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Reference: Australia's relationship with the World Trade Organisation

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JOINT COMMITTEE ON TREATIES

Monday, 12 February 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: Mr Andrew Thomson, Senators Cooney, Ludwig, Mason and Schacht, and Mr Adams, Mr Byrne and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

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

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Committee met at 9.03 a.m.**RANALD, Dr Patricia Marie, Convenor, Australian Fair Trade and Investment Network**

CHAIR—I declare open this hearing of the Joint Standing Committee on Treaties. I welcome witnesses, members of the public and any news media who are here to observe today's hearing into Australia's relationship with the World Trade Organisation. We are halfway through a series of hearings to gain different views on how Australia ought to interact with the WTO or, more particularly, with its rules and agreements, and how we ought to develop policies and practices here in Australia to do that. We will have a public forum at 3 p.m. today, during which members of the public can make short statements of three to five minutes duration to the committee. I welcome Dr Ranald. Do you have anything to add to the capacity in which you are appearing?

Dr Ranald—I am also the Principal Policy Officer of the Public Interest Advocacy Centre.

CHAIR—We do not require you to give evidence on oath, but these are legal proceedings of the parliament so they warrant the same respect as those in the House of Representatives or the Senate. Please make some introductory remarks, then we will have some questions for you. Please start with a sketch of your organisation.

Dr Ranald—The Australian Fair Trade and Investment Network is a network of 41 community organisations—we noted 35 in our submission but we have actually expanded since submitting. It encompasses major national peak bodies and national organisations, as well as state based organisations and local organisations from a wide range of areas, including churches, aid organisations, environment groups and unions. To give you a sample of the organisations that subscribe, there is the Australian Council for Overseas Aid, the Australian Council of Social Service, the National Council of Churches in Australia, the Australian Conservation Foundation, the Australian Council of Trade Unions, as well as organisations like UnitingCare from the Uniting Church, the Public Interest Advocacy Centre—my own organisation—and, as I said, a wide range of state based and local organisations. Many of our members will actually make separate, more detailed submissions to this committee on areas of particular interest. Our submission deals only with the general issues regarding Australia's relationship with the WTO.

The network, I must emphasise, supports the development of trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules. However, we believe that recent events, including the collapse of negotiations around the MAI and the failure to launch a new WTO round at the ministerial meeting in Seattle, show that changes need to be made to the international trade regulation framework.

The WTO is only five years old. It has much wider powers than its predecessor, the GATT, and its agreements have much broader scope; therefore, they affect many more areas of government policy. There are two main themes in our submission: firstly, there is a growing demand for more public debate and more accountability about trade policy at the national level because these agreements affect so many more areas of government policy; and, secondly, there are concerns about the structure of the WTO itself, and the relationship between its agreements and other areas of international law. There is particular concern about the way some WTO

agreements are able to override some areas of domestic regulation. I should emphasise that although these concerns are widely evidenced in the community—that is shown by the range of our subscribers—they are also reflected in debates amongst WTO member governments, including developing countries, and also in the discussion amongst international trade law experts. We should note that developing country governments at Seattle refused to agree to a new round of negotiations because they had not had enough say in the new agenda and they are still asking for structural changes to the WTO, many of which we support.

I will address the concerns under the appropriate terms of reference and summarise our concerns, and, particularly, our recommendations—I think that would be most useful for the committee. Under the term of reference ‘opportunities for community input into developing Australia’s negotiating position’, we recognise that there have recently been greater attempts at wider community consultation, which we all welcome. However, we believe that this is still a new experience, particularly for DFAT, and that some of it could still be done better. I believe other submissions have made these points too.

For instance, in 1999, although there were meetings held and submissions made, it was not clear what influence, if any, they actually had on the policy. Sometimes in meetings with DFAT there was a kind of debate which developed rather than a situation where they were listening to the community. In other words, DFAT felt obliged to answer every point that was made rather than listen. This year, although we have had a number of meetings where I think there has been more listening, some of them have not been very accessible to community organisations. I have given the example of one Sydney meeting about the disputes mechanism which was held at 7.30 in the morning at an international hotel. It was a breakfast meeting, where \$50 was charged for entrants. So obviously it is very difficult for community organisations to be at that sort of consultation.

What we are asking for is that information and community consultation on trade policy should be held in accessible forums; that they should be well published in advance, free of any cost, held at convenient times and have time for genuine input from the community; that consultation and public debate should take place before negotiations; that Australia’s policy for negotiation should be public and documents should be made available; that there should be full public scrutiny and parliamentary debate of draft agreements before they are signed; and that there should be representation of community organisations on the Trade Advisory Policy Council and on WTO delegations, which does not occur at the moment.

The second term of reference, which we addressed, is the transparency and accountability of WTO decision making. I will not go into some material about the history of the WTO, which is in the submission, but I will just make the point that the WTO does have much greater ambit of agreements than GATT does, it affects a wider range of government policies and its disputes mechanism is far more legally binding, so it has more teeth than GATT. But many WTO agreements do apply without requiring national legislation to implement them, and that means that often people are not aware of them until they come up in a disputes mechanism situation. I think the danger with this structure is that you can then get the removal of regulatory powers from the national to the international level without sufficient democratic accountability and without enough domestic policy debate.

I have made a comparison in my submission with the UN structures because, although the UN has many critics, it does have public debates, it has majority voting, there are non-government observers and its agreements are largely implemented through domestic legislation. So there is international and national debate about UN agreements. In the WTO, the meetings are held behind closed doors—there is no public debate, there is no majority voting and there is a so-called consensus process. It is actually dominated by the most economically powerful governments; that is, the US, Canada, Europe and Japan. Although it does have provision for majority voting, this provision has never been used in the ministerial council conference and general council, and it does not have any process for community or non-government observers at its discussions. Business groups do have a great deal of influence in the WTO, both on individual governments and on lobbying the WTO itself, and often business organisations are represented on government delegations. Our own delegation to Seattle, for example, had eight business organisations represented but no other community organisations. I am not saying that business should not be represented, but to us it seems there is an imbalance in that representation.

I have also talked about the position of developing countries in the WTO and the problems they have in finding both a voice in the WTO and the resources to have their position adequately represented. I have talked about the domination of the four quad governments and also the green room process, in which 20 to 30 governments are usually involved but some 100, mostly developing country governments, are not. This was admitted by the US representative, Charlene Barshefsky, after Seattle, when she commented that 100 countries were not in the room when the decisions were made.

The other complaints that developing countries have about the WTO relate to the structure and effect of some of the agreements, particularly the agreement on agriculture. They believe it has meant that they have had to open up their markets but that Europe and, in particular, the US have not had to open up theirs. There are a number of other agreements which they want reviewed, like the trade in intellectual property rights agreement. We believe that Australia should be concerned about these issues in themselves because they reduce the credibility of the WTO as an institution. We should also be concerned about the position of developing countries because many of these countries are important trading partners. Although the Cairns Group is an exception to the structures I have talked about, in that it does contain both industrialised and developing countries, most WTO structures and negotiating processes are not so inclusive.

Our recommendations are that there should be: changes to some of those processes and structures; open public debate at the WTO and the publication of all relevant documents; changes to decision making structures to give voice to smaller and developing countries through either some kind of voting procedure or some other means which can be worked out; greater technical and funding assistance for developing countries to assist meaningful participation; greater recognition of the special circumstances of developing countries and agreements; and recognition of non-government observers and inclusion of non-government community organisations in government delegations.

The third issue that we address in the submission is the relationship between WTO agreements and other international agreements, particularly UN agreements on human rights, labour standards and the environment. Again, I make the point that these UN agreements are recognised as being based on pre-eminent social values recognised by most governments in the

world. GATT article XX does provide some safeguards, in that it says that GATT agreements should not prevent the adoption of measures to protect public morals; human, animal or plant life or health; and measures relating to the conservation of natural resources. However, those clauses were drafted before many of the UN agreements and they are rather narrow. Again, the references in the WTO foundation document are also very narrow. They are very basic compared with the UN agreements.

The history of the way, say, environmental issues have been interpreted through the disputes mechanism in the WTO is that they have been interpreted very narrowly. Usually, in all cases except one—which was a recent case on asbestos—the imperatives of trade have overridden issues about the environment or health and safety.

Because of the absence of links and references in WTO agreements to these basic UN universal standards, the WTO disputes mechanism is constructing a body of case law on an ad hoc basis, which tends to undermine the principles of some of these agreements. We are not alone in saying this: there is quite a debate amongst international trade law commentators about these issues. They have noted that there are conflicts, for instance, between individual and corporate intellectual property rights; with the collective rights of indigenous people to their natural and cultural heritage; and between aspects of trade law and aspects of environmental law, like the precautionary principle.

In our recommendations we are suggesting that WTO agreements and processes should be changed so that they can be interpreted to give much clearer recognition to UN international agreements on human rights, labour standards, health and safety and the environment. This would involve amendments to article XX in the GATT and also amendments to the foundation document of the WTO. Where a conflict occurs between these principles and trade agreements, we believe the UN principles or agreements should prevail. There should be an ongoing dialogue between the WTO, the UN, the ILO and other appropriate international bodies on these issues. WTO agreements should clearly recognise the right to have national regulation in these areas.

The fourth area we wanted to comment on was the effectiveness of the WTO dispute settlement procedures and ease of access. To summarise, we support the concept of a dispute process. However, we believe that the current structure and the way that it operates needs some changes. A disputes panel is definitely a step forward from just having rule by the strongest. However, if you look at who uses the disputes mechanism, developing countries are having difficulty with access. Because the dispute process has been developed relatively recently, some of its procedures are still being developed, and they do not have all of the attributes of other international judicial procedures. For instance, they are conducted behind closed doors, there is limited public access to documents, information on decisions is difficult to access and the language is obscure. We believe that this is not acceptable for a process which is now effectively setting precedents in international law. We have had Australian policies being affected by this process. I am sure I do not have to go through the examples of the salmon quarantine issue and the Howe Leather case.

We believe that the following changes should be made to the disputes process. It should be made public, as are most national and international judicial processes. All documents and decisions should be publicly available with summaries of decisions in plain language.

Community organisations representing broader public interest issues should have the right to be heard and their evidence should be considered with other evidence. The disputes process should recognise other international law and the right to have national regulation based on the principles of those laws.

The final issue which we address is the extent to which social, cultural and environmental considerations influence WTO priorities and decision making. To summarise, we believe that the WTO's procedures and its one-size-fits-all global rules often cannot take into account the specific historical, social, cultural, environmental and development contexts of particular countries. These issues were canvassed in the debate over the MAI, which I will not go into, but I wanted to emphasise that that agreement, which was a top down agreement affecting all areas of law and policy, had the potential to affect every area of social, cultural and environmental policy. It would have had a very great effect on all of those areas of policy. I think it was rejected for those very reasons, because of that very comprehensive and deep-reaching effect. We have to be very careful that some aspects of those agreements do not appear in other agreements.

I wanted to talk particularly about the general agreement on trade in services. That is one of two areas—the other one is agriculture—where negotiations are in fact proceeding at the moment because they were built into the previous agreement. They do not require a new round for negotiations to proceed, so those negotiations are proceeding. That agreement is being reviewed.

I think there are two areas of concern which could have a big impact on policy in Australia. The first is that the trade in services agreement, because it covers a very wide range of services—from banking and finance services, to telecommunications, prisons, health, education, cultural services, almost any service you can think of—and because of the nature of services, the delivery of services often requires that the service deliverer establishes what is called a commercial presence in the country in which they wish to deliver services. Once they have established that commercial presence under the agreement, they are required to be given national treatment. What is being discussed under the trade in services agreement at the moment is exactly what that national treatment means and how it applies in areas like access to government subsidies, the application of government regulation and so on. There is a danger that, if definitions are changed and if national treatment is applied in a blanket way, that could end up making it very difficult for governments to have local regulation about quality and access to services, which could be argued to be discriminatory, or about policies like the current policies we have in terms of limiting, say, foreign ownership in areas like banking or cultural services. So I think that is something that has to be looked at very carefully.

