather or lamb or salmon or labour relations: say the agreement now says that proper wages and conditions have to be paid or that the environment has to be taken care of or that human rights must be considered. For the sake of this argument put them in—all that is decided. Now, how is that going to be litigated? That is the real issue. If it is litigated, how is it going to be effectively litigated so somebody gets a result? Do you have any thoughts about that?

Mr Murphy—I am trying to work out how much this is connected to the lawyers debate about whether you think the process is too legalistic.

Senator COONEY—If you want to compare it to a civil society like we have here now, normally those sorts of issues would be presented to a court or a tribunal via lawyers.

Mr Murphy—Not necessarily. In the case of the industrial jurisdiction and some other jurisdictions it could be a lay advocate that is used.

Senator COONEY—Industrial advocates—the same sort of thing.

Mr Murphy—If the point is that you are having a rules system for advocacy then, yes, I suspect that, in many cases, you will be using lawyers, particularly because you are in many cases arguing about the interpretation of a relatively small line in a subclause of a 112-page treaty.

Senator COONEY—What we are asking is: what do you propose about all this? Do you say it is a good thing or a bad thing? Yesterday we had a group that said we should not have lawyers and we should not have this sort of system. They said it should be done by government, and that is it. What we are trying to gather from you is: what do you say about this process?

Mr Murphy—What I am saying is this: disputes about trade treaties involve a process of international arbitration and I do not think you can confine it to governments. You should confine it to governments in terms of activating disputes, being parties to disputes and therefore to being able to conclude a settlement before the court, if you like. But I do not think the process of advocacy and argument about these matters should be confined to governments. I do not think it is an open slather. My argument is, effectively, that you would have to apply for leave to intervene; you would have to establish that you have a legitimate and substantial interest in the case.

Senator COONEY—The litigants would be, in effect, national governments?

Mr Murphy—Yes, for reasons that I went through, I do not think you want to have dispute activation by other parties.

Senator SCHACHT—You are saying that they seek leave.

Mr Murphy—Yes.

Senator SCHACHT—You concern me somewhat with the suggestion that six different state and two different territory governments with different interests could front up and seek leave to appear. We might try to explain to the rest of the world that this is part of our federation and our constitutional arrangements in Australia, but for a lot of people around the world it would appear bizarre that a federal national government could reach a national decision in which a state government could intervene. Take the Franklin River case, which Tasmania would have strongly appealed against and gone everywhere over, and things of World Heritage listing. If the international body had allowed six different states and territories to turn up and argue we would not, in my view, have got anywhere on an environmental policy that we are now quite proud of.

I must say that the idea that a state government can seek leave, even if it is rejected, to put a case will be confusing. I had this discussion with Tasmania this morning. That one would concern me.

As far as NGOs are concerned, wouldn't you think that a list of usual suspects will always be appearing and making a living out of it, in the sense of raising dough? They will be appearing and saying, 'We have a good case for you'—either a company or a Third World country—'we know how to do it.' You will develop a mechanism that, in a sense, is still remote from the interests of people we are discussing here today. I may be too cynical about this, but I have seen enough of it around to be a bit cautious of establishing a new paraphernalia.

Senator COONEY—Could I put the case from the other side? If you follow Senator Schacht's line, that means that what you are confined to is national governments arbitrating, litigating, or whatever other expression you want to use, about that process, and then that becomes too limited. That is why we are trying to search—

Mr Murphy—There are two separate issues here. One issue is whether, in federal systems, subordinate or state governments can appear in their own right to disagree with a national government. We, of course, are used to this in domestic tribunals and in arbitration—it happens all the time. The real question is whether there is somehow a problem about that being permitted at the international level. I am less concerned about that than others might be. But I think there is a secondary and distinct question, which is whether international non-government organisations can seek leave to appear. Yes, there will be a risk of usual suspects. But, if you have, as we have in many of these treaties, clauses that say you can regulate to protect public health, safety and welfare and to ensure environment protection provided it does not constitute a disguised trade barrier, then you must concede the right of an international environment organisation to intervene, if for example there is a case brought by a country that says this environmental regulation is actually a disguised trade barrier, to say that they actually think it is a legitimate environmental regulation.

Senator COONEY—Would you allow them to intervene to produce evidence or to put a case or to do what?

Mr Murphy—Usually, if the parties win standing they have leave to intervene, they are able to produce evidence and they are able to put a case. The tribunal invariably conducts the process to allow the parties the lion's share of the hearing, but it does give interveners rights. I would have thought that they should have rights. There is another reason to be doing this, to be frank. Part of the debate and the concern about what is happening—which is different perhaps from the concern of national governments—is the extent to which these decisions are being made by WTO dispute panels that do not appear to have any democratic composition or character.

CHAIR—What do you mean by that?

Mr Murphy—We are talking about a panel that largely consists of trade policy specialists.

CHAIR—Yes, but they are nominated by the parties to the dispute.

Mr Murphy—Yes, they are indeed. The point I am trying to make is this: part of the argument that is being put forward about the current concerns about the WTO is precisely the inability of international civil society to present its case. Maybe they should able to present to the dispute panels or maybe you should look at international civil society organisations—and yes, you are going to have to rationalise to certain respectable or usual suspect ones—to even be participating non-government observers at ministerial councils. I think that international organisations should have rights to intervene and I think that, frankly, if they did have rights to intervene, the argument of their constituents that their case was not heard on environmental questions, on labour standards or whatever—

CHAIR—Are these national or international interests that are not being heard?

Mr Murphy—These are now increasingly international interests and perspectives. Because we are talking about an international process of arbitration and dispute settlement, there is corresponding increasing interest by international NGOs. Bill Mansfield mentioned the ICFTU, which is the trade union international; I nominated Greenpeace International as another example. So, I am not primarily talking about every local environment group in Australia turning up: I am talking about the standing of 'international'.

Senator COONEY—When you say international bodies, can local bodies do it? Can national bodies do it, as distinct from international bodies, as well?

Mr Murphy—To be fair, if you are going to have an effective process and you want a relatively speedy dispute resolution, then—and this is the phrase I have used—you would have to seek leave and establish significant standing. I do not think that any tribunal process at international level would use those grounds to say any local, national or state environmental group gets a go. I think you would end up with a process, just like you do in domestic tribunals, where there is effective rationalisation of parties that have leave to intervene—in this case, representative international organisations.

Mr ANDREW THOMSON—The arguments for participation in the dispute resolution process of parties other than governments seems to be at the core of what is being debated here. The floodgate argument is an interesting one. The rules for standing and that are very useful to our inquiry. The point the two ladies made about the fact that the actual proceedings of the panels are not broadcast while they are taking place is worthy of our support, although I have to say that the reasons for the decisions published immediately after the decisions are made and before any appeals are made to the initial panels are perfectly adequate in terms of scrutinising what went on there. These are systems of rules that apply to governments. For example, the GATS agreement article 1 reads:

> This Agreement applies to measures by Members ...

in other words, by governments—

> ... affecting trade in services.

If the rules apply to that class of persons—just governments and no-one else—and although the effects of these decisions indirectly may affect your members or your interested constituents, I

still cannot find a conceptual reason for allowing parties to these disputes when the rules do not affect the parties. The rules are made between members; they affect measures taken by governments. Therefore, even if it is an industry association—like the Tasmanian salmon producers—a particular corporation or even an individual person affected by a trade barrier, it seems logical that they be represented by the people affected by these agreements. Hence, any commentary afterwards can come to the governments in the media and in the other normal ways we have in a democracy.

