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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia's relationship with the World Trade Organisation

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JOINT COMMITTEE ON TREATIES

Monday, 18 June 2001

Members: Mr Andrew Thomson (*Chair*), Senator Cooney (*Deputy Chair*), Senators Bartlett, Coonan, 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 (*Subcommittee Chair*), Cooney and Ludwig and Mr Adams, Mr Bartlett, Mr Haase, Mrs De-Anne Kelly, 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

GEBBIE, Dr Dennis, General Manager, Trade Policy, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia.....	488
GOSPER, Mr Bruce, First Assistant Secretary, Trade Negotiations Division, Department of Foreign Affairs and Trade.....	505
JENNINGS, Mr Mark Brandon, Senior Adviser, Office of International Law, Attorney-General's Department.....	505
PYNE, Mr Dominic, Manager, WTO and Multilateral Trade, Trade Policy, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia	488
ROBERTS, Mr Ivan, Research Economist, International Agricultural Trade Policy, Trade and Industry Directorate, ABARE	488
SPENCER, Mr David, Deputy Secretary, Department of Foreign Affairs and Trade.....	505
WILSON, Dr David, General Manager, Biosecurity Development and Evaluation, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia.....	488

Committee met at 10.16 a.m.

CHAIR—Firstly, I apologise that the committee is a little late getting under way. We have quite a few of our members who are fogbound, or at least are in the fog somewhere—not in their mental processes, I hasten to say—and so have been prevented from attending this morning's session. I formally declare open this hearing of the Joint Standing Committee on Treaties. I welcome witnesses, members of the public and the media to this final hearing into Australia's relationship with the World Trade Organisation. Over the past eight months we have conducted public hearings, community forums, and round table discussions to explore trade policy issues and how Australia interacts with the World Trade Organisation. With the new WTO ministerial meeting scheduled this year in Qatar, many of the issues raised in submissions and evidence to the committee are now at the forefront of government policy and decision making.

Today we are hearing from the Department of Agriculture, Fisheries and Forestry Australia about agriculture, quarantine and the WTO. We have also recalled the Department of Foreign Affairs and Trade and the Attorney-General's Department to make final comments on the issues raised throughout the inquiry. As you can appreciate, this is a bit of a moving agenda. The committee is now drafting its report which we hope to table in the spring sittings of parliament. To begin our hearings today I call representatives from the Department of Agriculture, Fisheries and Forestry Australia to the table.

[10.18 a.m.]

GEBBIE, Dr Dennis, General Manager, Trade Policy, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia

PYNE, Mr Dominic, Manager, WTO and Multilateral Trade, Trade Policy, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia

ROBERTS, Mr Ivan, Research Economist, International Agricultural Trade Policy, Trade and Industry Directorate, ABARE

WILSON, Dr David, General Manager, Biosecurity Development and Evaluation, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia

CHAIR—The committee does not require you to give evidence under oath but I will just advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House or the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do each of you, or any of you, wish to make some introductory remarks before we proceed to questions? Perhaps we will start with Dr Gebbie.

Dr Gebbie—I have a brief opening statement. AFFA welcomes the opportunity to provide a submission to this inquiry and to appear before the committee. We believe it is important to increase awareness in the community about the WTO and its significance to Australia as a major trading nation. Probably no sector is more reliant on trade for its wellbeing than agriculture. Overall around 65 per cent of our agricultural production is exported. This can vary from year to year, but it is generally in that vicinity. Our export dependence is even greater for some particular industries—for example, sugar, wool and wheat, where export is 80 per cent or greater. AFFA then has a strong interest in a fair and effectively functioning world trade system. We believe that the WTO-rules based, multilateral trading system provides the best basis on which to deliver the rules, disciplines and progressive opening of markets that our industries require. This is not to say that multilateral approaches are the only way. Bilateral and regional approaches to opening markets are also important, but the biggest gains come through comprehensive multilateral trade rounds.

As outlined in our submission to the inquiry, the main areas of WTO interest for AFFA are the Uruguay Round Agreement on Agriculture, the Sanitary and Phytosanitary Agreement and the dispute settlement mechanism. The Agreement on Agriculture was an outcome of the Uruguay Round. For the first time, agriculture was brought under multilateral trade rules. There are important disciplines in the so-called three pillars: market access, export subsidies and domestic support. But the Uruguay Round Agreement on Agriculture was only a start. We do not yet have a level playing field, and this was recognised in the Agreement on Agriculture, which included an agreement to continue the reform process. Indeed, negotiations have been under way on agriculture in the WTO since around March 2000.

The Sanitary and Phytosanitary Agreement was also an outcome of the Uruguay Round, which, for the first time, established a multilateral, science based framework that applied to the application of SPS measures. Disciplines such as a science basis, the need for a risk assessment and the need to apply measures consistently and in the least trade restrictive way are some of the important features of the SPS agreement. The dispute settlement procedures were significantly strengthened in the Uruguay Round and we believe now have real teeth to enforce members' rights and obligations under the WTO system. We have of course in recent times been involved in dispute settlement processes regarding salmon, US lamb and Korean beef. Although not perfect, these agreements resulting from the Uruguay Round are proving effective in providing a more predictable and fairer trading environment for our exporters.

AFFA's submission also makes the important point that while we have rights under these agreements we also have obligations. We must also play by the same rules we expect others to follow. Trade is a two-way street. If we do not abide by the same rules then we risk actions against us through the WTO, which could be very costly to us in trade terms. In addition, our capacity to exercise international leadership for further reform—for example, through the Cairns Group—would be undermined. I would also make the point that AFFA places great importance on communications with our client industries and on getting their views on WTO related issues.

In summary, AFFA are strongly supportive of the multilateral trading system. We believe it is working reasonably well, although there is still much to be done before we have a genuinely level playing field. We must accept that we too must play by the rules, and this applies particularly to the quarantine area, where we can and do play by the rules without compromising our relatively good pest and disease status. That completes my opening statement.

CHAIR—Dr Wilson, would you like to say something by way of introduction?

Dr Wilson—No, thank you.

CHAIR—Mr Pyne?

Mr Pyne—No, not at this stage.

CHAIR—Mr Roberts?

Mr Roberts—Not at this stage.

CHAIR—All right, thank you very much. We will start to investigate some of this. Could I perhaps start with Mr Adams.

Mr ADAMS—In the discussions between your department and NGOs has there been any discussion on the build-up to the next round of negotiations or is that being left to other departments?

Dr Gebbie—No. We commenced some time ago getting the views and discussing at least issues in their broader context with our stakeholders. As I mentioned, the resumption of the

agriculture negotiations commenced in March 2000 in Geneva, and prior to that and since then we regularly consult with our client industries. We have a number of formal mechanisms for that in addition to the sort of day-to-day regular contact we have with many industries on a more ad hoc basis.

Mr ADAMS—I am not talking about industries; I am talking about non-government organisations and non-industry.

Dr Gebbie—Not specifically ones outside our immediate stakeholder base.

Mr ADAMS—The comments that I have read recently are that we are further behind now with agricultural reform than we were in 1994, that there is more protection in the world than there was in 1994. What is your reaction to that?

Dr Gebbie—I do not think that is an accurate reflection of the situation. When the Uruguay Round agreements came into force at the beginning of 1995, for the first time there were a range of disciplines covering various kinds of subsidies and domestic support, and indeed market access concessions that were negotiated in the round have progressively come into place as well. It depends very much on how you measure support. The Organisation for Economic Cooperation and Development in Paris has devised this so-called PSE, the producer support estimate, which measures support to agriculture in a comprehensive way without regard to whether that support is of a trade distorting nature or not. It is certainly true that, after a period of significant falls in that PSE towards the latter part of the 1990s, support as measured by that particular measure did increase quite markedly and reached roughly the same levels as prevailed at the time the Uruguay Round started.

Mr ADAMS—But those are statistics that have not been picked up generally as being a measure. Everybody is still looking for measures about how freer trade and the WTO have assisted the world—there are still a lot of questions there—and we still do not have measurement to that effect. But it is pretty common, and I am reading this constantly, that we are further behind now than we were in 1994 in protection measures, that countries have put on protection measures in agriculture.

Dr Gebbie—That is simply not supported by the facts, though. The measure I refer to is in fact widely accepted as the best measure of support to agriculture. The one further point I should have made was that I think you need to be careful here about what sort of support we are talking about. If we are talking about trade distorting forms of support, the ones that most affect the world markets our exporters operate in, then support in that area has in fact reduced as was required under the WTO.

Under the WTO domestic support element of the Agreement on Agriculture we have what is commonly referred to as the green box. That green box allows countries to put in place measures that are not, or are at least minimally trade distorting, pretty much without limit. If you take that into account then indeed support has climbed a lot. But that support is perfectly legal and, by and large, it is of a non-trade distorting type. You have to be careful about the forms of support you are dealing with here.

Mr WILKIE—Would that include the sort of support that the US and the EU are putting into their agricultural area by way of subsidisation, because they are heavily subsidising their industries which surely must be having an impact?

Dr Gebbie—Yes. Both of those—as indeed I believe applies to all countries—are providing support that is perfectly legal and within their WTO commitments. It is important to distinguish whether that support is green—that is, non-trade distorting—or in the other box, this so-called amber box, which is the type of support that is trade distorting and is subject to reduction commitments. The trade distorting forms of support are going down, but it is true that green box support is climbing—but it is all legal. The sort of green box support we are talking about could include government support for R&D, for example, which everybody believes is a good thing and is not distortive of trade. It is important to look at exactly what they are doing.

