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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, 29 January 2001

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

Senators and members in attendance: Senators Cooney and Ludwig and Mr Adams, Mr Byrne, 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.

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Committee met at 9.13 a.m.

BARKER, Ms Lisa, Special Counsel, International Trade Law, Corrs Chambers Westgarth

CHAIR—I declare the meeting open and welcome witnesses and members of the public or the news media who are present to hear different views about how Australia should interact with the WTO and how the Australian government ought to develop its policies to deal with that. We will have a second hearing in Sydney on 12 February and we will also be taking evidence in Melbourne, Perth and Canberra in the next few months.

Ms Barker, we do not require you to give evidence on oath, but I must formally advise you that these are legal proceedings of federal parliament—it is as though they were taking place in the House or the Senate—so any false or misleading evidence is a very serious matter. But I am sure that we will not trespass into that sort of villainy. If you would like to make an opening statement, we will turn to questions and answers after that.

Ms Barker—Thank you for inviting me to attend today. Corrs Chambers Westgarth is very pleased to participate in this process evaluation of Australia's relationship with the WTO. The terms of reference that we addressed in our submission relate to the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures, Australia's capacity to undertake WTO advocacy and the involvement of external lawyers in conducting disputes. I would like to make the following comments in addition to those that we raised in the submission.

In March last year I joined Corrs with a brief to try to develop an international trade law practice centred on the use of WTO agreements. Corrs had recognised the extensive and effective use of private expertise by industries in many of our trading partners. Corrs sought my participation in building the practice because I have a mixture of private legal practice and public policy employment experience, a master's degree in international law, and extensive government and industry networks here and overseas. I do not have a background in trade negotiation. John Denton, who is a senior partner with Corrs and who leads the international division of the firm, has experience as a former diplomat and trade negotiator, and many years experience in private practice conducting international transactions.

Our approach to our task has been that, in addition to advising clients, we have invested considerable time and resources in preparing documents and presenting materials aimed at raising industry awareness of the tools available to it through the WTO agreements to increase their export performance. Our aim has been to encourage industry to take some initiative in identifying market access difficulties and acting to overcome them. In the last 10 months we have advised horticultural industries in relation to their engagement in the quarantine process, companies seeking to avail themselves of government assistance and wanting assurances as to WTO compliance with those arrangements, companies having difficulties in other jurisdictions as a result of Australia being a non-signatory to the government procurement agreement, companies concerned about issues arising from the anti-dumping agreement and companies wishing to participate in the development of public policy in Australia by submission to inquiries such as this and seeking details of the impact of Australia's commitments under the general agreement on trade in services. We have also been advising state governments on their role in the new system.

In addition, we have provided briefings and other materials. For example, we have put together information on international trade and the financial services sector, the textile industry, the telecommunications industry, the construction industry and the wine industry to name a few. Throughout this period, we have been concerned that our ability to provide advice and develop our practice is limited to a significant extent by the non-availability of much of the documentation relevant to Australia's participation in the WTO.

We have had concerns about the submission and oral evidence given to this committee by the Department of Foreign Affairs and Trade insofar as they outline the department's knowledge of training of international trade laws in this country and the limited role they see private practitioners playing in the conduct of trade matters in the future. I have recently had discussions with the secretary of the department and officers of the department about these issues, and I have been encouraged by their assurances that they are willing to look at the possibility of making more material available on their web site to provide some greater guidance to officers who answer external inquiries as to the extent to which material or information might be made available and the course to take to obtain approval for such release; that the department welcomes the involvement and interest of private practitioners in this field; and, in cases where industry has taken the initiative and employed private practitioners to assist them in the preparation of a case for submission to the WTO, that the department would be prepared to work in partnership with the engaged private practitioner in compilation of the WTO case, noting that the discretion as to how such a case might proceed would remain with the government as Australia would, of course, be the party in the case.

Given that these matters are of central importance in establishing a viable practice in this area, we see the willingness of the department to address issues of concern and to work with the private sector as crucial commitments to our engagement in the process. We remain convinced that it is in the best interests of Australian industry that the resources available to them be expanded and that private sector trade expertise be developed to ensure Australia's effective and competitive use of the WTO system, as has been the experience in other countries such as Canada and the US and in the European Union. That is all I would like to say at this point and I will be happy to answer your questions.

Mr BYRNE—Is yours the only company that specialises in this area at the present time?

Ms Barker—To my knowledge, we are the only firm that is seeking to work exclusively in this area, insofar as our practice group is working exclusively in this area. There are other law firms that have worked in the area and provided some advice in individual matters, but they tend to be lawyers who are specialists in other fields—for instance, litigation—and who might provide a one-off advice. In our case, we have set up a practice group purely designed to develop this expertise.

Mr BYRNE—How many law firms in the United States would be specialising in this area?

Ms Barker—I could not put a number on it, but I could say that there are extensive practices and a large number of them in Washington DC in particular. The system there is of course a different one. Section 301 of the US Trade Act provides a legislatively based role for private practitioners in their system. That is not the system that operates here, and we recognise that.

Nevertheless, we can look to their experience and see that the United States has been a very effective user of the system and that there are some reasons for that.

Mr BYRNE—How many cases would private practitioners have been involved in recently?

Ms Barker—In the United States?

Mr BYRNE—Yes.

Ms Barker—Again, I could not put a figure on that. Their system works like this: if industry have a complaint, they can go to a private practitioner, work up a case, make that case to the United States trade representative and the USTR must investigate it. If they find that there is cause for the complaint, they must proceed and take that forward. There is an inbuilt role for private practitioners, and they are part and parcel of most of the actions that the US industry would be taking in this area. It should also be acknowledged that there is probably a cultural difference insofar as industry is more accustomed to looking to the private sector for assistance in the United States than they are here. They are well known as a litigious society, and so they do tend to think about obtaining legal advice when they have a difficulty in a market in a way that perhaps our industry does not.

Mr BYRNE—In your submission you were talking about being proactive. When you were talking to organisations—I guess the horticultural industry is a defensive as well as an offensive thing—did your firm encourage them to be proactive and to utilise the mechanisms, not so much just for defence but also for what you could categorise as offensive purposes?

Ms Barker—Yes. That is a good example, in fact, in that we have been working with them in a defensive capacity. As part of that, we did some information papers to encourage them to see that they could act in a proactive way with the WTO and that they could be getting a message out to their members that in fact there are positive things about the WTO that could work for them as an industry. They were very interested and excited about that. Going back to the issue that I raised about the level of awareness, the difficulty always is that when you raise the positive aspects of the WTO agreements with industry they are almost invariably interested and excited. But they apparently have not given much thought to that in the past and have not been aware of the fact that they could be using these tools themselves. That was certainly an example.

Mr BYRNE—Would some of the companies that might be contemplating accessing private practitioners be concerned about the potential costs involved in litigation?

Ms Barker—Possibly so. Certainly, if they are going to need to engage private practitioners in order to build a case and then take it to the Department of Foreign Affairs and Trade, that will require them to make some financial commitment. In most of these cases, the reason they are coming to a private practitioner or going to the government is that they have a major difficulty in the area of trade which is costing them a huge amount of money as well. Often the cost involved in the preparation of their case is insignificant compared with the cost that they are encountering in their trade difficulty. That is one side of it. I guess the other is that DFAT have made it very clear—and I think rightly so—that from an access and equity point of view they will never require industry to bring to them a fully compiled case before they are prepared to

investigate it. They are very happy for industry to come to them with a preliminary outline of what their difficulty is. This will then cover the range of corporations, I guess. There are those who are perfectly capable of contributing to the legal costs in putting together a case for themselves, and there are those who would need more assistance.

Mr BYRNE—What would your assessment be, in a general sense, of the capabilities of DFAT in dealing with the whole process of lodging complaints, initiating actions, distributing information to relevant parties and just general awareness raising within industries of the mechanisms that are available to them?

Ms Barker—DFAT have some very experienced and very competent officers. The difficulty is that, since the commencement of the WTO in 1995, we have had almost double the number of members that we had under GATT. We now have 140 markets—in our case, we have 139 other markets that we can look at and scrutinise—and we have many more areas of trade covered by the vastly increased number of agreements. Most particularly, there is the fact that we now cover trade in services and intellectual property as well as trade in goods. That means that for an Australian government department with its resources to be responsible for looking at all of those markets for all of those industries is an almost impossible task. While I understand that they have been endeavouring to increase those resources in recent times, I think it is a reality that private sector expertise will be needed if we are to represent the broad brush of Australian industry in a really effective way.

Mr WILKIE—On page 11 of your submission, you argued for a consultative body to be established between government, industry and private lawyers to develop coordinated international trade law initiatives. Can you give us some further details about how you think that consultative body should work?

Ms Barker—I know that DFAT do currently engage in quite extensive consultations with the states and territories and with industry bodies, that they attempt to engage industry at a grassroots level through their market access facilitation teams and that they have had quite extensive outreach programs during the lead-up, for instance, to Seattle and during the Uruguay Round. What we would like to see is something like what they have done at those crucial times on a more regular, ongoing basis. As in the United States and in Canada, they have quite extensive arrangements for consultation with sectoral committees. That would be an effective sort of thing to put in place in Australia as well. Of course, from our point of view we would like to see private practitioners involved in that so that there is the possibility of information flow between industry and government and the development of expertise in the private sector.

I think the other thing to say is that at present there does seem to be a system whereby to some extent DFAT rely on industries that have an interest coming to them and identifying that interest or DFAT themselves identifying who are the stakeholders in a particular issue. I am not certain that that is always the most effective way of getting information across, and that is why we have been arguing with them for a far more comprehensive coverage of information on their web site so that members of the public and members of the industry who may not be immediately obviously interested in an issue can actually get access to information.

This is probably most easily illustrated in the case of potential retaliation action against Australia. There may have been parties to a particular dispute, but then other industries completely

unrelated to the original dispute may be the focus of potential retaliation. If there were a list like that compiled, I know that DFAT would make every effort to contact those industries. Nevertheless, it is important that somebody from an industry unrelated to, say, the salmon industry who is drawn into a dispute is able to actually go to a place such as the web site and find out some information and contact details, for instance.

Senator LUDWIG—I want to follow up on that. Is it only information such as that that you would be seeking on the web site? More specifically, I notice the Amnesty International submission goes into a little bit more detail about what Amnesty International would prefer on the web site. You may not have read it, but I will go through what they were basically seeking. Their submission says:

> Amnesty International calls for all WTO briefing and research papers to be made available to the public well in advance of WTO meetings, and the Australian government should inform the public of negotiating positions prior to WTO meetings, and of changes in position throughout meetings ...

Is that the type of information that you are seeking, or is it of an entirely different character?

Ms Barker—I think it is perhaps of a slightly different character, although related. We would like to see more in the way of WTO submissions made available. In the United States, virtually all submissions that are made are put on their web site or made available in their reading room. The United States in fact adopts a policy of encouraging other countries to give them permission to provide their submissions also through their web site or in their reading room. We recognise there are sometimes issues of commercial-in-confidence information being included in submissions, but to a very large extent we think there are many submissions that could be made available to the public that are not. That relates not only to individual cases but certainly to the positions that Australia takes at the WTO on particular issues. For instance, at present the WTO is looking into transparency issues itself but the Australian submission on transparency is not available, whereas we can easily get access to submissions made by the United States or the European Union or summaries done by Canada.

Senator LUDWIG—When you talk about more information, are you also referring to community consultations? We understand that they were undertaken by DFAT in 1999 prior to the meeting in Seattle, but you are after not only that. I think the AMWU submission argues that the government should not embark on a marketing strategy about the WTO, but then in your submission you talk about an educative role. What I am basically trying to put to you is that you have a number of bodies seeking more information but they are of different character and composition in the sort of information they are seeking. That is why I want you to be a bit more specific about the type of information. If the question is whether you support an educative process as well—

Ms Barker—Yes, we do.

Senator LUDWIG—You have that as one of your recommendations, but you are arguing for something slightly different in this line.

Ms Barker—Yes, I suspect we are in that we are most interested in some of the working papers, the WTO submissions and bilateral agreements, if not the actual agreement. As an example, the agreement between Australia and China in the lead-up to China's accession to the WTO

is not available. The department maintains that although the United States made theirs available that is not a regular process, but we do believe that it is possible to make available summaries of the details so that industry in Australia can be aware of the ways in which that agreement might affect them, for instance. At the moment, we rely primarily on press releases made by the minister at the time that those agreements are concluded.

We believe that there would be more in the way of bilateral treaties and submissions to the WTO that could be released. The third area that we are interested in is where industries have approached government with concerns and complaints about systems in other countries. Some of those details could be made available. We recognise that Australia may not be willing to go as far as some other countries in terms of actually providing all the details of complaints made but, again, it should be possible to make available generalised summaries so that, for instance, we might know that an industry in Australia is concerned about a particular subsidy in a particular country without identifying anybody any more clearly than that. We are interested in some more technical information. We also support the suggestion that DFAT perhaps extend the role that they already have in their outreach to the community and industry in advising them, informing them and raising their level of awareness about the WTO, its role and the advantages of our engagement in that process.

Senator LUDWIG—So, in effect, you are saying, although you led me away from that in the beginning, that you are seeking the same type of information Amnesty International is seeking. You may differ on the use you wish to put it to but you have effectively gone over the same issues as Amnesty International has, asking, for example, for research papers and briefing documents prior to WTO.

Ms Barker—I do not recall the exact details, other than as you have outlined them for me, that Amnesty asked for. It may well be that I would want to look at exactly what they asked for. It might be that negotiating positions, for instance, would not be something that I would argue for. It might depend on the stage of a process of negotiation as to whether or not it was appropriate that all of those details were made public. I recognise that. I suggest that once negotiations reach a certain point it is appropriate to make at least general details available to the public, and that is the point that I make in relation to bilateral treaties.

Senator LUDWIG—Does the consultative process that you have recommended mean a consultative committee, or is it something a little bit more than a consultative committee? Already we have talked about—perhaps it was in the AMWU's submission—a marketing strategy and an educative process. We then talked about DFAT being a little bit more open about what they have available and putting it on the web site. They can both go to a consultative framework. But then you talk about a consultative body with representatives from industry. What more will they be able to do than those earlier two that I mentioned?

Ms Barker—What we would be interested in is something more perhaps than one consultative body also but more a continuation of the sectoral approach to consultations that tend to take place in the lead-up to the big meetings such as Seattle. I assume something similar will take place if, in fact, the next ministerial meeting of the WTO will take place in December of this year or some time in that vicinity.

I assume that DFAT will again go through a process of widely consulting with industry bodies. In some other countries there are arrangements in place for regular meetings to take place on an ongoing basis so that they do not just emerge before important meetings. That means that—rather than an exchange of information, where DFAT just provides information to an industry body—they are involved in the processes of negotiations with other countries that they may have a particular issue with. That information can flow backwards and forwards, and it can be a truly consultative mechanism. In that sense, if they are sectoral bodies, then it would be a matter of identifying how many sectors you actually had represented in different—

Mr ADAMS—Essentially, people having different policies.

Ms Barker—Yes.

Senator LUDWIG—So it is the Canadian model that you prefer.

Ms Barker—Yes, the Canadian model. The US model is similar. They have regular meetings with different industry bodies. I think they have something like 17 different sectoral advisory bodies.

Senator COONEY—The World Trade Organisation deals with industries, like the lamb industry, and it also deals with enterprises, such as Howe enterprises. Is that right? It is not a body that is confined to dealing with a country's industry as a whole. It is also interested in dealing with particular enterprises within the country, such as with Howe Leather.

Ms Barker—It was the arrangements that the government had in place for Howe Leather that drew attention—they were alleged to be subsidies. In that case, there were two contracts—a loan and a grant—that came under the WTO's scrutiny. But they were part of export facilitation programs that drew the attention in the first place. Insofar as it is a subsidy to a particular enterprise, the WTO may look at the matter, but essentially it is the government's measure that they are concerned with.

Senator COONEY—If Howe had a regular solicitor—say Corrs or whomever—the solicitor might well find it a bit awkward, if Howe came with this problem and you had to just abandon Howe to DFAT. I do not say that to suggest in any way that DFAT could not do a good job. That would be an awkward situation for a solicitor, though, wouldn't it?

Ms Barker—Yes. This is the situation that we were concerned about with DFAT, and that I have recently raised with them: what might happen in the event that industry does take the initiative to look at a problem that they are having. In that case it would be defensive, but in many cases we have been talking about market access issues, where they are trying to deal with a situation in another country. Whether it be defensive or in a more proactive way, if industry actually have a relationship with a private practitioner who has been working with them, and who has assisted them in their case, we are seeking assurances from DFAT that they would be prepared to work in partnership with private practitioners, as other countries do.

That is important—as you rightly raise—from the industry's perspective. If they are prepared to continue to fund their own defence or action in that way—and they have advisers who they have faith in, and who they believe have knowledge of their business and their business prac-

tices—then it is important that they be able to continue to be involved in the case in a very central and constructive way.

Senator COONEY—The knowledge of the business and of the general situation of a firm would be built up over years in that solicitor's firm.

Ms Barker—It could well be, of course. As you know, the relationships between lawyers and their clients can be very long.

Senator COONEY—DFAT would lack that knowledge, and it may well be assisted by working with the private solicitor. Is that the situation?

Ms Barker—Yes, that is what we would hope. They certainly have acknowledged that, in those sorts of circumstances, they can see there could be a role for the private solicitor to continue with them. Because Australia is the party before the WTO, DFAT would not want to relinquish the discretion that they have to make decisions about how a case actually proceeds and whether or not it is going to proceed at the WTO. They are of course centrally involved in a case at that point, but I think they can also see the advantages of a continuing partnership with private practitioners who have a history and a knowledge of any particular case.

Senator COONEY—Can I follow that through with a hypothetical example. Say you had somebody come to you with an intellectual property problem and he or she said that some company in the United States, Europe or wherever was interfering with it. You looked through the papers and saw that what was being done might be in contravention of the World Trade Organisation. What is your present avenue? Can you do anything about that, or have you got to send that person off to DFAT?