Mr Atkinson—There is another alternative that is not being considered here. The argument has been about representation before a tribunal, but my understanding of what is actually happening within the dispute settlement process is the question of amicus briefs—friends of the court briefs. This is not a question of appearing before the tribunal; this is a question of having input into the tribunal, in the way in which we are having input into this inquiry. There is almost a precedent for that within the dispute settlement mechanism. My understanding is that on at least one occasion in one dispute amicus briefs were sought and provided by a non-government, non-state entity. Maybe as an intermediate step we should be looking more carefully at that, which is a question that has already been considered. It arises out of the concerns that the panels are making judgments—as somebody mentioned, they are basically international law experts—about things that have wider implications than international law and economics; for example, impacts on health, et cetera. There is an argument for them to seek advice in the form of amicus briefs to the dispute settlement mechanism. Those may be NGOs, but they could also be other intergovernmental bodies—for example, the United Nations agencies, the World Health Organisation and the ILO. There is no reason why input into matters that may impact on labour standards should not seek input in the form of amicus briefs from the ILO.

Mr ANDREW THOMSON—Is that at the discretion of the panel members?

Mr Atkinson—That would be at the discretion of the panel members.

Mr ANDREW THOMSON—If that is the case now, what are you complaining about?

Mr Atkinson—It is not the case at the moment.

Mr ANDREW THOMSON—I thought you said—

Mr Atkinson—There is severe debate, as I understand it.

CHAIR—They call for them. In the asbestos case there were 23.

Mr Atkinson—The asbestos case was the only one, as far as I know, that ever accepted an amicus brief.

CHAIR—In the shrimp-turtle case one Australian made a submission. I would like to try to make this concrete, if we can. Can anyone at the table—there is now a considerable body of jurisprudence and case law in WTO—assist the committee with concrete examples where NGO or other participation might have led to a very different outcome?

Mr Mansfield—The one example I was going to give you was the one you have just quoted, and that is the asbestos case. As you know, at present there is a worldwide move to ban the use of asbestos. The French government placed a ban on the importation of asbestos, which was challenged by the Canadian government, as you no doubt are aware, and that was then heard by the appropriate WTO tribunal. That is the sort of case which I would use to illustrate the interests of employees. It is obviously of interest to the general community as well, but the vast majority of people who have been injured by the use of asbestos are employees. To me, it would have been appropriate for representatives of employees in France to be able to appear before the tribunal, state their cases for an intervention, and support the arguments of the French government for a maintenance of the ban as being consistent with WTO rules. As you know, at the end of the day, the ban was upheld, but it is an example of a situation where specific interests were at stake, and those interests had a right to be represented.

CHAIR—That is a very good example. With the body of expertise we have in front of us, I am wondering—ultimately the outcome was probably, as most people would say, a sound one—with the vast number of cases that have now been dealt with, can anyone give me an example of where some denial of an amicus brief or some other civil society argument has not been adequately represented?

Mr Mansfield—I can get you some information on that issue.

CHAIR—Take it on notice, by all means.

Mr ANDREW THOMSON—These rules do not apply to individual people. The international law is the law of nations and if it is going to develop into some rules that are what we call generically international, or are applying to individual people or corporations, then how do we control the law making process? That is one of my problems. I worry about going too far down the road of merging domestic law. Where you have parliaments and so forth—hopefully elected properly—to make and remake laws, then you have some control over it as a citizen, minuscule though it is, whereas, with the push to make a lot of the multilateral agreements apply to individual people or corporations and hence give people the rights to appear in these tribunals and so forth, aren't we going to lose control in the end? It is going to be less democratic than leaving it to nations and governments to be participants in this sort of litigation and then fighting out the indirect effects back home within the democracy. After all, these agreements—

Mr Hobbs—Some nations are not democratic.

Mr ANDREW THOMSON—No, of course. Very few are—

Mr Hobbs—There is the issue of international NGOs taking a role. I share your concern about the need for the decision making to be clearly a question for governments, but to deny access for individuals or organisations in countries where you do not have the rule of law and you do not have democracy creates a clear case for some kind of mechanism.

Mr Murphy—There is also the issue of to whom the law or the treaty applies or whom it affects. The treaty may only apply to governments, but it affects communities and interest groups and potentially affects the citizens of those governments. So the argument we are putting

forward is that if there is a dispute that has taken over, for example, whether our accreditation regime for universities is trade restrictive, then I would say the Australian Vice-Chancellors' Committee has a legitimate interest in that. I would say our union representing academics and staff of universities has a legitimate interest in that. So I think the point that it only applies to governments does not invalidate the point that it may affect entities, organisations or people other than government.

I should also point out that Senator Schacht's concern is magnified. You quoted article 1 of GATS, but article 1 also says that a measure includes any measure taken by central, regional or local government and authorities and non-government bodies in the exercise of powers delegated by central, regional or local government authorities. So, if we are going to rely on article 1, I think Senator Schacht's concern about local government and state governments appearing contrary to an Australian government position comes into play.

Mr ANDREW THOMSON—We have that problem, for example, in a lot of our treaty making where state governments' laws conflict with treaty obligations, and the powers under this constitution to override that and so forth. We have had the odd fight about that, but I appreciate that it is very, very close. You could say, for example, that the laws of negligence generally—the common laws of negligence in a domestic sense—affect everyone who has got a farm or garden, in the sense that there are certain things you can and cannot do without the risk of terrible sanctions, but that does not give us the right to interfere in every negligence case taking place in the Supreme Court. It is just that this move to make many of these agreements apply to individuals is something that is a big threshold issue. It is one of the big things beyond this. I appreciate what you say. You were very cogent in the way you argued and I am very grateful.

Senator SCHACHT—I want to go back to what the Oxfam representative said. I note your remarks about the fact that the Third World is being penalised by not being able to get its agricultural products into the First World—Western Europe, North America and maybe even Australia. Do you think that the WTO is the only body that is available to continue to put the pressure on to get the First World to remove its barriers, both tariff and non-tariff, to enable the Third World to get access to market for the things they can now produce, which are everything from sugar cane, vegetables, bananas, apples and grapes, et cetera, to cotton, or whatever, and they often produce them at cheaper prices than the protected markets and subsidised markets. Sugar cane is a classic example. Sugar beet has protected production—it is overwhelmingly protected in Europe, for all the wrong reasons. Consumers pay through the neck for it, whereas sugar cane production from Africa and the Caribbean could be a very profitable market for small sugar cane growers. Do you accept that, for all its difficulties, the WTO is the best way to go to try and get the First World to remove those barriers?

Mr Atkinson—Are you thinking in terms of alternatives like APEC or other trade agreements, or a bilateral—

Senator SCHACHT—Whatever else may be around. For all its deficiencies, there is no other body that is dealing with something that, if it were removed, would be the biggest improvement in living standards in the Third World.

Mr Hobbs—We certainly favour reform, not abolition. It is clearly very difficult when the level of subsidy, particularly by the US and Europe, has continued at such a level and yet they are trying to drive access to poor country markets through the WTO. I think it offers a leadership opportunity for the Australian government, through the Cairns Group, to try and drive that back in the other direction.

Senator SCHACHT—That leads me to these other questions, to Mr Mansfield in particular. If we lobby on agriculture on behalf of the Third World and also on behalf some of our own self-interests—sugarcane growers, et cetera—the argument comes back: the next area for the Third World is textiles and clothing, where they are developing. That puts Australian textile and clothing workers out of jobs. But, in the greater good, do Oxfam and the ACTU see that in the long run it would be better for world prosperity to give the Third World access to our market so that those jobs, living standards and incomes can grow, even if spasmodically and not evenly—that at least it is a start?

Mr Atkinson—I do not think the argument is about access to Australian markets. What they are arguing about is North American and European markets.