The other change which is being discussed in these negotiations is the change in the definition of government regulation and the idea that a very strict test should be applied to government regulation, which is called the least trade restrictive test. Currently, that test is not applied to the trade in services agreement precisely because that agreement does recognise that governments must have the right to regulate, particularly in areas of essential services like access to electricity and water, and in areas like public services, such as health and education.

If that definition of regulation were changed, then again there is a danger that this could be used to argue that we could not have the kind of regulation that we do have in Australia, which

controls the prices of essential services like water and electricity, controls the quality of them, ensures supply and so on. It could also be used to argue that public provision of certain services like health and education was in itself a barrier to trade, which again would be taking a decision about what kinds of services we want to have in Australia—important services about our quality and life and culture—out of the national arena and put into a trade agreement where it goes out of national accountability.

I guess what I want to signal is that, at the moment, these negotiations about the trade in services agreement are going on in very obscure little committees behind closed doors. There are no public documents available on the Australian government's latest position, although I have talked to DFAT about what its position is. We need to have open, public discussion and access to the government's position on these things, and we need to have more transparency about the WTO process, because these issues are of great concern to people in the community.

I will finish by saying what we are recommending here. We believe that the WTO framework should be changed to make it clear that certain areas can be excluded from trade agreements and remain in the domain of national public policy. Areas like the cultural and land rights of indigenous people, other national cultural activity, public health, social security, public education and access to essential services like water and electricity should also remain regulated under national arrangements. We believe that the Australian government should particularly oppose the inclusion of any of these areas in the trade in services agreement; should support the right of governments to regulate services to meet national policy objectives; should oppose changes to the definition of government regulation in the trade in services agreement, which would require it to be the least trade restrictive; should ensure that the regulation of services remains at the level of national policy; and should expose the expansion of the scope of coverage of government regulations in the GATS, which is another proposal.

The government should ensure that the trade in services agreement and any proposals on competition policy, which are being discussed separately, do not require the privatisation of social security, public health services or public education services or reduce the right of governments to determine the distribution of government funding in these sectors. We believe all of those things should be determined nationally, not through international agreements. Finally, following the widespread community opposition to the failed MAI agreement, we would oppose the expansion of the services agreement in any way which includes aspects of the MAI.

Mr ADAMS—I was interested in the reference to raising the standards of living, full employment and environmentally sustainable development. All these are in the UN international agreements but were not picked up when the WTO came into being.

Dr Ranald—They are mentioned in the preamble, but they do not have sufficient legal weight in the agreements for them to be picked up in the actual legal decisions that have been made in the disputes process. We are saying that we believe they must have legal weight within the WTO.

Mr ADAMS—Similar to the UN?

Dr Ranald—Yes, based on the UN agreements.

Mr ADAMS—So you feel that, if the decisions continue to roll out of the dispute settlement mechanisms as they are, they are building up case law which is going to totally override the states' or the nation's ability to make decisions at all?

Dr Ranald—I would not put it that strongly at this point, but I do think there are conflicts developing in important areas. We have seen it in areas like quarantine and health and safety. We have seen it in areas like the environment. We believe it is very important not only for those international principles to be recognised by the WTO but also for national governments to continue to be able to regulate in those areas based on those principles.

Mr ADAMS—On food safety, I come from Tasmania, so the salmon case is very close to my heart. It also goes to regional development in the sense that it was a brand-new industry for Tasmania when many of our old ones were passing over. We have now got a push for the import of prawns, and I see there has been an outbreak of white spot in Australia, which we never had before. You probably have not looked at those in any detail, but are these the points that you are trying to make?

Dr Ranald—Yes. I do not know the prawn example you mentioned, but I did look at the decision on salmon and I have looked at the material produced subsequently by both the Tasmanian government and the Senate inquiry which was conducted. I do think that there is a case to be argued that there are legitimate quarantine reasons for limiting the import of salmon which were not adequately recognised by the WTO.

Senator MASON—I was looking through your submission and one thing struck me about it. You argue in general that to obtain domestic political credibility there must be internal Australian national policy debate, that, if you do not have that, in a sense you lose your democratic accountability. You are concerned in certain areas about ceding sovereignty in certain contexts. On page 25 of your submission you mention what areas they are. This committee has met in Queensland, and there my constituents are concerned not so much about ceding sovereignty in the context of trade but in the context of human rights. In your submission you are saying we should embrace those international standards on human rights. On the one hand you are saying we should be very wary of the WTO and on the other hand you are saying it is okay to embrace international standards on human rights. In Queensland many people would say there is a far, far greater ceding of sovereignty in the area of international human rights. That is the paradox that underlies your submission, that on the one hand it is fine to cede national sovereignty on human rights but on the other hand it is not okay to do it on trade. What do you say to that?

Dr Ranald—The point I am making in the submission is that with the UN we do not cede sovereignty because the UN is a more open and transparent organisation than the WTO. If you look at UN procedures, they have open meetings, majority voting and non-government observers, and UN agreements cannot be implemented in Australia unless we pass domestic legislation to implement them. The WTO does not have any of those features. It has closed meetings. It does not have majority voting or non-government observers. Quite often its agreements do not require domestic legislation but they apply anyway, and we find out about them when someone else takes a case against us. The teeth of the WTO are much stronger than the UN. UN agreements are not enforceable through trade sanctions or anything like it but WTO agreements are enforceable externally through trade sanctions. So I would argue that the UN is

a more accountable and transparent organisation. I agree that it is not perfect but, if you compare the two, it is far more accountable and transparent than the WTO.

Senator MASON—But there would be plenty of Queenslanders, indeed many Australians, who would argue that, while you are right that we need domestic legislation to implement treaties, there can be certain legal obligations entered into before legislation is actually implemented. You can sign a treaty and there are still some legal obligations. What you are saying is not fully correct but it is part way. Many people would argue that in this country we have entered into treaties and then there has been legislation to implement those treaties in the area of, let us say, human rights but that there has been no real domestic debate about those issues. At the Queensland seminar everyone was saying, ‘I do not know about these things. What is happening as we are entertaining these treaties?’ And this applies to governments of either persuasion; that is not the point. We pass legislation to implement them with no real debate among the public. That is what they argue. It has been similar for years and years on immigration. We have not had a proper immigration debate in this country for years and governments did what they wanted. What is so different here?

Dr Ranald—I am saying that what is different is that, however critical you might be of the UN processes, they are a lot better than the WTO processes. Any criticism you might make of the UN can be made much more sharply of the WTO because its processes are much worse.

Mr BYRNE—I am just trying to get a framework in my mind as to how the WTO can operate basically outside of the ambit of international law and a range of other areas. Is there any avenue whatsoever within existing international law where a developing country that felt disenfranchised or disadvantaged—particularly if it was, say, exploitation of their labour or something like that—as a consequence of one of the provisions of one of the agreements could contest that particular agreement?

Dr Ranald—Not at the moment; no, I do not think so. The thing about the WTO agreements is that they are made in the context of trade law, and the process of countries—particularly developing countries—signing up is often done under a lot of pressure. So there are these very long negotiations in which many developing countries are not involved in detail, and there are well-authenticated accounts of these negotiating processes, by people like Braithwaite and so on. At the end of the process, they are presented with an agreement and a lot of pressure is put on them to sign up. They are told, ‘If you sign up, you’ll have access to these markets’, or ‘You won’t have access to them if you don’t.’ The whole context in which those negotiations are conducted is a fairly narrow set of trade law contexts and the bargaining power of the most powerful is exerted very strongly. We are saying that we need a framework in which the weaker countries have more say and in which the framework recognises some of these social impacts of agreements.

Mr BYRNE—Say there was a class action, for want of a better term, where developing countries said that they were coerced into signing an agreement and it operated to their detriment. There is absolutely no legal avenue if they went in for an opt-out clause—which I do not believe exists within the World Trade Organisation framework. Are you saying that in international law that could not possibly happen?

Dr Ranald—Not under existing trade law. What is happening at the moment is that the developing countries have asked for a review of the trade in intellectual property rights agreement. A type of review was built into the agreement, but they have asked for a much more radical review of the terms of that agreement. That is an agreement that they have already signed. They signed it in 1994. A lot of them did not realise what the implications of it were.

Mr BYRNE—I agree with you with respect to trade law, but if they are saying that their human rights et cetera have been breached using another form of law outside of trade law, can that cross over into trade law? That is the question I am asking.

Dr Ranald—I think it would be very interesting for someone to attempt such a case, but so far they have not. That is why I think the framework needs to be changed.

Mr BYRNE—I would struggle to believe that you can operate trade law outside of other international law. It would be interesting to test whether or not they should be able to operate in isolation. My other point is: it would be interesting if there was a test case mounted by those who felt they had been disenfranchised, shall we say. I guess that is the point. You are saying it is a possibility?

Dr Ranald—I am not enough of an expert on the interaction between those two kinds of law. My speciality is actually trade law. I think that would be a very interesting case to look at.

Mr BYRNE—Can you give examples of how some of our trade in services would be affected by some of the agreements that are being considered outside of the multilateral investment agreement? Are there any things that you are aware of that we should be concerned about in some of the potential negotiations that are happening that may affect some of the provisions of essential services, or what we regard as essential services?

Dr Ranald—I think there are two issues that I flagged. Firstly, there are currently negotiations going on within the context of the trade in services agreement. There is a committee called the Committee on Government Regulation. What that committee is doing is reviewing the definition of government regulation, which is in the trade in services agreement. At the moment, the preamble to the trade in services agreement states unequivocally that governments have the right to regulate in the public interest, and the actual definition of government regulation does not require that it be absolutely tested only against the test of least trade restrictive. It actually recognises that there are other issues in services that governments have to take into account besides whether they are trade restrictive or not.

Our worry about those discussions is that the general comments that have been made by the trade in services council indicate that those discussions are aimed at tightening that definition and making it more difficult for governments to have certain kinds of regulation. The Australian government's position should be opposed to that. The Australian government should unequivocally say that the government should retain its right to regulate, because we do have a lot of regulation of services which is in the public interest. We have regulation of price and quality in areas like electricity and water. We have regulation about access to such services and, in the area of public services like health and education, we do have government provided services, which have the support of the majority of the community in Australia. We do not want a situation where any of those things can be defined as a barrier to trade.

Mr BYRNE—You mentioned in part of the submission the privatisation of, say, social security. What potential agreement would that fall under?

Dr Ranald—That comes under the trade in services agreement, too. There is a peak services body in the United States, and they have surveyed the world market, as they call it, for a number of these services. They have calculated—I do not have the exact figures with me—an X trillion dollar market in social security services, an X trillion dollar world market in health and an X trillion dollar world market in education. From their commercial point of view, they are lobbying the US government and other governments to use the trade in services agreement to open up those areas of what are now in most countries, except in the US, publicly provided services. They are lobbying for the trade in services agreement to be used to open up those markets as they see it. To them, that is a market opening; to us, that is an important part of our living standards and our public policy. We want to make sure that we retain the national ability to make those decisions about public policy. It is not just a question of market access.

Mr ADAMS—What is the name of the body that was looking at the change in the definition?

Dr Ranald—It is called the Committee on Government Regulation. It is a very obscure little committee of the trade in services negotiations.

Mr ADAMS—On government administration?

Dr Ranald—No, government regulation.

Mr BYRNE—Could you just detail how businesses become part of government delegations. I was quite keen to just quickly touch on that point. Is that because they are part of the process, or is it because they are just being brought in by the governments to consult?

Dr Ranald—No, it is not to do with the disputes processes. This is actually the government delegation that goes to do the negotiations at, say, the ministerial meeting. It may not do detailed negotiation, but it certainly represents government. In Seattle there were eight business representatives on our delegation, and there were no other community representatives. I am not saying there should not be business representatives because I believe business should be represented, but I believe other parts of the community should also be represented, because otherwise you get an imbalance.