Mr WILKIE—I just cannot see how what they are providing could not be trade distorting.

Dr Gebbie—Some of it is trade distorting. The outcome of the Uruguay Round did not abolish trade distorting forms of support. What was required was a 20 per cent reduction in support measured by the so-called aggregate measure of support, which is yet again another form of measurement of support, but it was a 20 per cent reduction based on a fixed based period in the late 1980s. It was to be done on an aggregate basis where countries could aggregate support to all the various agricultural sectors, so by no means did the Uruguay Round eliminate trade distorting support. We have a long way to go before we get anywhere near that objective.

Mr ADAMS—What about statistics from an Australian perspective? Does your department keep details of what we are actually selling more of as opposed to what we are not? Have you got any statistics on that, looking for real evidence of pluses?

Dr Gebbie—I will pass that one to Mr Roberts.

Mr Roberts—Yes. In fact, there has been a very substantial increase in agricultural exports in recent times. There have been large increases in our exports of beef and dairy products. This is not necessarily all related to better conditions as a result of the Uruguay Round outcome, of course. There are other factors as well, particularly with respect to the exchange rate, that have had an impact. But there has been a very large increase over the past few years in the period that you have mentioned since 1994 in our Australian exports, particularly in the last couple of years.

Mr ADAMS—But not specifically tied to the measures of trade that have changed since the last round.

Mr Roberts—In fact the conditions under which we are exporting have improved significantly for some commodities. In particular, up until the end of the Uruguay Round, there was substantial competitive export subsidisation between the European Union and the United States in wheat in particular. That was very detrimental to the Australian wheat industry. Since 1995 the United States, which was exporting quantities which were even greater than those from the European Union with exports under the Export Enhancement Program, has been no longer subsidising its exports of wheat. That has been an important example of this. Also, it has

been important for Australia in beef, for example, that we have been able to secure under the Uruguay Round outcome substantial access of beef into the United States. There have been improvements in access to other markets like Japan and Korea. Those improvements in access have been important in underscoring the growth that we have had in our exports.

Mr ADAMS—They were to do with getting date stamps sorted out and those sorts of things, weren't they? Into Korea, that was sorting out date life—how long they can stay on the shelf. They were using those, and we went into an arrangement with the Americans and knocked it over. That was an increase there. We have got no extra beef into the European Union. We export very small amounts of beef to the European Union.

Mr Roberts—Yes, but I was speaking about the United States and Korea in which we in fact, for beef, have secured greater access. The European Union, regarding access to us, has been a major problem: there is no question about that. Perhaps I could put some of the conditions a little more in perspective. In fact, up until the mid-1980s there were very rapid increases in agricultural support in developed countries overall, and they did reach very high levels, but since that time they have levelled out. They dipped down in the mid-1990s when the world prices were very high, and at the end of the 1990s when world prices dropped again they shot up again and were at levels similar to those in the mid-1980s. So at least the overall levels of support have levelled out. You can see in countries like the European Union and Japan that levels of agricultural production have also levelled out. Up until that time they were increasing rapidly. Since the mid-1980s, the beginning of the Uruguay Round, we have seen significant changes in the forms of agricultural support away from what were clearly very market distorting forms of support in export subsidies and high price supports, and, in some instances, the changes in forms have been to unequivocally less market distorting forms of support. If you look at the European Union, for example, with cereals they have in fact reduced their support prices and paid direct payments to producers. We would argue that those direct payments are still market distorting, but in reducing the support prices they are at least increasing their own consumption and reducing the amount of subsidised exports.

Mr ADAMS—Opening the world up a bit. Mr Pyne might like this question. We have now probably got the most efficient dairy industry in the world. Where are we going to sell the increase in production if we do increase production?

Mr Pyne—I would say that that is not an easy question to answer from the point of view of identifying a particular market. As you are probably aware, the Australian dairy industry itself has put considerable effort into developing Asian markets for Australian dairy products over about the last 20 years, and certainly in that time we have seen a very sharp increase in exports to most of those Asian markets. The dairy industry itself certainly is not seeing those markets as such at this time as having reached a stage where there is not any prospect for future expansion. It is very important here to consider the fact that there have been significant changes in the consumption of dairy products in a number of these countries where traditionally dairy products were not a major part of the diet, so, as a result, opportunities have been arising here in markets where there is not necessarily a high degree of protection. Certainly Australia has been able to take advantage of that as we have had more product available for export. As far as saying exactly which market—it is changing. The industry is a fairly dynamic industry in that particular case, and not just the total level of exports is changing but also what the product mix is according to the opportunities which are available there. At the same time, that is not to say

that world dairy markets are extremely open. It is very well-known that world dairy markets are some of the most restricted markets, but that does not mean that there are not opportunities there. Obviously we will be trying to see further improvements in access to world dairy markets, and in working with industry we will be trying to identify particular markets for particular products where we see there is potential for growth.

Mr ADAMS—But you do not have any at the moment?

Mr Pyne—We do have priorities which we have been working on with the dairy industry that we will be trying to pursue in the agriculture negotiations that Dr Gebbie has referred to.

Mr ADAMS—Mr Wilson, last week I saw an article in the *Financial Review* which said that American corporations had moved over and embraced a Left agenda on trade policy, hence labour and environmental regulations, and wanted to embrace those in discussions in relation to the World Trade Organisation's future. Did you read that article and, if so, do you have any comment on that?

Dr Gebbie—That is probably more in my area, Mr Adams. I do not think it is particularly new that there has been strong American interest in labour and environmental aspects of trade negotiations. It was certainly a high priority in the Clinton administration. Indeed, the inclusion of both of those areas in world trade negotiations has been a big stumbling block in getting a fully comprehensive trade round going. I think the American agenda, including in those areas, was one of the reasons behind the failure of Seattle. I believe the Bush administration is less inclined to pursue those areas as priorities. The republican side of the house there has been less inclined, but nevertheless I think they do still remain on the American radar screens and, as long as they are there as somebody's priorities for a full round, it will make it that much harder to get agreement.

CHAIR—I think the new configuration in the Senate might have some impact, of course, with the new chair.

Dr Gebbie—Yes.

CHAIR—Before I allow the session to continue with my colleagues, there is one thing I would be very grateful to have your views on. Indeed, everybody at the table might have a view. I am interested to know what the opportunities are in your view to increase access to new markets in agriculture—and I will list what I understand to be the sorts of avenues that are available and no doubt you can add to them. There are, of course, hopes to get agriculture meaningfully onto the agenda for a new round of negotiations. There are obviously pressures that can be exerted by the Cairns Group. There are obviously opportunities for bilateral arrangements, and I would be happy to hear about them. A very neglected avenue is the dispute settlement system and the extent to which that might be used more proactively than it is by Australia. It has been acknowledged that Australia has done pretty well by our third party actions. We have been pretty good at fending off attacks and we have had a couple of wins where we have taken other members on. With the expiry of the peace clause coming up in the future, do you see that as perhaps opening up opportunities for Australia, perhaps with others, to be taking a much more aggressive line on agriculture? Having asked that question, I am fully cognisant of the fact that it is not always simple to take a case and go off because there are

obviously lots of other interests that impact and you have to be very careful about whether you can effectively chew what you are biting off. It does seem to me that we have all been in the system long enough now to really evaluate in a much more comprehensive way just how you might use the rules based system a bit more effectively.

Dr Gebbie—I think it is true to say that we always need to pursue all avenues for opening new opportunities for markets. The bilateral approach, regional approach and multilateral approach are all important. Even in a multilateral negotiation, at the end of the day you get down to talking individually with trading partners, so there is always a very important bilateral component that is part of any multilateral negotiations.

I think it is also true to say that, when WTO multilateral negotiations are in place, as they are now for agriculture and indeed services, it makes it very difficult to negotiate further market openings bilaterally. By and large, trading partners will rely on at least not giving up anything twice, so they will negotiate multilaterally, but it will be harder in the bilateral context. There is nothing new about that, I do not think.

The negotiations that have commenced in Geneva are, by and large, under way within the same framework that came out of the Uruguay Round. Although we are only at a very early stage of those negotiations, we do seem to be in a situation where we are pursuing things along the lines that were given to us as the outcome from the Uruguay Round. We are dealing very much with the three pillars I mentioned earlier—market access, domestic support and export competition. It is very early days as to where we are going to end up with those. We are certainly going to run into very difficult issues in all three pillars I believe. It is essential that we get agreement on a comprehensive trade round because, without that, we will not have the opportunities for trade-offs in other sectors that some of the protectionist agricultural countries will need—countries like Japan, Korea, the European Union and so forth. If we are left with solely an agriculture negotiation, it is going to be extremely difficult to achieve an ambitious outcome. On the other hand, if we do get agreement in Qatar in November, or it could occur somewhere else I suppose—but as long as we get agreement on a comprehensive round that includes all of the other areas, including industrial tariffs, manufactures and all of the many other areas covered by WTO—that hopefully will provide the scope for trade-offs so that the protectionist agricultural countries can gain in other areas. That is extremely important.