Senator SCHACHT—It would be say to the ACTU, 'Our friends in the clothing and textile industry have seen great jobs go because we have reduced tariffs from 140 per cent. In some cases quotas have all gone over 15 years. So cheap clothing from Asia has wiped out a lot of jobs. But this move has actually improved the living standard of a group of Asian workers, even though not to the standard we would like—there has been improvement in jobs, et cetera.' This is the difficulty the ACTU faces.

Mr Hobbs—We have a difficulty too. It is hard for us to argue for no subsidies and then in the same breath say no tariffs. I pick up the ACTU's point about standards. I think it really is fundamental that you look at it in terms of how the ILO intersects with WTO rules and how we make sure that standards rather than price are the driver.

CHAIR—How do you get that balance right? I am really anxious to know if anyone get help me. In theory one would subscribe to differential treatment and putting a floor under poorer countries.

Mr Hobbs—One way is to look at the protection that has been available to the wealthy countries. They are now shedding tariffs, but they have had the benefit of protection.

CHAIR—I understand that. There was an interesting example this morning that Mr Adams or Senator Schacht came up with about whether subsidies to a certain industry sector in Poland would impact adversely on Australia. It is the same sort of argument. Where do you get that balance and what do you do?

Mr Hobbs—Maybe some of it is in the timing. We have suggested that the timing needs to relate to actual need. If a country is genuinely poor and has no chance of getting out of its predicament in five years, you would not suddenly lift all its tariffs. That idea of a vulnerability index is based on certain criteria, which we have not specified.

CHAIR—Not now, but could you give me a note about what you would see as the criteria? At the moment I am struggling with envisaging how that would work.

Mr Mansfield—If I could attempt to address Senator Schacht's question—his question is a very good one but very difficult—I would have to say that the trade union movement in Australia have never taken the view that we are in a static position in our economic development and that a job that is here today must be here forever. We have had any number of changes, reforms and moves to downsize in a variety of industries in Australia for a whole range of reasons—sometimes it is technology or consumer taste and, at other times, it is a transfer of work from Australia to elsewhere; sometimes it is a transfer of work from elsewhere to Australia. All of these things are happening in an ongoing way. We are in a very dynamic situation.

Overall, in relation to the last 20 years or so, unions in Australia and the ACTU have accepted the need for the Australian economy to become more internationally oriented; to become more involved in trade with other countries and, associated with that, you must accept that trade is a two-way street. We need to move away from being a country which essentially trades unprocessed raw materials, to a country which trades not only unprocessed raw materials, which will continue to be very important, but also more highly valued services and manufactures. We are not living in a dark room. We know what is going on in the Australian economy and we accept all that.

We also accept that trade is very important to raising the living standards of countries in our region and beyond. Indonesia will not become significantly more wealthy and able to lift the living standards of the Indonesian people, of which there are over 200 million, without having access to markets in North America, Europe, Japan, Australia and other richer countries. We understand that. However, we are saying that, while we can accommodate and cope with the changes that occur in relation to expanding international trade, there is a limit to what we can and will accept. That limit is reached when we are asked to open up our markets to countries which do not have fundamental labour rights for their workers. That is a completely unfair playing field. We have made our position clear on that and I do not want to repeat it. We will continue to oppose trade liberalisation when it comes to opening up our trading opportunities to Australian markets with countries which do not respect fundamental labour rights. That position is being taken increasingly by trade unions throughout the world.

In relation to the specific point raised by Senator Schacht about the textile, clothing and footwear area, we know what has happened to the TCF area. It probably employed about 100,000 people 15 years ago and, while I am picking these figures out of the air, it now probably employs about 25,000 to 30,000. There has been a very substantial reduction in employment in that area which will almost certainly continue. In such areas, the significant thing we must do is apply some positive adjustment mechanisms. We should not just simply pay lip-service to these issues; we should not expect that a 45-year-old woman who has been involved in a clothing factory with a sewing machine for the last 15 years can walk out and get a job in the information technology sector. A whole range of initiatives need to be taken, in a serious and positive way, to assist people displaced in those sorts of industries.

In a broad sense, some people would argue, for the overall national good in the long run, to allow those people to adjust and achieve decent work and maintain their living standards into

the future. We have fallen short in this area because we have been very proactive in trade liberalisation, but not so proactive in developing the social adjustment policies that will enable people in those industries to start a new life and a new career. My colleagues might like to add to that point.

Mr WILKIE—We had a panel similar to this yesterday and people argued quite strenuously that labour rights and issues, and human rights and environmental issues, should not come before the WTO on the basis that there were other international bodies which deal with those issues. They were very strongly of that opinion. Understandably, quite honestly, your opinion is obviously different. Can you enunciate quite clearly why you believe those issues should come before the WTO?

Mr Mansfield—The WTO is a very powerful institution. The other institution that prescribes those standards—the International Labour Organisation—when it comes down to the bottom line has very little authority when it comes to achieving the adoption of those standards by individual countries.

CHAIR—Can I suggest that is because it is rules based?

Mr Mansfield—I am not sure whether or not that is right. At the end of the day, the ILO has the power of persuasion only. The WTO can actually give rights or take away rights from member countries and that is the power of that institution. There is another point that I would make about the ILO, and Mr Durbridge wants to comment on this as well. Insofar as the ILO is concerned, the current government in Australia, the Howard government, has argued strenuously that we should keep these matters in the ILO and not refer them out to other international institutions.

At the same time, the government has withdrawn its support and involvement in the same institution that it is encouraging people to regard as the pre-eminent institution in regard to labour standards. The government does not participate in ILO meetings by and large at the moment. The ILO invites the Australian government to participate in a whole range of meetings. The Australian government currently says, ‘We are not going to participate.’ With some rare exceptions for the last four or five years, we have not participated in sectoral meetings in the ILO.

In terms of the delegation to the annual conference, we used to send one delegate and three advisers from both the employers and the ACTU and the unions. That is a standard delegation; most developed economies send that sort of number. It got down to the point where the minimum constitutional entitlement was being sent, which was one delegate to the ILO conference from the employers, Mr Noakes, and one from the ACTU, one of our officers. You just cannot service the institution with one delegate. Everyone knows that. It is another example of withdrawal of support from that institution. The government cannot have it both ways. It cannot say on the one hand that the ILO should have the authority to deal with these things then treat the ILO with a great deal of disrespect in terms of the way we participate in it.

Mr Durbridge—My only additional point was to say that the reason labour standards should be enforceable and related to the operations of the WTO is simply so that it gains a level of credibility and acceptance. Until it does, I do not believe large numbers of people are going to

give it that credibility. We are told that it is not possible, but we would like to draw the analogy with the TRIPS provisions which are, in effect, the way of enforcing the conventions of the World Intellectual Property Organisation, a UN body, and draw the analogy between the ILO and WIPO. Why shouldn't the WTO put the ILO in a comparable position to the one it put WIPO in? As we see it, the answer is that it is about the property of corporations and their power to determine who shall and who shall not have access to that intellectual property as compared to labour. It is a quite obvious comparison about who has what power. The answer to us is the WTO could become a force in the world, being able to create a much more level playing field in the area of labour standards, so that the reforms that it wants to prosecute would be accepted in the countries involved.

Mr WILKIE—Thank you.

Mr Atkinson—Can I make a comment?

CHAIR—Yes.

Mr Atkinson—If the WTO seriously believes that labour rights is not a matter for it, that it does not deal with labour rights, that it has no implications with it, then it perhaps should withdraw from the TRIMS agreement which is basically about liberalising of investment. I would argue that, by liberalising investment, you are changing quite directly and specifically the balance of power between employer and employee. The main weapon, if I can use that word, which employers in the developing world use to keep down conditions is the threat of moving. To the extent that the WTO liberalises investment and makes it easier for companies to move from country to country, they are having a direct impact on labour rights. If they say that labour rights is not their business, then they should withdraw from the TRIMS.