Ms Barker—DFAT have set up a disputes investigation and enforcement mechanism, which is their avenue to look at matters such as those you raised. At present we would investigate the case with our client and advise them as to whether we think there are breaches of the WTO agreements and whether they are likely to have a case that can go forward. Then it would be necessary for us to take the matter to DFAT or to advise our clients to take it to DFAT to seek their guidance as to how it might proceed. Obviously, what we would like to do as private practitioners is to be able to continue with that case and assist in the actual compilation of the case that is to go to the WTO. That means actually assisting in putting together the submissions that would go to the WTO to argue the case and not being forced out of the process at that point.

Senator COONEY—What do DFAT do at the moment? Do they start their own investigation of the matter?

Ms Barker—They do start an investigation of the matter. They set it out to some extent in their submission to the committee. They appoint a person who is in charge of the project, do some preliminary investigations and put together some legal advice on the position. They work on a task force basis, so they would be working with the industry involved and other government departments where that is relevant.

Senator COONEY—I do not ask you to comment on this, but it does seem a very inefficient way of doing things. You have a firm that has worked up the case, perhaps over years—when I

say that, I am talking in terms of the experience they may have at a commercial level with the problems the client has—and then you send it off to DFAT, whose main focus is international relationships and who are not necessarily skilled in detail about the laws on intellectual property and contracts. For them to start it all off again seems a very clumsy and inefficient way for Australia to be going about things.

Ms Barker—It is central to our thesis that it is in Australian industry's best interests that the resources available in the private sector be marshalled in some way and developed in this area of the law so that DFAT are not trying to handle every case completely on their own, which is the situation at present.

Senator COONEY—Wouldn't it lead to a bit of a bottleneck? What you are saying is that Australia ought to be more proactive in this field. If DFAT have only limited resources, that is very much a stopper to that situation developing, unless they are willing to employ a series of lawyers. I suppose you would have to have commercial expertise, expertise in intellectual property, expertise in international law and what have you.

Ms Barker—I think that is right. I know that DFAT have been trying to increase their resources in this regard in their trade negotiations division in recent times, but we can assume that there will still be a limited number of lawyers employed there. It stands to reason that if, in fact, there are other lawyers with expertise in the area who could be used by industry and who are able to fund their own cases to some extent, that has to be a good thing and an advantage for Australia.

Senator COONEY—It is industry and enterprise that are immediately interested in things. If you have private practitioners, of course, you have a choice then as to whom you can go to across the board.

Ms Barker—That is right.

Senator COONEY—With DFAT, you have one body and one body only.

Ms Barker—That is true. As I said previously, inevitably DFAT will be centrally involved in the case because it will be their function to take it forward to the WTO. It should be noted that the WTO, in a number of cases, have addressed the issue of private practitioner involvement and have said that they can see no difficulty with that, provided the country concerned is happy to include the private practitioner in their delegation. Ultimately, it will be the Australian government in a case against the government of another country, so DFAT will be involved. Working out a partnership is what is necessary.

Senator COONEY—You are saying that the client would come, that you would work it all out and say, 'Yes, I think there is a good case here. We will take it off to DFAT, go through it with DFAT and explain it to them.' You would say, 'Look, can you take this up?' and go forward together with DFAT, doing what is required to be done under the rules but with the private solicitor there to back them up.

Ms Barker—That is right, and assisting with the actual preparation of the submissions and—

Senator COONEY—Even the presentation, I suppose.

Ms Barker—Potentially the presentation, potentially the strategy to be followed in a case.

CHAIR—What is your view about the potential scope of litigation under the WTO rules on a 10- to 20-year horizon? Do you think it is going to grow very steadily in a linear fashion?

Ms Barker—It has certainly been growing that way. I think we point out in our submission that, in the 50 years under GATT, the number of cases was one-quarter the number of cases that we had in the five years since the WTO. That is partly because we now have 140 members of the WTO, and there are another 30 waiting to join. When China and Taiwan come in, all the major trading economies of the world will be included. That covers 90 per cent of trade because we now have so many more agreements. It seems to me to be inevitable, given that it is a rules based system designed to provide a forum for people to settle these things, that the level will continue to grow. I believe that is also the opinion of DFAT. They can see that this is an area that will be continuing to expand.

CHAIR—In that case, do you advocate a specific USTR style of office in Australia? Would you go so far as to argue for what I suppose is splitting DFAT into what it originally was and making the department of trade more specialised? Feel free to comment—you will not offend them if you say that because it is privileged.

Ms Barker—I possibly would.

CHAIR—They are not going to sue you—don't worry. Shouldn't we go the whole hog and say, 'Right, let's get in big time—special office, more staff'?

Ms Barker—I can see many advantages in the US system. I also recognise that there are some cultural differences in the way that industry and government interrelate here and there that may mean that we would not want to adopt holus-bolus that sort of system. I can also see that, as this area does progress in the way that it seems to be progressing, there may well be a need to again have a dedicated trade office of some sort. The other difficulty is that the WTO is specifically designed to remove the sorts of diplomatic concerns that used to hinder the negotiation of trade disputes in the past and to put into place a set of rules that everybody follows so that it is done in a fairly clean and isolated way. The fact that the trade function is in DFAT, which has as a major part of its role responsibility for the relationships that Australia has with other countries, is a potential area of conflict. I can see that, as the area continues to grow, that could potentially be an issue.

CHAIR—That is good. You should be quite clear about that. Can I just clarify this business of an Australia-China bilateral WTO access agreement? It is not available at the moment, is it?

Ms Barker—Are we talking about the Chinese?

CHAIR—Yes.

Ms Barker—I understand that the terms of the agreement were circulated to some interested members of industry. We made several attempts to get greater detail than was available in the

minister's press release from the department and were unable to do so. That was at a time when, for instance, we were meeting with a delegation from China of Chinese lawyers who were responsible for the accreditation of international lawyers and who were responsible for the training of WTO lawyers in China. That information would have been very interesting to us and very helpful in our discussions with them. We were unable to get any more detail than you could read in the newspaper or from a press release. Since then I have had discussions with DFAT about that and they have indicated that, if we had asked the right person, the information could have been made available. I guess I would identify that as an issue in itself. Members of the public should not have to understand the organisational structure of DFAT to be able to get access to information like—

CHAIR—Just to clarify that—here we are, members of parliament and worthy citizens. Are you saying that there is a treaty that is secret? Is there an agreement between Australia, a sovereign country, and another sovereign country that is presumably valid—has text and so forth—and somehow sitting outside the treaty process?

Ms Barker—No, they would say that it is a negotiation that is in progress or that the negotiation has not concluded at this point. At the time that China acceded to the WTO, the negotiation points that Australia had settled with China and those that each of the other WTO members had settled would all be put together and that would become part of one accession agreement with China. I think DFAT would represent that as a negotiation in progress and, therefore, that it is inappropriate to release the details in full. As I said, to some extent, I think those details were circulated to some members of industry, but we argue that summaries at least of those sorts of agreements should be placed on a web site where interested parties such as ourselves, in the circumstances that we found ourselves, could actually locate them and access them.

Senator LUDWIG—Is there a cultural difference within DFAT itself in that, on the one hand, you have got Department of Foreign Affairs people who specialise in smoothing relations with countries, and, on the other hand, you have got trade officials who are about trying to bust into a country to get a trade import in? Is there tension that arises between wanting to know everything about it from the trade official's perspective and wanting to ensure that there is a cloak of secrecy over it from the Department of Foreign Affairs side? Is that part of the cultural differences that you are now talking about within DFAT itself that seem to be an impediment to the trade side? Or is that putting it too bluntly?

Ms Barker—That probably is partly the case. I think the trade negotiators in DFAT would also say that part of trade negotiation is that you need to have your hands free to be able to negotiate and not be too exposed during that negotiating process. I would argue that at a certain point it is appropriate that that sort of information become public and that members of the Australian public know where Australia is up to in the particular process. I do think there is an inherent tension between the different parts of DFAT.

Senator LUDWIG—That is why you argue for, effectively, a separation between them similar to an American department of trade; elect for a different grouping of departments, perhaps.

Ms Barker—I could see that there would be some advantages in it.

Mr ADAMS—Have the Americans got all their information on their web site?

Ms Barker—They have a large amount on their web site. In relation to all their submissions, a lot of them are available in what they call their reading room at the United States trade representative, which means that you can get access to them. For instance, in relation to their bilateral agreement with China, they not only released it—I acknowledge that they do not release all of them but they did release that one—but they also put together briefing papers for each state of the United States, outlining for them how the agreement affected the industries in that state. They provided a lot of very useful information for industry, and of course with something as important as China joining the WTO there can be huge interest for industry.

Mr ADAMS—I think you said that some industries probably got some information here. There were probably some people who got some knowledge but others who did not. But information about how it is going to affect individual state economies, et cetera, has not been released in the Australian information pamphlets.

Ms Barker—No, not in a public way. It may well have been individually to the states.

Mr ADAMS—We are talking about this lovely, easy, wonderful free trade that exists in the world. You were mentioning the inputs. But trade in the world is really about trade-offs—that has been the traditional way that it has been done. We agree to import Canadian salmon and more pig meat, and the red meat quota for Canada goes up from Australia. That is a trade-off. It has not got much to do with anything other than the officials who are doing the trades. How do we overcome that? Do you think that by having private practitioners representing companies you will be able to overcome some of those issues? They are the linkages between diplomatic negotiations and trade issues. I see those as big areas. That is still there all over the world. What we are talking about basically is the pretty minor stuff of breaking open new barriers for trade.

Ms Barker—In terms of the trade negotiation function, yes, of course. With the WTO hopefully in the not too distant future about to start another round, those issues will become that much more centrally important, although there are the ongoing negotiations in relation to agriculture and services and they are very difficult areas that they are trying to get across. What we are talking about here is also the difficulty that the WTO has created in that it has made the system a more legalistic system than it previously was. There are many who argue that lawyers still do not have a place in the WTO, that this is really about economics and that the trade negotiation models that existed under GATT are still those that are relevant now. The difference is that, since the WTO as an organisation and as a forum was created, the dispute settlement mechanism has inevitably made it a more legalistic process. We now have a process that has enforceable rules and we have a process that is being used a great deal by lawyers in other countries. It is somewhat counterproductive for Australians to sit back and say, ‘We don’t want to be legalistic in this country,’ when everybody else is.

Mr ADAMS—Some would say that we have probably been so far behind the eight ball with some of our industries that the EU and the USA have been kicking us to pieces. I really wanted to touch on that. I am concerned about the cost for regional Australia trying to renew some industries, and how we count the cost of litigation. Law is still pretty expensive in Australia and not much has been done about it. We are going to impose more costs here, especially on small

industry and regional industry. Are you thinking about some of this funding coming from government, from DFAT, to fund some cases that are taken up?

Ms Barker—I have thought about this. I have not given a great deal of thought to it in that I know that DFAT at this point in time are not keen on the notion of any sort of outsourcing arrangements, although that is done in some other countries. Canada, in particular, does engage in outsourcing from the government department to private practitioners in order to try to expand their resources base. The attitude of DFAT at present is that, on an access and equity basis, they do not want industry to have to completely fund the preparation of a case before they can come to them. They are very strong about that and I think probably rightly so for the reasons that you point out. There are, however, other sectors in industry that are quite capable of funding some of their cases themselves.

Mr ADAMS—But they are large corporations.

Ms Barker—They are and that does actually help balance the resource difficulties that DFAT have. If the big end of town is able to assist in that regard, then the resources available in DFAT will be able to look after those industries that are less able to.

Mr ADAMS—In the quarantine area, which is going to grow, there is a lot of cost for science as well: having science evaluations to put to the WTO dispute settling tribunals.

Ms Barker—That is right. My firm currently represents two industry associations in relation to quarantine matters. While those industries would rather they did not have to spend the money, they are prepared to do so to look after their interests.

Mr ADAMS—Thanks for that. Have you seen a pamphlet from government giving information to industry about the WTO dispute settlement?

Ms Barker—There is a pamphlet and there is also a booklet on the investigation and enforcement mechanism that they have put in place.

Mr ADAMS—And a web site?

Ms Barker—The web site does refer to it also. In addition to that, DFAT did a circuit of the country at one point, trying to get that message out. My personal experience is that not many sectors of industry are aware of that. I am sure there would be some understanding that, if there was a problem, they might go to DFAT. They might not be aware of the actual mechanism in place.

Mr ADAMS—Or go to their industry association.

Ms Barker—They could go to their industry association, which may well then be able to refer them on.

Mr ADAMS—Going back, your submission deals with the other issue of input into policy. You would like to see a council of some sort that allows input. I do not know what happened before Seattle. Did the legal—

Ms Barker—The legal profession has not really been involved in any consultative processes with DFAT at all. But, in fairness, there have not been that many lawyers who have been attempting to work in the area. We do see it as important that, in the future, they be involved in the consultative processes.

Senator COONEY—As I understand it, what you are saying is that, whether it is right or wrong, Australia has signed up to a rules based trade system which makes it, I suppose, a system that is almost akin to commercial law internally—in other words, there are trade relationships that have a commercial basis in which, once the relationships are rules based, you are going to have courts. That is what has happened here. The United States, Canada and the European Union have realised that but Australia has not. To follow on from questions that have been asked, once you have a rules based system you are going to have matters of law arising.

Ms Barker—Yes, that is right. I have been at conferences on these issues when people who have been involved in international trade for many years have stood up and said, 'International law has nothing to do with this. This is not about law; this is about economics. Why on earth are lawyers involved in this at all? The reality is that it is a rules based system, the processes are quasi-judicial and there is extensive involvement of lawyers in the preparation of cases by our trading partners. It would be highly counterproductive for Australia to adopt anything other than a course that involved lawyers.

Senator COONEY—So if the system changed and became economic, you would say, 'It is economic' and you would not lose it?

Ms Barker—It has been economic in the past. Of course, under GATT, the processes were less legalistic in nature but I do not think the trend, at the moment, is to become less legalistic. Whether people think that is fortunate or unfortunate, that is the reality of the case.

Senator COONEY—If they are comparable to commercial cases, I suppose you would say that any commercial case fought internally, in a domestic scene, is open to the public. Evidence is patent. If you are going to have the same sort of system internationally, the same principles ought to pertain.

Ms Barker—Yes. I think that is a very important point. The WTO is looking at its own transparency practices and countries have been making submissions about that. I believe, from what we read about Australia's submission in that process, that Australia put forward the notion—in relation to the way that a country deals with industry and their own public—that it should be left to those individual countries and that those things should not be dictated by the WTO itself. It is up to Australia to work out what they release to Australians within this country and it is up to America to work out what they release to Americans. We have all witnessed the levels of distrust and concern about the WTO and globalisation at Seattle and in the year since then. In large part, that reflects the lack of transparency and the lack of participation and access that has been reflected at the WTO. I think Australia can learn some lessons from that in terms

of helping Australia and Australians to understand the advantages of the system by understanding the system itself, and they cannot do that if information is not made available.

One of the difficulties with the WTO in terms of public understanding is that the liberalisation process is a progressive one and that it varies according to the different sectors. We started out with trading goods and we are quite well down the track in relation to liberalisation in that regard, but in some of the other areas we are less so. It is very difficult, for instance, for people to understand why it is not okay to subsidise Howe Leather but it is okay to subsidise agricultural products in America or in the European Union. That difference in the scheduled commitments that countries have made is not well appreciated or understood. This progressive nature of the whole process is not understood. I think that the more transparent Australia and the WTO are, the more understanding there will be of those sorts of issues. Hopefully people will understand that there are many good things that happen. For instance, the fact that when a large country negotiates a trading position, smaller countries will get exactly the same benefits, thanks to the most favoured nation principle that the WTO has. I do not think there is general understanding of that. Once upon a time, a large country could negotiate a much better deal with a trading partner than, say, a small one could. Now everybody gets that deal. They are benefits that are not really understood at present.

CHAIR—Many thanks. If there is an opportunity to ask further questions, we might send something in writing. Are you happy to respond?

Ms Barker—Yes, I would be very happy to respond. Thank you for the opportunity to appear today.

Proceedings suspended from 10.16 a.m. to 10.43 a.m.

BOELE, Ms Nicolette, Special Adviser on Business Engagement, Business Group, Amnesty International Australia

HOGAN, Mr Des, National Refugee Coordinator, Amnesty International Australia

SULLIVAN, Mr Rory, Convenor, Business Group, Amnesty International Australia

CHAIR—Welcome. We do not require evidence on oath this morning, but I formally advise you that the hearings of the committee are legal proceedings of parliament as if they were taking place in either chamber and they therefore warrant the same respect. The giving of false or misleading evidence is a serious matter. Would one of you please make an opening statement and then we will have some questions.

Mr Sullivan—First of all, Mr Chairman, we thank the committee for giving us this opportunity to provide evidence today. We see the World Trade Organisation and the ongoing debate about international trade as being a particularly important influence on the international debate on human rights. We welcome the opportunity to give evidence at this time and we actually see this inquiry as quite a timely event.

I might briefly run through our statement and highlight some of the key issues that we raised therein. Then we will be quite happy to take questions or address any specific comments you have. By way of background, Amnesty International is a human rights organisation. Our sole mandate is the protection and promotion of human rights internationally. Specially, we work towards the implementation of international human rights law such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as the core conventions of the International Labour Organisation. An issue that I need to flag for the purposes of this inquiry is that Amnesty does not have a formal position on trade or on trade liberalisation. We recognise that trade liberalisation has the potential for positive and negative outcomes in terms of human rights, but we do not have a formal position on whether trade liberalisation is a good thing or a bad thing. We recognise simply that it can have consequences, some of which are positive and some of which are negative.

Basically, our submission highlighted four key issues that we would like to discuss today. The first is the issue of transparency and accountability in the manner in which the WTO operates. The second is the manner in which the WTO's dispute resolution system is currently structured. A related topic to that is the manner in which NGOs and broader civil society can—or cannot, as the case may be—interact in those dispute resolution mechanisms. Finally, coming back to our core mandate, we want to raise the manner in which WTO agreements and other international laws, specifically those relating to human rights, interact or complement each other. I might briefly run through each of those four points and highlight some of the specific issues we raised in our submission.