Mr BYRNE—You say they were ‘part of the delegation’. How did that interface with the government? What role did they play? I am just a bit unclear about it.

Dr Ranald—They would be advising on the impact of certain kinds of agreements on their area of industry.

Mr BYRNE—So, effectively, DFAT would be constantly consulting with these people but basically would not consult with non-government organisations.

Dr Ranald—They were not officially there. Yes, that is right.

Senator COONEY—I want to ask some technical questions. Technically, there is no problem in putting into an agreement whatever you want, whether it be about trade, environment or safety. You could say we are now making an agreement about manufactured goods but, in the supply of those manufactured goods, the machinery to be used must be adequately guarded. There would be nothing technically wrong with putting in a provision like that in a trade agreement, would there?

Dr Ranald—I do not think the problem is technical. There is no technical problem. The issue is the way that people think politically and in public policy terms.

Senator COONEY—Can I just follow this through? So, technically, there is nothing wrong with saying you sent a delegation that consisted of traders, environmentalists and trade unionists interested in protecting goods and services and also protecting rights? So it is quite feasible to put that all in the one agreement?

Dr Ranald—Yes. The European Union, for example, has agreements which include these sorts of issues.

Senator COONEY—So, to get to your point, the only thing that would stop you would be the policy you came to the negotiations with, or the mindset rather?

Dr Ranald—I think that is right.

Senator COONEY—You might not want to answer this question but I will put it up in any event. Given the history of foreign affairs and the people conducting foreign affairs, which were, until recently, inclined to be done secretly, has your organisation got any thoughts about the desirability of having people in addition to the Department of Foreign Affairs and Trade taking part in the negotiations? I am aiming my question at whether or not we have the right people doing the job. You could have the most perfect of systems but if you do not have the right people running them you are in trouble and you can have a pretty ordinary system but, if you have the right people running it, you can make it work.

Dr Ranald—Do you mean people from other government departments?

Senator COONEY—No, generally. If you knew what the issue was, whether it was something about the trade in the provisions of legal services or medical services or an agreement about intellectual property, you could have a whole series of people.

Dr Ranald—I think that is partly the idea of having government delegations that have people in them, say, from business or from other NGOs. There is nothing to prevent expertise being brought in from other areas. At the moment I think the DFAT people are very professional. They have limited resources and also in many cases have limited training. It would be helpful to actually expand the training and expertise in DFAT so that, for example, there were more people trained in some of these areas of environment, health and safety and the interaction of these agreements with other areas of domestic policy. One of the things that I have experienced is that, the way that DFAT is organised, the negotiating teams are often very isolated from each other. So someone over here is talking about government regulation and doing negotiations on that and someone over here is doing the negotiations on competition policy. When you ask a

question about the interaction of those two types of agreements often there is not much awareness of (a) how they interact and (b) what impact they might have on domestic policy down the track. I do think that some improvements could be made there. But I also think that, if we had better consultation generally and had community and non-government representatives in some of these negotiations, that would make the negotiators more aware of these impacts.

Senator COONEY—On the issue of transparency—going back to what Mr Adams was asking you about salmon—the evidence given by experts was given in secret or not in public, from what you were saying.

Dr Ranald—Do you mean at the WTO disputes hearings?

Senator COONEY—Yes.

Dr Ranald—Yes. Hearings are conducted behind closed doors. You can get some information after the decisions have been made, but the actual hearings are conducted behind closed doors.

Senator COONEY—If you had strong or credible evidence about the way the salmon would be affected you could not introduce that evidence during the hearing to contradict evidence given within the World Trade Organisation because you would not know what evidence was being given at that stage. Is that correct?

Dr Ranald—At the moment the only parties that can appear at those dispute hearings are representatives of governments. There has been a decision to allow what is called amicus or friend of the court—public interest-type representation—in some cases. In other words, they have invited environmental or other experts to give evidence. But that is still up to the discretion of the disputes panel. Unlike our courts, where it is possible for people to apply to appear in the public interest, there is no automatic right for that to happen in the WTO disputes process.

Senator COONEY—It is not an open disputes process.

Dr Ranald—No.

Senator COONEY—If it has the opportunity, PIAC might be able to do something about pushing the envelope—a classic PIAC situation?

Dr Ranald—We are certainly interested in public interest appearances.

Senator LUDWIG—Could you help me with a couple of matters? You appear to be arguing mainly for public accountability, majority voting and public debate in respect of the WTO. Taking those individually, how do you believe the WTO can become more publicly accountable? Should it invite everyone to attend? It is a rules based organisation. What rule do you believe it should adopt to assist in that process?

Dr Ranald—There are some really basic points—and we are not the only people arguing for them: some of the legal firms have argued for them as well. For a start, all WTO documents

should be public; at the moment only some are. Its meetings should be open. The meetings of the larger bodies, such as the ministerial council and the councils that deal with particular trade issues—for example, there is a council on trade and services—should be open and public. There is no reason why those discussions should not be open. I think we have a precedent in UN meetings: UN debates of that general kind are open and take place in public.

Senator LUDWIG—Do you still believe there is scope for having private meetings?

Dr Ranald—There may be scope for holding private meetings on very detailed negotiations. But I believe there should be representative government delegations at those sorts of meetings and a wider representation than there is at the moment.

Senator LUDWIG—In the reverse, some would argue that their negotiating position would be compromised by circulating documents that put clearly the position of Australia or other countries and what they intend to argue. That then may hamper them in the negotiations. Are you saying that there is scope for maintaining some of those positions until such time as they can put their view forward in the WTO or are you saying that we should play an open hand?

Dr Ranald—I think there has to be a balance. People in Australia want to know what our government is going to argue at the WTO; they have a right to know that, particularly in areas that affect broad areas of government policy. We should have access to the documents that state our government's position on the Committee on Government Regulation, for example.

Senator LUDWIG—In relation to voting rights, do you say that all members of the WTO—as I understand it there are 138 and another three to go shortly—should have equal voting rights, or should they be weighted according to their trade size? How do you say that should operate?

Dr Ranald—The WTO founding document has provision for majority voting, not weighted, one vote per country.

Senator LUDWIG—No, I was asking you your view; I know what the document says. You have just argued for voting and I was curious as to what sort of voting you intended.

Dr Ranald—I am saying that they have already agreed to have that form of voting, but it has never been used. I believe that each country should have an equal say in these fora.

Senator LUDWIG—What would happen in the circumstances where, for argument's sake, there was voting over a particular agreement and Japan, Europe and US decided not to participate or vote in the negative and every other country voted in the positive? Would it, in your view, allow scope for Japan, Europe and the US to enter a bilateral agreement to achieve the same result and walk away from the WTO?

Dr Ranald—I think that would be very unlikely because the processes that go on with these agreements are long negotiations and it would be unlikely that you would end up with an agreement of that type. However, at the moment the situation is the opposite: Japan, Europe and the US effectively draft the agreements and other countries do not have enough say. What we have now is a deadlock in the WTO main discussion precisely because a large majority of countries feel excluded. That issue has to be addressed somehow.

Senator LUDWIG—Should matters such as human rights and labour standards be included in an agreement in a regulatory fashion? Because the WTO is rules based, should a rule be put in that only those countries that meet the ICCPR be able to enter a particular trade agreement? I am trying to work out the concept you are putting.

Dr Ranald—There are a number of ways it could be done. I have suggested in the submission that it should be done through amending the framework of the WTO to make it clear that those UN agreements apply and that WTO rules should not be used to undermine them. As for the actual mechanism for doing that, there are several different kinds of mechanisms which need to be explored. You could put it in particular agreements, you could make it a criterion for membership—there are a lot of different ways it could be explored.

Senator LUDWIG—Perhaps my concern then is this: if they are included in a rules based organisation and put into an agreement and a country breaches those and someone takes them to the disputes mechanism for a contravention of a particular rule, what would be the penalty that would be applied? How would you go about dealing with people who do not meet those particular standards that are put in, unlike trade standards?

Dr Ranald—As I said, we are also critical of the way that the disputes mechanism is used at the moment. We are arguing that we need changes to the general framework of the WTO to ensure that these human rights and other agreements are given proper weight in relation to trade agreements, but we also want changes to the disputes process itself. In the current context, I would not be in favour of just using the disputes mechanism to enforce these things because I think the disputes mechanism itself needs changing.

Senator LUDWIG—What mechanism would you then see? Maybe we do not have time to go through the issues that I have raised. I was interested when another speaker a week or two ago said, effectively, that labour standards should be put in—I might summarise the argument badly but I am sure you understand the gist of it—and if they are not met then trade sanctions should be imposed, or tariffs should be reintroduced, which will have a negative effect on the domestic economy. Are you subscribing to that view, as well? You have not talked about that area.

Dr Ranald—No. My argument is broader than that. I am not suggesting that you can fix the WTO by just adding in labour standards and enforcing them with the current mechanisms. I am arguing for broader changes to the WTO, that the framework itself should be compatible with other international law and human rights, and that the disputes mechanisms also need change.

Senator LUDWIG—Perhaps what I cannot see is that broader framework that you are proposing. Is it based on UN style? To understand your argument, do I look at the UN and say ‘that is the framework you want to adopt’? Or do I look at the IMF and say, ‘that the framework I should apply to your argument’?

Dr Ranald—No, I have not used the IMF as an example. As I said in the submission, and as I have said here, some of the UN processes could be a model. They are more open and transparent than the WTO, but they might have to be adapted. I am not being prescriptive. Some of those mechanisms I have indicated, such as open meetings and so on, are the starting point.

Senator LUDWIG—When I sit down to write something, do I recommend that we should adopt a more open framework based on the UN? It just does not seem to have the same ring of specificity that I might require. I am not asking you to do that, but I am listening to your argument and then I am left a little in the shade.

Dr Ranald—I have made some specific suggestions about open meetings, majority voting, non-government observers and publication of documents. All of those are very specific suggestions.

Senator LUDWIG—In relation to voting, what happens in circumstances when member states take a vote and vote the particular agreement down—we could argue the salmon case as being one where they decided to vote it down—but then Australia and other countries enter into agreements outside the WTO process to achieve the same result? Should the WTO then take a negative view of that? How should it deal with those instances?

Dr Ranald—That goes on now.

Senator LUDWIG—Yes, I know that, but you are proposing change and I want to know how you intend to deal with it. You say that it goes on now, so that is okay and we will just continue on. Then I wonder why we need to adopt a few changes.

Dr Ranald—The WTO is not the only place in which trade agreements are made, and currently while the WTO new round is stalled a series of bilateral and regional agreements is actually developing outside the WTO. So that is going on in any case. But I am saying that, quite apart from that process—which is not caused by majority voting in the WTO, it is going on anyway—there is a case for making the WTO structures more transparent and accountable.

Senator LUDWIG—On page 12 of your submission you talk about the WTO and transparency and accountability, which is what we have been discussing. You then say:

The WTO objective is to develop one set of global rules to maximise free trade for corporations and to limit national regulation by governments.

Is that your view of what the WTO objective is, or are you stating that that is their view? I am hoping to qualify who is saying that.

Dr Ranald—What I say at the end of that paragraph is that some powerful players see international trade agreements precisely as a way of implementing global policies without troublesome national public debate or accountability, and I have quoted both Bergsten and Spero, who have both made statements indicating that they see the main role—as Bergsten put it—to lock in current and future governments to a certain agenda which they cannot go back from.

Senator LUDWIG—Yes, I understand that debate.

Dr Ranald—And Spero says, ‘It is about getting governments out of the way so that business is free to do business.’ I think they are extreme views within the WTO, but they are powerful views within the WTO. In this submission I am arguing against that view and saying that the

structure should be changed so that we are not trying to prevent national governments from carrying out their role in relation to legitimate regulation in the public interest at the national level.

Senator LUDWIG—When you argue for community representation on WTO trade negotiations where Australia might coopt representatives, is their role to progress trade or those broader issues that you talk about?