You mentioned the dispute settlement system. We believe that that system has real teeth now. It is no longer possible for countries to block the outcomes of WTO panels, which is a very good result from the Uruguay Round. I think it is true that that system is not there to be entered into too lightly. There are many prior mechanisms that fall short of a fully fledged panel process that can and should be used to resolve trade disputes prior to going that last step. There is a committee system there that is available for use. Prior to that, there are informal processes.

CHAIR—Yes, I understand the process.

Dr Gebbie—It is really only at that last stage where nothing else is proving possible that you get involved in the full, fully fledged dispute system, but it is effective. We believe that we need to be making appropriate use of that when other avenues have failed. We have had two successes recently with US lamb and Korean beef. We are on the receiving end on salmon. The system is there, and we believe that we should be using it. In fact, it is very hard to explain to

industry, when you have both rights and obligations, why you focus on the obligations—that is, on your commitments—and do not exercise all your rights. It is very important that if there is to be public confidence in the WTO system that we also exercise to the full our WTO rights.

CHAIR—Where do you see the avenues opening up, though? You say that we should be effectively using the system, but where do you see this going? Do you see the expiry of the peace clauses opening up any possibilities, and where in industry are you getting pressure to take action?

Dr Gebbie—I can take the three pillars separately. In the export subsidy area, we are pursuing with very strong industry support in Australia the elimination of export subsidies, and at least very strong disciplines on some of the various areas that have been used to circumvent commitments in the export subsidy area—for example, the use of agricultural export credits and, to some extent, the use of food aid. That is a very high priority for us and perhaps the one that has reasonable support from other trading partners, even outside the Cairns Group. I am reasonably optimistic that, given a transition period of some kind, we may well succeed in that area.

Greater market access is extremely important to our industries, including the food industry. Border protection, tariff quota mechanisms and so forth that resulted from the Uruguay Round have left very high levels of protection in place for agriculture. In the Uruguay Round we managed to get rid of all non-tariff barrier protection to agriculture by having that converted into tariff equivalents, but those tariff equivalents in many cases are still extremely high. There is a long way to go before we get anywhere resembling the same sort of situation as applies for manufactures trade, for example. That is extremely important, not only in the OECD countries but also in many developing countries, and particularly in Asia for our food exports. In the Uruguay Round, the major economies like the Americans and the Europeans did not have the same interest in Asian markets as we did so we did not have the same economic clout or leverage from the big players as we would have liked. Perhaps in Asia the tariff protection remained much higher than it would have if the majors had taken a stronger interest there.

The weakest outcome from the Uruguay Round, I believe, was that of domestic support, and I described the mechanism there earlier. Indeed, it is still going to be an extremely difficult area to discipline. It is perhaps the area that is most strongly linked with a country's sovereign right to provide assistance to their farmers, and it is an area that is always subject to very strong political pressures in many countries. Domestic support is very high and, as I said earlier, there is still far too much trade distorting domestic support. We do not always have the quantitative means to measure the sorts of distortions that may or may not apply to various kinds of support. We are going to have to work very hard indeed to discipline that area to provide a more level playing field.

In all of those areas, we have been talking to our industries and getting their views on where their priorities lie. Sometimes their views differ or conflict. They are not all the same. Along with our colleagues in Foreign Affairs and Trade, which has major carriage of trade negotiations, we have to sit down and work out where our national interest lies in these areas. As I said, we are only pretty much at the start of these negotiations in Geneva. There is a long way to go and we are not yet at the stage where we are looking at fine detail in the sort of mechanisms we might apply in these three areas. It is hard to be too specific at this stage, but

we are making progress. In fact, we have made more progress than I imagined was possible in the time we have had so far. I am reasonably optimistic. Particularly if we can get a full trade round going then I think we have a real prospect of getting an ambitious outcome.

CHAIR—Is one of the difficulties that you face in evaluating whether or not you can perhaps even prefer an action or commence an action the difficulty with evidentiary problems—that is, getting any kind of proper analysis if you are looking at some other country's domestic support? It must be very difficult.

Dr Gebbie—That would certainly be a problem if there was a case involving domestic support. My colleague, Mr Pyne, was involved in such a case with Korea beef, where in the domestic support area that was an issue. Perhaps he has a better feel for this than I do. By and large, I do not think that area has been a big problem in the cases we have been involved in, but I will pass that to Mr Pyne.

Mr Pyne—Certainly, at times in some of the examinations of other countries programs, we have struck some difficulty in finding the necessary information. At the end of the day, though, it is a question of what sort of resources are allocated to seeking the information. Some of the information is available through the WTO system. We can also use the WTO system to try to seek the information. In the case of Korea beef, not only were we seeking information but we were also comparing that with, say, information that Korea was supplying to other international organisations such as the OECD and, where we could, trying to find areas where perhaps that was inconsistent as well. Obviously, when countries are notifying to the WTO what sorts of support levels they have, they are normally notifying that within the framework of their commitments on domestic support. In the case of Korea beef, what we were really looking for was more to do with inconsistencies in how the level of support was being calculated rather than necessarily a shortage of information.

Our colleagues in the Department of Foreign Affairs and Trade have been undertaking a similar exercise in relation to EC canned fruit. The Department of Foreign Affairs and Trade may be a bit better placed to address that particular question. In the case of EC canned fruit, the complexities of the EU system does make it a lot harder to see how their support fits within the WTO framework, because not all countries have their programs set out in such a way that it is easy to see if something is automatically in compliance. A key question here, say in relation to some export subsidy issues, would be how the support is being delivered. You might have a support measure which, on the surface, is being notified to the WTO as a domestic support measure, but the reality of it can actually be that it is an export subsidy. The question is not necessarily associated with lack of data or difficulty of obtaining the data, but perhaps is—

CHAIR—Characterising what it is. Yes, I follow that.

Mr Pyne—in interpreting that data within the WTO rules.

CHAIR—That makes sense.

Mr Pyne—Senator, I was just wondering if I could clarify one point that you raised in relation to how the peace clause could be used to open new markets. It is important to realise—when the peace clause does expire at the end of 2003—that the peace clause does not relate to

market access commitments. The peace clause is only there in relation to the domestic support commitments and the export subsidy commitments. While it will certainly be possible to introduce challenges against the subsidy regimes of some of our major competitors, that will not necessarily open new markets for Australia but perhaps it can lead to improved trading conditions.

CHAIR—Thank you for clarifying that.

Mr ADAMS—How much chance would the honey sellers of Tasmania have in getting a move in Korea? They have a tariff of 260 per cent on their honey. Has that come across your desk at all?

Mr Pyne—I have not had that issue raised with me at all at this stage, but we would certainly be happy to look at the exact conditions which are impacting on the potential into the Korean market.

Mr ADAMS—It is very difficult for small industries like salmon and honey to get up to your level, I think, when we get to negotiations.

Mr WILKIE—I would not mind hearing a comment from you on the question: did we really win the US lamb dispute? Here they were with a program that was lasting two years and it took us nearly two years to get a result. Obviously the program expired before the decision was handed down. So, really, what did we gain from that? Are we seeking any compensation to try and reimburse our farmers that missed out, and what changes can be made to make that system more efficient?

Mr Pyne—As to the detailed information on what is likely to happen on US lamb, the Department of Foreign Affairs and Trade will be best placed to answer, but I am certainly happy to provide some comments from our point of view. The first point I would like to make is the US measure was a three-year measure rather than a two-year measure, so at this time it has not expired. A further aspect to this is that under the WTO safeguard rules that three-year measure could have been extended: there is also the option that the US if they wanted to would be able to apply a safeguard measure for up to eight years. So we were not just looking at trying to seek the immediate removal of the three-year measure that had been introduced. There was a further aspect to this as far as trying to ensure that there was not a further extension to this measure and that the US market was reopened or at least returned to the previous trading conditions as soon as possible. That was part of the background against which the original challenge was undertaken. At the time we went into that challenge we were well aware that the time frame that dispute settlement processes take is quite lengthy and that we would not be in a situation where suddenly, six months into it, the US measure would be removed. Right from the outset, having that measure removed in the third year of its operation was almost the best scenario that we could actually be facing. Have we won? Well, from a WTO legal sense I think you would have to say we have won comprehensively on almost all of the points that we raised as part of that dispute. That win was then reaffirmed by the WTO appellate body.

The key questions now will be the questions associated with implementation. As I indicated, the Department of Foreign Affairs and Trade may be able to comment a little bit further. But at this stage, all we can say is that the initial indication from the US is that they will implement.

How they implement will remain the key question. Obviously, from an Australian position, we believe that the way to implement will be for them to have the immediate removal.

In relation to your question about compensation, there is not any retrospective compensation built into this system. There are provisions, such as under the safeguards agreement, that if a measure is in place for more than three years or it is found to be inconsistent with the obligations, rather than compensation there is a retaliation provision, which at this time Australia has not exercised. Under the dispute settlement understanding, if the US fails to implement by whatever is determined as the reasonable period, at that time Australia could either seek compensation or retaliate under those provisions.

Mr WILKIE—Page 10 of the submission talks about the consultation which has taken place with all major agricultural industries. You have suggested in point 44 on the same page:

Despite these intensive efforts with stakeholder groups, there is ample evidence that there is no consensus within rural and regional Australia as to the benefits of trade reform.

Given that, are rural and regional Australia and our agricultural industries ready to face more competition from imports as well as to benefit from the opening of more overseas markets for our produce?