The first is the issue of transparency. It is probably fair to say that from our perspective we have actually seen quite a change over the last two to three years in terms of our interaction both with the Department of Foreign Affairs and Trade and with the WTO. There has been an

increased emphasis on providing information to NGOs in a timely manner and on ensuring that discussion papers and policy position papers are made available to us in a timely manner. We actually see that as a very important and a very welcome step forward.

We have also found that, when we have needed to obtain specific information or meet with officials of the department, they have been quite willing to do so and have been quite open in terms of their discussions and the information they have provided. However, the issue of transparency still remains somewhat problematic for us. We consider that a lot of the substantive negotiations are still not publicly available. The first that we, as a representative of civil society, see of those discussions is when they are released as decisions or as formal policy positions, which makes it very difficult for us to interact in the debate or to contribute except at quite a late stage in the process. We also note that the Joint Standing Committee on Treaties inquiry report into multilateral agreement on investment highlighted transparency and consultation as a particular concern when the government is involved in international discussions. We have seen some change, most of which has been positive, but we consider that there are still areas where further transparency and openness would be helpful.

The second issue is dispute resolution. There are two specific issues with dispute resolution. We recognise the importance to trade disputes and to trade policy of having a rigorous and binding dispute resolution mechanism. However, our particular concern has been that the hearings, discussion papers, positions and so on that are articulated in those processes are actually not made available in a timely manner to NGOs or to civil society more generally. It appears that at the moment the primary information that is made available is the decision of the panel. In that context, it is of concern. In certain disputes, we would like the opportunity to be able to present evidence or to contribute in some way to the dispute, obviously particularly where human rights issues are concerned. One of the suggestions we make in our submission is that NGOs could be recognised as expert witnesses in an area where a trade dispute requires a non-trade type input or where the issues are not just those narrowly defined by the WTO's constitution. That leads into the third point, which is the involvement of NGOs in dispute resolution. I think I have just covered that point.

The final point we make is in terms of the relationship between WTO agreements and other international law, in particular that relating to human rights. We have obviously read the material that has been released by the WTO. We recognise the report that was released last year about the links between development and poverty alleviation and the data that the WTO has presented on that. We certainly recognise that alleviating poverty is one of the most important steps in ensuring human rights in countries. We recognise that trade liberalisation has the potential to contribute to poverty alleviation but we are concerned that the argument in favour of trade liberalisation has not been made unambiguously so far. This is reflected in the comments made by Mike Moore, Secretary General of the WTO, who is increasingly talking about the need to compensate for victims of trade liberalisation or to take steps to ensure that trade liberalisation brings benefits and that those benefits are distributed. Although he may not have said this as explicitly, certainly trade liberalisation provides societal benefits beyond those measured by GDP, GNP and per capita income.

Our perspective on this is that we would, first of all, ask that the complementarities and the relationship between trade law and international human rights law be recognised and that policy thinking on trade liberalisation recognises the importance of international human rights law and

acts to ensure that trade law does not conflict with or undermine those international laws. Secondly, we have struggled somewhat over the last few years to get an overall assessment of how trade liberalisation has influenced human rights both in so-called developed and less developed countries. We would like, first, for an assessment be conducted of the implications of trade liberalisation specifically on human rights. Secondly, for the next round of trade negotiations—which was originally meant to have kicked off in Seattle but did not—we would like the proposed trade liberalisation measures to be accompanied by some form of human rights impact assessment. We give in our submission some thoughts as to what we would like to see covered in that type of assessment. That concludes the formal presentation of our submission. Thank you.

Mr BYRNE—I have a quick question with respect to human rights. Can you give an example of a recent trade agreement and the way it has impinged on human rights?

Mr Hogan—We do not measure trade agreements per se, but I could give an example of our thinking here. If an economic measure were being considered by the WTO that might result in water supplies being cut off to two villages in a remote area of a certain country, there would obviously be a situation about collective rights of access to water. If, in the context of water shortages in those particular villages, there were to be civil protests that were met by repression by local authorities, obviously that would certainly be moving from economic rights into civil and political rights.

In our 1998 annual report we recognised that most human rights violations that we research and report on occur in the context of extreme poverty. In Amnesty International we are trying to bring a human rights perspective to international economic policies and the way they are discussed. We do not purport to have any solutions, but we want to make sure that that issue is being raised at the appropriate time. For example, with the dispute resolution processes, there must be expert witnesses, social impact statements, assessments and things like that.

Mr BYRNE—What would your response be, as you have mentioned in your submission, to claims that there is historical evidence that indicates that human rights improve with greater economic prosperity? They might cite the British industrial revolution as an example of that, that they went through a period where the conditions were horrendous but, as a consequence of overall incomes increasing, that has been balanced out and there is then a greater awareness of human rights, working conditions, et cetera.

Mr Hogan—I am not an expert historically but you could say that, if you look at the last few hundred years of particularly Western development, as GDP and GNP standards increase humans are finding that they have the luxury to concentrate on personal and collective freedoms such as the right to participate in democracies, the right to enjoy sport, et cetera. As Rory has already said, we do recognise that economic policies and trade policies can result—obviously if people are better off you are going to have more time and you are going to be able to put more money into health, education, police and those sorts of things.

Mr BYRNE—If someone were to run an argument past you that says that at this early point in some of the developing countries, if you insist on imposing some sort of human rights standards, it may have an impact on the level of prosperity, what would be your response to that?

Mr Hogan—It is a very difficult question to gauge either way. We had that argument right up until the Asian economic crisis in 1998 where people were saying that we should not spend too much time on human rights in Asian countries in particular because of the fact that there was a 20- or 30-year-old pattern; we had to wait until middle-class people had TVs and they would be able to elect responsible democratic processes. As often happens, the people at the bottom are left out. In the meantime the world goes on and human rights are not being respected, so when do you say it is time? For us, there are different elements of human rights but it should be there from the start. If you leave it out, you are not doing anything for empowering local people.

Mr BYRNE—With respect, say, to China and their coming in, has your organisation been consulted about what sort of baseline they should have with respect to human rights? Do you think that, where there are some concerns about some countries' human rights, before they enter into the WTO there should be some sort of basic commitment to standards?

Mr Hogan—It would be nice to think that the WTO would look at that. We would not necessarily see there being any barriers to entry into the WTO by any country because the WTO is not basing human—

Mr BYRNE—That argument has been advocated by the United States in the past, though.

Mr Hogan—Of course, and by other countries as well. It is a really tricky one. Certainly the more a country has to answer to its human rights record the more accountability there is on the international level. But at the same time the question is why you would have it for China and not have it for other countries. What we need is a level playing field whereby both developed and developing countries answer to the same standards in a human rights forum and fair international system.

Mr BYRNE—Have you been consulted in a general sense about that by DFAT and other organisations?

Mr Hogan—In relation to China, no, I would not say so.

Mr BYRNE—I am talking about the basic platform of human rights standards imbuing the world trade agreement.

Mr Sullivan—No. At the meetings we have had with DFAT we have sought to discuss the issue. To build on Des's comments as well, from our perspective China's accession or potential accession to the WTO does present an opportunity. We have actually seen over the last two or three months China indicating that it would ratify some of the international human rights laws. It has cleared that again. This is one of the areas where I think some of the civil society concerns that have been expressed by the WTO could be alleviated, if it was seen that the WTO was not only moving forward on the trade liberalisation agenda but also maybe more than setting a ceiling on performance, actually setting some minimum benchmark. It is a very complicated issue and Des's comments about level playing fields obviously apply. But we have actually been quite encouraged both by the comments the US made and by, at least in terms of public statements, the comments the Chinese government has made.

Mr Hogan—Often developed countries use human rights as an excuse for keeping trade protectionist policies or whatever. There can be a convergence of selfish economic interests with genuine moral standards. At the same time, the People's Republic of China signed both international covenants in 1997 and they have not brought them in. With our latest reports on China—and we are going to be releasing a report on torture in China in the next two weeks—our assessment is that human rights have actually deteriorated over the last year or two. We brought this up—in the context of the bilateral dialogue between Australia and China—with the foreign minister on several occasions over the last year or two. If you can imagine China coming into the international club in a more central way while so many human rights concerns remain, it is quite disturbing for organisations like Amnesty. But we do not say, 'Keep countries like China out unless you have uniform playing fields where you can maybe have benchmark standards. You have ratified the international covenants, you have eliminated torture, you have stopped repression of religious or social groups and you are working towards an inclusive way of development which is going to try to empower and, if you want, work at 'povertisation' policies.' That would be what we would obviously be looking for—not only at the WTO but also at the UN or at bilateral discussions between countries.

Mr BYRNE—Do you incorporate labour standards within that overall parameter?

Mr Hogan—Yes.

Mr BYRNE—I presume that you have articulated this to DFAT. What is DFAT's response to that?

Mr Hogan—On China specifically?

Mr BYRNE—Not on China, just in the general sense. You are obviously pushing—looking at your position paper here—for this to be incorporated as a base line. What is our foreign affairs department's response to that?

Mr Sullivan—DFAT have been interested but I would not say that they have gone much further than that. One of the issues we found with DFAT is that their interest, particularly in this area, is in trade—their specialisation is trade. I suppose, as a consequence of that trade being an interest, issues like the environment and human rights, et cetera, are somewhat foreign to the bureaucrats dealing with this particular issue. That is probably just the reality of the way in which DFAT is structured. Our concern has been that we have not seen any sign of the issues we have been raising appearing on the policy agenda of the government. It is interesting, given that the WTO has held high level symposiums on trade and the environment and trade and development. I guess that the issue of labour and the WTO has been around for a number of years as well. We are, I suppose, a bit concerned that what we are not seeing is either an inclusion of those issues or a policy approach that would seek to ensure that those issues are addressed in other fora or in another manner. At the moment, yes, we have had dialogue with DFAT. They have been interested but we have not actually seen any changes, either in the government's policy on the WTO specifically or on other international areas that reflect the concerns that we are bringing to the discussion.

Mr BYRNE—Do they provide any rationale? In any of the conversations you have had, have they said that it was too difficult? What has been their general response?

Mr Sullivan—The emphasis of the WTO and of the WTO negotiators is on trade liberalisation. Their position, obviously, is that issues such as human rights do not fall properly within the ambit of the WTO or the WTO negotiation process. That has been stated government policy for a number of years now. That has been the primary reason. They do not want to see the trade emphasis of the WTO being compromised by other issues. However, we have suggested approaches like looking at the production process methods debate as a possible vehicle for, as they suggest, defining some minimum stands. What you end up having is minimum standards so that, if they are applied uniformly, they do not become barriers to trade; they become minimum requirements that every party has to meet. But we have seen little discussion of that from the government either.

Mr ADAMS—Would you like to have input into that sort of policy development area to push the human rights question?

Mr Hogan—We would like to be asked. It is a problem for NGOs insofar as we often have to try to do the chasing; ask for the meetings to chase people down before meetings.

Mr ADAMS—I am just bringing it up because in Tasmania we have the best forestry practices in the world but the pulp section of the Burnie paper mill is now closed and the pulp now comes from Indonesia. The environment there is ripped to pieces. One guy who was sticking up for the forests got his head hung in a tree as you go into the national park. So there are a lot of people who would like to have input into saying, ‘Why should we trade with that country? Why should we be importing pulp from there when the human rights are abused and we believe the workers’ standards are subhuman?’ Are these issues you would like to get involved in and make an input into government policy on?

Mr Hogan—Yes, I think we would. But not only Amnesty, because our focus is very discrete research into certain areas, particularly civil and political right violations. We would like to see more of an inclusion of civil society. If we could get a good model going in Australia, we would certainly be able to go to other countries, like Indonesia or Cambodia, where we might have so-called democratic processes but in reality we are looking at the entrenchment of certain elites in political power and the disenfranchisement of large parts of the population. A good, vibrant civil society is a very healthy thing. Maybe Nicolette would like to come in here about the interconnection between environmental and human rights as well, particularly with labour standards.

Ms Boele—I just make the comment that if we take a leadership position it just gives us a much stronger position at the table when we go and talk trade with our partners. That is another reason, I suppose, why we would like also to see the promulgation of human rights by Australia in those sorts of standards.

Mr WILKIE—You have suggested that there be an audit of all WTO agreements for human rights. Who would you suggest would conduct those audits, and what sort of standard would they use in doing that assessment?

Mr Sullivan—Obviously the first issue on any such inquiry is who pays for it. If we exclude that issue for a moment, we actually think that the issues that are of particular concern and that are raising particular concerns, as evidenced by, for example, the protests at Seattle et cetera, are

the quite basic ones on fundamental human rights. One of the questions that a lot of NGOs are asking is, ‘Yes, we have had this period of economic expansion, we have had this massive growth in trade: have we actually seen the overall status of basic human rights enhanced in that same period?’ It is very difficult to gauge that because our research tends to be focused on individual countries, and to draw conclusions from individual country research to an overall picture is very difficult. That would be the broad scope of what we would like to see, and to see whether increased trade has led to improved human rights, as measured by pretty much the agreed material in the universal declaration and so on.

Mr Hogan—I will just go one step further from that to say that in looking at how you do it you would want to be including the United Nations High Commissioner for Human Rights and the Commission for Human Rights and some of the thematic mechanisms at the UN. We would like to see more interaction between the UN’s human rights machinery and the WTO. For example, we know that Secretary-General Kofi Annan has recently brought out a global compact for business which looks at saying to business, ‘Recognise your responsibilities under the Universal Declaration of Human Rights, get behind the ball and let’s see how we can work it together.’ We would like to see some sort of review before we go forward with economic policies, because there seem to be a lot of assumptions made that economic liberalisation policies are good for everyone, and it is quite easy to trot out a couple of villagers to say, ‘Yes, we’ve got running water; we go to school,’ but there really has not been a lot of in-depth research done across countries and across sectors of society.

If you look at some of the countries where we have seen movements to democracy, you still see large human rights abuses being perpetrated. The same issues of impunity—economic impunity can be corruption, or from lack of accountability or transparency—are therefore impunity in human rights where there are justice systems which do not bring the perpetrators to account. For example, we still have not seen a lot of movement on war crimes in East Timor. You might say that in Indonesia there is a link between that and the whole question of the economic impunity of certain elites which continues. I am thinking in particular of the ex-president Suharto investigation of whether he is going to be brought to trial and the difficulties and obstacles that are put in the way of that. You can see links between economic and political impunity. The key issues of transparency, accountability and inclusiveness seem to be a theme of which, going back to the original question, we would like to see some sort of review or some sort of human rights audits which could start putting down some guidelines.

Ms Boele—We could look more specifically at who pays for it. Certainly in the environment area if you look at ISO1401, which is an environmental system, companies that have implemented that system and have a systemic way of controlling and looking at the environmental impacts actually perform much better as companies. The top 100 ASX listed companies that have ISO1401 perform better. Why not make it incumbent upon corporations which are ultimately benefiting in the process of liberalisation to demonstrate to government domestically, for example, their human rights performance and give them some terms of reference to put out a picture about what is the minimum standard we are asking for? Of course, we draw on the internationally accepted UDHR—Universal Declaration of Human Rights—and ILO standards, but we could give them a focus on what they can do. Certainly we have not found this coming from the Australian government yet.

We have put together and developed with business recently something called *Just Business* which is a framework. It is an interpretation of the UDHR for business in Australia and it says, 'Here are the standards. Here is what we would like to see from business.' The investment community has recently approached us to do one for screening investment products, for example, just as currently there are investment companies screening the environmental performance of corporations. There is a movement and I probably should stress that, when engaging with business, industry is not homogenous. There are businesses that are excited about it and see it as a competitive advantage to get involved in with human rights as well. They are looking for two things: one is the bottom line benchmark and terms of reference and what they are; and, two, what best practice means. I suppose that is where we see our role come in. But government certainly has to set the bottom bar for what is the minimum performance.

CHAIR—Let us get back to the subject for a minute. Are there any other questions?

Senator LUDWIG—Do you think minimum standards can actually become maximum standards and can be counterproductive in truth anyway in the sense that everyone sets the bar at that level and no-one wishes ever to shift from it? I know the answer might be that it would be wonderful to get everybody to that minimum bar in the beginning, so we will move from that argument. I understand that point. But in terms of where most of the trade is conducted it is not in some of those areas. It is conducted in the area where the bar is set significantly higher than that. Everyone then looks at the minimum bar and says, 'Maybe we should all be there.'

Mr Hogan—I think that is a very good point. If you look at the human rights of different countries, as well as the same issue of minimum standards, what do you measure them against and what is the bar? Maybe a periodic raising of the bar might be an answer. But in many countries some of the minimum human rights standards are not being observed. We would not purport to have the answers. We are trying to bring the question into the debate at this stage, so that governments can sit down and say that they will conduct their trade in certain ways but they will not do it if it is going to result in somebody being tortured or ill-treated in a certain village. It will not be at the result of making sure a village no longer has running water. It will not be at the result that cultural rights are being removed and different things like that. There are minimum benchmarks, which we all sign up to. Then you come to a situation where you do not get accusations of human rights being used for trade advantage.

Senator LUDWIG—I was going to come to that as well.

Mr Hogan—It is a very fine line and a very tricky situation but if you do not do anything it is just going to continue the way things are at the moment. To go back to our 1998 annual report, we said that most of the human rights violations which we report against do occur in the context of poverty.

Senator LUDWIG—I was a little bit confused about some of your arguments. In one sense you argue for a more effective interventionist strategy by the WTO in relation to human rights issues, but you then say that you prefer input into the process to be able to influence the outcome through a consultative process. They are actually quite different in effect. One is a consultative process and one is an audit, which really underscores something that needs to be done to fix the issue. Once you have audited and examined it and you have got a green tick on

it, what do you do with the green tick? You have actually got to do something if you do not get a green tick—if you get a red one. But in your submission, on page 3, you then argue:

All governments, including Australia, promote the use and education of human rights in WTO processes.

That is what we have been hearing you say to this point, but you also then go on to say:

Amnesty International takes no position on any advocacy of economic pressure techniques against countries which perpetrate human rights abuses...