Dr Ranald—I think it would be both. One of the points we are trying to make is that the trade agenda would have more legitimacy if these other issues were taken into account. At the moment there is a real polarisation between trade, on the one hand, and these other issues, which are just as important in terms of people's lives and public policy.

Senator LUDWIG—On page 23 you talk about the resurrection of the MAI. Do you only say that in respect of those two matters contained within the MAI that you have mentioned or are you talking about the resurrection of the MAI as an agreement in itself?

Dr Ranald—There is a separate proposal that the WTO develop an investment agreement. That was one of the new agenda items for the new round. That proposal has not progressed very far, but it is there, and some US negotiators and some in Europe have pushed for that. I think the US under the previous administration was less keen on it; I am not sure what the current US administration's position will be. In relation to the trade in services agreement, I quote a trade law commentator—this has certainly been said elsewhere as well—who said that parts of the trade in services agreement could be used to implement parts of the MAI. That goes to that commercial presence and national treatment issue.

Senator LUDWIG—That is how I understood your argument. I was just curious whether you meant singularly or through the TRIPs or the GATS. Thanks very much.

CHAIR—On the proposal to have community organisations, as you described them, represented on these delegations, what would they bring to the process that the members of parliament wouldn't?

Dr Ranald—I do not think there are members of parliament on the delegation at the moment.

CHAIR—Wouldn't you rather have a few MPs from each side who are answerable to the public through a formal process?

Dr Ranald—I guess you could say that about the business representatives as well. I would argue that you need both business and community representatives to get specific expertise and views from those parts of the community.

CHAIR—What specific expertise does your group of network people have that the members of parliament—Labor, Liberal, National, Democrat—don't have?

Dr Ranald—I would not make that comparison. I would say that, for instance, people from environment organisations do have specific expertise in the environment, people representing low income people do have specific expertise in that area about the impact of agreements on

low income people or on social security systems, et cetera. As I said, you could make that same argument about business representatives and say that you do not need business representatives either, that you could just have members of parliament there.

CHAIR—You are asking for a community input, so you are saying that members of parliament in a sense have an inferior grasp of these various issues than either departments of government that deal specifically with these things or people who represent specific constituencies. And MPs are answerable, at the end of the day, to the public—not a rule that applies to your network.

Dr Ranald—I am not making any comment about the expertise of members of parliament.

CHAIR—All right, we might propose then that, before we include your network on these delegations, we include a few of us. A number of us are probably going to get chucked out of parliament at the end of this year. There will be a general election, and that is generally the result of the process, but if you want us to take your network seriously then, like a former fish and chip shop owner, you might consider running some candidates for parliament and getting involved in the political process. It helps. Thank you. You have had an hour and a quarter this morning.

Mr ADAMS—Can I just add that I did not read that this witness gave us any evidence along those lines at all? I found it a very credible submission.

CHAIR—Thank you.

Dr Ranald—I have here a list of the members of our network. It is an updated list, so I can leave that with the committee.

CHAIR—Yes, you are welcome to do that. There is a list of the organisations on the front here. Is that the full list?

Dr Ranald—Yes, this is a complete list of all of them.

CHAIR—Thank you.

[10.17 a.m.]

McDONALD, Mr Don, Chief Executive, Australian Institute of Steel Construction

CHAIR—Welcome. We do not require you to give evidence on oath this morning, but I should advise you that these hearings are legal proceedings of parliament and they warrant the same respect as proceedings of the House or the Senate. The giving of any misleading evidence is a serious matter. I am sure you will not get into that.

Mr McDonald—We represent the interests of the full spectrum of the steel value added chain in steel construction including the manufacturers, distributors, fabricators, people that weld it, cut it, drill it and bolt it et cetera, the suppliers of consumables and the people who specify steel.

CHAIR—Do you want make a statement and then we will go for questions from the committee members?

Mr McDonald—Yes. Have the members of the committee read the submission? Is it worth my while reading through that or should I just give an off-the-cuff overview?

CHAIR—We tend to get the best out of a cross-examination process. You could, in a sense, summarise it and add anything to it that you may not have included when you submitted it in writing.

Mr McDonald—We represent the interests of a broad spectrum of steel in construction, and by ‘construction’ we mean buildings, bridges, major resource projects et cetera. We have got a market that is under siege from two avenues. At the peak of the boom in 1998, we had something like one million tonnes going into construction in Australia in fabricated steel. Due to the cyclical downturn in construction, that is now down to about 650,000 to 700,000 tonnes. Of that which is left, there is something like 200,000 tonnes that has been earmarked for importation in fabricated form for major resource projects. These projects include several power stations in Queensland, a pulp and paper mill in New South Wales, a power station in South Australia and a fertiliser plant in Western Australia. These projects are importing a significant amount, if not all their fabricated steel requirements, from Asian countries. Several of these projects have received state and federal government assistance in the form of subsidies, infrastructure incentive and other means.

It is our view that that assistance should be tied to Australian content. The taxpayers here are investors in these projects and deserve a maximum return to the nation in terms of job creation, skills transfer and the whole economic wellbeing of the country. This is indeed what used to happen with projects up until two years ago. We are finding with the multinationals—what we call the engineering procurement construction management contractors—that their changing purchasing policies have meant that they now trade on a world stage. In our view—and, indeed, in the view of some of the EPCM contractors—this does not always result in savings for the project.

The first-off pricing they get is invariably cheaper because of the low Asian wage rates. Productivity is certainly a lot higher here. What we and these companies are finding is that there is a significant amount of added cost with rework, delays and having to put expeditors,

translators and inspectors up there. It alters the dynamics of the flow of material into projects. When one looks at the total cost and adds in all the hidden costs, it is indeed not necessarily the cheapest way to go.

We are asking governments, state and federal, to show some leadership in all this for those projects where governments have leverage and to provide that leverage in the form of the involvement of our very capable local industry, which has a proud track record. For those projects that are getting government subsidies or incentives, governments should attach some strings and require project developers to prepare a project impact statement—otherwise known as an Australian industry development plan—whereby the project proponent will put down in writing what that project will bring to the net economic good of the country.

From a leadership point of view, our industry is in rapid wind down. Something like eight out of every 10 jobs in the top seven fabrication shops in this country have been lost in the last two years, including major closures of companies like Transfield at Seven Hills, ABB at Tomago in New South Wales and Kwinana in Western Australia, and Evans Deakin in Queensland. There is a long list of them. The tragedy we see is that work available in this country is going offshore, often with government subsidies through Invest Australia and through departments of state development. I am not familiar with WTO provisions—I am not a lawyer; I am an engineer—but in our discussions with government we hear, ‘We can’t do this because of WTO.’ We hear this continually. Our position is, ‘Let’s test this and see if we can require project developers to produce a plan, like an environment impact statement, that looks at the impact of the project.’ That is not asking for too much. From a commonsense point of view, I read it as strange that WTO would prohibit the mandating of something as simple as the preparing of a plan.

From the point of view of economic sense, we understand \$250 million of state and federal government money is on offer as an incentive for the Comalco alumina project in Gladstone in Queensland. As we understand it, there are no strings attached in terms of the engagement of local industry. In a nutshell, that is it. I cannot overemphasise the bleak nature of what is confronting our industry. From a leadership point of view, governments need to show their hand here. Otherwise, an industry which has taken a long time to build up its expertise can be wound back or even decimated.

Senator LUDWIG—When you talk about your project impact statement, are you talking about local content in terms of something quantifiable—for argument’s sake, how much steel should be used on a project, how much local labour should be employed and how much Australian sourced concrete should be used? To put it in a more concrete fashion, is that what you are talking about?

Mr McDonald—That is getting into a level of detail—without mandating in these project impact statements or Australian industry development plans, as they are increasingly being termed—for the developer to put down the extent to which he intends to involve local industry. But these plans are not about mandating for a particular level of content. I guess it is encouraging the developer to think about what engagement he is going to have with Australian industry.

Senator LUDWIG—If they are not mandatory in that sense, what would prevent someone simply saying that it is 100 per cent through all the criteria, leaving it at that, putting it to one side and saying, ‘I’ve finished that bit of paper warfare, but I don’t have to follow it’?

Mr McDonald—Companies these days are conscious of their images as good corporate citizens. Producing a transparent public document that says they are going to turn their back on a capable Australian industry and yet extract our resources and put their hand out for government taxes and subsidies arguably does not show them up to be good corporate citizens. Sometimes they turn their back on industry without even going out to tender, which is indeed what happened with several of these projects which we have lost out on—some of the Queensland power station projects and indeed the Visy Paper and pulp project at Tumut. With some of those projects Australian industry did not get a chance to compete.

Senator LUDWIG—Have you considered from an organisational point of view—that is, the Australian Institute of Steel Construction—examining the Howe Leather case and examining how the WTO operates? You prefaced your remarks by saying that you are not familiar with how the WTO operates and that, quite fairly, you represent the steel construction industry. Given that what you are now proposing is a little bit broader than simply representing your members, that you are now talking about interacting with governments on the level of proposing plans and looking at local content rules, have you considered it is time now to actually start to look at how the WTO operates and examine where you can achieve an outcome and where you cannot achieve an outcome in light of, say, the Howe Leather case where, I guess in short, if you propose subsidies in certain areas it might be found to be in contravention of the WTO? I guess the question at the end of this is will the project impact statements meet the WTO requirements so that you do not find yourselves or the government in hot water sometime down the track? If you have not looked at that, is your association going to consider those sorts of things in the future?

Mr McDonald—I guess that is really what we are here for today, to encourage government to use some of its resources. This is government and industry in partnership here because government is indeed taking a stake in some of these projects. In short, no, we have not because we are a fairly under-funded industry association. It is fair to say that we are working on a broader stage with the heavy engineering and infrastructure action agenda. Some of these issues are being treated and addressed within the implementation phase of that, as I said. It is of concern to me and others in that implementation phase that a strong recommendation of the report to government was indeed the introduction or requirement for AIDPs, Australian industry development plans, but it is coming back to us there through the industry science resources bureaucrats that, to mandate for these plans, could indeed be in contravention of WTO. We are not resourced to be able to run a case on this. What we are saying to government is, ‘Well, it is in all our interests here. We are trying to develop a competitive industry, a viable industry, one that is in rapid wind-down at the moment.’ One way of doing that is saying, ‘Please, don’t use the WTO as a smokescreen excuse’ My concern is that it is often used as a stopper for not doing anything, or for governments not showing leadership. So we are saying, ‘Can the resources of government be used to test some of these reasons?’ Why is the WTO used as a blocker?

Senator LUDWIG—It makes it a bit clearer, thank you very much.

Senator COONEY—Part of Australian industry, I suppose, wants to see things more open and more transparent than apparently they are at the moment. Is that what you are saying?

Mr McDonald—A concern we have got is with this Comalco project. The Industrial Supplies Offices are state based organisations funded by the Department of State Development. They have also got an umbrella group in Canberra called ISONET that supports them. The concern is that the Industrial Supplies Office in Queensland is unable to get access to Comalco, or Bechtel, for this important Comalco alumina project. They are not able to get through the door to demonstrate to them the capabilities of Australian industry. That is sending out some pretty bad signals to the market that maybe the minds are already made up there. We have been hearing rumours now for two years of Comalco's intention to source nearly all of its structural steel requirements offshore in the Philippines. We have had discussions with them on that. We have had discussions with their project managers; we have had discussions with government, with the Department of State Development. It is still of major concern that with that project something like 40,000 tonnes could be lost offshore. They have turned their back on what is a very capable local industry that has a proud track record on any number of major resource projects in Queensland, Western Australia and South Australia.

Senator COONEY—What do you say about the proposition that tenders ought to be made public either before they are taken up or at least afterwards? So then people know exactly what the tendering process was and what tender was accepted before an agreement was reached. I have had this put to me by a constituent who said, 'Half the trouble is that you do not know whether you have lost out on a legitimate basis or on some other basis. You do not know what you have missed out by. There is no ability to improve in the future.' Do you have any comment on that?