Dr Gebbie—That is a good question. Quite clearly, there are a lot of people in rural and regional Australia who are not convinced of the benefits necessarily of trade reform. When you look at the export dependence of Australian agriculture, it is very hard to argue that, overall, the further opening of markets and better conditions on those markets are not in our national interest. Trade reform, as I mentioned earlier, runs both ways. There will be industry sectors where trade reform is going to lead to increased competition and adjustment pressures on them. In recent times, I think that has primarily occurred as a result of the easing or changes to quarantine restrictions. There have been a number of industries which, for the first time, potentially face import competition that they have never had before. I think it is perfectly understandable that there would be concern there about increased competition as well as the prospect of pest and disease entry.

In recent times, the differences in views that we have been hearing have probably related more than anything else to implications of the quarantine regime rather than to reducing tariffs or anything like that. In fact, our agricultural tariff, as with most manufactures, is already very low by world standards. I think five per cent would be the maximum tariff on any agricultural produce. By and large, that five per cent margin is not going to be particularly significant if that was lost, at least not for an industry that was clearly world export competitive any way.

I think we have got a long way to go, though, in terms of our communications with rural Australia about the benefits of trade reform. We have not, in my view, done this particularly well, and you can judge that from the public concern that is aired in various forums. It is a high priority area for AFFA, including for the year ahead, and we will be putting a lot of effort into that area to try to argue what we believe is a very strong case that increased exports and further opening of world markets is overwhelmingly in our national interest.

Mr HAASE—It is interesting that Mr Wilkie should ask that question because I noticed in your introductory statements you made a great deal of comment about the process. I see the whole situation from the opposite perspective, of course, and it struck me that it was only in the last few sentences of your introductory remarks that you made any mention about AQIS and their function in all of this. Yet, public perception in the area of globalisation being undesirable, there being a general silence on the benefits of world trade and a huge concern at the coalface of agricultural production in Australia about the competing nature of product import and the risk, the very real risk in some industries—and I think of bananas from the Philippines, for instance—of the introduction of those pest species, I conclude that the PR war is being lost by your department. I wonder if, long term, any consideration might be given to endeavouring to level the playing field with regard to your own media campaign. I would like you to comment on that because I think you are losing badly at this stage.

Dr Wilson—Perhaps I could add some comments on that. Following the Nairn review of quarantine, one of the recommendations arising was that we improve the information circulation to stakeholders on the more general aspects of quarantine and trade and so on, and when we were producing the first edition of the risk analysis handbook I did hold some meetings with industry and other stakeholders on how the risk analysis process fits into the broader context. In reality, there was not a lot of interest from stakeholders in the broader sense. It was only when we got involved in particular risk analyses that there was interest from stakeholders, and, in general, that has been the case since. At the moment we are reviewing the import risk analysis process handbook. In November last year we sent out a notice to all stakeholders, over 2,000 of them, advising that we were reviewing the process, involving them implicitly in consultations and so on and asking for comment. We only received 11 responses. We went out again in April and said, ‘Look, there have been a few developments. The ministerial council has become involved; again we are asking for comments on the process.’ Now we have received in total over 50 submissions. I have also had some meetings with various stakeholder groups and so on. They have admitted the same thing, that one of their problems is that, until they get involved in a risk analysis such as with bananas from the Philippines, or salmon or chicken meat, it does not really hit them as to the implications, and when they do get involved in that risk analysis they are at a bit of a loss to understand the context in which we are discussing it. It is a view of, ‘Why does the government have a managed risk policy? Why isn’t it no risk? Why are we allowing these imports? Why don’t we just say “No”?’ So we certainly need to improve our communications in explaining the broader context of how we operate.

Mr HAASE—I agree. Thank you.

CHAIR—Just on that point, so that we have covered it, can you tell the committee briefly how Australia’s level of protection is set? I know it is low risk, but how do you actually go about it?

Dr Wilson—It is a term called the ‘appropriate level of protection’, which comes out of the SPS agreement. It is a policy set by government in the broadest sense in that the government determines the amount of risk it is willing to take in order to participate in international trade. That risk pertains to pest and disease incursions and the biological and economic impact of those incursions. The government has decided that we will adopt a very conservative approach to quarantine risk. In other words, we will set our level of quarantine protection in such a way that we will make every effort, but not adopt a zero risk approach, to keep out pests and

diseases. That is a government policy. In this case Biosecurity Australia sets quarantine policy and it is implemented by AQIS.

Mr ADAMS—Do you have a copy of that policy?

Dr Wilson—It does not exist in such a form. It is an instruction from government to us as to how we will conduct policy and operational procedures. It exists in no more words than I have explained. To my belief it has not varied in recent times. We have always had a very conservative approach to quarantine risks.

Mr ADAMS—You are telling me that from a ministerial level to your department there is an unwritten level that you pick up and implement but it is not written down? Is that how we are operating?

Dr Wilson—It is not written down in that form. It is, however, constantly written down in briefings we give the minister, which the minister then agrees with, in the approaches we take to various issues that the minister agrees with, in responses we get from the minister on other issues.

Mr ADAMS—Would you not find it pretty hard in the matter that my colleague from Kalgoorlie took up? It is a bit hard to go out to the general public and to the Australian people and say, 'This is how we are operating. There is a secret little mind thing that goes on between the department and the minister.' Is that what we are saying here?

Dr Wilson—No, we are not. The policies we adopt and the operational procedures and so on are based primarily on precedent. In other words, we have a body of policies and operations in existence which we use as the benchmark. They have been built up over time and they are produced in general agreement with government, stakeholders and so on. We have not deviated from that approach to quarantine. There is no secret document. All other countries follow the same path. They follow the precedent that has been set, although of course there could be an instruction from government that you need to change your approach to quarantine. Perhaps a change in government decides that it is in Australia's interest to adopt a more liberal approach to trade. On the other hand, there might be a history of some recent pest or disease incursions which generally make the government and the community think that we are taking too many risks and that we need to become more conservative.

Mr ADAMS—There is not a written policy in that area?

Dr Wilson—The policy is the entirety of quarantine policy and operations. There is no specific one or two line statement.

Mr ADAMS—So appropriate risk is not written down. We cannot explain that to anyone?

Dr Wilson—Except in the body of policies and procedures.

Mr ADAMS—But we cannot explain that to anyone in the general public other than what you are telling me now?

Dr Wilson—No.

CHAIR—How would you know whether risk is low or minimal or a bit higher than low?

Dr Wilson—That is a scientific judgment. You take that on a case by case basis. If you are conducting a risk analysis, you first of all assemble the list of pests and diseases that might associated with that commodity. Then you assess the risks posed by them. If those risks are greater than what is considered to be appropriate for Australia then you look at putting measures in place to mitigate those risks.

Mr ADAMS—But who makes the decision about what is ‘appropriate for Australia’? The general public wants to know who makes that assessment. You are saying a scientist makes that assessment. Somebody makes that assessment.

Dr Wilson—That is right. It is an assessment based mainly on precedent. How did we approach similar pests or diseases in the past, similar commodities, similar countries and so on? That worked; therefore we will adopt a similar approach this time. That, of course, is in an environment where there are new pests and diseases occurring. We are looking now at access requests for commodities which we have not looked at before and there are new diagnostic techniques and treatments available that maybe were not available in the past.

Mr ADAMS—Can you explain to me how the WTO’s SPS committees work? There are committees that look at these issues at the WTO. How do they work?

Dr Wilson—The SPS committee is the one that is relevant to this issue. The SPS agreement lays out some rights and obligations in this area. The first one we have to take into account is that each country has the right to set its own level of quarantine protection. There is no obligation to have that set at any particular level. However, if you have set your level, and any country operating a quarantine regime has done that, then you are obligated to be consistent in that regard. In other words, you cannot adopt different levels of protection according to what you might gain in reciprocal trade, or something like that.

Mr ADAMS—You cannot let polluted pilchards in to feed tuna in South Australia and then keep out Canadian salmon. Would that be an example?

Dr Wilson—To some extent. You should not just compare the actual measures. You should look at the levels of protection applied. But where they are so far apart, it is a little more simple. As well as that we must have a science basis for our quarantine policies and so on.

Senator LUDWIG—I might adopt a slightly different approach. There is a series of questions I might give you which you might want to take on notice, given our time constraints.

Dr Gebbie—Certainly.

Senator LUDWIG—In answer to a question from Mr Wilkie you talked about compensation or retaliation in respect of the US lamb decision. I would like an update of where we are with the US lamb. You have an update in the annexure. I suspect that is now slightly out of date.

Dr Gebbie—Yes, it would be.

Senator LUDWIG—You could then follow up as to where we are now. You also mentioned, effectively, a three-year period but with a further extension of eight, which was part of the driver for pursuing the issue. However, one of the questions is: in the event of a person being successful, does the clock start from the first year or does it start from the date of the decision for compensation to accrue after the date of the decision or the final appeal mechanism has run its course? When does the clock start for compensation, or do you go back the whole three years? Otherwise you could see that you could implement three-year strategies to assist domestic agriculture, knowing full well that by the time the decision is run through you have successfully achieved what you set out to do. You might want to expand on exactly those issues themselves. How are you dealing with strategies that other countries might adopt within the WTO framework to resist what would otherwise be removing barriers to trade? I think you understand where I am coming from there.