Mr Hogan—Amnesty International is governed by its mandate. Our mandate at the moment states that we take no position on economic pressure techniques. What we are saying there is that we recognise that those arguments are advocated by some; we are just making it clear that we do not take a position ourselves. Under those circumstances, we are still trying to work out some sort of mechanism whereby there can be consultation—and not just with Amnesty International but with civil society organisations in general. At some stage, we need to have a review or audit of what has happened to date.

Senator LUDWIG—It leads to an action plan, and you then run into this mandate that I referred to earlier where—

Mr Hogan—We are only one organisation. We would not presume to say that we have all the answers or that we are the experts in economic, social and cultural rights. Our expertise is in civil and political rights. What we were trying to do in our submission was to say where we are coming from and what we think needs to happen but not to say that we have all the answers.

Senator LUDWIG—I understand that part of it but at some point don't we run into the question of what you do when you actually uncover it—where a trade related issue might also embody a human rights abuse? The audit will throw that up. What do you do to bar it when you have a non-interventionist strategy in terms of economic techniques? Do you then ask the WTO to say, 'Don't trade with that country'? You then run into the fine line between countries that invoke that as a trade barrier. To be able to then differentiate between the two groups, I suspect that at the black and white ends we can give good examples where we can easily delineate between the two, but right in the centre, in that grey amorphous mass, it becomes very difficult for governments to use these sorts of things on either side.

Mr Sullivan—I might comment on that. The way in which we have tried to approach these debates is to use posters, dialogue, education, information, publicity and the more non-confrontational techniques in terms of advocating or pressing for change. That is what we have done in terms of dealing with the corporate sector as well. On the issue of the specific solutions that get adopted in response to a specific issue, if an audit identified a problem we would then obviously much prefer the solution to be—and this is where the Amnesty mandate comes in—a practical solution. If that is not the case, we as an advocacy organisation would still say, 'Please sort it out. We are going to keep chasing you to sort it out.'

Senator LUDWIG—But that is not the real world.

Mr Hogan—It gets very tricky. On, for example, the Iraqi sanctions, we do not take a position on sanctions but we said at the time and we continue to say that Iraq has serious human rights violations. Many countries use that sort of evidence as part of the argument for saying we should maintain sanctions against Iraq, as well as on the whole question of weapons. The impact of the sanctions on children is quite significant and it has been documented by many organisations, not just by Amnesty International. We expect to be bringing out a report on that sometime this year. The point here is that sanctions as a blunt tool can cause human rights violations, but it is the same thing with military intervention.

Senator LUDWIG—Isn't that the circular argument we are getting into? If you start off with the violation of human rights but you then answer it with an audit, you then uncover it, you then ask for sanction and you then reinforce it in other areas in that society.

Mr Hogan—But I think that if you look at many areas of public policy the remedy to a certain ill often itself, if left unchecked, could turn into a different ill as well. The way you try to treat that is to have periodic review and to say that there are certain bottom lines of the remedy. For example, if you had a sanction which was a trade penalty, you might say that this can continue but it should have periodic review at a certain period of time and it should not impact, again, on the water flow into that village or whatever the baseline is. It is very tricky.

Senator LUDWIG—I know it is tricky but I am trying to explore your view. At the base of your view is the fact that you want an inroad into the WTO in the sense that the WTO should move away from its mandate in terms of being solely a trade related body to being far broader in its outlook than that by including environmental and human rights issues. That is what you are seeking. If it is tricky, perhaps I could hear from you how you are going to overcome some of those problems.

Mr Hogan—I think the simplest answer to that is to say that this explains why you need a roundtable to look at this. This is why you need UN human rights machinery coming in and saying, 'We are working on extrajudicial executions, torture or disappearances in these countries. We are working on areas of poverty alleviation. Your WTO policies, your solutions, are going to have this impact. How do we square that circle?' If it is only the WTO and you are not bringing UN human rights or NGOs into the discussion, it is just going to continue in the same way.

Senator LUDWIG—I understand that. I would be happy for you to take that argument away and have a bit more time to reflect on it, if you wanted to, and perhaps make another submission to the inquiry. You understand where I am coming from in terms of that circular argument. We tend to trap ourselves: even in the Iraqi experience, do we now not have a sanction because it has led to human rights problems? We have got the reverse of the circle, I suspect. There are arguments for and against that.

Mr Hogan—Amnesty International is very happy to look at this further for you. We are a little constrained by our mandate in terms of going into some of those greyer areas, but we will go away and—

Senator LUDWIG—That also concerns me. Your mandate constrains you from going into the field but you are then saying that the WTO mandate to deal with trade related issues only should not remain, they should move.

Mr Hogan—I am sure the WTO might be concerned that Amnesty International does not have a mandate for economic liberalisation. I take your point.

Mr ADAMS—In history there are areas where we have moved the world a little forward with sanctions and things.

Senator COONEY—When you are preparing that for Senator Ludwig, could you also cover the situation I want to raise with you, that the World Trade Organisation is a rules based system and we are asked to look at Australia's capacity to undertake World Trade Organisation advocacy when, with all due respect to the Department of Foreign Affairs and Trade, I am not sure that they are the greatest advocates in areas which are rule based. Be that as it may, they are the ones that apparently do it.

What I would like you to bring back is what rule you want in the World Trade Organisation agreement that deals with this issue of human rights. As I understand the World Trade Organisation—and I might be wrong about this—is that this is a place where there are specific rules. If they are breached, you go off to a body and you advocate before that and a decision is made. I think that, from what you are saying, you want some sort of law in there, or rule or provision, which says that trade is not to take place unless human rights are taken into account. You would have to specify them—the International Covenant on Civil and Political Rights, the convention against torture and all that sort of stuff. Could you, when you are bringing back what you are going to bring back in response to Senator Ludwig, put in a sample provision—we will not hold you to it—of what you would like in the rules?

Mr Hogan—We will certainly try to, Senator.

Mr Sullivan—Just to follow on from that—because we did get asked this question by DFAT some time back—one of the issues that is commonly raised is whether there should be a preambular reference in the WTO's legislation to international human rights law. There is obviously an existing provision that relates to sustainable development in the preamble which includes intergenerational equity and the intragenerational equity; one interpretation encompasses human rights. The problem is that the preambular provision does not appear to have had any effect in any of the disputes that have been taken or that have occurred at WTO. So, yes, it is a nice thing at the front end of the statement, but I think that, because it fails to have an effect, or a legal effect in disputes, it really has no effect at all.

Senator COONEY—Just listen to what I am saying, if you can. What I am saying is that I understand that. Of course, this is a matter of advocacy. That is why I said that I am a bit worried about the efficiency of DFAT in World Trade Organisation advocating, but they have to advocate with respect to a particular rule. What I am looking for is not a preamble but the rule that you want in the provision so that DFAT can use such ability they have as an advocate to press it.

CHAIR—How long has Amnesty International been interested in this question of the WTO rules and human rights?

Mr Hogan—Only recently.

Mr Sullivan—Traditionally, Amnesty's focus has been governments and the activities of government. About eight or 10 years ago, Amnesty UK set up a business group to deal with economic issues and to develop the capacity within Amnesty to address these types of issues. In Australia, the Amnesty International business group was established in late 1996. We have previously given evidence to the inquiry on the multilateral agreement and investment. I would say probably the section's capacity to interact on these economic relations issues would have commenced around that time, so early mid-1998.

CHAIR—So a few years.

Mr Sullivan—Yes.

CHAIR—You have gone to great trouble in drawing up a few pages of submission here. In the introduction, you make it reasonably clear in terms of your own—if I may say—rather vague language that you use. We are used to more concrete things; we have to draft provisions of law. That is our job. You say, for example, that you want due account to be taken of the effects of all these proposals on the protection of human rights—that is, the WTO rules. You urge that 'all existing and future trade agreements explicitly address human rights' and that, in any inconsistency between the rules or a dispute about trade and human rights, the protection of human rights should be paramount or take precedence.

Where is your proposed amendment to the rules? In the sense that if you have gone to the trouble of making these strong points to a parliamentary committee, why haven't you drafted an amendment to the SBS agreement or the GOTS? What is the point of making all these points to us if you have not even gone to the trouble, as Senator Cooney pointed out, of proffering an amendment that we can go and do something with? Don't you draft amendments or do you just specialise—to be polite—in advocacy? Are you lawyers? What are you doing?

Mr Hogan—Amnesty International have never really seen our role as being drafters of legislation or rules as such. So, in that respect, we are not lawyers. For example, when we lobby at the UN or in other areas such as that some negotiating parties might say, 'What do you mean; can you write down what you want me to say; what is your question?' and things like that. We do not see our role as being prescriptive in terms of, 'This is the rule that has to be there'. We see ourselves as coming more from a research basis and we campaign on the basis of the research that we do. Our research is into a core mandate, which is—to summarise—opposing torture, disappearances, extra judicial executions, unfair trials, prisoners of conscience and the death penalty. But it is promoting human rights as well.

In terms of what you are saying, in a way it is a correct criticism: we are not lawyers, so we do not see ourselves as going out and writing things down exactly. That is why we might have a little difficulty with what Senator Cooney is asking, but we will see what we can do. We see ourselves as a research based advocacy organisation. Most of what we are trying to say here is

coming almost from that key comment in our 1998 annual report by our Secretary General, which was that most human rights violations happen in the context of poverty.

CHAIR—I appreciate that. But here we sit and your colleague Mr Sullivan talks about ‘human rights law’ in every second paragraph and your colleague Ms Boele talks about ‘terms of reference’. They are not abstract things; they are words. We get advocacy the whole time: we are overwhelmed by it. When someone comes along—I am giving you free advice—and says, ‘Here’s how to do it; here’s a kit to fix it up so that our objectives as we put them to you might be achieved’, you are not halfway there, but you are past the starting line. You can come along and blow trumpets, so to speak, but there are a lot of trumpets out there. As Barney said, if you can come back with an explicit draft amendment to the agreements that make up the WTO rules, we can test them with people who would oppose you—for example, the DFAT people or whoever. Please take his advice seriously because there is no point our having all this kind of theatre if nothing happens. We could draft our own agreement, but you would never trust us to do that.

Mr Hogan—We always trust our parliamentarians.

CHAIR—That is a fine principle to live by.

Mr ADAMS—Mr Sullivan raised the point that the UN has a role here and has committees that bring down audits. They got into a bit of trouble with the Australian government through what they said about human rights in Australia, but the UN does do audits on countries and human rights. I think there are avenues in that area. We have to use our intellects to move through sanctions and other issues. I think we have to move forward and, if you could help us in that area, we would be pretty appreciative.

Mr BYRNE—I think you have a fairly difficult proposition. From my perspective, you are a non-government organisation that is a monitoring organisation of a baseline of human rights. Asking you to draft a proposition that you might be monitoring seems to be a bit of a conflict of interest. From my perspective—if I can add a dissenting voice—I think Amnesty has been asked to put themselves in a fairly compromising position: they are a monitoring agency that are being asked to put forward something that they would then be monitoring. I want to articulate that point of view that dissents from the position that some committee members have put.

CHAIR—I know you have very kindly come along but the farmers are waiting so we have to get on. There is plenty of work there and we appreciate what you have said—it has all been recorded. Thank you kindly and please respond in writing to some of the things that have been said; it will make a difference.

[11.35 a.m.]

JORDAN, Ms Beverley Anne, Economist, New South Wales Farmers Association

MARTIN, Mr William Xavier, Senior Vice-President and Chairman, Business Economics, New South Wales Farmers Association

CHAIR—Welcome. We do not require evidence on oath this morning but these are legal proceedings of parliament as if they were happening in either chamber, so they require the same respect, and any false or misleading evidence may be regarded as a contempt of parliament. Could you start with an opening statement, and then we will have some questions.

Mr Martin—Thank you, Mr Chairman. The New South Wales Farmers Association welcomes the opportunity to appear before your committee and to put the views and policies of our members that are painstakingly developed through our democratic process. We represent the interests of 14,000 farm businesses across this state, arguably the most diverse state in terms of agricultural enterprises. We assume from what we have heard and observed this morning that we do not need to reinforce with the committee the importance of exports as a source of income to this nation and certainly to our members.

The association's trade policy has been the subject of lively debate year in, year out and of development over many years; decades, really. The views we are putting to you today were reconfirmed as recently as last year's annual conference, where there was again robust debate, discussion and resolutions. The upshot of our policies is that we are very clear that we are far better in a game that is governed by rules and has a refereeing process than the alternative of the trade wars and distortions that we have been through in the past. We see Australia as having been in the door discussing trade for a long time but we have only recently got agriculture on to the table.

In the agreements that flowed from Uruguay, there have been some benefits. We have outlined them in our submission, which I assume every member of your committee has seen, so I will not go into those. They are well documented in DFAT publications as well. But we still do have a very distorted market for agriculture. We have seen some successes, and they have whetted our appetite, but we are subject to all the distortions the super-treasuries are throwing at us throughout world agriculture as of today. The discrepancies between industries and between countries are things that still concern us greatly, particularly those that are within the rules. They are actually things that really annoy our members greatly. They see the rules based system as having advantage and, as I have already emphasised, they agree to it, but they are quite concerned that there are so many things that are legal or outside the rules.

There are three areas where the terms of the current agreement on agriculture need to be renegotiated to remove distortions. They are: market access at both tariff and non-tariff barriers; removing those domestic subsidies that distort the market, and they are perhaps some of the most insidious and difficult to root out from some of the other members of the WTO; and also the export subsidies. The elimination of those is the third area but obviously a bit clearer than many of the domestic ones. For those reasons we recommend that the federal government seek

that the next round of WTO negotiations be comprehensive and multisectoral to ensure that agriculture is subject to the full framework of free and fair trading rules.

Moving on to some of the more defined points, we do welcome the steps taken to date in developing a process to allow the community better access to the dispute resolution process. There needs to be a dual process between government and business, though. At the moment there is a distortion between the haves in terms of resources to access the process and the have-nots. There is too great a discrepancy between those that understand how to use the system and those that do not.

On an international level it appears that the dispute settlement process is working. Certainly, lamb has been something that our members desperately needed to see as an example, albeit lamb producers needed to see it full stop, but our members—agriculture generally—desperately needed to see that process work. So lamb as a working example was great, because we were running out of time, after so many years down the track from Uruguay, for a working example. Australia needs to get a lot more street smart at using the rules. We do not seem to have been at all tough in articulating our position or pursuing it. That may be just the fact that it is mind numbingly slow compared to how immediate the issues are that our members deal with when they walk out the back door. The settlement processes are very long so it may be that they just lose interest, but we have outlined in our submission the view that there is room for wider involvement in the community. There needs to be a broader consultation process, with positions drawn up early, well before the deadlines, and then the participants and the public need to be informed not just of the process but of the outcomes. There really has not been a good communications process. All of us around this table are probably fully aware of what DFAT gets up to; but go out into the street and the knowledge base of just what Australia's bargaining position is, where they take it, is extremely poor. We should not be relying just on peak councils of various industries to articulate that. We think there is a broad consultation and information role that has been neglected.

On the WTO and regional economic agreements, many of the successes in gaining improved access in our bilateral agreements are a direct result of the influence of the multilateral agreements, so we are getting a flow-on from those efforts. Without that framework and our prominent support for free trade, our bilateral and regional progress would arguably be much slower. We see all manner of red herrings thrown in front of us in debates on these matters, but there is clear evidence that, by sticking to the cause rather than perhaps some of the symptoms that the committee had just been hearing about when we walked in, we are getting a good flow-on effect.

You have obviously heard about WTO agreements taking into account a whole range of other things, from environment to labour conditions. We hold the opposite view to that. We believe the WTO is clearly there to deal with trade, and it is a difficult and intricate enough job resolving those disputes and making sure they are resolved fairly. What then flows from that is good use of the environment and good access for labour. We have already seen ABS data that suggests that those industries that have good access to markets can afford and, in fact, do pay much higher rates than similar industries can pay their employees, so we believe there appears to be evidence out there that, again, there is a flow-on effect—a significant flow-on, not incremental.

The example of governments needing to resource the process increasingly is that in the last six or 12 months we have seen various extreme events: whether you look at the 'battle for Seattle' or whatever else, there have been a number of occasions when the process has been nominally hijacked by the popular media. We believe very strongly that government needs to resource the process in a very robust manner to keep the train on the track, because it can be very easily derailed into some of these symptoms rather than the cause. We do believe that developing countries are set to benefit greatly from this process and that we need to increasingly harness their assistance through the Cairns Group. Indeed, the government should be increasingly resourcing the Cairns Group and the process that supports that to enable the developing countries to participate and to increase their participation. At the end of it, we are looking for a better result, improving outcomes coming from that table, and for agriculture to be a permanent fixture in that debate. Thank you, Chairman.

Senator LUDWIG—When you talk about avenues of consultation, DFAT have public consultation and they had that prior to the Seattle Round in 1999. Was that adequate in your view? Did it get to your members or are there areas that you see that need to be improved?

Mr Martin—Certainly it was welcomed and well regarded by our peak lobby groups. They availed themselves of that opportunity and clearly articulated the policy that is driven from the ground up through our democratic farm organisations. So, to that extent, it was a great success. What we are arguing here today, though, is that the Australian community is not galvanised in its will over this—in fact, it can be easily sidetracked, because it is not involved in the process and it does not largely understand the trade conundrums that confront DFAT, that confront us as exporters, on a daily basis.

Senator LUDWIG—You may not have had the opportunity, but have you looked at the submission from Corrs Chambers Westgarth and Ms Lisa Barker? There are two main thrusts in that legal firm's recommendations: the first is for greater consultation and the second is to have advocacy arrangements—in other words, more advocacy with DFAT as against the WTO through the dispute settling body and also greater involvement in consultative arrangements by having sectoral committees established similar to those in Canada and the US. You may not have had the opportunity to look at the submission at this point in time but, if you have, I would be happy to hear from you now. If not, you might like to take it on notice and have a look at what Corrs Chambers Westgarth argues for. I would be interested in having your view on those sorts of things because, basically, they argue that it is a rules based system and that lawyers, therefore, should have a role. They recommended two main areas where they would like to have a role. I would like to have your view—from industry, from actual people on the ground—about whether or not you think they are on the right track, because they will be arguing on behalf of your clients, they will be arguing on behalf of your industry, and their recommendations, if picked up, will then impact upon the style and nature of how we address the WTO from an industry perspective. I hope that makes sense.