Mr McDonald—We are picking up those very same objections from some of our members. Yes, they are in the dark. Sometimes they are not even asked at all to price a project. At other times they believe that they are asked just to provide a check price. Worse still is the case of Visy at Tumut. They were involved for part of that project over a fairly lengthy period to feed in some of their good ideas on constructability and design comment and so forth, which was then fed back to the market. In fact, that work was then placed in China. In that event, it backfired to the extent that what was coming in needed a lot of rework. It was delayed because there were some quality problems with it. But the Australian industry in the meantime has missed out. Companies are going to the wall and workers are losing their jobs.

Senator COONEY—A constituent also said to me that the people judging these tenders do not necessarily know, to the extent that they ought to in any event, the sophistication or the developments that the Australian companies may be bringing into the agenda. So what you get is a closed mind, not a dishonestly closed mind, in the sense that the people judging the tenders do not have the expertise and the technical knowledge and the background to know exactly who is the best tenderer. Do you have any comments on that?

Mr McDonald—That is a fair comment. We believe that is occurring on occasions. That is, indeed, the role of ISO—to get in and show them what expertise exists, either within individual companies or within clusters of companies. That is why I mentioned our concern with ISO not getting access on Comalco. As part of this campaign, AISC have some marketing tools to help our industry to better market its own capabilities to the decision makers and the project

managers and the proponents of these projects. That is also one of the recommendations under the implementation phase of NIEF—the forum that has come out of the Heavy Engineering and Infrastructure Action Agenda. Certainly there are gaps in our industry's ability to market its capability. We need to supplement those, and that has been recognised.

Senator COONEY—Would it be of assistance to you if your organisation had access to, say, Foreign Affairs and Trade so that you can make some input to those people who are going to present the case before some tribunal?

Mr McDonald—The case in terms of the plight of our industry or the position we would like to see the government take?

Senator COONEY—The position you would like to take on any particular issue, or generally in terms of world trade, that is going to be negotiated.

Mr McDonald—It would be useful. I guess we are saying to the government, 'Let's get a case running on some of these reasons or excuses why WTO is being blamed for governments not being able to attach conditions to subsidies or, indeed, for the AIDPs.' We are saying that we are not resourced to get involved in the detail or the legalities of trade law, et cetera. We are saying that we would like government to assist in exploring where the stoppers are in all of this and how we can manoeuvre.

Senator COONEY—I have absolutely no say in any way over what PIAC does, or what PIAC does not do, and what cases it ought to accept. Given the fact that our last witness, Dr Patricia Ranald, was here, have you ever thought of going to an organisation like PIAC to see whether or not a firm would take up the case on your behalf?

Mr McDonald—The thought had crossed my mind when I was listening to her answer your questions earlier. This is uncharted waters for us. Basically we are a technical marketing organisation that has been there to promote more efficient use of structural steel. Part of the efficient use of structural steel means you need a capable conversion industry out there, such as steel fabricators. We are seeing some of that capability being eroded quite rapidly with the closure of some of our shops. It is the long way of saying that we are moving into territory that we have not previously been involved in and, yes, I would think to have a discussion with that organisation would be of benefit.

Senator COONEY—I think what they do is to take up a case that, as it were, extends the envelope, or is very significant in the public interest, and they give it out to some firms that are willing to do that. I do not know, but it does seem to me that, given your situation, it is something that you might be able to do.

Mr McDonald—I appreciate that. Certainly our challenge is that our industry is not the only one affected by this and we have got to work in more closely with other industries. The transport industry is certainly affected by our plight, the surface treatment industry—there are lots of related industries that are in a similar boat.

Mr BYRNE—You were talking about the local content contracts. How much dumping of overseas product is occurring, in your understanding?

Mr McDonald—We have done some very preliminary inquiries as to whether it is worth pursuing with a dumping case. There are two factors here. Firstly, it is project specific, it is custom built material, so we are not dealing with tradeable widgets here. These are major components for a project. Secondly, we think that from a pricing point of view it is not being dumped. This is in fabricated form.

Mr BYRNE—Why you are losing it is because of the style of contract that is being constructed, is it? That is why you are, in effect, losing business rather than lower cost overseas goods being dumped on the market?

Mr McDonald—The Asian economic meltdown certainly led to some overcapacity there which led them to look at other markets. The global procurement policies of some of these multinational engineering procurement construction management contractors were certainly another factor. That is, I think, what has caused this trend, and it has become a very rapid switch. In the last 2½ years it has gone from very little, virtually nil imported fabricated steel, to upwards of 25 per cent of our market now under direct threat.

Mr BYRNE—Were you or any of your companies that you represent involved in the rolling stock issue in Victoria?

Mr McDonald—No, though I have spoken to some people on that issue. It is a related one, I guess, and it is one that I believe government did show some leadership on.

Mr BYRNE—My understanding is that it was a local contract that was supposed to have had a 40 per cent local content. In the tender it did, but in the final contract by the previous government, the Liberal government, it did not specify that local content. But I now understand that in future contracts in Victoria there will be a local content specification and that, if they undertake any major projects, what will then have to happen is that, if there are companies, say, like your own that can source some of that material, that will be then sourced as part of the tender. Have any of your organisations worked with the Victorian government with respect to this particular issue?

Mr McDonald—Not in respect to that particular issue. We have had dealings with the Victorian government on steel construction issues in general. It is fair to say that this threat of imported fabricated steel does not loom nearly as large in Victoria because it does not have the large resource projects. Our concern is that, once the modus operandi gets established, that is, once the major projects start importing a fair portion of their fabricated steel requirements, it will not be long before some of the other building type projects catch up.

Mr BYRNE—Are there any potential future large scale contracts that you will be excluded from because of this? Could you name some of the contracts?

Mr McDonald—The one that is of prime concern to us is this Comalco alumina project in Queensland, which has got \$100 million of Invest Australia funding on offer and \$150 million of Queensland state government money on offer. We are working quite closely with ISO and, through them being excluded, we think that the signals are pretty ominous.

Mr BYRNE—Are you saying ISO has been excluded from providing assistance?

Mr McDonald—Yes.

Mr BYRNE—Why?

Mr McDonald—Comalco will not talk with them, as I understand.

Mr BYRNE—That is interesting.

Mr McDonald—That is as I understand it.

Mr BYRNE—I find that interesting because we worked closely with ISO—particularly with respect to the rolling stock issue—and they have been extremely proactive. A large number of companies have certainly been working, to the extent where ISO went over and negotiated with some of the companies—Siemens and some of their manufacturing plants in France—to ensure that there was greater local content. We were looking at the decimation of our heavy engineering capacity in Dandenong as a consequence of that particular project. We have managed to resuscitate it. Is that more a product of the company taking a decision, or are you arguing that governments should be far more prescriptive in the sorts of contracts that have to be signed?

Mr McDonald—I think the case you raise is an excellent model. The government is showing leadership and ISO is actively involved. Once ISOs are involved, they can open the doors for local suppliers. Industry worked together and it was an excellent outcome.

Mr BYRNE—Would you like to see a much more proactive outcome? I am not quite sure what the Queensland situation is, but perhaps it could be looked at as a model in other states, given that we want to make sure that we keep our heavy engineering capacity, particularly around Dandenong and other areas.

Mr McDonald—Most definitely. The Dandenong rolling stock case is an excellent example because government had leverage as a purchaser of that rolling stock and it applied that leverage. We think that is commonsense because it keeps the work, not just in the state but in the country, and retains expertise—people will then continue to employ apprentices.

Mr BYRNE—Absolutely.

Mr McDonald—Once you wind down an industry, you do not rebuild it. We have seen industries lost in this country before.

Mr BYRNE—Yes, that is a good point.

Senator MASON—To move from the micro to the macro, historically, foreign governments have used local content provisions to keep out manufacturing goods from other countries. It has been one of the great non-tariff barriers and has perverted trade world wide for years. Why should we use that in Australia now?

Mr McDonald—Because we have an industry that will be decimated if we do not. We are not advocating that a certain percentage of local content be mandated for all projects across the board, but when government is a significant stakeholder—an investor in the project—it is commonsense that it should try to extract the best returns for the nation. There is a broader argument, which came out of a House of Representatives joint standing committee report on Woodside and the North West Shelf entitled *A sea of lost opportunity*. There was a subsequent report, *A sea of indifference*. The sad thing is that, in the 10 years between those two reports, local content went from 70 per cent to 35 per cent.

A strong recommendation of the report is that we are dealing with Australia's non-renewable resources and that project developers and proponents should pay economic rent greater than the bit of royalty or tax that gets paid. Greater economic rent is broader involvement of what is a very capable and competent Australian industry. From an economic point of view, it means that the wages paid to these workers come back to the country in taxes. There are fewer social security payments because these people are working. It helps with the balance of payments, which has been looming as an increasingly major problem for this government and the previous government. It nurtures, develops and keeps in place a capable local industry that has all sorts of spin-off benefits for attracting other investments. We are of the view that, once you lose the heavy end of your steel fabrication, the material will not need to come in as cheaply as it does now. You are at the mercy of what is on offer.

Senator MASON—What are you doing to help yourselves in the face of strengthening international competition?

Mr McDonald—I think that is the hub of all this. We did start this campaign as a negative campaign to try to stem the flow of imported fabricated steel on major projects. We have had some minor reversals. In the interim, we have seen some excellent examples: things like a new coal handling plant at Port Waratah. Bechtel is the project manager on that. They went overseas; they got overseas pricing out of three Asian countries. They came back and compared it with local pricing. It was cheaper on their first pass comparison with the Asian fabrication. They priced in all these hidden costs—the rework; the potential delays and what that would do to the project; the cost of expeditors, translators, inspectors; and the fact that it comes in in lumpy shipments, so you do not get the just-in-time flow on to your project that you sometimes need to get to hurry it up because steel is on the critical path and is needed on the job first. Once they made that assessment, they said, 'Right, it's better to do it with local industry.'

Senator MASON—It is a much more complex equation than simply identifying a price, for example.

Mr McDonald—Exactly. We have in fact publicised and commended them for that model because they have gone out on a limb to convince their management in the head office in Australia, and then in turn to Singapore and in turn to the States. We do that by encouraging our industry to market itself by bringing forward the good news stories, by working in with these broader issues, like the Heavy Engineering Infrastructure Action Agenda, and by just getting a general awareness amongst a pretty fragmented industry. But it takes industry time to rationalise, to become more competitive. It is doing so but it cannot do it in the face of absolutely declining or wiped out opportunities and lack of leadership by government in terms

of not setting the parameters properly for those projects where government is a major stakeholder.

Senator MASON—Leadership by government, Mr McDonald, means different things to different people at different times. I ask one last question: do you think there is any chance that the Australian fabricated steel industry will have the capacity to export?

Mr McDonald—Yes, and indeed it has in the past.

Senator MASON—You do think so.

Mr McDonald—I was going to go through some letters here today—but it is probably better on an interactive basis. One of our fabricators in Brisbane had a very large export business into China until three years ago, when he was hit with a 33 or 35 per cent tariff. He is still doing business in China, but instead of fabricating his steel in his workshop in Brisbane he now subcontracts it out locally in China.

Senator MASON—Did the Chinese whack a tariff on it?

Mr McDonald—Yes, they put a tariff on it.

Senator MASON—Those tariffs are bad things.

Mr McDonald—He had \$17 million worth of Australian export that was wiped out overnight. So we are about fair trade, not free trade.

Senator MASON—Thanks, Mr McDonald.

Mr ADAMS—That is a prime example of some of the problems your members would have trouble coming to grips with. How much information does your industry have on the changes to WTO? Was the industry actually excluded from gaining knowledge of the changes to be imposed on your industry? Did you have very much knowledge of that?