Please bear with me. I have a few questions. If you feel that you need to answer perhaps you can at the end but, given our time constraints, I might reel them off and you might want to give them a more considered response. On page 5 you talk about a level playing field. What I was curious about was whether you mean a level playing field or do you really want to allow comparative advantage to work fairly by the removal of effective barriers to trade? You keep saying ‘level playing field’, but do you mean in the context of comparative advantage because it would not work if everyone was level. There would be no reason to trade, I suspect. It might be just the way you are expressing that issue. On the top of page 9 of your submission you say:

And functioning of the WTO is now more open to the scrutiny of all members.

From what date do you say that it is now more open? Do you say that it is since the adoption of the WTO—some specific date—and what brings you to the conclusion that it is now more open to the scrutiny of all members of government? Did something happen? On the same page, in the next paragraph you then say:

With the large ongoing WTO agenda it is not practical for other groups—

Is it your assessment that it is not ‘practical’ or has something drawn you to that word in the sense that you have come to the conclusion that it is not practical for other groups outside the government to be involved in the WTO? You refer later to amicus curiae briefs. It strikes me as being a bit discordant that you talk about amicus curiae briefs but in an earlier remark you say that it is not practical whereas amicus curiae briefs are a practical way of allowing other parties to have an input into the WTO if the WTO was so minded.

On page 11 you talk about the Exporting for the Future initiative for secondary schools. Could you make available to the committee that package or some of the information that you put out. What I was particularly curious about was how you were actually selling what you do and the range of material that you then use to inform farmers and the like. That is what I think that paragraph is all about—explaining how you go about doing it. One of the issues that has been raised here today which does concern me is that it is a two-way street with both you pursuing strategies through the WTO and, also, advising the domestic market about what you are doing and how you are doing it.

On page 13, paragraph 57, you talk about the Tasmanian issue. Perhaps you might like to give an update of where we are with that or whether that has shifted. In the last sentence in paragraph 58 you say:

The case raised practical problems of how to manage quarantine policy in a federal system.

You might like to explain to the committee how you are going to address that matter or whether you have turned your mind to addressing that particular issue that has now come to light because, of course, it might continue to be an issue that is raised not only in Tasmania but, also, in other states. I would like to know how you are then going to deal with it.

At the top of page 13, paragraph 54 there is an area on trade arrangements where you say that they are 'not consistent with the WTO obligations or where countries are not playing by the rules'. I was looking at how you were proactively dealing with finding these areas on behalf of the domestic market because in the last sentence you say:

There is no question that the existing rules apply to all members and can be, and generally are, effectively enforced.

What are you doing about it?

On page 55, paragraph 61, you refer to the Trade Law Branch. I was curious as to what involvement you have with the Trade Law Branch: whether you have set up a dialogue with them or whether you have referred any matters to them recently. How are you going to utilise the Trade Law Branch effectively on behalf of Australia or the domestic producers?

Mr ADAMS—Mr Roberts, can the committee have the latest information or the papers that ABARE has written in relation to the improved trade from an Australian perspective?

Mr Roberts—Those numbers are published in our agricultural commodities journal which we bring out every quarter. There will be one out in the third week of June.

Mr ADAMS—Are they on the Net or do you still charge for them?

Mr Roberts—We still charge for them.

Mr ADAMS—Dr Wilson, has the handbook been upgraded? Could the committee get a copy of the handbook?

Dr Wilson—The original handbook was produced in 1998. The revised version will be out in the second half of this year. Would you like a copy of the original or would you like to wait?

Mr ADAMS—I think we will wait if you are at the printers.

Senator COONEY—When you are answering the questions on notice from Senator Ludwig you might keep in mind the impression you gave in answering Mr Adams—I am sure it is wrong and it may be, admittedly, that I accepted it in the wrong way—that the whole thing is very ad hoc, that you almost stroll down to the wharf and find a cow there with foot-and-mouth disease, look around and get out your precedent book and say, 'Oh yes, what we have done with

this before?' It has just left the impression that there are no objective standards that people in the community can look at and say, 'Yes, this is how things are going to be done.' There seems to be nothing written; it all seems to be very much a matter of judgment made there and then on the spot. You might want to correct that when you are giving the answers to Senator Ludwig.

Dr Wilson—I could correct it now. I would have thought that if we are relying so heavily on precedent and established policies, procedures and judgments which have been made in the past, it goes to the opposite direction of ad hoc.

Senator COONEY—No, what you said to Mr Adams is that there is no way that the public can get a look at all this in some sort of document.

Dr Wilson—The public sees as the entire quarantine documents, there are hundreds of them—

Senator COONEY—Perhaps do that when you are giving your answers on notice.

Dr Wilson—Okay, thank you.

CHAIR—You could perhaps just look at *Hansard* and just see if there is something you want to embellish. Thank you, gentlemen. We have gone a little bit over time. I think you have got some questions on notice. I thank you, Dr Gebbie, Mr Pyne, Dr Wilson and Mr Roberts, for sharing your time with us this morning.

[11.32 a.m.]

GOSPER, Mr Bruce, First Assistant Secretary, Trade Negotiations Division, Department of Foreign Affairs and Trade

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

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

CHAIR—Welcome, Mr Spencer, Mr Gosper and Mr Jennings. Thank you very much for your participation throughout this inquiry. Mr Spencer or Mr Gosper, would you like to head off with any kind of summary statement?

Mr Spencer—Chair, let me simply say that this is the fourth opportunity that we have had as a department to come and talk to the committee. We very much welcome those opportunities. We have also provided some extra written material which supplements our submission. As far as our department is concerned and as far as the government is concerned, the number one trade priority is to get a new round of multilateral trade negotiations launched at the next ministerial meeting of the WTO, which is to be held in November. A new round at this stage is by no means assured—views are still very divergent—but we are hopeful that in the next few months we can reach a position where there is a consensus amongst the 140-odd members of the WTO to launch a new round of negotiations.

We are undertaking a very extensive consultation process by inviting all people in Australia to make submissions to us. We are ourselves undertaking a very extensive process of consultations in the states with interested parties in an effort to develop a position for that ministerial meeting. We very much understand the need for widespread consultative arrangements. It was in that context that Mr Vaile announced last week the establishment of a new WTO advisory group.

Mr Jennings—The department is pleased to appear before the committee again in relation to this inquiry. We appeared earlier in March with the round table with the various other groups. We are at the disposal of the committee today to answer any further questions that you might have in relation to issues of particular relevance to the Attorney-General's Department.

Senator COONEY—The Australian Government Solicitor gives a lot of assistance in the World Trade Organisation area—is that correct? The reason I ask that is because that is what it says in these notes from the Attorney-General's Department. Paragraph 15 states that:

There is a substantial existing capacity within the Attorney-General's Department, the Department of Foreign Affairs and Trade and the Australian Government Solicitor (which is a separate statutory authority within the Attorney-General's portfolio, operating as a government business enterprise) to undertake WTO advocacy.

Mr Jennings—That statement relates to the handling of work in this international arbitration and international litigation area and the operation of the legal services direction which ties that work. The agencies or departments involved are DFAT, AGs and AGS. I am not from AGS, so I

am not sure what sort of other involvement or what level of involvement they have, but certainly that does flow from legal services. Apart from WTO, I recall, for example, that Henry Burmester, who is Chief General Counsel in AGS, was involved with the southern bluefin tuna dispute litigation. They do have that capacity.

Senator COONEY—The other one you mentioned was deputy general counsel Robert Orr QC.

Mr Jennings—I think they may have mentioned that in connection with his appearing before a committee in Geneva, but I am not sure on that.

Senator COONEY—The only reason I point that out is because all that is set out in the submission from Attorney-General's. The point was then going to go on to make was that, as the Attorney-General says, that is a separate statutory authority. If you had Mr Henry Burmester—I am not suggesting for one minute he or Mr Robert Orr would—go into some other firm, would there be any temptation for the Department of Foreign Affairs and Trade to follow them?

Mr Spencer—The Attorney-General's Department and DFAT consult quite closely on matters affecting the WTO. I think what you are getting at is in the dispute settlement area. The Department of Foreign Affairs and Trade have not drawn, as far as I am aware, on the AGS in terms of supporting us in disputes that we have handled in the WTO but Attorney-General's, as the department, has. Mark Jennings was involved with Mr Gosper in the appearance before the appellate body on the recent lamb case. We have not yet drawn on AGS for specific advice in relation to any WTO dispute that I am aware of.

Senator COONEY—In the Attorney-General's submission, clause 15, it is under the heading 'Australia's capacity to undertake World Trade Organisation advocacy'. In that context it said that the Australian Government Solicitor has the capacity, I suppose, to undertake World Trade Organisation advocacy. I drew from that that there may be some contemplation of that happening—but it has not happened?

Mr Jennings—I think Mr Spencer explained DFAT has not drawn, and DFAT as a lead agency would be in the controlling position.

Senator COONEY—I wonder why the Attorney-General has put that in?

Mr Jennings—I think we used the word 'capacity' in the sense that there is a capacity there. Whether it is used or not is another question. It was also in the context of this broader legal services direction, as I said, where you have a tying of this work generally in this area to the three agencies and some involvement on other issues, such as Henry Burmester and southern bluefin tuna. It is a capacity that is there. It is a question of utilisation and so on.

Senator COONEY—The World Trade Organisation is a rules based organisation, as you say. There is nothing in those rules that would prohibit the use of the Australian Government Solicitor, even at the point of where advocacy has been undertaken?