Mr Martin—Yes, it does. Ms Jordan advises me that we have not had the opportunity to review that submission, but we will be happy to have a look at that. I would be concerned up front that it simplifies rather than complicates the process. It is not the experience of the Australian community or the farming community generally that bringing legal argument to bear shortens the time line.

Senator LUDWIG—I think that is worldwide.

Mr Martin—Certainly, shortening the period has been a fundamental component of the trade rules process. At the moment, even that nine or 10 months is potentially fatal to many of our members' business activities.

Mr ADAMS—I think we will table them today.

Senator LUDWIG—They will be tabled and you will be able to have a look at them.

Ms Jordan—We will certainly take that on notice. If I can just reinforce the comments that have already been made, we really believe that the consultation needs to be improved in the policy development and the negotiating position development and as regards dispute resolution. The opportunities to give feedback to those who participate up front about what has developed and what are the next steps also need to be dramatically improved. The failure of that process up to now, I would argue, weakens the consultation process of policy development or to develop the negotiating position, because you have participants who are inadequately resourced to really get to grips with the depth of the issues. If we take as an example the most recent DFAT consultations, it was a very broad agenda—very few of the real issues were actually posed as such.

Senator COONEY—I am not sure what you are saying. I think what has been put to you—and certainly where the cause for concern is—is that this is a rules based system and that there are certain rules that are going to apply to everyone. I am not sure whether you were saying, 'Yes, that is a good thing,' or 'No, you should be going into matters of policy and it is not a good thing.' What do the farmers say? Do they want a rules based system or not?

Mr Martin—Yes, we do, and we want Australia to be effective at using those rules. On the face of it, we would need to be convinced that lawyers would actually enhance that effectiveness, particularly in relation to the timeliness of the decision. I am not sure whether Corrs have presented any argument as to the shortcomings of that refereeing process, but from what we can see it is a practical resolution of a dispute. We believe we have to be in there at the table achieving that outcome.

Senator COONEY—I think they pointed out that the European Union, the United States and Canada are much more active than Australia. But you are happy with the way the system is running at the moment?

Mr Martin—No. We would agree that they are more active, and I stated that we need to be tougher and smarter at using those rules. There are ways—and I should not go near the salmon case—in which our industries can gain some advantage from that rules based system. I also articulated the point that there is a level of frustration about what is GATT legal, what is actually achievable under those rules. I am not saying that there cannot be improvement, but I am very sceptical—and I believe our members would be quite sceptical—that introducing legal argument would improve it either in terms of time or outcome.

Senator COONEY—Do you see the World Trade Organisation as helping individual farmers or only the organisations? I am not sure what your concept of the operation is.

Mr Martin—Both. I think they flow. It covers both. As I have mentioned, our experience is that in this nation there is a disadvantaged sector that does not understand the rules, that actually takes the call or the fax this morning as being discriminatory, or quite possibly discriminatory, but does not know how to deal with the export problems of a particular product. There are other groups that are very well coordinated and know how to use the system. That is an inequity within our nation, and we are saying that improvements in consultation, improvements in community knowledge and will, will produce a genuine improvement.

Senator COONEY—I think what Corrs are saying is that if somebody came to them without the knowledge and they picked this up and ran with it then they ought to be able to participate with DFAT in presenting the case. But you seem to be against that. I just cannot quite gather why you should be against it if somebody who does not know about it goes to their lawyer and gets this result.

Mr Martin—That happens already. There is already a process by which individual producers and manufacturers of goods take advisers into negotiations but, as I understand it, there is no provision under this dispute process for standing for legal counsel. I see them as separate issues. This is part of the problem: again it comes back to those who can afford to employ advisers and those who cannot. I suspect that Corrs were not proposing to do everything pro bono.

Senator COONEY—I am just covering whether the farmers' federation is opposing that or just saying, 'Yes, that is all right but it is not an answer to the issue.' I am sure you are opposing it.

Mr Martin—We have a long experience through a lot of issues that affect our members where the law is clearly a delay, and part of the benefit of this dispute process is that at least it gets it through in 10 months.

Senator COONEY—The only other matter that I wanted to raise is that you say this should be confined to trade and not to other issues such as the environment. In your submission, you were talking about AQIS having a say, that quarantine ought to have a part. Why should quarantine have a part and not the environment? What is the distinction between the two?

Mr Martin—The fundamental point that our members expect from a quarantine based decision is one that is based on science. There has been reference this morning to the SPS agreement. That is, again, a complementary agreement that is part of a simplified rules based system that enhances this trade dispute process. That particularly addresses the non-tariff trade barrier issue and therefore it is complementary to the process. Once you start getting into some of the more arbitrary areas, it becomes a circular argument. Again, it comes back to the issue of what is quarantine and what is not.

This nation continues to get a couple of dozen moderate to major incursions a year, so I think there is evidence of that out there in our membership and our membership believes that we, as a nation, are fairly relaxed in our approach to quarantine in a continent—the globe has a rules based system that respects our continental rights in relation to quarantine. However, they are an annex. In our view, they are an important annex to the trade dispute settlement process. The inclusion of some of these other matters relating to the environment, labour or biodiversity are very spurious and potentially distracting from the main game.

Senator COONEY—Just to clarify, you are saying that there is a scientific basis for quarantine and that, with these other matters, the science becomes too nebulous to rely on.

Mr Martin—Our members have to deal day-to-day with what is clearly a reactionary process when it comes to, for example, the environment or clearly quite a difficult process when it comes to industrial law. We are an extremely regulated society in relation to these matters. How you introduce that in a balanced way to the trade debate is certainly beyond the comprehension of our membership.

Mr ADAMS—Your members should be happy with foot and mouth disease countries and regions that had not shown anything for some time. They would accept the science on an AQIS report that says, 'Yes, we can import from there' or that certain grains could be imported into Australia from certain regions. Would they be happy to accept the science?

Mr Martin—It is a good question and, on a regular basis, our membership do accept the scientific assessment.

Mr ADAMS—We have accepted salmon, which is a small industry in my state, but we have not tested red meat yet in any way, have we?

Mr Martin—No. It is a good question you ask. Our members do accept the science based decision. They then look at the rigour and the genuineness of the components that underpin that science based decision. When you get reported veterinary statements being bought for $US100 in certain South American countries, we question, and then when we see outbreaks we say, 'Just how rigorous is the process?' If we are going to have rules, we want to be able to manage the risk between here and there. We do not want an unspecified breadth of risk. I have already alluded to the number of incursions we seem to be suffering as a nation, and particularly as an agricultural producer. Our members have to take that on the nose and, with the possible exception of papaya fruit fly, we have taken just about everything on the nose over the last few decades.

Mr ADAMS—Have you done any surveys with your members about free trade? Are there any surveys in New South Wales?

Ms Jordan—If you mean statistical surveys and sending them questionnaires, no, we have not. But I think most of our membership would argue that their views are actually expressed through the annual conference and our policy setting process. The fact that our policies were tested as recently as last year would suggest that it is a reflection of our members' views.

Mr ADAMS—The difficulty is that when one moves around the country and talks to different people they have got different opinions about trade and its interpretation. You raised the issue about information and what is out there in the general public and what we gain as a country from it, but I often think that maybe some organisations that have a very pro-trade policy should perhaps do more with their own membership if they are going to have them on side. I find that there seem to be some great holes in the information out there.

Mr Martin—Perhaps I could ameliorate your anxiety to some extent. As an organisation we actually go out of our way to provide an unscoped level of debate. We are never too sure just

what the breadth of a trade debate will be but we are actually encouraged by holding various meetings and forums to discuss the issue prior to a debate so it is not a sudden-death, who can speak the loudest for one or two minutes, type discussion. I have already alluded to the dynamics of 2000 where there was, if you like, some impetus given to alternative views within trade. We are an organisation that reflects community views. We felt that, last year at our conference, out of the 500-odd delegates there may have been 25 that are usually motivated to turn a lot of our policy on its head, and there may have been a majority who were prepared to embrace some or all of their thinking. In the final event, none of that occurred; in fact, they reinforced our existing policy.

Ms Jordan—Could I just add that, if it would be of interest to this committee, we can certainly make available to you some examples of the sort of information that we have actively put out to our members.

Mr Martin—We put both sides of the argument.

Mr ADAMS—And you still have the appeal decision coming up on the lambs, I think. You have not really won that one yet, have you?

Mr Martin—No, but the important thing about lamb is that it has been seen by our membership as the first real working example.

Mr ADAMS—What about packages that assist regions which would then maybe be argued against in the WTO as an assistance to industry? Have you dealt with that issue at all?

Mr Martin—Our policies do not rule out—and neither, as I understand it, do the GATT rules—or eliminate the concept of putting in place processes for adjustment for reorientating the dynamics of a particular region or nation in terms of its agricultural effort. In our view, Australian agriculture—especially agriculture in New South Wales—has suffered greatly from the distortions of the super treasuries for decades now. I am sure you are only too aware of just where the US quantum is in relation to their distortional activity at the moment. Our membership expects that they will be given a good and robust understanding of the issues that effect them and the appropriate response put in place, and we argue that in all manner of fora.

Mr ADAMS—In your submission, you say:

> The NSW Farmers' Association recommends that the national interest be the objective of Australia's trade and industry policies.

Would you say that it would be in the national interest to make shirts or boots for the Australian Army in Australia?

Mr Martin—There is an argument that can be put and has been put on the floor of our processes for many years as to where the balance might be in those things. There is no doubt that, as a nation whose desire is to pursue an improving and high standard of living, we need to find the balance in these matters. There is no doubt that the community is aware of some of the examples of gross distortion in relation to manufacturing industry and primary industry. What we are saying is that those have occurred without good rules being in place. We are saying that if there

are good rules in place, if the umpire's decision is adhered to, then those things will flow and we will have the right production, whether it is primary, secondary or tertiary services, that they will be in place because of that good cause, not by being distracted by some of the symptoms which you are obviously going to have thrown at you.

Mr ADAMS—So you think it is in the national interest to make shirts and boots for the Australian Army. Does the New South Wales Farmers Association believe that or not?

Mr Martin—We have no policy on that matter. What I can say is that our members are convinced that if there is a good rules based system, a good application of those rules, then the correct balance will flow and we may very well be producing the best boots in the world as well as the best wheat in the world.

Mr ADAMS—We might be exporting them.

Mr Martin—That is right. Redback boots.

CHAIR—With the three categories of concern you outlined—market access, domestic subsidies and export subsidies—what are the top three market access problems at the moment, in the association's view? Where would you like to see a suit brought tomorrow to try and bust it open?

Ms Jordan—I think we would need to take that on notice and come back to you on that level of specific priorities. I would suggest that our members' list would be way longer than three and we would need to test with them which are the top three.

CHAIR—We hopped into the Amnesty people in the same fashion. A good list or a good amendment allows something to happen.

Ms Jordan—Point taken.

CHAIR—Is the association itself a potential litigant? Why don't you bring suits?

Mr Martin—Our constitution provides for certain activities. It does not involve us in market access processes at this point in time. Are you suggesting that is something you believe primary producer organisations should be involved in?

CHAIR—If these things are troublesome to the membership, whether it is of a specific producer group or whether it is an umbrella organisation or a state based one such as yourself, who cares?

Mr Martin—We are certainly keen to take a partnership approach but we have not got the resources to run this sort of involvement. Our submission does outline the concept of a community based approach, participation between government and the stakeholders. We have got quite a few other examples under federal government legislation where that works quite well. So we would not be resistant to that, but I took it that you were meaning that we should be the prime mover.

Senator LUDWIG—As we have heard today, and you have heard some of the comments, we have moved from a system under GATT which was more economic in its outlook and more representative in that type or style of engaging with government to a rules based system which is spawning a number of court cases. In America it is already actively involved in court cases and they are now saying that the process, because it is rules based, should be more litigious, as Corrs Chambers have given an outline on. Therefore, isn't it incumbent on your organisation to also look at that and, instead of merely continuing to be representative of your members about these issues and trying to provoke government to some action about it, to shift along and embrace the new rules based system and do something about it. Whether or not you have got the funding is another question again. But if you continue along the same continuum, aren't you part of the system we have now left behind, which was the GATT system?

Mr Martin—I believe our members clearly see it as a role of government; indeed, the WTO itself sees only governments as being admitted to the debate. We agree with that, we do not disagree, because the community has an expectation that that is clearly a government role.

We may from time to time be critical of DFAT and others that participate around that table, but we are fully prepared to be involved in the broader process that we are encouraging. More than that, we have to take the Australian community at large with us. At the moment the reactionary fire lighting and firefighting approach, if you like, that is perhaps taken through our popular media is not doing trade any favours. We are flat out dealing with that with our resources. We are happy to do what we can in a partnership approach. In fact, we would be more than keen to do that, but we need the opportunity. That is where the federal government plays a key role in linking the community, the stakeholders, through to the WTO process.

CHAIR—I appreciate that. From your point of view I suppose you see the federal government and you probably think: why shouldn't it do things more often and more actively? In a sense it is like a giant electric razor: someone has to turn it on in the morning—it just does not lie on the kitchen bench and shave you; you have to switch it on. Why shouldn't associations or even local councils, who have producers in their municipality that have a market access problem, be able to initiate a suit on behalf of their ratepayers, who would do very well if we opened access to a particular market and all those kinds of things? We have to make a suggestion to the government out of this inquiry. Perhaps you could go away and think of some of these things—how to switch on the government and make it do things. As senators and members, that is what we spend a lot of our time trying to figure out.

Lastly, you express some concern that other agreements seem to be competing for paramountcy with the WTO agreements—the Cartagena protocols are mentioned there and there are other ones—and that the standards that cannot be objectively measured become de facto trade barriers. What are you doing about that? How are you going about lobbying the Australian government to stop such villainy happening? Is there anything going on? What have you done about Cartagena? Has there been a demonstration? Have letters been written or press releases issued? Have you threatened to burn down Mark Vaile's electorate office to get a result?

Mr Martin—Certainly some members have, but I will defer to Ms Jordan.

Ms Jordan—I think we have tried to use the established channels rather than the more extreme methods. We, through the National Farmers Federation and through their participation in the Cairns farm leaders group, have attempted to get this message through at a number of different levels and in different fora, including the International Farm Federation. I think the clear message from individual farmers is that these issues should not become de facto trade barriers, because that is what stands to undermine the few gains that have been made in establishing a rules based system.

CHAIR—Yet you are happy to have the federal government's domestic law give paramountcy to environmental matters over agriculture.

Mr Martin—Our membership is certainly convinced that there is a lack of balance in the approach to many of those issues. When they look at Cartagena, when they look at Kyoto and other agreements, it concerns them greatly that they are distractions from the main event. The main event for them is getting rid of these extraordinary distortions. It does not matter whether you look at the US on cotton or you look at European barley subsidies, that market failure is being visited right back in the paddock here in New South Wales, across this nation, today. The only way that our agricultural producers have any countervailing power is by coopting together, either in an orderly or cooperative type marketing arrangement, to try to countervail. You are only talking increments compared to the distortions and the threats they see from these other distorting agreements.

Senator COONEY—The impression you have given us now apropos of what Corrs were saying is that you do not seem to want to see advocacy roles adopted in the way that Corrs do but rather that you see yourself perhaps the same way as Amnesty sees itself as a lobbying group to get government to move. When you are bringing back your further submission, could you comment on that? The impression I have got is that you see organisations like yourself and Amnesty as lobbying government to do something about a problem whereas Corrs see themselves as actually entering into the process of representation and going on with DFAT to put the cases in the World Trade Organisation.

Mr ADAMS—I think it is organisations coming to grips with globalisation in the sense that maybe we need to move a bit further on than lobbying government and there may be other roles that groups could play and their rules or their charters have not quite caught up to where we are actually heading with this globalisation and global bodies like WTO or whatever.

Mr Martin—Certainly we will take that matter into account, but I must make it clear that our role as the New South Wales Farmers Association under our constitution is not to stand in the marketplace in any form between our producer members and the consumers. Our role is a step removed from that, representing them. Nevertheless, I believe we can have a significant involvement in broadening the effectiveness of that will of the community. That is what we are exhorting government to do: to improve that community will, the consultation and the information. There should be an awareness out there in the street of just how important this is to your standard of living. If you want the water to run out of your taps, if you want the air to be clean, then you need good rules, and at the moment there is no linkage in this Australian community's mind of those matters with trade.

CHAIR—We will respect the right for a further submission. Please do so, by all means.

Mr Martin—Thank you.

CHAIR—Thank you for your appearance today.

Proceedings suspended from 12.17 p.m. to 1.35 p.m.

[1.35 p.m.]

CAMERON, Mr Doug, National Secretary, Australian Manufacturing Workers Union

HOLMES, Ms Natasha, National Research Officer, Australian Manufacturing Workers Union

CHAIR—Welcome. As a matter of formality, I have to advise you that today's proceedings are legal proceedings of parliament as if they were taking place in the House of Representatives or the Senate, and the giving of any false or misleading evidence is a serious matter. Could you make an opening statement, Mr Cameron? We will then have questions from the committee members.

Mr Cameron—Thank you, Chairman, and thanks for the opportunity to address the committee. The AMWU has provided written submissions on two specific terms of reference—that is, the opportunity for community involvement in developing Australia's negotiating position on matters with the WTO and, secondly, the relationship between the WTO agreements and other multilateral agreements, including those in trade and related matters and on environmental, trade and labour standards. If it pleases the chair, I would like to make some general comments to supplement the AMWU's written submissions.