Mr McDonald—I have to say that we did not. The background to our appearance here today—and this is a bit out of left field from the stage I normally operate on—is that we have taken our argument to government. We said, ‘Here is the Visy pulp and paper mill, into which you have put \$40 million of federal funds and we understand the state has done the same. Here is Comalco, which got \$150 million in state funding and \$100 million in federal funding. We have businesses that are going broke; we have eight out of every 10 jobs in the top seven fabrication shops being lost. What are we going to do? Can we get some conditions attached to your funding?’ They said, ‘No, we cannot do that because of the WTO.’

Mr ADAMS—Before that the traditional response from your industry had been to go to government. However, government had actually been negotiating the WTO agreements, but government had not really passed that information back to your industry. Is that your understanding?

Mr McDonald—I suppose we all operate on information overload too. Also, it is not something that we have had cause to address in the past but now we see it as a roadblock to what we see as a commonsense approach. For instance, we have commissioned research on the impacts of this Comalco project on the net present value to the Australian economy if the work was to stay here, and it has a major positive balance.

Mr ADAMS—Sure, I have no doubt about that. The point I am trying to get at is that your industry, as a local Australian industry, has not been able to do this—either with your own resources or the information flow—but Comalco, as a multinational company operating in world markets, has been able to use its knowledge of the WTO and its expertise to go offshore and bring in the prefabricated work at the price it chooses and attract resources from the Australian government—as you were saying, \$100 million of taxpayers’ money—because, if there is an objection from your organisation or from local people about local content, it can say, ‘Well, that does not apply anymore because the WTO rules exclude that and we can do what we wish.’ Is that a true assessment?

Mr McDonald—It would appear that is the way it has occurred. I do not know the dealings. Indeed, in our meetings with Invest Australia, I guess for good reasons, the negotiations are all in confidence.

Mr ADAMS—I guess what I am trying to say is: do you think it is true that the larger corporations have a better opportunity because they pick up on the knowledge, because they have the skills and the expertise and because of their size, as opposed to smaller Australian industry?

Mr McDonald—That would be 100 per cent right.

Mr ADAMS—That is just the size, isn’t it?

Mr McDonald—Yes.

Mr ADAMS—That is not an advantage. The advantage is because of the size of that corporation and the expertise within it.

Mr McDonald—Yes, and more power. Examples are multinationals like Shell and the automotive companies, et cetera. I understand Holden is getting a \$400 million incentive for the engine plant in Melbourne. It is good to see the jobs from projects like that come to Australia. We would also like to see the construction jobs and the fabrication jobs stay in Australia.

Mr ADAMS—We are basically buying our own jobs, aren’t we?

Mr McDonald—Yes, even more so. Isn’t it \$175,000 per employee or something like that?

CHAIR—I think you have been fairly clear with us this morning and that is always welcome. These issues are difficult where we have advocacy from a particular industry, and I appreciate what you say about the threat to some of the jobs and that is probably quite true. The difficulty when it comes to making policy is that, if we were to help your industry out in some way to keep the prices at a level such that you could supply competitively, why don’t we do it for

everyone else? Why don't we subsidise Australian hotels so that Australians take more holidays here instead of going to Bali and places like that? Tasmania is a good example of that. There are terrific holidays to be had there, but the domestic airfares are a bit pricey. So you get into this floodgate argument. Why is steel more important than tourism?

Mr McDonald—We are certainly not about getting any industry handouts or being propped up. That is not what this argument is about. We are arguing this on the basis that, where government has got leverage, where government is a stakeholder in projects, they look at the broad picture. Get one part of government talking to another, get state talking to federal, so they work on a united front. Get one minister talking to another so that we have some commonsense leadership in all this. We are not about an industry that is putting its hand out to be propped up. It is not behind a tariff wall, not like automotive or others which are under much higher tariffs. Our industry is five per cent or often nothing.

CHAIR—Yes, you are right there.

Mr McDonald—It is an industry that certainly on a man hour's per tonne, on a productivity rate, is very efficient and it is becoming increasingly so. Where it does not compete is on a dollars per hour basis here compared to China, where they do not have the same occupational health and safety, the same environmental conditions, and those sort of things. It is not a fair comparison there. What we are saying is, yes, what will be will be in terms of globalisation and we accept that, but let us look at the whole equation here, the whole project costing. There is this first point comparison about how many dollars per tonne for steel out of China versus Australia, but once you look at the whole thing, the differential is not nearly as great. In fact, it often makes more sense to keep it here for that reason.

CHAIR—So it is the users of steel, the developers of these big plants, who in your view are buying too much steel from overseas for cost reasons. If like other industries you have started to compete in the export markets and you have the odd blow like this Chinese tariff and so forth, then why shouldn't we just say, 'Hands off from governments. You do as other industries like tourism, wine or even pork have done'?

Mr McDonald—We might not have much of an industry in two years time if the urgent actions that are needed are not taken.

CHAIR—They have all said that in the past to us. The pork people were particularly vociferous last time round, and they were given a little bit of help like some of these subsidies for some of the plants you are getting indirectly. Then necessity forced them to develop pork so good that they could sell heaps of it overseas, and they are pretty buoyant now. Our problem is that we hear the arguments about the decimation of jobs, but we just have not got the dough.

Mr McDonald—We are not looking for that. What we are looking for is for those projects where government has got a stake to show some leadership, and that leadership—

CHAIR—But that is a chequebook.

Mr McDonald—No, it is not, not at all. These are projects that are already getting government subsidies. Comalco has been a classic case—\$250 million of taxpayers' money on

that project. It is not a big ask that they be required to at least tender for the job here and tender for it fairly—and not when there is a week to go and after all the plans have been set in place overseas—and to involve local industry early on so that we get the best possible bite of the cherry.

CHAIR—Yes, but if they have to spend more money on your steel, that is less money they can pay to Australian subcontractors, truckies, or anyone else involved in it. It comes down to a budget that these fellows must have when they build these plants.

Mr McDonald—Sure, but we are not saying they necessarily have to spend more money on our steel—in fact, it is often to the contrary. If they get the comparisons done right and they do them early on, if they show a willingness to engage our industry—

CHAIR—They are mentally defective, you are saying?

Mr McDonald—Sorry?

CHAIR—Then they must be mentally defective if they are not buying your steel because it is the same price and better quality.

Mr McDonald—No, we are not saying that. What we are saying is that they need to be encouraged to talk to our industry early on in the piece, not turn their back on it after being propped up with a very high level of government subsidy.

CHAIR—As Dick says, it is almost like buying our own jobs with our own money.

Mr McDonald—But we are importing unemployment with what has been happening here at the moment. I was over in Western Australia last week; 2,000 boilermakers are out of work in the Kwinana strip. The shops that have closed over there are shops that have invested in new technology. In fact, one of them, called Primax, was state of the art. They had a state-of-the-art facility and it is now a bottling plant. He has got more money from leasing the thing out than from actually fabricating steel and creating employment through the whole value added chain.

CHAIR—So it must be a failure of management in these plants.

Mr McDonald—Once you deal with the multinationals, they have got in place supplier relationships. I guess I should broaden this out—and I do not know how much time I have got—but the big problem here is that on some of these projects increasingly the design has been done overseas. The Bechtels, Fluors, Kaeveners of this world have got big design houses in India and elsewhere. Once you lose the design, you do not get even a look-in at the tender because you are dealing with in-place supply networks. So it is important; it is imperative we keep the design here on projects. Where that has happened in projects like Port Waratah—and it is now happening in the west on the West Angeleas project, which is an iron ore project for Rio Tinto—it gives us our best possible chance at keeping the downstream supply.

CHAIR—So that is the engineering industry, in the sense that consulting engineers here are falling down or falling behind; they are not getting the work that they ought to for these plants?

Mr McDonald—It is not through lack of expertise or anything. It is just through a change in procurement policy of some of these multinational EPCMs.

CHAIR—Yes, that is useful to this discussion in the sense that you think there is a structural problem with the large number of very large multinational companies that are, in a sense, distorting some part of the process, say the design, and it is going downstream causing the managers who are in charge of purchasing their materials to make defective decisions—they must be.

Mr ADAMS—No, what has been said here is the multinational companies would never ever have bought anything off us unless we had had content rules that said you have to take X amount of Australian goods.

CHAIR—They would go to the Philippines.

Mr ADAMS—They would go wherever they could get it cheapest. In the past we have had these rules and now, under WTO, we are eliminating those rules.

CHAIR—The strange thing in my mind is: if a plant, which belongs to a multinational and is to be built in Australia—was it Gladstone you were talking about where the smelter was to be?

Mr McDonald—Yes, it is a refinery.

CHAIR—How could it be both cheaper and in quality terms better to procure it from the Philippines than from Brisbane?

Mr McDonald—There is any amount of evidence to show that these projects that are importing have a lot of quality problems because it is made to unknown standards, it does not have the same inspection, there is a lot of rework et cetera. So quality wise there is any amount of evidence to show that there are quality problems.

From a cost point of view, I cited the Port Waratah example. There are several others where, after people do a valid comparison—and our challenge is to get them to do those valid comparisons, but it is pretty hard when their minds are made up before they start because it is an edict from an overseas procurement manager in the States or something. I think they are deliberately now enhancing and developing the capability of these low cost countries at the expense of maybe some of the projects in the interim where they will wear a bit of rework and a learning curve because they figure that then they can use those low cost centres to deal with projects anywhere around the world.

What we are saying is, ‘Hang on, it’s Australia’s resources here, these are non-renewable resources, couldn’t or shouldn’t that not be a condition of licences?’ In terms of these projects where they come cap in hand to get government subsidies, taxpayer subsidies, should that not be a condition that they use what has been a very capable industry that has a very proud track record on any number of major projects in recent years, such as Olympic Dam and Century Zinc and Boyne Island Smelter—big tonnage jobs which are run very well using our very capable local industry.

Senator COONEY—That issue that you raised about China where the tariffs went on: could you give the committee any more details, not now but later on, about that?

Mr McDonald—Yes, I can. I have a letter from our member on that very one. Would you want me to send that letter through?

CHAIR—We can table it and then distribute it. Thank you.

Proceedings suspended from 11.02 a.m. to 11.19 a.m.

ANDERSON, Dr Tim (Private capacity)

CHAIR—Welcome. We do not require you to give evidence on oath, but I advise you that these are legal proceedings of the 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. You have made a brief written submission, so please speak to that and we will have the same process of cross-examination. Could you just firstly indicate the capacity in which you are appearing today?

Dr Anderson—I am a lecturer in political economy at the University of Sydney, and I am appearing today in a private capacity. Perhaps I will just do a brief overview of the points I made in the submission. I have argued eight points, and I will just say something briefly about them.

I congratulate the parliament on setting up this inquiry; it is an important and timely one. The first of my points is about transparency and accountability at the WTO. Forums such as the one this committee has provided are important in enhancing the level of public involvement and of accountability in Australia's relationship with the WTO. It is important that that be sustained in some form, whether through this committee or through some other forum, so that interested sections of the community other than the processes of formal politics or those with direct economic interests can have an input into this process.

The second point is about the peculiar situation of the WTO in international law. This is perhaps the most vexed of the points I raise and I call it 'maintaining the integrity of Australia's other international agreements'. Of course, one of the major differences between domestic law and international law is that when an issue in domestic law is considered other elements of the law are considered; when there is an issue of international law, the body that supervises a dispute, for example, before the WTO is not considering international law but is considering the treaty. So, in a sense, the treaty has a totally different status to other treaties. However, the Australian government and parliament have a responsibility to look at Australia's other international obligations. The question is: how are those obligations to be viewed as against each other when there may be conflicts? There are a number of examples, which perhaps you have already been discussing, that might illustrate where such conflicts could arise, how they are resolved and what the role of the parliament is in resolving those sorts of conflicts—say, between labour treaties, environmental treaties and trade treaties. I just flag that because it is quite a large territory that you may want to say something about.

My third point, which follows on from the second, is on pursuing effective mechanisms to ensure WTO agreements are consistent with international human rights, labour rights and environmental agreements. That is by way of saying the parliament can have a very active role in helping articulate the various obligations that exist in those different treaties.