Mr Spencer—When we appear before the dispute settlement system, it is up to the Australian government to decide who will be on its delegation to appear before a panel or an appellate body and therefore there is nothing in the rules that would preclude us from having someone from the Attorney-General's Department or the AGS.

Senator COONEY—Or from an outside—

Mr Spencer—Or from an outside person as well.

Senator COONEY—And if DFAT thought that was appropriate they would do it?

Mr Spencer—Yes.

Mr ADAMS—Other countries use private solicitors and law firms?

Mr Spencer—Other countries do avail themselves of non-governmental, private sector legal advice in preparing for cases, and they are able to appear if they are delegated as part of the delegation for that country.

Mr ADAMS—And those countries are building up a lot of expertise and skills in those areas, with law firms being able to offer different industries a great deal of expertise in how to put a case before a disputes panel of the WTO?

Mr Spencer—The number of countries whose private legal services or private legal firms have an ability in this area would be few and far between. The United States, Canada and a couple of countries in Europe would be the only major countries whose legal firms are absolutely au fait with what is going on.

Mr ADAMS—They are the biggest blocks of trading in the world though so that even gives them more influence over a wee little country like Australia, wouldn't you say?

Mr Spencer—It is interesting, though, that when the United States appear they do not appear as having someone from outside represent them. They do not even have their private lawyers where the private lawyers would have been hired by the firms who then make representations to government. The Americans do not turn up with private lawyers sitting at the desk. Their representative is the United States special trade representative. Similarly, in Europe it is the same.

Mr ADAMS—But the brief has been done by outside expertise?

Mr Spencer—No, not necessarily. The brief will be done by USTR. If there was a case—take the lamb case as a hypothetical case, where the lamb industry wanted to go out and get some representations to put before the government—yes, that would be available to the United States special trade representative but the brief for the appearance at the appellate body or the panel will be prepared by USTR, not the private sector firm.

Mr ADAMS—How many Australians have been appointed to the panels?

Mr Spencer—Each country is invited to submit to the WTO secretariat a list of people whom they are prepared to offer as willing to serve on panels, et cetera. I think the last list I saw had maybe 20-odd people that we have notified to the secretariat as willing to do that. The number of Australians who have actually served on panels I think would range probably now close to a dozen, but I remain to be corrected.

Mr ADAMS—Could we get a list of those?

Senator COONEY—I understand the panel but I just want to get some idea of how Australia is presenting its cases. I think the committee asked: what has been the current level of industry business access to the dispute investigation and enforcement mechanism and went on to indicate that it would appreciate receiving statistics in the case study example. I think the department said that there has not been a case where that issue has arisen—is that correct?

Mr Spencer—That is correct.

Senator COONEY—That certainly gives the impression that there is not much linkage between, say, industry and the department, and the impression given—and I am sure it is wrong, and I would like you to relieve me of the impression if it is—is that somehow we have here an organisation of governments but the mechanisms of government are removed from, if you like, everyday industry where world trade after all is going to impact. What you have got appears to be—I know it is not—a very esoteric system trying to help free-up world trade but in a way that somehow leaves in the shadows the very industries and the suppliers of goods and services that it should be helping. This is why—and you are probably reading the stuff—you have seen me on this issue that perhaps private solicitors would be useful because they are nearer to the way things are done. When you read that there has never been an occasion to resort to the disputes investigation and enforcement mechanism by industry and business that would confirm that impression.

Mr Spencer—Any impression that there is not the closest of consultation between the government and industry in relation to issues that come up in the dispute settlement process is completely misleading. We have been involved now in about 30 formal disputes in the WTO of which we have been a complainant in five cases. In each of those five cases we have had very close consultation with industry. In the most recent case with lamb there has been the closest of intensive consultations with industry. In responding to the question that you posed about what has been the level of industry business access to the dispute investigation and enforcement mechanism, that mechanism was established about 18 months ago now as a signal to industry, to exporters and to the private legal fraternity that if they have a problem they could bring it to us.

The industries like the lamb industry, or the beef industry, or the dairy industry, or the sugar industry, or whatever, know very well that their very intensive exporting industries know the system perhaps better than many other industries in Australia, and that mechanism was established really to put up a signboard out there that we are inviting industry to come and present us with complaints. It is rather surprising, I think—we were surprised—that there has not been one. But that is not to say that the sugar industry or the canned fruit industry or the coal industry or the beef industry are not coming to talk to us. In all those 30 disputes there has been very close consultation with industry.

Senator COONEY—When you say ‘with the industry’, do you mean with the peak bodies of the industry or with the general population in that industry?

Mr Spencer—With peak bodies, producer associations, semi-government statutory authorities, individual companies—the whole gamut.

Mr ADAMS—That is different from the evidence that we have received from industries.

Mr Spencer—In what sense?

Mr ADAMS—They say that they have not been consulted, that they are finding it difficult to understand the rules. All of a sudden their industry is caught up in a WTO situation and they do not have the expertise. That is why we have had representation to us, as a committee, that they need to have legal representation to be able to formulate their arguments and get them into a position where they can make sure that their industry and their particular company have some influence or input into the effects that these decisions are going to have on them.

Mr Spencer—I am sure that there is a degree of ignorance amongst many Australian companies as to what the rules are in the WTO and I would not discount that for a moment. But the fact that there is no basis on which they can find out what the rules are to come and talk to us or that they need some intermediary to come and talk to the government seems very strange to us. I can well understand an industry—and we meet with them quite regularly, I will go through a couple in a minute—might think that they might have a problem. Whether it is your honey people or Tasmanian fish roe exporters or a coal company worried about something in America, they will come and talk to us and we will sit down with them to see if there is a case that we can make in the WTO. That is what the whole dispute settlement mechanism was designed to do: to put up a flag that we are open for taking disputes. But there have been none. I am surprised that you say companies or state governments feel that there is no-one to come to talk to about this issue.

Mr ADAMS—Yes, that is the evidence we have had.

Senator COONEY—I will just signal—but because we are short of time I will not go into it—attachment B5, ‘Identification of errors of fact in submissions to the JSCOT inquiry’. I was going to go through some of those because I am not sure that what you say is quite the situation. I will give you the first example of what you say is wrong. You say that a submission by Institute for Comparative and International Law, University of Melbourne was wrong when it said:

It [the Appellate Body] held that the EC was not entitled to regulate the use of growth hormones as its decision to do so was not based on sufficient scientific evidence.

You say that that is a wrong statement and yet your answer would seem to bear out what the University of Melbourne was saying.

Mrs DE-ANNE KELLY—The submission 222.1 following page 79 from DFAT: the qualitative analysis of trading partners, ‘Australia’s trade with the WTO members, new WTO accessions and nonmembers’. I am interested that when you look at the total trade figures they

look quite encouraging but when you, in fact, look at exports versus imports I notice that for the WTO members we have gone from \$75 billion in exports to \$81 billion in exports which is an increase \$6 billion in exports. Over the same period of time however for imports we have gone from \$80 billion to \$95 billion, so imports have increased by \$15 billion. During the three-year period it would appear from those figures that with WTO members we have exported only an additional \$6 billion but we have imported \$15 billion—and if I misunderstand the figures, please correct me. Overall, including China, Taiwan, the Russian Federation and the rest of the world our exports have increased by \$10 billion—if I read the figures correctly, from \$87 billion to \$97 billion—however our imports have increased from \$90 billion to \$110 billion, which is by \$20 billion. From that I read that although we are increasing our exports, our imports, in fact, are increasing at twice the rate—is that a correct way to read those figures?

Mr Spencer—I think I picked up the drift of what you were saying. I did not have the figures until just two seconds ago that they were absolutely spot on. Let me presume that they are.

Mrs DE-ANNE KELLY—I will run through them again now that you have got them open. WTO members: exports 1997-98 are \$75 billion, 1999-2000 \$81 billion—or is it \$81 million, it is not quite clear. Nonetheless the relativity remains. Imports from \$80 billion to \$95 billion. Imports are increasing at the rate of \$15 billion and exports at \$6 billion. Overall, looking at the same time frame, total for all countries, we have gone from \$87 billion to \$97 billion which is \$10 billion, and from \$90 billion to \$110 billion which is \$20 billion. Imports are increasing at twice the rate that we are increasing our exports. Is that a fair conclusion to draw from those figures?

Mr Spencer—From WTO members, it does appear so.

Mrs DE-ANNE KELLY—You say it is up to government and members to sell the benefits of the World Trade Organisation. Would it not be fair for a constituent to say, ‘We are going backwards. We are importing more than we are exporting. We are losing. We are peddling backwards.’

Mr Spencer—The substance of our position in the World Trade Organisation is that we have a two-tier set of rules. We have a set of rules that look after industrial products and services, and they are comparatively open and fair. We have a group of products called agriculture where the rules are different from those on industrials and services. We have always regarded the rules on agriculture as the poor cousins. That just so happens to be an area where we have a large comparative advantage internationally. What we are trying to do in the WTO is to bring a set of rules so that they are comparable to industrials and services and by that I think we will see a difference in the statistics that you have referred to.

Mrs DE-ANNE KELLY—When will that happen?

Mr Spencer—We are hoping to launch a new round of negotiations in November. We very much hope that the substance of those negotiations will have as an objective to bring the rules on agriculture to be comparable to those on industrials and services. It is by that action that we are hoping to make better inroads and returns for Australia’s agricultural exporters.