Firstly, I would like to say that if the World Trade Organisation does not work for working families then it does not really work. There is ample evidence that many Australian working families are hurting, and they are hurting badly, due to the dominant policies of the political parties on the WTO and free trade. In fact, some 300,000 jobs have been lost in manufacturing since the commencement of tariff reductions in the early 1970s. The World Trade Organisation rules, from our perspective, are one-sided: they protect corporate rights and they do not protect human rights. The debate on the WTO and free trade is extremely polarised. The AMWU is portrayed as protectionist and seeking to go back to the past in relation to trade issues. I want for the record to say that the AMWU supports international trade. Many of our members' jobs rely on international trade. However, the form that world trade takes disadvantages many Australian families. It is the AMWU's view that the bulk of politicians and major political parties have been captured by and capitulated to free trade and neoclassical economic theory. World trade, in the minds of the political parties, is seen as the panacea for the ills of the world. Unfettered trade and capital flow and commerce itself are seen as the solutions to all economic and social problems. The AMWU's position is that these views demonstrate a lack of critical analysis and understanding of the problems associated with the WTO and free trade.

We are witnessing unprecedented international economic integration at the same time as we are witnessing local social dislocation. There is a huge north-south divide being created within nations as well as between nations. Global corporations are almost unfettered by domestic or international social obligations. Many of these huge corporations are benefiting from the most alarming by-products of globalisation and free trade. The artificial demarcation created by politicians and big business between trade and core labour standards benefits those countries that use exploitation of labour and the country's environment as a competitive advantage, colloquially known as social dumping. Big business is putting profits before people. Big

business has progressively been adopting a cosmetic aura of concern and, in some cases, paternalism towards their employees and the environment. But self-regulation on human rights and environmental sustainability has not worked, and will not work in the future.

Governments around the world have a responsibility to act in the interests of their nation and their citizens to ensure there is fair trade, not free trade based on environmental destruction and exploitation of human beings. I understand one of the aspects of this committee is that they have to do a national interest analysis and, in my view, the critical analysis of the national interest has not been done effectively enough, otherwise many of the politicians would not be arguing the points that they argue at this time.

I just want to draw your attention to a couple of polls that have been done. One was the millennium poll on corporate social responsibility. I draw your attention to that because without corporations you cannot have a WTO and you will not have world trade. So corporations are very important to that area. The poll was conducted by Environics International in cooperation with the Prince of Wales Business Leaders Forum and a conference board in mid-2000. The conference board is some 2,600 senior executives from about 60 countries around the world. Price Waterhouse was the major Australian sponsor. The poll was conducted in 23 countries in six continents and involved what was described as 25,000 average citizens.

The highlights of the poll indicated that citizens in 13 of 23 countries think their countries should focus more on social and environmental goals than on economic goals in the first decade of the new millennium. In forming impressions of companies, people around the world focus on corporate citizenship ahead of their brand reputation or financial factors. Two in three citizens want companies to go beyond their historical role of making a profit, paying taxes, employing people and obeying all laws. They want companies to contribute to the broader societal goals as well: actively contributing to charities and community projects does not nearly satisfy people’s expectations of corporate social responsibility.

There are 10 areas of social accountability rated higher by citizens in countries on all continents. Fully half the population in countries surveyed are paying attention to the social behaviour of companies. Over one in five consumers report either rewarding or punishing companies in the past year based on their perceived social performance, and almost as many again have considered doing so. Opinion leaders indicate that public pressure on companies to play broader roles in society will likely increase significantly over the next few years.

Australians were asked their view on the role of large companies in society. They were asked, ‘Should their role be to make profit, pay taxes, create jobs and obey all laws, or should they operate somewhere between the two positions, or should they set higher ethical standards and build a better society?’ In Australia eight per cent of those polled said that the role of companies should be to make profit, pay taxes, create jobs and obey all laws. Forty-three per cent said companies should operate somewhere between the two positions. Forty-five per cent of Australians said companies should set higher ethical standards and build a better society. Unfortunately, many of our key politicians and our political parties adopt more the view of those polled in Kazakhstan, where 48 per cent said the company’s role is to make profits and only 18 per cent said it should set higher ethical standards.

The strength of the millennium poll suggests that in the coming decade, corporate responsibility is likely to become a new pillar of performance and accountability for successful companies. Nevertheless, hoping that corporations will adopt the aspirations of the community around the world, in my view, is pie in the sky. Corporations will need to be regulated through various treaties, including, but not limited to, the WTO.

The AMWU also conducted a poll of 1,200 voters in 18 marginal seats in June 2000. The polling demonstrated the following: 53½ per cent of respondents believed that jobs will become less secure in the next few years; 65 per cent believed that jobs had become less secure in recent years. Overall, the federal government was nominated as being responsible for the reduction in job security. More than 75 per cent believed that Australia does its fair share in relation to free trade or that Australia does more than its fair share. More than 82 per cent believed that tariffs should be left as they are or that Australia should increase import tariffs. Some 90.2 per cent believed that the Australian government should do more to protect Australian jobs from competition by countries where employees earn very low wages.

The AMWU believe that it is time that major political parties and politicians listen to the Australian public, who have demonstrated not only that they want major corporations to act in a more socially conscientious way but that they want politicians to act in the interests of, and intervene on behalf of, the Australian public. It is unfortunate that we see our political system dominated by economic rationalism and by what Professor Joseph Steiglitz, the past chief economist of the World Bank, describes as a 'sophisticated form of madness'. This sophisticated form of madness is producing huge inequities in income distribution and social standards within Australia—the whole WTO, World Bank and economic rationalist approach. Our bush and our regional areas and many of our fringe metropolitan areas are not sharing in any of the benefits of globalisation or the WTO model.

Recent economic modelling by the National Institute of Economic and Industry Research, on behalf of the AMWU, demonstrates that in Sydney many of the residents of the eastern suburbs and the North Shore are benefiting from globalisation by significant increases in disposable income, while working class suburbs such as Bankstown, Holroyd and Botany have had significant declines in living standards. This NIEIR study has been supported by recent reports of the Catholic Social Welfare Commission, which indicate that the manufacturing jobs that have been lost are not being replaced, that families are in deep trouble in terms of their living standards and that there is huge inequality within the metropolitan centres. I draw your attention to that Australian Catholic Social Welfare Commission report. It goes into some detail, but it confirms the analysis that NIEIR have done for us.

Also, Dr Ann Harding, who has done consultancy work for Peter Reith, the coalition government and Labor, conducted a study called 'The Regional Divide'. It shows that in the wealthiest five per cent of local government areas real household incomes rose by nearly eight per cent between 1986 and 1996, while in the five per cent poorest LGAs real household incomes fell by five per cent in real terms over the same period. That confirms the NIEIR study. Similarly, the impact of globalisation is highlighted in the Luxembourg income study, which is the main international government-supported research project. It shows that Australia's income distribution is the sixth most unequal of 21 Western countries studied. In 1997-98 the ABS showed that in Australia the top 10 per cent of families got 26.8 per cent of total family income

while the bottom 50 per cent got just 23.1 per cent. These analyses support the further work that we have quoted in our submission by Professor John Quiggins.

The AMWU supports fair trade; we do not support free trade. We believe, first, that information and community consultations on trade policy should be held in accessible forums. They should be well advised in advance, free of any cost, held at convenient times and locations, and have time for genuine input from the community. Government must accept and consider a wider range of advice and opinions on trade and related policy. Consultations and public debate on policy positions should take place before negotiations commence. Government should accept and consider a broad range of advice and opinion on trade and related policy than it has to this point. Secondly, there should be greater parliamentary and public scrutiny before agreements are signed. That goes back to this national interest analysis of what we would call a 'social audit' of the effects of globalisation and the free trade model that we are labouring under at the moment. Thirdly, there should be representation of non-government organisations on the trade advisory policy council and on WTO delegations.

I was a representative of the International Metalworkers Federation in Seattle at the last round of trade negotiations. There were supposed to be consultations set up for the full week of the WTO between Australian NGOs and Australian citizens in Seattle. These were an absolute farce. There was one meeting and after that meeting, because of the generally chaotic nature of the WTO forum, we were told that there was no time for any consultations with the NGOs. Even though the NGOs turned up every night at the Australian delegation headquarters, there was no consultation and no communication as to the Australian government's position.

Fourthly, we support a position where all WTO members are required to ratify ILO conventions 87, 98, 100, 111, 138, 182, 29 and 105 and give the necessary support to the ILO in the follow-up to the ILO declaration of fundamental principles and rights of work.

Fifthly, WTO agreements and processes should be changed and interpreted to give much clearer recognition to UN international agreements on human rights, labour standards and the environment. In pursuing these changes, the government should seek such a widening of exemptions under WTO rules and procedures as would allow intervention for a wider range of purposes than are currently permissible, namely, sanctions for persistent labour right violations and disincentives for production that entails breaches of environmental standards. Exemption should be enforceable through an independent WTO panel, with advice, technical assistance and monitoring being provided by the ILO. The system should include technical and enforcement assistance to developing countries that require it. A primary goal of the system should be to assist countries develop support of domestic public institutions. WTO agreements should clearly recognise the right to have national regulation in these areas.

Sixthly, there should be commencement of an examination of how to incorporate the issue of labour standards and trade into WTO mechanisms and processes. This examination should envisage enhanced ILO-WTO collaboration on an equal basis in areas such as trade policy reviews and dispute settlement procedures and oversee the incorporation into the WTO's existing mechanism of core labour standards. It should examine the role which could be played by ILO technical assistance in helping countries to achieve implementation of all the core labour standards.

Seventhly, we should establish a trades and labour standards monitoring group within the Department of Foreign Affairs and Trade—we certainly should not hand it over to the lawyers which I understand was a submission put here this morning—which would monitor the violations of labour standards among Australia's trading partners. The monitoring group should investigate complaints from Australian businesses and other interested parties in relation to claims of social dumping. The monitoring group should report cases of social dumping to the government. It should provide advice to the government in relation to settlement of social dumping cases with the countries concerned.

Eighthly, we should upgrade Australia's representation to the ILO, at least to the level of representation that existed prior to 1996. The government cannot have its cake and eat it. It cannot say that trade should be separate from labour issues and the labour issues should be dealt with at the ILO while the government has deliberately downgraded its representation at the ILO. I just want to add an additional point: the national interest analysis that this committee has to undertake under its guidelines should be done in the terms of a social audit to analyse the effect of the WTO on working people in this country. I might leave my initial submissions at that. Thanks for your patience.

CHAIR—Thanks kindly.

Mr BYRNE—With respect to utilising the WTO mechanisms, have there been any manufacturing companies other than the more publicly recognisable cases that have initiated some action under the framework of the WTO?

Mr Cameron—Yes, and they complain bitterly about the ineffectiveness. Sorry, not so much under the WTO but under the anti-dumping legislation initially. We have had huge complaints from companies in Albury-Wodonga who produce Australian paper that the Indonesians are destroying the forests and intimidating and exploiting the workers. The companies there are dumping paper at a huge loss to gain markets in Australia. When these concerns are taken up through the existing processes, there is no fast-track mechanism, and they say to me that the damage is done prior to the existing processes actually having any effect.

Mr BYRNE—It is a bit like Pilkington's, the glass company, which is one where dumping from China is basically wiping them out of business. Australian manufacturing is about 13 per cent of GDP—is that right?

Mr Cameron—Yes.

Mr BYRNE—If the existing situation continues, what percentage of GDP are we going to wind up with for manufacturing, in your view?

Mr Cameron—That would only be a guess, but I have to say we are at a critical mass at the moment with just over one million Australians employed in manufacturing. The situation we see now is that the skills base in manufacturing is declining quite significantly. As the size of the industry declines in comparison with other areas of growth, which are not really providing jobs in the areas where they are declining, there is less money being spent on training in our industry. We are very concerned that it is not the percentage which is going to be the important figure, it is going to be the quality of our skills base in the industry. Under the current WTO

rules, under the free trade agenda, we are seeing our skills base decimated. There may be some decisions made today by the federal government in the innovation statement, but we would argue that a lot of that, from what I have read, will be too little too late. We spend about $135 billion less over a 10-year period than the leading nations which really want to have an information economy. So it is a question of the skills base, and if the skills base is not there that will force a decline in the percentage. I am not sure what that could be, but we are far too reliant on coal, wheat, iron ore and minerals at the moment. We need a strong manufacturing base. No country can provide a decent standard of living to society unless it has got a manufacturing base.

Mr BYRNE—What is your experience with respect to heavy engineering?

Mr Cameron—Absolutely disastrous. We have recently seen 25,000 jobs that could have been created in Queensland disappear overseas. We have state government funded projects and federal government funded projects being fabricated in China, Indonesia and Vietnam for rates of pay between 11c and $1.60 an hour. These workers have got no trade union rights, they have got no rights of representation. These are jobs that the state governments tell us they cannot keep here because of competition policy and WTO rules.

I will give you one example in Queensland. In Brisbane we have had the company Evans Deakin operating there for 75 years. They closed down recently. They closed down because they said they could not match the competition and the social dumping from China and Indonesia. These are jobs for Australian infrastructure projects that are coming in here. The analysis by the ISO—not by the AMWU but by the Industrial Supplies Office—is that that is 25,000 jobs that are not here: apprenticeships, fabrication jobs and unskilled jobs, which are very important as well. We hear too much about the highly skilled jobs; we need to get some unskilled jobs for people that cannot become brain surgeons or rocket scientists.

The figure of 25,000 jobs was the last analysis in Queensland. That is replicated in Western Australia and New South Wales. We have seen with the Visy Board project, funded by federal government grants, that much of the fabrication work is being done overseas. This is a new development and it is an absolute tragedy. And that cuts into the basic skills base of manufacturing and engineering in this country.

Mr BYRNE—What level of consultation has existed between, say, organisations like DFAT and the government and manufacturing when they are talking about putting our position forward?

Mr Cameron—Very little. I have written to the Prime Minister on two occasions to seek discussions about what I believe and our union believes is the crisis in manufacturing. The first response I got after about four or five months was to talk to Peter Reith. Peter Reith had other things on his mind at that time with the MUA dispute, and I did not think I would get too much focus on jobs from Peter Reith at that time. I have written to the Prime Minister and to Minister Minchin. I simply get the mantra coming back that, really, everything is okay, the government has got the basics in place, low inflation, low interest rates, 'We are concentrating on the basics; there is absolutely no need to do anything else.' All of those analyses that we have—the Harding, the Catholic Social Justice Commission—say that it is not right, it is not going well.

Mr WILKIE—The AMWU argues that there has been little community consultation, particularly in relation to development of trade policy. I was just wondering if the AMWU participated in the community consultations undertaken by DFAT prior to the 1999 WTO meeting in Seattle?

Mr Cameron—Yes, the union as an organisation did and I personally attended them. They were anything but constructive. We were lectured by DFAT officials about the benefits of free trade and it really set up a combative situation as distinct from a consultative process. It was not very good.

Mr WILKIE—So it was more a talking at rather than a talking with?

Mr Cameron—Yes, the ideologues from DFAT were there putting their ideology to us.

Senator LUDWIG—I just wanted to force some of your views; I think you referred to it as sanctions, but correct me if I get the terminology wrong. As I understand your submission and your oral evidence this afternoon, what you are effectively saying is that the WTO should embrace sanctions for those who do not undertake core labour standards. Is that what you are saying?

Mr Cameron—The union takes the view that there has to be a complete restructuring of the WTO. We have to get one fundamental position understood and adopted—that is, without labour, you cannot have trade and to artificially demark a position where you say trade stands on its own and core labour standards are to be dealt with by the ILO is intellectually weak and unsustainable.

We argue that there has to be a close working relationship between the WTO and the ILO. A working party should be established. Eventually the WTO, along with the ILO as equal partners, should be in a position to exercise sanctions against a country like Burma, which continues to use forced labour, slave labour and child labour and which persistently defies world opinion and standards for human rights. We say that Australia cannot do it on its own; we cannot implement sanctions on our own. There should be an international forum if we are going to be part of an international organisation. That organisation should have some power to take sanctions against persistent breaches of core labour standards or environmental destruction.

Senator LUDWIG—And that would go for human rights violations as well?

Mr Cameron—Absolutely, human rights violations, child labour. If we can set up the complex infrastructure to deal with trade disputes and we can put all of the effort into resolving trade disputes, surely we can put the same effort into human rights, environmental issues and labour issues.

Senator LUDWIG—Would you then suggest that the WTO adopt a rule about these sorts of things so that they can be applied universally across all members of the WTO? Or are you suggesting that there be a bar to entry into the WTO in the sense that they have to, as I understand it, sign up to all the relevant ILO conventions listed on page 13 of your submission before entering the WTO? Is that what you are suggesting?

Mr Cameron—Given China will become a full member of the WTO, I think it is fairly brave of me to say that you should jump that hurdle before you get in. I think once you become a member, like being a member of parliament, there are certain obligations that you should meet and once you become a member those obligations should be met. There should be a process within the WTO not only to have sanctions but also to give incentives. So it should be a sanction and an incentive position, with sanctions being the last resort.

Senator LUDWIG—Doesn't that inherently create a bar in the sense that China—as a bad example—would know that, having signed up, it would then have to move down the track of meeting all these ILO conventions or face sanctions? Of course, it could then say, 'Well, I will join,' but as soon as it finds itself in the gun for a sanction, it says, 'Well, I'll hop out now. Thanks very much.' Surely it knows in advance if it is going to sign up to that. In fact, it may not want to join because it is going to be required to meet those ILO conventions. Therefore, it begs the question of why it would join in the first place if that is what is going to happen to it. I am not arguing for or against; I am merely trying to explore your view about these sanctions and how they would operate. In addition, perhaps you could also tell the committee what type of sanction you envisage as well as, I guess, incentives.

Mr Cameron—I think you are seeking from me that I be far too prescriptive at this stage. I do not think we are at the stage where the prescription on what types of sanctions and how those sanctions should be used is available to me. I think that is a job for the ILO and the WTO, working as equal partners, to determine what they should be. I am not here to give any prescriptive view on how sanctions or incentives should work. I simply say to you that, in China, workers are paid $2.11 an hour. There are no independent trade unions, there is no right to strike and trade union activists are being locked up in mental institutions for daring to criticise the state. There should be some opprobrium from Australia for that position, similar to that which should have been put against Indonesia in the past. We cannot just sit back and be quiet when these things are going on. I believe there is a responsibility for parliamentarians and government to take up these issues seriously and to not diminish labour rights—human rights—against trade. That is what has been happening and I think it is wrong. I do not have all the answers—I would not pretend to have all the answers—but I certainly put to you that there are enough resources at WTO and ILO to sit down and come up with a workable sanction-incentive program.