In the fourth point I mention that I personally believe in a ban on the patenting of life forms and I urge that the parliament pursue that issue at the WTO. It is one thing for us to be moving ahead very rapidly in the development of genetic engineering and new life forms; it is another thing to be granting ownership over those life forms before we know where we are going with that process. There is a limited exception to a general presumption for a ban in the WTO rules. That limited exception is something that, in my view, deserves challenge also.

The fifth point is ensuring public control of the production and delivery of essential goods and services in the development of a 'global commons'. This is a broader concept. It is, in some respects, a reaction to the wide scale privatisations we saw in the eighties which, to some extent, are being rolled back in some areas—note the Californian retreat on energy privatisation at the moment. There are some areas—and I note, in particular, essential health services and water supplies—where, in my view, there is great danger in pursuing them as tradeable commodities. Issues of international conflict may well arise in some of these areas, as well as issues of domestic security.

The sixth point is about distinguishing between types of protection to do with food security and subsidies on food exports. That is an important distinction to make in dealing with agricultural liberalisation—to the extent that it gets dealt with in the WTO. When countries are concerned about securing their food security—and you might take the case of Japan with rice, or, hypothetically, Singapore if it were to develop a domestic water supply and not import its water from Malaysia—those concerns in a way deserve a different status to the subsidies of agricultural exports such as we see with the US.

The seventh point is about supporting affirmative action measures for developing countries. The erosion of those special differential treatment provisions is something that developing countries have expressed a lot of concern about. I think Australia also has common interests with some of those countries, and the issue is largely about the capacity of a country to develop its comparative advantages as opposed to being trapped by its comparative advantages. The eighth and final point is about opposing special privileges for investors, such as was proposed by the Multilateral Agreement on Investment stalled at the last OECD round. That is all I would like to say, Mr Chairman. It is just an overview of the points that I made in my submission.

CHAIR—Thank you.

Mr ADAMS—Dr Anderson, I am interested in two points. You feel that we probably have not had an ethical debate about GMOs and life form trading and things like that. Is the thrust of your argument that there should be more of an ethical debate or a setting of ethical standards?

Dr Anderson—There is an ethical debate—we are perhaps at the beginning of it—but I think it is an important debate to be had. I do not say that I am totally against genetic engineering or anything like that, but I would say that the devolving of ownership rights to these life forms is an additional dangerous step which ties our hands in the course of having that ethical debate that we are beginning at the moment. I think the devolving of those ownership rights is what is particularly objectionable in the WTO process at the moment.

Mr ADAMS—The world is changing enormously. There is an article on the front page of the newspaper today about the human genome, and this concept opens up enormous change and it deals with issues that I am dealing with now in another committee forum. There is some experimentation within my own electorate in a copper mine, where bacteria is actually eating away the overburden and leaving the ore. Evidently, from my talks with the CSIRO, this is becoming a reality and this will probably become a part of mining in the future. It will not replace the actual mining or extracting minerals but could become a way of milling the material. We traditionally have mills that sometimes gives us enormous environmental problems, but there is this concept of using bacteria to do this process. I understand that in the pulp industry it

is just at its conceptual stage, where they are using small animals to chew up wood fibre to make pulp so that we will not have to use some terrible bleaches. So these are different concepts. When we are talking about life forms, if a company is using those sorts of life forms, would they own them? Have you thought through that at all?

Dr Anderson—To a degree, but you can understand the attraction of a company. It might be that there are enormously beneficial results of developing those sorts of life forms, and you can understand a company wanting to protect its investment in those sorts of areas. The problem arises when you give global ownership, a global patent, for things and extend—I think as Australia did—their ownership from 10 to 20 years. The more you expand those sorts of processes, the more you foreclose unresolved future issues. We see the result of that with pharmaceuticals at the moment, don't we? The extent of patents claimed by large pharmaceutical companies is closing down a whole range of health options in poorer parts of the world. So in a sense then my presumption would be that, if any type of a proprietary right would be given in a process such as that which was seen to have enormous benefits, you would restrict that so far as possible so that it did not foreclose future options.

Mr ADAMS—I am not quite sure how this relates to the inquiry, but the South African experience with drugs is one that comes to mind. How do we use the WTO to assist us in that area?

Dr Anderson—We cannot in the South African case. My understanding is that the TRIPs agreement of the mid-1990s did not have a huge number of consequences for Australia except in extending the length of patents. I would have been opposed to that, and I think practice in Australia provides some cause for alarm over the previously existing use to which patents were being put. I excise consideration of the Pharmaceutical Benefits Scheme here for convenience at the moment. An example is a drug produced by Glaxo, a very popular anti-ulcer drug called Zantac, which came to the end of its patent about the same time as the TRIPs agreement about the mid-1990s. At the same time as that patent ran out, the whole prescribing practice of drugs for ulcers changed to a totally different process. Call me suspicious, but I wonder about those sorts of links between the common prescribing practice for that drug and the length of the patent. It seemed to me that the patent was used for all it was worth, including through the Pharmaceutical Benefits Scheme, while that patent was in existence.

The argument of protecting an investment and recuperating the costs of research and development that is commonly used in those sorts of areas runs a bit thin when we see those things being milked for all they are worth, effectively. That is why I go back to my initial point. My presumption would be to limit or clearly define their recuperation of those sorts of costs and protection of those sorts of investments, rather than give a global milking cow to a company that happens to have got in first in an area like that.

Senator MASON—I would like to ask a couple of questions about the WTO's interaction with some other international standards, human rights, labour rights and environmental agreements, that you mentioned in points 2 and 3. My colleagues, in particular Senator Ludwig, have touched on this this morning in other contexts. To cut to the chase, for those people who believe that in general free trade is the way to go, often human rights, labour rights and environmental agreements, while at one level great things, can also be used as non-tariff barriers. You can use them in a sense to inhibit free trade. In particular, one example would be

to apply First World labour standards to Third World countries. If you do that, that will inhibit the capacity of Third World countries to engage in trade and more than anything else inhibit their capacity to move from the Third World to the Second World and so on. That would entrench poverty in the Third World by trying to impose those sorts of standards. What do you say to that?

Dr Anderson—You are quite right that standards can be a form of protection. I think the US is a case in point that is cited by a lot of developing countries in complaining about this, that the US, which cries the loudest about free trade, is often the most aggressive in pursuing protection issues. An important distinction has to be made, though, between labour rights and labour standards. The second part of what you are saying is quite correct if we say we want to impose a minimum wage level like Australia's on, say, Indonesia. However, if we are saying that the labour rights that we have agreed to in the International Labour Organisation are to do with freedom of association and the right to join a trade union, then those sorts of things are not a barrier to another country with lower levels of wages developing its own advantages. Those things are not an obstacle in that same sort of way.

To address your more general point about free trade, free trade is really a slogan that people use when they want to sell something. Australia wants to sell products to protected markets in Europe and the US and therefore Australia has been arguing that on the presumption that there may be some responsiveness to that from countries that have argued free trade in the past in terms of their agricultural markets. The problem with the argument is, of course, that no-one really takes it at face value and only people who are naive do or should take it at face value. The Japanese, when confronted with this question 50 years ago, were told in the late 1940s, 'Look, your comparative advantage is cheap labour; you should be developing your resources of cheap labour'. The Japanese said, 'Sorry, we think our comparative advantages may change.' I think they were right in that respect.

Senator MASON—Although, Dr Anderson, the 1990s was a lost decade for the Japanese and they are now liberalising their trade, as you would appreciate.

Dr Anderson—The Japanese have never contradicted liberal arguments, but they have gone about development in their own way; they have changed their comparative advantage. At university we teach comparative advantage and factor substitution to all our students, but also circular and cumulative causation, which says that there are historical processes to do with a country's industry and a country's trade, and they change over time. In the short term, comparative advantage is a 19th century idea that is still quite relevant, because in the short term you make more bucks out of selling something that you are good at. But in the medium term, if you want to change what you are good at, you cannot be locked into a strategy based on comparative advantage.

Senator MASON—I accept that, but the problem is that everywhere in the world—and you are quite right: in the United States and elsewhere—you get those standards you mentioned, whether they are human rights, labour or environmental, and they are used by the First World to lock out the Third World. Make no mistake: that is how you do it. The Europeans do it as well. They lock out the Third World by saying 'They are not complying with those standards.' They are all very trendy, often left-wing governments talking about social democracy, but they will obliterate Third World economies by saying, 'You cannot trade with us because you have not

got these standards.’ That is the nub of the problem, yet there is no answer—no-one will trade. Countries in Africa, for example, have got no chance of moving forward without being able to trade, and you can lock them out forever. All those fashionable western European, liberal or social democratic countries have wrecked, and are wrecking, African economies by saying they cannot trade. How are we going to get around that?

Dr Anderson—At what, the WTO?

Senator MASON—Yes.

Dr Anderson—I doubt that we are going to influence it. You are talking about power politics here; you are not talking about theory. You are talking about people differentially using those agreements as suits them, and you are talking about who is the arbiter of these sorts of agreements. At the moment, the US have got their super 301 where they can impose sanctions on countries unilaterally—and do—if they think companies are dumping or whatever. It is about the administration and the exercise of that power. You are not talking about a theoretical issue here. Of course, poor countries want to engage in trade. Socialist countries want to engage in trade. That is why almost everyone is there at the WTO—not because they like the way in which the US and Europe dominate that process but because they want to participate in it.

Because we want to participate in the WTO from an Australian point of view does not mean to say that we go in and accept the arguments of free trade at face value. It does not mean that we go in and say that we like the terms in which it is set up—by the US, Europe and Japan typically. It has been a tussle between those three from its inception. What I am saying here—I am not sure if it is answering your question—is that there is a way in which we can engage with those terms, seek to influence those terms, change those terms, and take seriously those other obligations at the same time. Just because people use those other obligations for ulterior motives does not mean to say that we do not have to take those issues seriously too. They are very serious issues.

Senator MASON—I accept that, but the hypocrisy—and I do not want to mention any particular nations—with respect to those standards and denying other countries the capacity to trade is pathetic. And it happens all the time. What always worries me when these issues are put in is that they will be used as benchmarks to stop or inhibit trade, and that is very worrying.

Dr Anderson—In brief, I agree with you on that. The point is that the response cannot be to naively accept at face value the arguments of the pure theory of trade, to say that we will abandon all these things.

Senator MASON—I know that and I accept that, although we have moved on from the seventies, Dr Anderson, when free trade was anathema, to even socialist countries embracing that trade is a good thing. Thank God for that.

Mr BYRNE—Dr Anderson, if there was some sort of integration of some baseline standards with respect to labour, environmental concerns, et cetera, do you sense that that would actually impact on, say, developing countries? If it does, how would you see them as offsetting that? You mentioned in your submission an affirmative action policy.

If, for example, 10 years down the track a people's movement says, 'We actually want baseline labour standards and environmental concerns integrated within a world trade organisation,' (a) do you think that it would impact adversely on the sort of trade taking place; (b) if it did, particularly in relation to developing countries, what methods would offset that so that it could be a more level playing field; and (c) is this an inevitable trend? We can certainly see from the American experience that there is a growing movement on some of these issues. When populations reach a critical mass of economic prosperity, they start looking at integrating these other sorts of concerns into agreements and other arrangements.

Dr Anderson—In fact, it is happening already. The US is doing it already on its own terms; it is integrating some of those standards in some of its own agreements. I think it did one with Jordan, for example, a few months ago as part of its Middle East package—its foreign policy, as always. You have raised a lot of big issues. One issue is whether the WTO is the appropriate body to supervise the implementation of these sorts of standards. Some people are arguing that it is not because of the way in which decision making has occurred in the WTO. As I mentioned in point 3, there have to be some rather creative ways, which I think the parliament can have a role in, of pursuing the integration of those agreements or international obligations. Some people have put the proposition fairly clearly about which ILO conventions they want adopted at the WTO. Other people have said, 'No, the decision making process of the WTO is such that we cannot be confident that the US, for example, is not going to use this in the way that it has used them in the past.' There is an argument there; there is a debate there; there is room to move. Plus, in some respects, the heat has gone out of multilateral agreements into regional agreements, and whether these things are dealt with in regional agreements is another issue again.