CHAIR—Thank you to each of the participants for coming this afternoon and sharing your thoughts on free trade and fair trade. Obviously, there will be a few things that you will have to get back to us on that some members took on notice. Apart from that, it just remains for me to thank you once again.

[3.08 p.m.]

GEMMELL, Mr Andrew (Private capacity)

GRECH, Mr Jacob (Private capacity)

GRIFFITHS, Mr Alan Frank (Private capacity)

McCORMACK, Mr Denis Myles (Private capacity)

O'CONNELL, Ms Genevieve (Private capacity)

RIMINGTON, Ms Mary (Private capacity)

SHARP, Mr Roger (Private capacity)

CHAIR—Welcome. I declare open this public forum on Australia's relationship with the World Trade Organisation. The forum will allow members of the public to make statements to the committee about Australia's relationship with the WTO. This is a slightly different process than usual: it is not a question and answer or discussion session as such, but a chance for you to have your say and to make your comments part of the evidence that has been taken by the committee. The statement should be brief. I am going to have to be reasonably strict about it—three to five minutes.

We would appreciate it if you would address the terms of reference for our inquiry. I am sure that most of the people here know about them, but I will run through them briefly. They include: opportunities for community involvement in developing Australia's negotiating position with the WTO; the transparency and accountability of the WTO; Australia's interaction with the dispute resolution mechanisms of the WTO; and the impact that the WTO agreements have on any other bilateral or multilateral agreements, the environment, human rights and labour standards. We would be happy to hear from you across that range of topics. Mr McCormack, would you like to make some comments?

Mr McCormack—I used to be a staffer for Graeme Campbell, the former member for Kalgoorlie. Back in 1994, I saw a copy of the February 1994 *Atlantic Monthly*, the cover story of which was 'The Coming Anarchy'. It mentioned such things as nations breaking up under the tidal flow of refugees from environmental and social disasters as borders crumble and other types of boundaries are erected; a wall of disease; wars being fought over scarce resources; et cetera. Suffice it to say, it was one of the first popularised statements of a catastrophe scenario for the future. I gave it to Graeme to look at. I said, 'You had better look at this, boss, because it potentially affects everything that everybody does in the future.' He said, 'Yes, I agree.' I went down to the basement and got it printed up and delivered to all parliamentarians. I thought that was the best statement of the case that I had ever seen in the most established, oldest and authoritative monthly journal in the United States. I knew it would go places over there, and I know for a fact that it got into Bill Clinton's office and turned him quite white with astonishment. I thought it would stand the test of time and, lo and behold, late last year *The Coming Anarchy* came out as a book. It is a consolidation of the author's thoughts in this regard

and a number of other articles influential on the process of civilisation and the environmental decay that is currently taking place around the world.

I know I probably have a somewhat more dystopian view of the future than most people. It comes with the territory that I have specialised in for over a decade now: immigration, multiculturalism, population growth, environmental decline, waves of boat people, et cetera. I believe it is one of the themes that underwrites a lot of unease in our society today. A lot of people are feeling a little guilty about living a little better—or a lot better—than a lot of other people in a lot of other parts of the world.

After having listened to the Kyoto and WTO proceedings here yesterday, last night in my mail from an American colleague I received a copy of 'Global Trends 2015: a dialogue about the future with nongovernment experts'. This document was put out on 13 December by the Director of Central Intelligence in the United States. It mentions the WTO, by the way, and the sorts of impacts that will be forthcoming. Just to show that I am not particularly reliant on esoteric and overseas sources, I have here the *Herald Sun* of Tuesday, 20 February 2001. On page 29 there is a report on global climate change. One of the issues they take up is to classify different parts of the world—for example, of Asia they say that high temperatures, droughts, floods and soil degradation will reduce food production in some areas and that there will be rises in sea levels, intense tropical cyclones and displacement of millions of people.

My local member, Lindsay Tanner, makes a specialty of running around town saying that all these sorts of things are going to happen in the future; that we are 0.3 of the world's population on five per cent of the landmass and therefore obliged, as a nation, to make the decision today to put our heads into the fire because everybody else's head is going to be there due to the grace of God, historical circumstances and overpopulation. I do not subscribe to that view. Most Australians out there, if they thought about it, would not subscribe to it either. The WEF forum last year has been the topic of some conversation around this table over the last couple of days and, I am sure, in other parts of the country. An article in the *Age* on 13 September last year headed 'Watch out for China, executive warns' states:

> Trade liberalisation would enable Asia to devastate the labour markets of Western countries, one of China's top business executives said today. ... David Tang said the world should be more concerned about coping with the impact of lower trade barriers to China. 'I never understood why you want to engage us. We have got fantastically low labour costs. China is going to completely devastate your labour force. They have labour costs 15 times to 30 times lower than America. The entire Seattle problem was because the unions realised that threat.'

All I want to say to you is that if you want to get serious about looking down the tunnel of time I would suggest that perhaps the joint standing committee could take some of this information on board and not necessarily consider that the progression through history is simply a linear progression. I have given you a very small sample of a huge array of very dark and dystopian scientifically based literature that is looking to the future. I cannot find a forum anywhere in this country, governmental or non-governmental, that is as well informed on this stuff as I am. That worries me enormously. I do not know what the Office of National Assessments is doing but I did have input when the 'colt from Kooyong', the former aspiring Prime Minister Andrew Peacock, was running around the country last year on his Defence 2000 statement. I gave something like this, and there were a range of old diggers and what-not in the audience as well as the panel members. I said, 'What we need to be doing is really looking at the ultimate scenarios and gearing our defence forces and civil defence and industry base, which we are

losing because of internationalisation. We need to be recasting and look at what did us proud in the past. We should redo some of that and stop acting like doormats in the case that some of these dystopian futures could unveil.' I had about a dozen old diggers come up to me in tears afterwards and say, 'You're the only person who made any sense out of all these wankers at this little talkfest.' I am sorry to take up your time. I know it is a little bit beside the point, but someone has to do it.

CHAIR—Thank you, Mr McCormack. Was there anything you wanted to table of your literature?

Mr McCormack—I have not had a chance to make a copy of this—

CHAIR—If you wish to, you can.

Mr McCormack—Okay, I will table some of it.

CHAIR—Thank you very much. There is a question from the back.

Mr Griffiths—I am an activist. Before addressing the WTO, I would like to mention something which has not really been talked about in the last couple of hours, and that is the underlying ideology of, for instance, free trade. This inquiry came to Melbourne back in 1998 to address the Multilateral Agreement on Investment, and I would like to remind you what your inquiry found. You tabled the interim report to parliament in May 1998. On the Treasury's evidence—the Treasury were negotiating MAI on our behalf—you said on page 12, at 1.4:

> The Treasury's submission is a disappointing document, especially from the department responsible for the MAI, because it does not assess us significantly in evaluating the agreement. Running to only 11 pages, it provides a quick summary of issues rather than addressing the MAI in more detail. It fails to provide, for example, systemic discussion on the implications to Australia of particular aspects of the draft text. Though it asserts many advantages, nor is there an explanation of the official negotiating position, no matter how qualified it may be at the moment.

These bureaucrats fronted up to the inquiry and verbally stated to you that it was in Australia's interest to sign the MAI. You asked for evidence, and under oath they were forced to admit that they had no evidence whatsoever. What alarmed me as well was that the very members on this inquiry had not bothered reading the treaty, the Multinational Agreement on Investment. Through the World Trade Organisation there are 20 agreements going through. Have any of you read any of those agreements?