Senator LUDWIG—In the second paragraph on page 22, in relation to conclusions, you mention:

Government should set itself the task of managing trade so as to avoid exploited labour or social dumping.

When you say 'managing trade', what do you mean by that?

Mr Cameron—They should manage trade on the basis of government projects not being sent, as at the moment, to China for exploited labour. It looks like they will move to bilateral trade agreements. There is going to be a proposal—I know it is a proposal—from the Labor Party for a bilateral agreement with China. I would be interested to know what that bilateral agreement means in terms of a future Labor government's position with China on human rights, environmental issues, and health and safety standards in a country that we are trading with. We have a right to put those positions and to put them forcibly.

Senator LUDWIG—To put a bit of concrete around it, what you are suggesting? I will not hold you to it; I am merely trying to understand your submission a little better. You are not seeking to manage trade, per se, but the agreements that might govern trade. In doing so, you are looking at incorporating ILO conventions or core labour standards as part of those agreements and then having forcible sanctions or incentives to ensure that they are met.

Mr Cameron—Through a joint WTO-ILO position. I think that encapsulates it well, Senator.

Senator COONEY—I note what you said about lawyers. Can you perhaps put that in context so that we can get your disagreement or agreement about it? What has been said is that, if you have a rules based system of trade or, indeed, a rules based system of human rights or whatever, and if you have a body that is going to decide whether or not the rules are broken, you should have procedures by which that is done—if they are legal procedures—or, if there is an agreement that needs to be enforced at law, surely you should have people who are learned in that area to do something about it. Are you saying that we should not have a rules based system, or are you saying that we should have a rules based system but lawyers should be kept apart from it?

Mr Cameron—I will say a couple of things about a rules based system. I think a properly constructed rules based system that encapsulates core labour standards, environmental standards and labour rights as part of the trade agenda is the type of rules based system that we would support. We do not support a rules based system that is fully focused on trade, in many cases at the expense of environmental standards, core labour standards and human rights. That is what we have at the moment.

In terms of the lawyers' involvement, if we knew who the lawyers were who were making the decisions, it would be better than the position we have now because we do not know who makes the decisions at the WTO. It is a secret process. It is not open or accountable. The process is bad. That process is generated right through the whole WTO system. I think next time there is a WTO on, this committee should go and have a look at the chaos and the stress under which people make decisions that affect all of mankind. It is crazy, and I am not so sure about putting a lawyer into the mix.

Senator COONEY—What has been put by Corrs is, 'Since you've got a rules based system, all this should be out in the open. If there is a hearing, it should be in the open, people should be represented and there should be an idea of what the evidence is going to be.' You would agree with that, I take it?

Mr Cameron—Yes, I certainly agree with more openness in WTO proceedings because they are closed proceedings at the moment.

Senator COONEY—We have asked the New South Wales farmers and we have asked Amnesty International if they could give us an example of the sorts of rules they might like to have put in. For example, one rule that you might like to have in is that any party to the World Trade Organisation ought to pay a wage that enables a family to live reasonably—the Higgins statement—or something like that. Have you got any thoughts on what you would like in the agreement? The reason I ask is that I think if we start getting actual conditions and rules put in we might take the argument a bit further.

Mr Cameron—Again, I think the rules are an issue that should be developed by proper processes between the ILO and the WTO. I do not come here with any specifics. I think it is a bit unfair to be seeking those specifics when we have not, as a nation, actually focused on this issue with any rigour for probably 17 or 18 years. We have not done it. We have simply capitulated to the free trade agenda—that that will see us okay. It is the trade equivalent of the drip-down effect of Ronald Reagan's economic policies and it is not working.

Senator COONEY—I think one of the problems that may arise is that people say, 'Things are going badly; somebody ought to do something about it. The ILO or the World Trade Organisation ought to do something about it.' We have a Department of Foreign Affairs and Trade about which it could be said—I am not necessarily saying it—that they are not terribly skilled in this area, are not terribly skilled in trade, are not terribly skilled in human rights and are not terribly skilled in anything, yet they are out there making agreements. Is the trade union movement going to do something? They say, 'It's got to be done through the ILO and the World Trade Organisation.' You say to the farmers, 'You've got some problems with it. Are you going to do anything about it?' They say, 'No, we're not.'

It seems to me that to a certain extent we are in a position where nobody, in Australia at least, is ready or capable of taking some sort of step and putting forward some sort of proposal. We heard from Corrs this morning the position that the European Union seems to be on top of all this and, whether you agree with them or not, they are putting forward things, as are the United States and Canada, but that Australia seems to be lagging behind. It just seems to me that we need to put forward some very specific things. Amnesty International is going away to see whether they can do something and so are the farmers, as far as I can see. What we are tending to get is a whole series of lobby groups coming along without putting specifics. I do not think the Department of Foreign Affairs and Trade are geared for all this. I do not think they have got any great consciousness of what it is like to get out and trade, what it is like to be a worker in the industry or what it is like to be without your human rights. They go away and are very nice people, but a bit fey, and nobody else seems willing to take on the issue.

Mr Cameron—I think it would be an interesting thing trying to graft a conscience onto a DFAT official, but never mind. I understand where you are coming from but I think what we need firstly is the political will within Australia to accept that this is a problem. What we have at the moment is denial. We have the Productivity Commission being sent away with its Orani model to develop economic modelling to say that everything is okay. We have politicians in areas like Newcastle telling the public that everything is okay when the local bishop and the local charities cannot keep up with the social and financial problems that displaced workers have. There has to be as a threshold—and I think this committee can play a role in that—a political change in terms of accepting that free trade, the WTO, the IMF, competition policy and privatisation have got certain problems. Rather than just writing to people who raise concerns to say, 'All the basics are in place, go away. Everything's fine,' I think there has to be a more critical analysis of these issues.

Senator COONEY—I can follow that, but who is going to make the critical analysis? That is the point. Not only you—

Mr Cameron—Not the Productivity Commission.

Senator COONEY—I know. I understand what you say there. Not only you but a series of groups are coming along saying, 'We're reasonably satisfied but there is this to be done' or 'We're not satisfied' or 'This is terrible'. There just does not seem to be anybody willing to go on the evidence and say, 'We suggest that this is how agreements should be made. There ought to be a provision in there to take care of the environment.' The farmers come along and say, 'There ought to be quarantine provisions in the agreement.' You say, 'What about environmental provisions?' They say, 'No, because that is not scientific,' so they have no idea. We say, 'How would you put it?' They say, 'We don't want to put it, although we will go away and think about it.'

Mr Cameron—The only example I am aware of is the Jordan free trade agreement that was signed off by the previous Clinton administration. Core labour standards and environmental issues were part of that agreement. What we would be arguing is that, if Australia is doing bilateral or multilateral agreements, core labour standards, environmental issues and human rights should be addressed in those agreements.

Senator COONEY—An agreement is just establishing a new relationship; that is what agreements are all about. It is a particular sort of relationship that an agreement or a contract establishes, but people can decide what is in the new agreement. We could say, for example, in an agreement, 'We will not take any manufactured goods from countries unless they have guards on their machines.' That is a simple concept. 'We will not take goods from a country unless there is a fair and reasonable wage which we define in a Harvester judgment type of thing. We will not take goods from countries that do not impose proper environmental standards to stop clear felling or something like that.' What we really need to know is what propositions we should put into agreements.

Mr Cameron—I have indicated environmental issues, core labour standards and human rights issues. I would point not only to the Jordan agreement but also to some of the European community legislation that has been developed. They are a far more civil society than we are in terms of these issues. We pride ourselves on being a civil society. We are moving more and more to the American free trade model, as distinct from a European civil society model. Rather than me give you prescriptive issues here, I just point to the fact that the European community have conducted social audits as to the effects of globalisation. After they conduct the audit they have an understanding of what the problem is and they can then put in processes that fix the problem. We have not done the social audit. All that we have said is that free trade is good, trade liberalisation is good and in 20 years time everybody is going to be better off because the GDP will be 0.4 per cent bigger. That is the answer we get. The Europeans have done it in a much more sophisticated, humane way. It is very difficult to give you all these answers because we are so far behind.

Mr WILKIE—Is there a worldwide movement towards incorporating human rights and working standards into these sorts of agreements?

Mr Cameron—On a number of levels there is. There is the formal trade union level through the International Confederation of Free Trade Unions, who are lobbying consistently with government, the WTO and the ILO about core labour standards. There is the public and community reaction that takes place every time there is a meeting that says WTO, WEF or globalisation. People just cannot dismiss these protests as some rent-a-crowd. These are people

who have serious concerns, and many of them are victims of globalisation and free trade. If the politicians and government want to continue to pretend that these are a bunch of rabble, I think that is a serious political misjudgment.

There is the grassroots opposition, there is the formal trade union opposition and there is the role of government. Until recently in America, the Clinton administration was arguing for the implementation of core labour standards as part of the trading regime. We say we should do that. We say that you just have to let it run as it is because, unless you do, there is going to be another world war. Come on. I think some of the shallow analysis is a bit rich.

Mr ADAMS—Trade has caused a few wars over the years.

Mr Cameron—Yes, but I think we have moved on.

Mr ADAMS—I think you are right. We had evidence from Bill Mansfield, when we had a roundtable discussion before Christmas, that the ILO had formally written to the WTO asking about a formal agreement. Do you know whether there has been any movement in that area?

Mr Cameron—No, I cannot give you any details on that other than that the ICFTU is continuing to push very strongly to try to get the WTO and the ILO working together. The change of government in the United States may not help that. I think there is an obligation on the Australian government, whether it is a Liberal coalition government or a Labor government in the future, to take a position based on civil society, human rights, environmental issues and core labour standards. We should be advocating these issues as strongly as we advocated nuclear disarmament and nuclear control. We just do not understand the issue as well. We have never thought about it in 17 years because we have been captured. The elites in politics, the elites in business and the elites in the newspaper area have pushed this down people's throats, yet all of the polling that is done demonstrates that, after 17 years of pushing trade liberalisation by both Labor and Liberal governments, the public have not bought it.

Mr ADAMS—There is certainly not much public debate. In your submission you argue that—especially prior to the Seattle round—more effort went into discussing mining and agriculture than into looking at Australia's manufacturing base. I would like to explore that with you. Would you tell us what you meant by that?

Mr Cameron—I am not sure how aware you are of the process at the WTO. The WTO process is based on what they call green rooms. The major players in certain areas attend the green rooms. The Australian government delegation attended the green room in agriculture. Singapore, Indonesia and all these other countries who see the importance of manufacturing would be in the green room in manufacturing. We do not even think about going in to actually make an impact on manufacturing, because we see Australia as focusing on minerals, agriculture, tourism, services and to some extent IT—and we have not spent enough money on IT to be any force in it at all in terms of manufacturing. We are focusing on what is our core capacity from some people's point of view. The Ricardian theory is that you concentrate on your comparative advantage. If Ireland had to concentrate on its comparative advantage, it would not be the fastest growing manufacturing country in the world. Australia needs to do something and do it quick.

Mr ADAMS—Senator Cooney raised the point about looking at sanctions and whatever. The EU seems to put limits on countries that come into the European Union. They have to come up to certain human rights standards and also, I think, ILO conventions. Is there any reason why that has not been accepted in the WTO? Why could we not have a method of the same process?

Mr Cameron—I have heard the argument that it is because it is democracy at work: each individual country has a veto. I have heard the argument that countries would be disadvantaged because of looking after their environment or looking after the population. I find that a bizarre concept, but we are told that you cannot do it because Cambodia—though not so much Cambodia—India and China will not accept it and they will exercise their veto. That means that we have to—at least Australia has to, as it has been for the last five years—side with those countries. Australia should be siding with civil society and the European model. We should again be seen as a sophisticated, caring society, not a society focused on economics, profit and shareholder value at the expense of everything else.

The European model is far better than the model that we have been following, and that is something I think we need to have a look at. These countries that are exercising their veto have also been told by senior politicians that they are speaking on behalf of their nation and their population. I put it to you: would China be speaking on behalf of its nation? Would Indonesia be speaking on behalf of the nation? Would Cambodia and Vietnam be speaking on behalf of their populations? It is a nonsense. It is politicians and it is governments that get involved with big business to put WTO rules in, not the population.

Mr ADAMS—The national interest comes up as the important objective. The farmers wanted to put on the agenda that trade should deal with the national interest. I asked them the same question I will ask you now. You would believe that we should be able to make a shirt or a pair of boots for our Army in Australia. That would be in the national interest, wouldn't it?

Mr Cameron—I do not know how naked soldiers go—not too well, I would think. Surely we have to be able to do the basics for engineering and manufacturing in this country. The WTO position we have adopted has been predominantly agricultural and minerals based. Remember, when you think about farming, do not think about the local farmer out in the back patch. These are major corporations dominating farming in Australia. So these major corporations, both from minerals and agriculture, have their own vested interest and will put certain things to parliamentary committees like this. We have a vested interest, and that vested interest is our members and the community in general. We believe that the best interests of members in the community would be served by having a vibrant manufacturing sector. No country can survive on minerals and agriculture. We are far too trade exposed. Our current account deficit will blow out continually. We will be on a continual roller-coaster and our dollar will continue to decline. If this is five years of the good times, I shudder to think what we are facing in bad times.

CHAIR—How do you see the effect on investment capital, either equity or loan funds, by moving from a free trade based approach to a European or protectionist one? How do you think the Australian economy would fare under such a change of policy?

Mr Cameron—Your question is flawed. The Europeans do not have a protected economy.

CHAIR—I beg your pardon.

Mr Cameron—So I am not sure what you are on about and whether I can answer it.

CHAIR—I have some misgivings in the sense that I perceive Australia as an economy that is in search of investment capital to renew and innovate its factories and its mines and, in some cases, its farms. If investment capital tends to go where cost margins are lower, how do we go about attracting that capital that we will need to sustain ourselves? What will happen if we take this approach that you are outlining? I have sympathy for job losses and so forth, but in a practical sense I have this feeling that it would be very hard to attract capital, whether it was through investment in shares or loan funds. So how do you overcome that obstacle?

Mr Cameron—I think you do what we have done in the past—that is, concentrate on research and development allowances, concentrate on innovation and concentrate on education and training in this country. While you do that, I think we also have to make sure that we do not do what the Indonesians demanded we do some years ago; that is, close down all our factories and move them to Indonesia because the land is cheaper and the labour is cheaper. We have to have some gainful employment for the youth of this country who are not going to be brain surgeons or rocket scientists. I think we have failed miserably in that. You could talk about the knowledge economy, the IT economy, but you have to be able to have some other economy that allows people to participate in a fair and equitable manner in the economy. I think we have lost that.

In terms of investment, I think the superannuation funds have a huge role to play. I am on the board of the Superannuation Trust of Australia. We have just allocated a significant amount of money for venture capital. There is significant capital available in Australia to build our manufacturing industry without going overseas. We are far too captive of overseas capital. We are far too captive for overseas corporations. We have no genuine indigenous manufacturing industry. These are the issues that the government should be addressing, and I hope they address some of these issues in their statement today.

Senator LUDWIG—I would like to explore that option that we left last time. For argument's sake, if their sanction caused a human rights problem in a particular country that it was targeted at, what would be the answer to that?

Mr Cameron—If it caused a problem? What kind of problem—that the rich are going to get poorer?

Senator LUDWIG—We can go to specifics, but there are sanctions put in place and sanctions can have a negative impact upon industry and jobs as a consequence.

Mr Cameron—Sure.

Senator LUDWIG—We know what happens when that occurs. Sanctions can cause human rights abuses through that process. We can give you specifics like Iran, where you currently have a sanction because of their current or last military exploits, but it also creates human rights abuses in that country because of the imposed sanctions. There is no doubt about that. We are aware of that, but we do not do anything about it. You are advocating the same or similar results. That worries me on that side. I am curious as to how you are going to deal with that.

Mr Cameron—Senator, I do not think you should be worried. I think sanctions have played a great role in humanising international relationships. You have only to ask Nelson Mandela about his view on sanctions. You have only to ask the ANC about their view on sanctions in South Africa and the role they played in bringing democracy and human rights to that country.

Senator LUDWIG—So are you saying that the end justifies the means?

Mr Cameron—The end is very important. If the end means human rights, decent living standards and decent rights for working people, then the ends—if they damage big business along the way—may have to be implemented.

Senator LUDWIG—I am not talking about big business; I am talking about people and people's lives.

Mr Cameron—But that is the argument big business uses every time. When we were talking about sanctions—

Senator LUDWIG—I was just listening to your answer.

Mr Cameron—I am just trying to respond. We spoke about sanctions in Fiji. After the complete removal of democracy in Fiji, the people who cried the loudest were expatriate Australian business people exploiting Fijian clothing workers. So I do not have a lot of sympathy for them. I would rather listen to the trade union movement in Fiji and to the workers in Fiji who said, 'We need to do this or we will lose everything. There is no point having a job if you don't have a life.'

Senator LUDWIG—Therefore, to take a reverse example, if we had a large manufacturing export business employing a significant number of people in good jobs and we found that their major importer overseas was a country that had significant human rights abuses or significant problems with identifying, or at least gaining, core labour standards, should we say that we will not trade with them as a consequence until they adopt core labour standards?

Mr Cameron—Only if it is done through the proper processes. I am not arguing for Australia to adopt unilateral international trade sanctions. We are not a big enough player. It should be done through the WTO and the ILO and, as I have said to you, how it is done should be the focus of significant debate and discussion at the WTO and ILO. Look at the pressure Nike are under. They have moved from a position where they did not care about anything to saying, 'We will self-regulate.' They have been exploiting working people around the world. Are we to say nothing about that because some Indonesian women earning 30c an hour are going to lose their jobs? These are tough calls. We do not want them to lose their job, but we do not want Nike to exploit them. At least now there is a bit of analysis being done on it and a debate being generated. I think, Senator, you can be a good participant in that debate because it is an important debate.