Mrs DE-ANNE KELLY—However once the man who sold Revlon cosmetics was asked what he sold and he said he sold hope. I hope that is not what DFAT is selling. We are a bit above a cosmetics empire. This was brought in in 1994. We constantly get questions from our constituents about the matter. They say, ‘When are we going to see a benefit for us?’ They see imports coming in and hope to gain access to export markets. I do notice a list of some of those put in here and that is very helpful for our exporters, thank you. Overall, any reasonable analysis of the figures would say that we are peddling backwards. Imports are coming in at twice the rate that we are increasing our exports over that period of time. At what stage do we say that this policy is not succeeding. How much time do we give it?

Mr Spencer—One industry with which you are very familiar, I understand, is the sugar industry. Do we say to the sugar industry, ‘We’re going to pack up trying to work to open up markets for your industry,’ or ‘We’re going to give up trying to get better rules for the game in your industry,’ or ‘We’re going to give up trying to reduce the destabilising impact of American and European subsidies’? That is what is implied by saying, ‘Let’s withdraw from the WTO,’ or ‘Let’s change the emphasis of our approach to the WTO,’ where the design is to increase barriers rather than open up new markets. That is what we are confronted with, in that most Australian agricultural industries—not all, but most—are predominantly dependent on exports. We are hoping that, through our actions through the WTO—because there is no other avenue, apart from perhaps bilateral actions and regional organisations like APEC—those conditions of international trade will be improved, and the WTO provides us with the best vehicle to try and do that.

But to get specifically to your point as to how long do we give it, we do not know what a new round of negotiations, if we can launch them, will hold out. We are very much determined, very single-mindedly determined, that these negotiations must redress the imbalances that currently exist in agriculture.

Mrs DE-ANNE KELLY—You mention the sugar industry. Last year my farmers got about US5.6c a pound, as you would know, farmers in Europe got US23c a pound and farmers in the US got US19c a pound. Times are pretty tough in the north, frankly. It has improved a little this year, we trust, but certainly they are not going to be on the right side of the ledger. When the largest sugar producer in the United States gets a subsidy every year of \$30 million from its government, it is very difficult to say to my farmers that they should continue to wait and just hang on. The subsidies, in fact, drive the world price down. As to our having to wait another seven years—and you I know you say, ‘Well, we’ve got another round and we’ve got another round—the truth is that people are not making money now. I know you say, ‘Well, what’s the alternative?’ But they say, ‘We’re not making any progress.’ In fact, the figures, as we see, show that we are not making progress.

Mr Spencer—But we have no rabbit to pull out of the hat to overnight rebalance the international conditions of the sugar trade, which—I would agree with you—are amongst the worst examples of industries which have been cruelly hurt by protectionism in the United States and Europe. We are endeavouring—and it is the sugar industry amongst others that is driving us—to push for a launch of a new round, because the best chance of redressing that situation is probably going to come in a new round. We are also talking about the possibility of an FTA with the United States. But another example is recently, with the China accession agreement, where we got a new guaranteed quota of 1.7 million tonnes of sugar. It is only through constant effort

and constant work that we are going to do that because, if we sit back and simply say, 'Let's devote all our attention and all our energy to giving domestic support to the industry,' it will not help the 70 per cent or 80 per cent of our exports that we put into the international market.

CHAIR—Just following on there—and I will let Mrs Kelly continue in a moment—we have talked about where the opportunities might lie to perhaps be able to do a bit more about agriculture; obviously our main hopes are in getting a decent negotiating agenda and in all of the other bilateral pressures. To what extent, if at all, can the dispute settlement system be readily used to perhaps take on some of the arguments about sugar?

Mr Spencer—This is a classic case that I mentioned to Senator Cooney, where we have worked very extensively with the sugar industry to determine whether we do launch a case in the WTO. I will not say against whom, but the reality is that the industry concluded that it did not wish to present a case. Of course, the government can go off and ignore the industry to launch a dispute, but that is a very important criterion that we will look at in any decision to do it. Because of the circumstances of the Australian sugar industry being an industry that speaks as an industry, as opposed to one or two companies that might have different views—

CHAIR—It is fairly cohesive, I suppose.

Mr Spencer—the industry has determined that, at this stage, they would prefer us not to enter into a dispute. We and the industry both funded some research in the market that we are looking for and this is a classic example of where the industry and government work together to determine whether there would be a basis for a case. But we have determined—partly for tactics related to a new round—that we will not launch a case at this stage.

Mrs DE-ANNE KELLY—I have a question.

CHAIR—Just finish your answer, Mr Spencer.

Mr Spencer—There is a standing invitation—and that is what the DIEM is there for—for companies to come to government to say, 'We think we have a case where the rules of the WTO are being applied unfairly.' That is what we are talking about. When I was in the audience, you mentioned the case of honey and the tariff that is in Korea, I think the market was. Sure, you cannot deal with that in a dispute unless there is an infringement of the rules. If it is simply a high tariff, the only way we are going to get at that is through bilateral negotiations or through multilateral negotiations with the Koreans.

CHAIR—Thank you. Mrs Kelly, you may finish your line of questioning.

Mrs DE-ANNE KELLY—Thank you, Madam Chair. I will be very brief. So we are going to hope on the next round. I notice, though, that AFFA—and it is a pity they got away before I could put some questions to them—in their submission mention the high levels of domestic support in other countries. They quote the US with its \$20 billion of domestic support, which is 'green box', some of it, but anyway, it is all WTO consistent.

You came to us once before, Mr Spencer, and very kindly gave us an overview of how the bound tariffs work and the fact that many of our industries have tariff levels well under the

bound tariff. Why is it then that we do not at least exploit the opportunities under WTO arrangements that we have? A classic one, of course, is the sugar industry, which had a tariff, completely WTO consistent, and yet it was the department of agriculture which pushed, as did others, to remove that. Surely, if we are going to hope and wait seven years to get an outcome on the trade side through the WTO, we can at least exploit to the full those entitlements that we have under it. Would you not agree?

Mr Spencer—The government has formed the view and has decided that there are two options. We can either live up to the maximum that we can get away with internationally, and that is what the Europeans and the Americans do, to a certain extent—and I will clarify that in a second—or we can decide, as we have done here in Australia, that it is in our national interests not to have a high tariff or a tariff which is at our bound level, and not to go to the maximum of our domestic support obligations, and not to go to the maximum of our export subsidy disciplines, because the feeling is that it is in Australia's national interest that we lower the conditions of access. In America, for example—and you spoke about AFFA's submission which talks about American domestic support limitations—they have every right under the WTO, under the results of previous negotiations, to have very substantive export subsidies in wheat and they have refrained from doing that in the last few years.

The American industry asked the American government the same issue, 'Why haven't you used our subsidy entitlements to the full?' The Americans have decided that they do not want to use that because they feel that it is money better spent elsewhere. I believe that it is the same for the Australian government. We have decided that we can live better in Australia by having tariffs which are lower than the rates that we have bound in the WTO.

Mr WILKIE—At the moment the sugar industry are losing a lot of money and might not be able to survive the seven years until we get to further negotiations with another round. Is the government saying that if they are not competitive then they should go out of business? They obviously cannot compete at the moment.

Mr Spencer—The government is not saying that at all. Just let me clarify one point. We are hopeful that this next round of negotiations is not going to take the seven years. We would very much hope that it will take three years, and I believe that that is a view of most participants. The government is not saying that if you cannot survive at 5½ cents a pound you should get out of the industry. There have been some industry assistance measures that have tried to help some farmers. It is just a decision of government that this is the appropriate level of support that they should have and the money that they could spend on this has to be balanced with what they can spend elsewhere.

Mr WILKIE—But that has happened with a lot of other industries, hasn't it? They have not been able to compete, they have lost their tariffs, they have gone broke and closed down and we move on to other areas where we can compete. Why wouldn't the same apply here? I am not advocating that, but why would this be a different case?

Mr Spencer—Why would the sugar industry not be in this case? We in the Department of Foreign Affairs and Trade do not get very heavily into industry support measures. We are involved very much in the trade negotiations but not terribly involved in domestic support arrangements. I would have to go back and refresh my memory on why the government took

that decision on sugar some years ago. I was not here at the time and I would rather reserve on that.

Mrs DE-ANNE KELLY—So what you are saying is that there is a benefit for the wheat industry because the United States have chosen not to exploit fully their entitlements under the WTO for wheat. We chose not to exploit ours fully for sugar. Are you saying then that there is a decision made that the wheat industry in Australia is more worthy than the sugar industry?

Mr Spencer—No, I do not think that at all.

Mrs DE-ANNE KELLY—What you are saying is that the Americans decided not to fully subsidise their wheat industry, which obviously would have been detrimental to our wheat exports—that is what you are implying, Mr Spencer. I said, ‘Why are we not exploiting fully our entitlements for sugar and other industries under the WTO?’ You said, ‘America has not exploited its entitlements for wheat under the WTO.’ Is there a trade-off there? Do we decide that one Australian industry needs a bit of a hand so we will trade off another one in Australia?

Mr Spencer—The reason I used that example was to address the issue that we are not the only country in the world that has applied rates of industry assistance which are below what they would be entitled to do under the WTO. It was simply that.

Mrs DE-ANNE KELLY—So there is no trade-off?

Mr Spencer—There was not a question of a trade-off. I was not implying that.