CHAIR—There is actually over 60.

Mr Griffiths—Over 60—thank you. I would just like to point out that the bureaucrats who have been running this have been doing a lot of things behind the scenes.

Mr ADAMS—They usually do.

Mr Griffiths—They usually do, but I would just like to put this on record. For instance, Mr Hardgrave, when tabling the interim report to parliament said:

The MAI struck me as more than a little bit of an international diplomatic joke that was attempted to be played out on the people of Australia. ... We cannot allow our bureaucracy to acquire frequent flier points flipping around the world every six weeks, off to Paris to negotiate a particular treaty. This has been a fact of life, and is one of matters we have uncovered in our discussions and deliberations as a committee.

The World Trade Organisation is a very recent organisation—it has only been around since 1994—but it grew out of many years of private and quiet talks. I would really love to have the bureaucrats here now and talk to them about it, but where are they? They are still negotiating these agreements while this inquiry has been in place. I think that that is a joke. How can you sit here and assess how Australia will be affected when we are still negotiating. It is ludicrous.

I would like to point out that the bureaucrats who are negotiating these agreements will say that it is within our comparative advantage to sign the agreement on agriculture, but there are many economists on the right who are saying, ‘This is a nonsense.’ For example, David James, editor and journalist for *Business Review Weekly*, in his article on 17 December 1998—and this was the essence of his argument—quoted Paul Krugman:

Economists cling to the idea of a comparative advantage as a kind of badge that defines their professional identity and ratifies their intellectual superiority.

I am not an economist, but I have been studying the agreements going through the World Trade Organisation and how they will affect, for instance, the environment, social conditions and so forth. What comparative advantage does Australia have in agriculture if we have to give in to corporations which want to import genetically modified organisms, for instance? I am going to wind up here by saying that there is already agreement which has been ratified by 187 countries which allows countries to introduce the precautionary principle—the convention of biodiversity which has gone through the United Nations. This gives developing countries the right to implement policies which can override the Agreement on Trade Related Aspects of Intellectual Property Rights. The United Nations can have a comparative advantage by implementing other agreements which include environmental rights, social rights and food security. I would like to go further, but I realise that you have time constraints.

CHAIR—If I have a chance, I will come back to people. Thank you, Mr Griffiths.

Ms Rimington—I am a member of the Mordialloc-Beaumaris Conservation League, the ACF, and Port Phillip Conservation and Environment Victoria. I might be wrong, but my understanding is that the World Trade Organisation originated in the United States with the objective of protecting and extending their free trade at the expense of other countries. That is certainly happening today with their big companies, such as Monsanto, imposing trade on Third World countries in Africa and on the subcontinent.

The submission from the Tasmanian government to the inquiry of the Joint Standing Committee on Treaties into Australia’s relationship with the World Trade Organisation clearly indicates that there needs to be greater cooperation and coordination between the Commonwealth and states when negotiating disputes over quarantine and free trade issues such as the salmon industry, about which we have heard so much. It is obvious also that there has been insufficient community involvement in meaningful consultation—and we have been involved in enough consultation to know that it is quite often a farce—on environmental, employment and social issues, as described by the university crew and later by the ACTU and the civil liberties speakers.

The fact that there has not been involvement on social issues became apparent during the Seattle World Trade Organisation meetings and at subsequent World Trade Organisation meetings worldwide. I am cynical enough to suggest that the World Trade Organisation members in Seattle would not have considered social issues had people affected by unemployment, poverty and environmental degradation not clamoured outside the meetings. It was suggested this morning, rather patronisingly, that the community be informed about the so-called benefits of the World Trade Organisation via the Internet. Again, ironically, the young well-educated articulate people who clamoured at the S11 protest in Melbourne were extremely well informed, via the Internet, about the exploitation of Third World workers in Indonesia, for example, and other countries working for US companies.

It is timely that the opportunity has been provided for interested parties to present their views at this inquiry. There has been a lot of discussion about how these other groups are going to be incorporated. It seems as though you certainly need consultation with well-informed NGOs. I would say that the interested parties have to be more involved in that.

Unless environmental degradation, employment and exploitation is addressed by whichever government is in office, community support for the World Trade Organisation will dissipate and there will be even more clamouring. Governments appear to operate on a policy of short-termism. They are happy to accept whatever financial gains are made from the transnationals operating in this country but have no concern for the intergenerational equity leading future generations to face disasters such as the loss of forest harvested by US companies.

Loss of forests, as everyone knows, leads to erosion and salinity and increased greenhouse gas emissions; consumption of water from the Murray-Darling Basin for the American owned cotton crops, whose pesticides in the run-off cause pollution of marine environment; depletion of water from the Great Artesian Basin; in South Australia, leaching by the foreign owned Beverley uranium mine has already dried up the springs; and, of course, there is Monsanto's control and ownership of seed banks in India and other countries.

Mr Gemmell—I will try to alleviate your frustration and be succinct and direct. My late father was a director of an oil company. After completing the HSC, I studied mining engineering. Mining and oil were in my blood for 25 years. The senior lecturer in the mining engineering course tried to convince us that the molecules of Queenstown in Tasmania were an attractive environment—what a con. In the last century Australia fought in two world wars, supposedly to defend democratic values. Large corporations, including Siemens and Mercedes Benz, put profits before democracy and worked with the Nazis. Today, large corporations and their industry umbrella groups continue to put profits before democracy on a global scale. Examples are pharmaceutical companies against the South African government; the Canadian salmon industry against the wishes of the Tasmanian people; the New Zealand apple and pear industry against the wishes of the Australian people; and the Canadian mining industry wanting to sell asbestos to Europe against the wishes of the European people. I believe that has resolved itself now.

Much worse than all of those examples are chemical companies promoting GM foods, promoting pesticides to spray on those GM foods and promoting medicines to treat our illnesses—forget the fact that most Australians do not want GM foods. These giant corporations have to spend a lot of money on research and they have to make a profit on that research. They

employ full-time lobbyists who have presented to you here all week. They make huge donations to political establishments. Large corporations continue to put profit before democracy.

In America, oil companies even give directorships to potential presidents. In Australia, mining giants and land developers hold sway. I wonder if anyone from Western Mining made a presentation this week without being paid. The WTO is a servant of giant corporations. It is there to help these giants gain access to those countries where labour and regulatory costs are low, because there are no rules and regulations, and where there is no such thing as an EPA. The EPA would mean extra rules, and to comply with these extra rules there would be extra costs for large corporations. I worry about how many towns like Queenstown have been created in countries without a real EPA. BHP did not do a very good job in Papua New Guinea.

The golden rule of any corporation is 'profit equals revenue minus costs'. Corporations will do anything to minimise costs and, therefore, to maximise profits. They will produce scientific reports saying, 'This is the best science.' Do not believe it. It is generally one or a combination of three things. The latest science is sponsored by like-minded industry or umbrella groups; produced under terms of reference developed by like-minded groups; or produced by independent organisations and taken out of context. Often, reductionist science does not apply to the thousands of variables in the real world. I think Sir Humphrey said, 'If you build the tracks, you know where the train will go.' It is the same with science and with government inquiries.

I am sure my father would be more proud of his efforts to defend democracy in World War II than of his work for the oil company. Someone once said that a true patriot is someone who is prepared to defend his country from its government. Today we need true patriots. Please be true patriots. I am sorry to get emotional. Do not let this elected government bow to every wish of the unelected WTO. Until a more democratic system is organised, we must give the International Court of Justice, the ILO and the UN environment arm the power to veto WTO decisions. Until this power is in place we must appeal WTO decisions not to a different section of the WTO but to the International Court of Justice. If we do not object to the undemocratic, uncontrolled behaviour of the WTO, the future of our environment will be grim as giant corporations exploit natural resources in the lowest cost countries available. Future generations will be right to regard us as negligent.