CHAIR—No doubt you will be.

Senator LUDWIG—I am certainly listening.

CHAIR—We appreciate the chance to have this exchange. We asked some of the other witnesses earlier today if they felt like submitting some more material specifically on some of the points that were raised in the dialogue. You are very welcome to do that. If you want to call it a supplementary submission or whatever, do so by all means. We probably will not have another hearing on it, but we will read the information. You should have that opportunity. We feel that having just one meeting in Canberra is not enough for all the witnesses. So you are most welcome to do that.

Mr Cameron—I appreciate that.

CHAIR—Thank you very kindly.

[2.40 p.m.]

BARNARD, Mr Peter Oliver, General Manger, Economic, Planning and Market Services, Meat and Livestock Australia

LUGSDIN, Mr James Allister, Manager, Marketing Services Korea, Meat and Livestock Australia

CHAIR—I welcome our next witnesses. I have to advise you that these are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. I invite you to make an opening statement and then we will proceed to questions.

Mr Barnard—Meat and Livestock Australia—an organisation representing Australian cattle and sheep producers and meat processors—welcomes the opportunity to appear before this committee to discuss Australia's relationship with the World Trade Organisation. The meat and livestock industries are amongst Australia's greatest export industries. Last year, Australia exported a record amount of beef and veal. We are the world's largest exporters of beef and veal. Last year, Australia exported a record amount of lamb. We are the world's second largest exporter of lamb. We are also the world's largest exporter of mutton and largest exporter of live sheep and cattle.

For our continued viability as an industry, we depend on our export markets. Australia exports red meat and livestock products to a vast array of countries—over 100 in 1999. The diverse nature of Australia's red meat and livestock exports means that particular importance is placed on multilateral trade negotiations and the disciplines they impose. In common with many agricultural products, Australia's meat and livestock industries are beset with trade access problems. I daresay that, of those 100 countries to which we exported last year, there would be very few with which a market access issue has not arisen at some stage. Again, in our view, this points to the importance of developing strong international trade rules and of challenging countries that do not abide by these rules.

We believe that progress was made in the Uruguay Round of trade talks. Progress was not as great as we would have liked and the cuts to levels of protection were not as deep as we would have liked—nevertheless, progress was made. To demonstrate, last year Australia exported 352,000 tonnes of beef to the United States. Exports at this level would not have been possible prior to the Uruguay Round.

We are confident that, ultimately, further progress will be made in the millennium round of the WTO. We have been extensively consulted by the Department of Foreign Affairs and Trade on targets for this round. There is, of course, also a need to make maximum use of the Uruguay Round outcome. When the Korean government maintained a number of policy measures that impeded the distribution and sale of imported beef, the Australian government, in consultation with our industry, took the dispute to the WTO. The WTO has now ruled against most of those measures that were the subject of Australia's complaint. These trade impeding measures must now be dismantled, which we think is a great result. Similarly, when the US government

imposed tariffs against imported lamb last year, again the dispute was taken to the WTO. Previously, the United States would have been able to introduce these measures with impunity but now a WTO panel has found against the measures introduced against imported lamb and we are hopeful that the penalty tariffs will be removed in the near future.

It has become fashionable to knock the WTO and those who work alongside it—the organisation is not short of detractors. But our experience is that the WTO is transparent and accountable. Our experience is that the WTO is effective in dispute settlement. Our experience is that the capacity does exist in Australia to undertake WTO advocacy, though this should not exclude the judicious use of overseas expertise. Our experience is that, as an industry, we have been widely consulted on matters relevant to the WTO. We will be happy to answer questions from the committee.

CHAIR—Thank you.

Mr ADAMS—What is the most commonly eaten red meat in the world?

Mr Barnard—It depends on what you define as 'red meat'. Pork and—

Mr ADAMS—Goat?

Mr Barnard—No, that is a widely held misconception.

Mr ADAMS—An urban myth?

Mr Barnard—Yes.

Mr ADAMS—We have cleared it up today. How does your organisation look upon the fact that we have gone to cost recovery in meat inspection in Australia? Several other countries certainly do not do that. Do you see that as a hidden cost that we carry but they do not?

Mr Barnard—It is certainly a cost that Australian processors carry that processors in some other countries do not. Our competitor across the Tasman has arrangements similar to those in Australia: there is cost recovery on meat inspection. But our largest competitor in the beef and veal areas—the United States—has significantly less than full cost recovery, and we think that is an area that the government might examine in the future.

Mr ADAMS—The meat industry is a very big exporter so you have pretty good access to DFAT and other government bodies. I take it that you feel quite happy with the arrangements you have with them when dealing with the WTO?

Mr Barnard—Yes, that is certainly the case. To a great extent, it reflects the effort that the industry has put into that area over a number of years. Market access has always been viewed as a critical issue by the Australian meat and livestock industry. We export two-thirds of our beef, so it is absolutely critical for the continued viability of the industry that we have certain access to overseas markets. In the Uruguay Round we put in an enormous amount of effort. There were endless amounts of research material produced by the industry. I was in fact posted to Geneva

for a six-week period towards the end of the negotiation. I think that that effort was reflected in the outcome. In so many areas of life, you get out of it what you put in. I think the meat and livestock industry has put enormous amounts into this area.

Mr ADAMS—I think the salmon growers of Tasmania would say that they probably do not have the resources that the red meat industry has in Australia to be able to do that and, therefore, they may not have got as good a deal. My colleagues take issue with this.

Senator LUDWIG—We wondered why you—

Mr Barnard—I might make the observation that the per kilo price for salmon is greater than for beef.

Mr ADAMS—What about the issues on date labelling and things like that, which are used to block imports? Have we made gains in that through the WTO? Those issues have been on the table. Have you been able to make gains in that area? I remembered the Korean one was a prime example.

Mr Barnard—I think gains are always slow in this area. With the outcome from the Uruguay Round and with clear disciplines being put on quotas and tariffs, I think there has been a shift towards technical barriers to trade. We see in a number of countries that increased use is being made of labelling measures, of meat inspection measures, of accreditation of plants et cetera. These are areas as an industry we are actively working on. These are also areas that I know the government is actively working on through agencies such as AQIS. It is an area where I think we are making progress. When it comes to international trade, as in so many matters of international life, progress is often slow.

Mr ADAMS—Is your organisation ready to accept beef imports into Australia or red meats from areas where in the past they may have had foot and mouth disease? If the science is right, will the organisation take the trade and take the competition?

Mr Barnard—We certainly have an open door policy to imports from countries that have equivalent health and hygiene standards to our own. We are not in the business of judging those standards. That is the job of the quarantine service. We would certainly accept their judgments on it. There are amounts of US beef that come in here from time to time. There are amounts of New Zealand lamb coming in here from time to time. As an industry we think that the best position for Australia ought to be to accept product if it can be competitive, knowing that we demand similar access levels from others.

Senator LUDWIG—You may not have read about it yet—and you can respond later if you cannot answer the question at this point in time—but the New South Wales Farmers Federation seems to suggest that more education, more information, more involvement, more seminars and better managed agendas would be helpful. Do you find that as well, or do you differ from their position in respect of the people that you represent?

Mr Barnard—No, I certainly think that talking about these matters and educating farmers always helps. Ironically, to some extent even in the bush there is questioning of the benefits from the Uruguay Round and the benefits from being a member of the World Trade

Organisation. We think that that questioning is misguided. Certainly I think the leaders of the various agricultural industries are all great advocates of free trade. That probably demonstrates in a clear fashion that, as people become more knowledgable and as they are educated, they do take a different position. To me, that is prima facie evidence that education and dissemination of information in these areas would probably be helpful.

Senator LUDWIG—Both Amnesty International and the Australian Manufacturers Workers Union seem to be arguing, although on different grounds, for the WTO to adopt a more interventionist position in respect of when agreements are signed by taking on board—if I can use the term a bit more broadly—human rights or core labour standard issues. Both organisations argue for different ways of adopting that. What is your view?

Mr Barnard—Let me preface my remarks by saying, first, that I do not think that issue affects the meat and livestock industries significantly one way or the other. Our major problems are with countries like the European Union countries, Japan and, to a certain extent, Korea that have not dissimilar standards to Australia in those areas. Having said that, I will give a personal view. I think we need to be careful that we do not make the WTO into a gargantuan organisation that embraces all matters of government. My personal view is that it ought to stick to the script—that is, concentrate very much on trade issues.

I listened with interest to the remarks of the previous speaker from the union who talked about 12-year-olds in employment in some countries. I reflected on the fact that my grandfather went to work as a 12-year-old—and that was only 100 years ago in Australia. Even at that stage we probably had living standards in advance of some of those countries. It seems to me that the way forward for these countries—as is the way for Australian agriculture—is to secure freer trading arrangements and to lift their living standards and, by that means, adopt the standards that have become commonplace in the western world.

Mr WILKIE—You refer in your submission to the US lamb dispute and how it took a long time to resolve. A submission earlier today suggested that there could be an avenue for private lawyers to work with companies and help dispute resolution. Do you think that would work?

Mr Barnard—Yes, I do. As I have already noted, we have worked very closely with the Department of Foreign Affairs and Trade on all matters to do with the WTO—of late, on the two dispute issues facing the Australian government that have relevance to the Australian red meat industry: the Korean beef issue and the US lamb issue. We retain a firm of lawyers in Washington to monitor trade issues in the United States for us and to provide advice on those matters. DFAT did utilise the services of those lawyers to a certain agree. All the basic drafting—all the initial grunt—was done at this end, in Canberra, but our lawyers in Washington certainly assisted with some of the more technical issues by providing a second opinion more than anything else.

I think that that worked very well. I note that the Minister for Trade in his press release on the panel's findings made particular reference to the cooperation that the industry provided in these areas. It was a satisfactory outcome. You have always got to have a core of expertise and resources based in the Department of Foreign Affairs and Trade, but I also believe that it is prudent at times to seek outside advice on some of these matters.

Mr BYRNE—With respect to the US lamb case, what would be the scenario if they lose the appeal but they continue to impose the tariff? What would be the next course of action that would be taken under the existing World Trade Organisation arrangements?

Mr Barnard—The next course of action is for Australia to retaliate against the United States and that is sanctioned by the WTO when a country does not abide by the WTO rules. The Australian government could introduce a range of retaliatory measures against US goods coming into this country. That has happened in another dispute that we have been peripherally involved in—the dispute between the US and the European Union on the use of growth hormones in beef cattle. The European Union has for a number of years banned beef from cattle treated with growth promotants. The WTO ruled against that ban. The EU is yet to comply with that WTO ruling and the United States is retaliating against French perfumes and a range of other goods produced in the European Union.

Mr BYRNE—Are we not at a comparative disadvantage with respect to that? If we initiate a series of retaliatory measures, given we have got a fairly substantive trade deficit with America, surely you would then initiate some sort of trade war? Would you not say that there could be a more efficient mechanism that would not disadvantage a country that would be at the deficit end of the terms of trade?

Mr Barnard—I have thought a great deal about this. It is very hard to think about a more efficient mechanism. Even when you have got a trade deficit you try to pick out commodities and products that are sensitive to retaliatory action. I am just talking off the top of my head here, but we might choose Californian oranges and trust that Californian orange growers start to place pressure on their government to resolve the lamb dispute between Australia and the United States.

Mr BYRNE—Are there any documented cases like the one you have just mentioned of those sorts of retaliatory measures working?

Mr Barnard—The short answer is I have no documented cases in my head. On the growth promotants dispute between the US and the EU, it is clear that they are working. They are hurting.

Mr BYRNE—But America is a much more massive market. Any measures that they would be imposing surely are going to be far greater than we could proportionately.

Mr Barnard—No, the WTO restricts the amount of retaliatory action you can take. In the case of the growth promotants dispute the retaliation was of the order of $100 million in lost trade. That is my memory of it. I dare say in the gamut of total trade between the US and the EU that is probably still pretty small but you can pick out sensitive targets.

Mr BYRNE—You would pick regions that are sensitive and are going to put pressure on their respective governments.

Mr Barnard—Yes.

Mr BYRNE—In a sense, in the next 12 months you or the government may have to be thinking about what measure they will take in retaliation—for example, if the United States continues to allow this tariff to be passed.

Mr Barnard—I would be reasonably confident that the United States would abide by any WTO ruling on this issue.

Mr BYRNE—With respect to the time for the resolution of these particular conflicts, is there anything that has been done in your understanding to facilitate a faster processing time?

Mr Barnard—No, I think this is a matter that has probably got to wait until the conclusion of the next round of trade talks. In a lot of areas, a delay of a year or 18 months is probably not of great consequence. It happens to be of great consequence when one has had a measure that has been imposed for a short period of time. The US measures are only supposed to be imposed for a period of three years. If it takes you two years to appeal against them, you have got to think that they have succeeded in large measure. Particularly in those safeguards areas where actions are only sanctioned for a limited amount of time anyway, the appeal process has got to be made a lot quicker.

Mr WILKIE—Did they have to pay compensation though? Is there any avenue for compensation?

Mr Barnard—I think that is an area that is untested.

CHAIR—The federal government has to approach these issues—and, in particular, bring the suits in the WTO and hammer into these markets that are closed. If you had to start with a blank sheet of paper and design the federal government in this matter, how would you do it? Prime Minister Barnard, you have just been elected. Your portfolio is decided and you have to start to think, 'How are we going to make the departments and agencies work?' There is an absolute blank sheet of paper: how would you do it?

Mr Barnard—That is a rather large question. I certainly think the government has to have a set of consultative committees that it can call together for regular downloads and uploads of information from industry. Those consultative committees have existed in agriculture—and I think they have done reasonably well. I am not sure how pervasive they are in other areas, in other sectors of the economy. In the United States, the US president has a range of committees spanning virtually all sectors of the economy that do involve a range of representation, not only industry leaders but other interested parties. There have got to be regular consultative mechanisms in place.

I certainly think it makes sense to have the principal carriage of these matters within the Department of Foreign Affairs and Trade—I would hope within a specialist unit in that department, because the subject matter addressed is somewhat distinct and specialised and divorced from the run-of-the-mill foreign affairs material. As I have already indicated, I would encourage that unit to seek outside advice on pertinent issues.

However, it is incumbent upon an industry to keep in touch with the government when the industry has matters before it that are trade related. The decisions to take both Korea and the

United States to the WTO were reached over a period of time with the industry conveying to the government a complete understanding of the impact of these measures and what might be available from the alternatives. That is really the most important issue, in a sense. More important than the formal consultative mechanisms that exist is for an industry to establish informal consultative mechanisms with key officers in the Department of Foreign Affairs and Trade.

CHAIR—To put it a little more specifically, would you support the Department of Foreign Affairs and Trade being split back into what it was, with a specialist trade agency? It would not hurt, would it?

Mr Barnard—I would prefer not to answer that directly. It is important to have a clear line of trade expertise within the department.

CHAIR—A spade is a spade and so on. We will not have you arrested for contempt for refusing to answer.

Mr ADAMS—The Americans use a lot of private legal situations.

Mr Barnard—Yes.

Mr ADAMS—Was that answered?

Mr Barnard—Yes.

Mr ADAMS—Do you support that concept?

Mr Barnard—I do. A problem within Australia is that there is very little private expertise that exists.

Mr ADAMS—That is true.

Mr Barnard—And this committee could encourage increased private involvement in those areas.

Mr ADAMS—But even the state governments are not very knowledgable. We heard some evidence today about the United States and how the information on negotiations with China will affect each individual state. A brief is done and sent to each state government. Those sorts of things do not occur here. It is a way of involving that broader debate.

Mr Barnard—For instance, some encouragement by the government in international trade law, perhaps through the universities, might be useful.

CHAIR—How many countries have you sued? Has Meat and Livestock brought many suits?

Mr Barnard—No. Of course, it is not up to private industries to bring suits before the WTO. That is a matter for government. The governments are signatories to that agreement.

Mr ADAMS—In Australia do we need a mechanism for industry? The feeling is that we are not aggressive enough, that our industries have been left behind and that the Americans and the EU are way out there in front because they have private sector involvement and industry corporate goes to their legal firm and says, 'Listen, we want to crack into the Australian market. What's the problem? How do we get in there? How do we put pressure on? How do we get the leverage?' In Australia we do not seem to be doing that. We are waiting for DFAT to negotiate these things.

Mr Barnard—This is one of my clear messages. I hear what you are saying: perhaps the meat and livestock industry is better resourced in this area than other industries. But that is only because the Australian meat and livestock industry has chosen to put resources in this area. It is certainly incumbent upon industries, when they have a trade issue that they think can be resolved either through bilateral negotiations or multilateral avenues, to bring that to the attention of government. We as an industry have never been hesitant to do that. We research our cases.

I do not think you can expect a group of 10 people down in Canberra to be all knowing about trade issues facing the spread of Australian industry. The initiation of a lot of those issues has got to come from industries themselves. We have found that as an industry, when we have done the research and put the skeleton of a case together, government has not been timid in pursuing market access issues.

Mr ADAMS—Maybe that is a bit difficult for smaller industries that are just coming up to export. Eighty per cent of Australia's red meat is exported.

Mr Barnard—We get most of our information from the exporters themselves. They will ring up and say, 'I have got a problem here.' They know what the trade problems are. It does not take a great deal for them to put those problems down on paper and to make some representation to government about the issue.

CHAIR—With other witnesses today we have encouraged them to think again about some of the dialogue they have had. If you have any more specific things you would like to put to us, please write a letter specifically on those things and we will make sure that everybody gets a copy so that we can consider that a little bit more.

Mr Barnard—I will think again about being Prime Minister!

CHAIR—Preselections in some seats have closed but there is still the odd one left.

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

That submissions Nos 1 to 13 to the extradition inquiry be received as evidence and authorised for publication.

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

That submissions Nos 24 to 36 to the International Criminal Court inquiry be received as evidence and authorised for publication.

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.

CHAIR—Many thanks to Hansard and committee members.

Committee adjourned at 3.17 p.m.