Mrs DE-ANNE KELLY—So if there is no trade-off what you are saying is that it is just a policy decision. We could easily choose and be completely compliant with the WTO if we exploited, for instance, income support assistance packages, and so on—which AFFA mentions in their submission to us—under the WTO. These things are completely consistent with the WTO: direct payments to producers, income support measures, structural adjustment packages and regional assistance programs. So we could do that without in any way contravening our obligations under the WTO.

Mr Spencer—There is certainly scope for us to increase our domestic support perhaps even on export subsidies beyond what we are doing now, yes. It is a policy decision that we do not.

Mr ADAMS—The sugar industry in Australia must have a natural advantage in having such a low price. Why is that not taken up in the manufacturing process and what sugar ends up in to give Australia an advantage in that area? Is that because some of the processing is tied up with companies that may have capital in other countries as well and therefore you start to get a distortion going on in that area? Why doesn't the natural advantage of 5c a pound turn itself into a plus for Australia?

Mr Spencer—The classic example is the United States. The United States has a tariff quota on sugar. We are given a quota of the princely sum of about 100,000 tonnes. If you talk to an American sugar confectionery producer—Mars, Hershey or the food companies—they are all on our side and have been working actively with us in the context of farm bill legislation and Uruguay Round legislation to try and get rid of that terribly distortive US policy on sugar. With

all their clout they have not been successful. They are very large employers, producers and exporters. They have not been able to crack the nut either.

Mr ADAMS—Why don't they bring their manufacturing into Australia, manufacture their stuff here and then send it back into the States? Why don't they check out the economics of that? That will put some pressure back on them. That is the real pressure. That is the real market. We do not seem to get those things to operate.

Mr Spencer—I am sure they have, and it is then the question of the tariff escalation. As the level of processing of the food goes up, the higher the tariff. I think the Americans are producing certain confectionery products offshore. Mars in Australia have a successful operation. It mostly goes to Asia rather than back to America but I am not quite sure whether it is simply an internal corporate decision not to send it back to the United States or whether the 12, 13, 14 or 15 per cent tariff might be the reason why they are non-competitive.

Mrs DE-ANNE KELLY—Perhaps I could help, Mr Spencer. I am not sure about the United States but, as you know, in Europe, with any manufactured products that contain sugarbeet, the exporter is rebated the amount of the subsidy paid in Europe to the producer, so in fact there is no advantage. It does not help us. The exporters still benefit and we are still left back at the starting blocks.

Mr ADAMS—That is an absolutely dreadful problem.

Senator COONEY—Trying to get an idea as to what is going with the World Trade Organisation is very difficult; it sort of squeezes out in all directions. The idea was presented to us that it would be a rural based organisation to help the economic health of the world, and we would come along and argue different points. We say, 'All right, the environment we can understand—that is not on; labour relations—that is not on; the situation of the sugar industry—well, that is it.' At one level we keep arguing on an economic basis but it sounds to me as if the real strength in the World Trade Organisation is the political one. Would that be correct? Here we are as a small nation trying to struggle to get the economy going, and we argue in terms of the economy and say, 'Look, if you reduce the barriers to trade the world will be richer and Australia will get so many billions.' That is an economic argument. It seems to me that there is a political argument put in by the strong and the powerful. What is being asked of you—and it certainly came out from what Mrs Kelly was saying—is whether the political ramifications will always overcome the economic ones.

Mr Spencer—Undoubtedly politics weighs very heavily in the whole determination of international trade policy.

Senator COONEY—When we say it is a rules based organisation, the idea of a rules based organisation is that we have now a set of laws that people will accede to. Politically they are going to be interfered with, say by the United States who would simply say, 'If you want to enforce them, you are entitled to restrict trade to the United States, be our guest.' In other words, what strength has Australia got in this system, which is a mixture of legal, economic and political, where the political seems to be the most powerful force?

Mr Spencer—I think the most significant element of the politics that you are talking about is that there are a number of rules. The problem is the rules in the areas that are of greatest importance to us, agriculture, are not very good. The reason is that you have had two powerful economic forces and political forces, the US and the EU, who over the years since 1947 when the GATT, which was the WTO's predecessor, first came into power, have just refused point-blank to accept the sort of rules that we want them to adopt. That is where the politics come in. I do not think the politics come in to say, 'The rules apply to everyone, but me the United States, or me Europe, I am going to flaunt the rules.'

Senator COONEY—I was putting to you the question of that possibility arising. One gets the feeling that the politics of it all is so powerful that the legal aspect may be effectively neutered in certain circumstances, but you are saying that will not happen. Thank you.

Mr ADAMS—In your supplementary submission, you talk about the next range. Moving to the next phase of negotiations on agriculture and services, you are confident that industrial products will be a part of that. Are we going into trading off some manufacturing protection to improve our agricultural position? Is that what we are going to be doing in negotiations? Are we going to start trading off in some areas?

Mr Spencer—No.

Mr ADAMS—We have got this bilateral with America that is going to be talked about with the Prime Minister in September. I worry whether we are going to be importing American cars and we will not have a car industry or that sort of thing. Do you do mean that by what you have here in your supplementary?

Mr Spencer—No, industrial tariffs have always been a cornerstone of every negotiation that has been held in the WTO and its predecessor. There have been about seven or eight rounds over the last 50 years. Industrial products have always been there. One of the gaps in the preparations in the last few years is that there has been a lot of focus on services, agriculture, environment, intellectual property and other things but, for some reason, no-one has been preparing for industrial products. There is no question that a new round will have to include industrial tariffs. Indeed, many of our exporters are saying to us that in some ways getting better access to Asian markets, where there are high relative rates of tariffs now, is more important to them than getting additional access for agricultural products.

Mr ADAMS—Does our car industry say that? Do they want to get into Asia.

Mr Spencer—Yes, very much so. Our car industry has made some great achievements in exports, and there are a number of markets where they want to get the tariffs down. Thailand is a classic case.

Mr ADAMS—How are you going about consulting with the Australian community for the next round of negotiations, if we get the next round up?

CHAIR—Can I just interrupt you there? We are going to run very short of time, so if we could just keep our questions and answers as brief as possible. There is a couple more I just want to get on the record before we finish.

Mr Spencer—In the 2001 trade outcomes and objectives statement in April, Mr Vaile spelt out the vehicles through which we are going to consult with industry. One was the establishment of a WTO advisory council, the second one was a roundtable discussion with non-governmental organisations, third was calls for public submissions and fourth was the process by which we get information out to stakeholders. So they are the four key areas.

Mr ADAMS—Four pillars?

Mr Spencer—Four pillars.

Mr WILKIE—There has been a lot of discussion recently about a regional and bilateral trade agreement with the United States. Would such an agreement be worth a crumpet if we can't get some major concessions from the US regarding agriculture?

Mr Spencer—We would not enter into an agreement if we did not get anything out of it. It is as simple as that.

CHAIR—We have not asked you to compare the stronger trade mechanisms that the United States uses, the 301 process. I realise that it is not necessarily something that you can translate. I would be very interested to have the opinion of the department as to whether there are any stronger legislative mechanisms that may be required. I do not think there are. That is just my personal view. I would be certainly glad to hear from the department on that.

Mr Spencer—I think the reason that it is not always useful to make the comparison is that in the United States trade policy is shared between the administration and the legislature. In Australia we have a different governmental—

CHAIR—And people get very confused.

Mr Spencer—Precisely. I think that people can point to the fact that they have got 301, 201, et cetera. We have a cabinet. The cabinet can take that decision at any time it likes. It is not always the best comparison simply because of the way their government is set up.

CHAIR—That is what I anticipated would be the answer. For the sake of completeness I wanted to hear it from you. The United States and the EU do make very heavy use of the dispute settlement system. Do you want to make any comment about that or is it just a matter of resources and the bullies run the yard, so to speak?

Mr Spencer—We have not done a number to find out if the US and EU have a disproportionate number of complaints compared with their clout in international trade. I suspect that they do not, quite frankly. If you look at the amount of trade that they are responsible for and take the number of disputes relative to that, I think you will find countries like Canada or Brazil, and I would not be surprised if we are quite high up in that. That is my first point. My second point is that when we make disputes there will be a number of criteria as to whether we will ever want to initiate a dispute. The first one will always be our share of world trade. The customary approach in the WTO is, if you have got one per cent of that market and someone else has got 90 per cent of that market, you do not take the initiative. You usually take the initiative when you are the principal supplier. Second, we will always bear in mind our

bilateral relationship. If we have a major trade deficit with someone our propensity to take a dispute with that country will be different than if we had a trade surplus. Thirdly, there is the degree of private sector support. It would be unlikely that the Australian government would initiate a dispute unless we had the support of industry behind us. Fourthly, it will be determined very much on the strength of our claims. We are not going to take a dispute if we are just going through a PR exercise. We would only want to use this system if we genuinely believe that we have a chance of winning. The other point that I would take into account is domestic sensitivity. We have to be conscious that when we attack someone else's programs we do not have programs which are themselves vulnerable.

CHAIR—On that note I think we must bring the hearing to a close. If there is anything that you might want to augment or add, you are very welcome to do so. Thank you very much for your assistance; we have appreciated it very much. It has been a long process and very much a learning process as we have come to grips with it. Thank you very much to the department and to the Attorney's department for your assistance. This concludes the hearings.

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

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

Committee adjourned at 12.29 p.m.