That is the end of what I have written, but I also want to mention agriculture. The national land and water resource audit has put out some documents and a recommended strategy for regional areas to work out how to live with salt. I believe that 5.7 million hectares is under threat from salt. It is talking about convincing people in regional areas of Australia to live with salt and even to take up salt farming. Is this going to be the future of our agricultural trade? I give up!

CHAIR—Who else would like to address the committee?

Mr Grech—I am not representing any organisation, just myself. I have many concerns about a lot of aspects of the WTO, most of which have been adequately or at least partly addressed this morning and this week. The one issue that has often been left out is the security exemption clause—article 21 of GATT—and that is the one I would like to address today. The WTO rules generally amount to a reduction in government restricting the criteria that democratically

elected governments—that is, we the people—can use to determine policy for what type of commerce we would like to be involved in. The only industry that is exempted from these rules is the military. That implies, through article 21, that the only legitimate role for government is to provide the military and paramilitary for its essential security issues.

Many of us define essential security issues quite broadly to include access to food, water, health, education and housing, but in this context we are talking about the military and the paramilitary. By protecting the military industry from challenges under WTO rules, article 21 stimulates military spending and risks promoting the militarisation of the economy. Governments wishing to have input into new and emerging industries and job creation projects would be able to do so only in the context of military industry. Such injections into any other area would be challenged by WTO rules.

As an example, if the state government of Victoria wanted to inject funds into Williamstown shipbuilding industries to provide jobs in the creation of fast transport ferries, any subsidies or grants they gave would be challenged by other shipbuilding companies. On the other hand, if we wanted to increase our shipbuilding industries by building warships and submarines, no-one could say boo. It basically coerces government into putting money in the military. This is already happening. In 1999, the Canadian government injected $30 million into a company called Bombardier for the creation of a program to build and export fast transport planes. That was challenged by a Brazil owned company, Embraer, and the challenge was upheld by the WTO. The Canadian government was seen as giving an unfair advantage to trade. The Canadian government then rewrote its grants program, so it is now giving $30 million to the military industry under a scheme for weapons corporations where they can design and export more efficient ways of killing people. They also upped their military budget by $2 billion that year.

South Africa—a country, trying to boost their economy, that cannot afford to give drugs to their dying people—have embarked on a massive spending spree of military equipment. They are buying tanks, armoured vehicles, ships and aeroplanes from Europe because they can arrange offset agreements with the European companies under exemption 21. So European arms companies are building plants in South Africa—they will employ South African workers—and it is boosting South Africa's economy. So they are spending money on military equipment—and I am sure we are all aware of the more socially beneficial programs South Africa could be spending it on. So, on the one hand, the WTO rulings strike down domestic laws which promote social and environmental sustainability and increase the prospect of militarisation of the economy.

As well, by exempting the military from WTO rules, article 21 destroys even the most idealised concept of free trade and level playing fields. Rich countries are able to subsidise industries and give a boost to their economies by massive investments in military projects. Look at the way the current National Missile Defense scheme in the US is doing wonders for Raytheon's—the primary contractors—previously flagging shares. They have skyrocketed since the election of the Bush government. The US alone spends $50 billion a year just on weapons procurement from the three major US companies. That is something that poorer countries are unable to do. Poor countries are not able to artificially generate employment and improve their economy by spending massive amounts of money on armaments—unless of course, as in the case of South Africa, by transferring money from more socially beneficial programs. The corollary to this is obvious: it pushes military spending. Governments will only be able to

support new jobs, emerging industries and production through the military, and the military industry's primary concern is to protect the economic interest of its country and corporations by coercive force.

As a peace activist who, for many years, has been lobbying successive Australian governments on both sides of the fence—with sometimes dodgy policies on arms exports—the WTO rules in article 21 also restrict the way we can campaign. In 1996, fellow activist friends of mine in Massachusetts pushed the government to incorporate laws that stop government contracts going to companies that do big business with Burma because of their human rights record. That was challenged and it was found that that was an unfair barrier to trade.

In closing, I guess the best way I can sum up is in the words of the former Defence Secretary, William Cohen, when he was addressing Microsoft workers in Washington in 1999. He said that. for all of the domestic prosperity produced by the information age, symbolised by the astounding success of Microsoft, US economic power is still dependent on its military strength; some soldiers in the high-tech revolution and the trade revolution do not fully understand or appreciate the soldiers in camouflage. Thomas Friedman once said that behind the hand of a free market is the fist of the military—McDonald's needs McDonnell Douglas.

Ms O'Connell—I am an environmental and social justice campaigner. Free trade, in effect, allows easy access of powerful multinational corporations to exploit and pollute the world. Can any one of you explain how this and signing off on permanent WTO agreements can possibly benefit Australians? I am asking that to anyone on the panel here.

Senator SCHACHT—You only get five minutes, so we do not want to take your five minutes.

Ms O'Connell—I have just got one other point to make. This is rather important; you need to be thinking about this.

Senator SCHACHT—I think you have heard our comments during the day. I can only speak for myself; I think there are a number of advantages of helping poor people in the world by having reasonable free trade arrangements.

Ms O'Connell—My next point is that there should be an open public debate on Australia's relationship with the WTO instead of a majority of Australians being left out of discussions which will have dire ramifications for us all if Australia signs the WTO agreements.

Senator SCHACHT—We have already signed it.

Ms O'Connell—I was asking for open public debates.

Senator SCHACHT—Well, what is this?

Ms O'Connell—This is not a debate; this is an inquiry. Who is here? How many people are here? How many people in the public know about the WTO agreements?

Mr ADAMS—That is a point, but the public debate—

Ms O'Connell—It is a very important point.

Mr ADAMS—Sure, but define a public debate in Australian society. I read the columns in our national papers. There is elite debate in Australia, and there is debate at the pub and club level. I contend with that as a politician. I agree with you: we do not have a lot of really deep—

Ms O'Connell—I guess I have in mind the referendum on the republican issue.

Mr ADAMS—Do you mean a referendum on the trade issue?

Ms O'Connell—Yes. A majority of Australians are not aware of what is going on, so we should publicise it. There should be more in the media, and there should be—

Senator SCHACHT—Are you against our farmers selling wheat on the world market without having it knocked off by other countries putting subsidies?

Ms O'Connell—No. I am not, but I am—

Senator SCHACHT—That is what world trade is about as well.

Ms O'Connell—No, the world trade agreements—and I have experts here, I am not an expert but, Alan, would you like to step in?

Mr ADAMS—Please speak. Let us have a dialogue, if it is all right.

CHAIR—Just wait a minute. The committee will come to order for one moment. I have to be fair to anyone else in the room who came here on the basis that they would be given an opportunity to address the committee. Is there anyone else who wishes to speak? Apart from that, I am very happy to turn the discussion over to those who now want to engage with the committee. Come forward and we will have a discussion.

Mr Gemmell—The question, I believe, was about selling wheat overseas. I am certainly not against selling wheat overseas, but I am against selling rice grown on the Murray River, where rice takes up so much water from the Murray River, reduces environment flows and clogs up the other end at Adelaide.

Senator SCHACHT—But that can be dealt with domestically within Australia. Australians can affect that through domestic policy by arranging a different charge of controlling the water supplies. That is simple. That is not a WTO issue; that is whether we have got the guts to deal with it ourselves.

Mr Griffiths—Can I just counter that: through the World Trade Organisation, each country is now putting forward their list of commitments, say, through the GATS. They are putting their domestic regulation on these agreements to make them least trade restrictive. It could be argued that, if Australian domestic policy wanted to fix the salinisation problem, that can be challenged

through the World Trade Organisation if we put up domestic regulation covering environmental protection, for instance. If we commit that to the World Trade Organisation on the least trade restrictive test, that can be challenged, so I would dispute what you said.

Mr ADAMS—I would dispute your interpretation.

Mr Griffiths—You have got an interpretation here. On your side, you would have very well-paid lawyers disputing that; on my side, I do not have access to that, so that is an unfair level playing field for a start.

Mr McCormack—One of the key issues was brought up yesterday afternoon in that very interesting discussion that we had about ‘don’t let the public get hold of that idea out of *Hansard*, because that is exactly what we are trying to hose down’. Do you remember the commentary regarding the protection that allowed the Greek fruit industry to flower?

CHAIR—Mercifully or otherwise, I was not here yesterday.

Mr McCormack—That is right, yes. These sorts of issues are never cut and dried; there is a whole range of criticisms that I would have to make of the way the World Trade Organisation works, but I really worry about the massive polarisation that occurs in the Australian public’s mind—it does not matter whether it is the World Trade Organisation or whether it is immigration and multiculturalism—because of the superficial way in which these issues are treated in public fora, in the newspapers and, more importantly, unfortunately, on television. Unfortunately, you have to deal with the media which is today’s medium for most people’s information. With their attention spans you cannot hope to get across complex, involved ideas in the medium that most people are prepared to accept as having validity.

Mr ADAMS—That is the only medium there. What else is there to have the public debate? That is what I was asking about. What is the public debate? I will participate in a public debate as broadly as I possibly can, but how do you get that?

Mr McCormack—That issue was raised with Mr Mansfield this afternoon. I read only two weeks ago a book entitled *Socialism National* by a guy called Franz Borkenau, who was writing for the British labour book club back in 1941. Interestingly enough, after his introduction, he had a chapter on migration and what it meant for workers in different countries. He talked about the reason that workers in Australia, New Zealand and the United States baulked at mass migration, whereas the real international socialists—the Trotskyists—welcomed mass migration because it worked towards what Borkenau called a mongrelisation of mankind and would flatten out economic benefit right across international borders for the workers of the world, so to speak.

Mr ADAMS—So there is one elite working class and another class in another country which is less—is that right?

Mr McCormack—All classes are divided on this issue. What it amounts to is that, essentially, nationalism has the upper hand at a folk and club level, whereas elitist internationalism has a whole lot of what the blue-collar class see as unbeneficial side effects.

Senator SCHACHT—Did you say that at one stage you worked on the staff of Graeme Campbell, a previous member for Kalgoorlie?

Mr McCormack—Yes.

Senator SCHACHT—I have to say that I find it strange that you have concerns about free trade. The electorate of Kalgoorlie has the biggest exporting area of iron ore to the world and it is absolutely important for Australia's wellbeing. Are you against—

Mr McCormack—You have set up this straw-man argument on a few people. I have not said that I am against free trade, but I am not for all free trade, on your definitions.

Senator SCHACHT—I am astonished that someone who worked for Graeme Campbell in the electorate of Kalgoorlie—

Mr McCormack—I know you are astonished.

Senator SCHACHT—in which, overwhelmingly, its wealth is created on free trading—

Mr McCormack—Let me answer the question.

Senator SCHACHT—at the best possible price—

Mr McCormack—Let me answer the question. Your delegates here that were representing business yesterday, I asked them individually after they got away from the mikes—

Senator SCHACHT—I argued with them, too, so what is your point?

Mr McCormack—'What's your stance on immigration? All the big boys say, with the free flow of capital, goods and resources, you have to have the free flow of movement of people and open borders on migration.' They all agreed, and that is the problem: you cannot get—

Senator SCHACHT—You are a descendant of an immigrant to this country.

Mr McCormack—That was then and this is now—so are the Japanese. Everybody everywhere is an immigrant, if you want to use that as a criterion.

Senator SCHACHT—What are you going on about then? Why are you so paranoid about immigrants?

CHAIR—Let us the keep the discussion down, please; everybody can have a turn. You were partly taking over that lady's time and I want you to have the time to respond—she asked you a question and she brought you forward to speak on her behalf or to make her point.

Mr ADAMS—Can we start off with trade?

Mr McCormack—Yes.

Mr ADAMS—Are you opposed to trade?

Mr McCormack—Of course not.

Mr ADAMS—Okay. We will go from there. What are your concerns?

Mr Griffiths—My overriding concern is lack of public involvement in the trade negotiations. I am not opposed to any trade per se; I do not know anybody who is. It is about having a say on how trade is conducted to benefit local communities, and nowhere is it more important than in the lack of debate on performance requirements. We have no debate on what performance requirements are. If you ask the average person on the street, 'What is the performance requirement on investment?' I challenge you to find someone who knows what you are talking about. I am concerned about local employment, local content, technology transfer and, for instance, the employment of a certain amount of local managers. If you look at Kodak in Coburg, there is a lot of managers employed from Melbourne. The Australian government under the least trade restrictive test has given away the performance requirement to employ local managers on business investment. That is under GATS. Ask any manager around Australia who has benefited from the performance requirements giving him employment if he knows about this and I guarantee you he has not been told about this. Why not? It is a democratic right which has been signed away without asking them. Where has the input been there?

Mr ADAMS—You are here before this committee today. Have you written to the local paper? Have you started the debate? You are concerned about this issue.

Mr Griffiths—Yes. I am also writing—I have started to write on management today for *Business Review Weekly*. My second article, which will be in June this year, is basically about that.

Mr ADAMS—Good.

CHAIR—Mr Grech, do you have something you want to address?

Mr Grech—I would like to address the comments about Kalgoorlie. For many years, and not working for Graeme Campbell's office, I was running community development projects, for Perth City Mission, around Kalgoorlie and north through Leonora and Laverton and up into the Ngaanyatjarra lands. The mining industry there exemplifies some of the reasons I am opposed to free trade. While the mining industry has no doubt brought in export revenue for Australia, it has done so at a huge cost. To see indigenous people living in humpies in the shadows of tailing heaps that have raised these millions of dollars in export revenue makes me question what the real value is of those export dollars. We have one of the highest crime rates in Australia in Kalgoorlie and the western deserts. We have got massive social dislocation. We have got indigenous people still being blinded by trachoma when we have known since 1932 that all they have needed is fresh water. That is happening and that is well documented.

Senator SCHACHT—That unfortunately happens in other areas of Australia where there are no export or mining industries operating. It is a problem happening everywhere.

Mr Grech—It does, sure, but in that part of Western Australia it is the mining industry which dislocated those people. It is the mining industry which is bringing in thousands of not foreign workers but workers from the east coast and even stacks of workers from New Zealand, which is almost another state. The local people are not getting a lot of benefits. The roads in the communities—and I am talking about the towns of Leonora, Laverton, Wiluna, the white fella communities, as well—the sewerage systems and the electricity supply are all of a standard that we would not accept in a suburb of Melbourne. What benefit to the local area has the mining industry been? I would argue not a lot.

Senator SCHACHT—So you would close it down?

Mr Grech—No. I would say we need to look at the rules, look at who we are letting in, look at the environmental and social effects and make more adequate legislation—

Senator SCHACHT—That is a different argument; that means you look at tax policy to make sure they make a reasonable contribution to pay for the social services.

Mr Grech—Exactly.

Senator SCHACHT—That is a different argument.

Mr Grech—Exactly.

Senator SCHACHT—I am willing to agree with you on that point.

Mr Grech—I am sorry. Talking on an international level, they would be the kinds of laws that we would not be allowed to introduce.

Senator SCHACHT—That is just not right.

CHAIR—Ms O'Connell, you wanted to say something.

Ms O'Connell—In support of all this, I just want to ask: who exactly benefits from signing these WTO agreements? We are talking about a small number of people who make huge profits in these multinational corporations. Other people are working for them as slaves. There are wage reductions and longer working hours. Who exactly benefits? We are talking about Australians. Surely this inquiry must represent all Australians, not a minority of corporate people.

Mr ANDREW THOMSON—I appreciate your question. I will try to answer it and ask you all a question. Generally speaking, it might be better to ask: what are the consequences for a particular economy of having very high barriers to trade? Instead of putting it in the positive, if you put it in the negative, you can ask: what happens to people living in countries, or even particular districts, where the free flow of goods, services and even capital is very restricted? The evidence is clear that their incomes are quite low. To take it to an extreme, you could consider North Korea and Cuba as examples of very protectionist economies where, in North

Korea's case, people are almost starving. Where there are very few barriers to the movement of goods, services and capital, incomes tend to be much higher. That is one interpretation.

As a group, I wanted to ask you to reflect on the treaty making process here in Australia, the role of parliament and, to some extent, this committee and to tell us how you think the process could be reformed or changed in future. I have put out for public debate the notion of having parliamentary approval of treaties by perhaps even a two-thirds majority of the Senate. How do you view the treaty being processed generally?

Mr Griffiths—I am really glad you asked that question, because I did not have time to address that point. Because the national government can sign on to these agreements without state and local input, this is another serious flaw. It is quite ironic that, under Kennett, we had a state committee which examined how national and international agreements affected the state. However, Bracks disbanded that committee. It was the only viable committee. It was a joint Labor-Liberal committee which was capable of looking at how all the agreements affect Victoria.

Mr ANDREW THOMSON—Is it no longer on foot?

Mr Griffiths—Yes.

Mr ANDREW THOMSON—Is that so?

Mr Griffiths—Yes, that is so.

Senator SCHACHT—It is a national responsibility, not a state government responsibility.

Mr Griffiths—Hang on. State governments will be affected by these agreements.

Senator SCHACHT—People in Australia want a national government.

Mr Griffiths—Hang on. This is where you need to involve local communities.

Senator SCHACHT—We might as well go back to 1899 before Federation.

Mr Griffiths—I would encourage you to continue with that point of view, because it will encourage more people to come out and protest against it. We need inclusion in these negotiations and consultations. You cannot exclude local and state governments.

Senator SCHACHT—I am not arguing against that. The state government is not the constitutional power to handle it. Whatever the deficiencies are, it is federal government and the federal parliament.

Mr Griffiths—But it is imposed on the state government. These agreements are imposed on the state governments.

Mr McCormack—It is a change to have these sorts of consultations running. Under the previous Labor government, I believe that it was all pretty much handled at executive level inside the cabinet. When the Liberals took over, they sniffed the wind and they knew that a whole range of these internationalist issues, which had been sneaking in one way and another, including the whole treaty process, was getting under the skin of the people. As a result of that, they have instituted this sort of Joint Standing Committee on Treaties to go around and find out what is happening, as they found out what was going on in the minds of the public in relation to defence. I would like to place on record my thanks to the current government for being honest enough to get around the traps and at least find out what people think about it, or how little they do think about it.

Mr ANDREW THOMSON—Let me make it clear that it is not the government; we are the parliament. There is a distinction between ministers and the ordinary backbenchers.

Mr McCormack—I am sorry, yes.

Mr ANDREW THOMSON—Generally speaking, in relation to the Senate, for example, if I can be blunt, small minority interests can gain representation through the proportional representation system with more minor parties and so forth. How do you see that working at the moment in terms of expressing the views that you hold, and trying to bring them to bear on the treaty and legislative process? Is that working? What more would you do?

Mr Griffiths—It is a wonderful start, but I am just a grassroots activist. I have spoken to many people about the WTO, and very few people still understand the basic concepts like corporate globalisation and trade. I cannot honestly see how the World Trade Organisation affects trade per se. If you look at how corporations operate around the world, Kodak in New York will sell along its value adding process to Mexico. That is how it makes its profit. Mexico Kodak will then sell to Coburg Kodak. Kodak will add more value to the product and then sell to Kodak in China. That is not international trade. These are corporations which are merely adding value to the product and selling to themselves.

Mr McCormack—They are transfer pricing and royalty agreements. They are scams.

Mr Griffiths—I cannot see how this has anything to do with the traditional notions of trade and very few members of the public understand this. I have spoken to politicians and they are amazed by this as well. The literature is out there, but it is very hard to obtain. You have to look at dissemination of information.

CHAIR—You have put your finger on a very important point. There is a lot of static in relation to people understanding what is happening. Obtaining factual information is a very difficult process. You have made a good point.

CHAIR—We now have a new speaker who did not speak earlier.

Mr Sharp—I came to the committee mainly to listen, and I did not prepare anything to say. However, I thought I would take this opportunity to express my concerns. Going back to what was said about 1899, Australian Federation has been described as a free trade agreement between states, but what you people do as a government, and what state governments do, is

more than free trade between states. In the shift over the past 20 years towards forms of globalisation of trade and investment, there have been shifts of power away from national governments. Businesses with the ability to act globally have gained from that process. I am sure that you people understand that process. To some extent, some people in Australia benefit while others do not. It is hard to push what the Australian government does in terms of trade from Federation, to what should be done in the world. For example, if South Australia had an average wage of $20 a day, or whatever—

Senator SCHACHT—For 50 years, it has had the lowest average wages of the mainland states in Australia.

Mr Sharp—As happens internationally, we see states competing with each other for investment.

Senator SCHACHT—South Australia has attracted some industries on the basis that, on average, its wage rates are lower than those in New South Wales and Victoria. They have been doing that for 50 years.

Mr Sharp—The process in the WTO which is pushing that is the restricted ability for social and environmental standards, and for social interests generally, to play a part.

Senator SCHACHT—Are you against international arrangements, for example through the United Nations and other treaties, which guarantee international civil rights? They are all part of the international pattern that has been growing over the past 50 years.

Mr Sharp—My concern relates to the international arrangements which are prioritising trade and business interests at the moment. The WTO structure emphasises that.

Senator SCHACHT—That is just one area. This committee is also considering the establishment of an international criminal court. That would be a standing court and people who have committed genocide could be taken before the court from anywhere in the world, charged and, if found guilty, go to jail. In some form or other, that will override some Australian laws. Is that a reasonable thing to do?

Mr McCormack—No.

Senator SCHACHT—There you are. I think that it is a reasonable thing to do. If there is a Nazi in this country, or someone who has committed genocide in the Balkans—

Mr McCormack—Don’t come the globo-cop routine.

Mr Sharp—Can I just finish my statement?

CHAIR—Order! I am going to have to put Senator Schacht in jail in a moment because we are going to have to wind up. Perhaps you would like to make a very quick statement.

Mr Sharp—I think an international court is important and I agree with it. The trouble with the World Trade Organisation is that it does not consider other issues of legislation in a country such as social equity, development or environmental issues. Such issues need to be incorporated more strongly at an international level and the form of the WTO at the moment does not do that.

CHAIR—I am sorry that we have planes to catch because otherwise we could go on for goodness knows how long. I thank you all for your participation today. We appreciate your coming along to give us your time, ideas and thoughts. We wanted people to have the floor for an hour and that has happened. I cannot take any more questions as I have to close the committee.

Ms O'Connell—May I just say—

CHAIR—Order! Ms O'Connell, we are not here to listen to a parting shot from you. Under the circumstances, I thank you all again for your participation.

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

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

Subcommittee adjourned at 4.06 p.m.