The point is: are there effective mechanisms in which these international obligations can be pursued? It may be that none of us foresee what mechanisms which may arise later this year, for example, in terms of regional or multilateral agreements. It is much more difficult with multilateral agreements. I suggest that some of these sorts of packages are more likely to arise in bilateral and regional agreements.

Mr BYRNE—If you were to look into your crystal ball, what do you think you would see in 10 years time as the sort of mechanism, such as the World Trade Organisation, given your understanding that there seems to be some level of social movement to integrate those sorts of standards into agreements?

Dr Anderson—Ten years is a very long time in politics, as you know. Looking at the history of the GATT, it has been dominated by those three big groups. It continues to be dominated in that sort of way. There is a realignment between those groups and, in some senses, the relevance of those groups has not diminished, despite the rise of multinational companies. That is part of the problem. The 'consensual' decision making process there is, in effect, dominated by the large group, and the way that decisions are made at the WTO is perhaps something that we need to look at. I am not going to rush in and suggest that we need to implement a social clause under the existing regime because there are serious problems with the existing decision making processes. I think that whatever is happening in terms of that multilateral process—and it is a process that Australia is going to feel bound to engage in in one form or another—there has to be a search for creative solutions. We know what the principles for those solutions are. In

relation to the mechanisms, opportunities will arise. We may create some of them; we may participate in some of them.

Mr BYRNE—I might leave that point for Senator Ludwig to take up. He has a keen interest in the mechanics of it. Part of the phenomenon that we are seeing in Western Australia and elsewhere is people's belief that they are not being consulted on agreements that affect their lives, particularly with respect to World Trade Organisation agreements. Your point 1 states:

As the principal body accountable to the Australian people, the Federal Parliament should ensure that the Federal Government complies with this fundamental democratic principle.

With respect to agreements, what sort of process would you like to see? Given that there seems to be a fairly substantial disenfranchisement of large groups of the population over the impact of the decision making processes on their lives, how do you think that could be made more relevant so that people believe that their concerns are being taken into account but, at the same time, they understand that we are dealing with a fairly complicated international environment?

Dr Anderson—In principle, my attitude is that people have a right to engage in issues which affect their lives as opposed to issues which affect other people's lives. To that extent, the level of consultation exhibited by this committee, for example, is laudable and is something I would like to see extended. Consultation over the WTO process has been quite narrow up until now. When the next round of the WTO comes along, it would be good to see an avenue provided for people for have a say, whether it is this committee or some other process that the parliament may decide to set up.

Senator MASON—Should that apply to human rights committees as well?

Dr Anderson—Yes.

Mr BYRNE—Across the board.

Dr Anderson—Yes. We are talking about the WTO and there is a particular problem with the WTO.

Mr BYRNE—How do you get the public engaged? It is difficult with any message to get people engaged. I know Dick Morris in America has been doing some work with respect to this. In a sense, he is talking about the Internet and having referenda on a lot of issues. Is that a model you are looking at? What the Morris model proposes—this happens in California and is of some level of significance—is that the public has an opportunity to vote on the particular issue.

Dr Anderson—I am pretty hostile to that attitude for the reasons we see in lots of opinion polling in the US. They have opinion polling on criminal trials as they are going along, based on limited information in the media. You wonder what relevance it is to anything: 'Let's express your partial knowledge and ignorance on these issues.' A broader process of consultation is where people can have an input. Obviously, people want to have an input. It may be that there are some useful things that people have to say, too, that affect them. We do not know how it is affecting them.

Mr BYRNE—If there is an agreement and if federal parliament becomes much more involved, rather than giving delegated authority, which is what it does, particularly when negotiations are occurring—in my electorate, 30 per cent of employment is based on manufacturing—how do we say ‘What are your views?’ when looking at the model of greater consultation? Are we sending circulars out to the electorate? What do you see happening in a broader sense so that people become aware of this? One of the fundamental things that underpins this is, you are saying, that there has to be extensive consultation. How far do we need to go?

Dr Anderson—Anything at the moment is helpful because there has been very little up until now. This committee is rather helpful, but clearly not a lot of people have had a chance to have a say on this committee. If you put advertisements out in different forms—the Internet is one form but it is not the only form—Australia is pretty advanced in terms of people with access to the Internet, but a lot of people do not have access to it. So you could put out a proposition that, for example, Australia is entering a new round and these are the sorts of issues that are going to be discussed and, if people would like to have a say in these sorts of things, giving them a chance to have an input. I have left it open because I am not wanting to suggest. You know logistically better than I know how your committee deals with this sort of information process. It might be that you want to delegate some processes.

Mr WILKIE—You have mentioned that consultation so far has not been very good. What was wrong with the consultation that DFAT did in 1999 prior to the last talks?

Dr Anderson—The main problem is that DFAT identified stakeholders who were companies engaged in international trade and omitted community organisations by and large.

Mr BYRNE—You were talking about patenting of life forms. Under the existing regime and under what is projected if it continues unabated, do we have a potential *Blade Runner* situation where an international corporation patents a particular clone and then markets that? Is that something that could exist under the present regime and under the future projected regime of WTO?

Dr Anderson—Yes. The issue of seeds at the moment is quite critical. If certain varieties of plant are to be eradicated—certain varieties of bananas are not allowed to be grown now—and if certain companies own the only marketable forms of basic food stuffs, a massive monopoly power has been devolved in the name of protecting someone’s investment. We are devolving monopoly power to these corporations over issues of life and death. It is a critical issue that exists right now.

Mr BYRNE—Do you see that as—and it certainly looms from what you have identified there as a fairly substantial challenge for governments—in a sense losing the power to some extent, although they do not necessarily have it directly? Are you saying that it could threaten food sources for populations and stuff like that?

Dr Anderson—Absolutely. I think that if Monsanto withdrew from their terminated gene process whereby people could not recoup their own stocks of seeds and so on—and that is clearly in front of us at the moment, that there is a terminated gene where poor people cannot produce their own seed stocks so have to go and buy it from a multinational company—that

would be an enormous threat. It is with us right now. As you say, if it was decided as a matter of public policy that that thing should not happen and, as a result of that public policy Australian governments were subject to massive fines enforced through the World Trade Organisation, we would be faced with a huge dilemma.

Senator LUDWIG—I do not want to give weight to my colleagues, but on page 3 you are effectively talking about ensuring a system of special and differential treatment for developing countries. When you talk about that do you say that there should be a subsidy for those who are members of the WTO, or that they should allow the developing country to have subsidies against what might be considered the WTO rules? Or do you say—and I do not really want to get too firm with the specificity of it—that the problem with special and differential treatment is another way of saying, ‘We will all have trade barriers again or put up tariffs’?

Dr Anderson—One person’s trade barrier is another person’s industry policy, isn’t it, really?

Senator LUDWIG—That is right.

Dr Anderson—Already, the special and differential treatment exists in terms of the schedules of liberalisation from the 1994 agreement. I think what is complained about by developing countries is that countries like Japan, Korea and Taiwan have taken advantage of industry policy in the postwar period, and now that those rules are to be constructed more restrictively the opportunities for industrialisation for advancing the comparative advantage means that those countries are going to be denied to them and they will be locked into their so-called comparative advantages. With the expansion of trade opportunities that is a danger that arises with that opportunity, and while you are looking at the opportunities it is silly to be blind to the dangers that are there at the same time.

Senator LUDWIG—The WTO has been called on a number of occasions, today and during submissions to us, a ‘rules based’ organisation, and it has been said that if you are going to make representations to the WTO then the best place to do that is to the government itself. I was listening to your answer to an earlier question and I was a little bit confused: perhaps you can help me. When you say in your submission that there should be—and I take it to mean you support this—greater consultation, is it from the WTO listening or is it from governments creating a better forum to listen to and have input to, for argument’s sake, a new round if one is proposed? Is that what you mean, or do you mean that the WTO should create a secretariat of listeners?

Dr Anderson—I think the responsibility of this committee is to the parliament and the role of the parliament, so primarily I am addressing the function that the parliament might play as distinct from the government, too. The government has a responsibility; the parliament also has a responsibility, I would suggest. How that plays out in the WTO is partly a function of the willingness of government to say, ‘Well, we take on this responsibility of listening to our community with this level of breadth; we now suggest that this international body might do the same.’ There are precedents for that in United Nations bodies, for example: United Nations bodies do hear from community non-government organisations. The WTO is not like those UN bodies. Some of the UN bodies have progressed to that degree; the WTO has not. I think that if the parliament or the government wanted to suggest that to the WTO it would have to be doing it itself first.

Senator LUDWIG—You mentioned the United Nations as a model. Is it your view that the WTO should model itself on the UN? Forgive me if I ask this, and I am happy for you to take it on notice or to decline, but why should the WTO, which is a rules based organisation based on trade, adopt a model of the UN rather than striking its own model of operation in the international setting? I am curious as to your views. A previous speaker also said that the WTO should adopt a UN or similar model or at least take on some of the attributes of the UN model.

Dr Anderson—The simple answer is that the UN is a more democratic structure. The WTO, in a different way but with an effect similar to the IMF and the World Bank, is heavily weighted in favour of the powerful industrialised countries. UNCTAD, for example, which deals with very similar issues to the WTO, has a structure in which developing countries are more willing to participate. The WTO is a more powerful body but precisely because those wealthy countries have subscribed to it and have turned its decision making processes to their advantage. The consensual decision making process of the WTO disguises the fact that it is a really very small group of people that makes the critical decisions and then enforces the consensus.

Senator LUDWIG—You also argue—correct me if I am wrong—that there should be some mechanism for exclusion of essential goods and services from the GATS, that is, that effectively the WTO should, when it provides a forum for agreements to be made, have rules that enforce exclusion in relation to what you might call ‘commons’ or basic or essential services. On the other hand, we have a number of community groups that are also saying that, in allowing a forum for agreements to be made, they also should take into consideration labour standards, environmental standards and human rights. You are putting, I guess, a fourth area into the basket of those matters. How do you see them being put in given that the WTO is a rules based organisation? Do you see them as being put in—not particularly yours; it also includes others if you want to comment on them—as a rule that says that, in any agreement made in a WTO forum or within its framework, (1) they shall not deal with water or (2) they shall not deal with goods. Then what would happen if a particular agreement was breached in that respect? If one was included in it, what would be the penalty? Or do you say there should not be a penalty? I know I am going about it the long way, but what concerns me is that, at the end of the train, when it gets to the stop, you might be punishing a nation that does not need to be punished and it may have a great effect on that nation, such as creating greater poverty because they cannot trade because they have breached or cannot include a rule.

Dr Anderson—I think I understand how you are approaching it, but conceptually I approach it differently. I approach it by saying that the parliament of Australia, through the government of Australia, goes to the WTO and says, ‘Listen, we think these things are important in terms of commons, in terms of rights and environmental standards and if we see the rules of the WTO breaching this we want an exception to this process.’ In that sense a government can express itself, the Australian state can express itself, to the WTO and seek support for that proposal. The rule, as I understand it in the multilateral forum, gets constructed in that sort of way if you can garner certain support for it. You either exclude yourself from the process or you make reservations on the process, as with any treaty, or you seek support to have that incorporated into the treaty. I am looking at it from a slightly different angle now. The outcome you end up with may well be the same with the exception of the reservations you make about things, but you may gather support for that reservation as time goes on. There is a certain vision in there that you are identifying. You can start with the vision and then deal with the problems of the

process subsequent to that. I have problems myself starting with a global vision and then asking what are the process problems that are going to arise here.

Senator LUDWIG—The difficulty I am going to have is that, in setting out the vision, I have to be careful about the consequences which might flow from it. A country that has a very low standing in respect of its human rights, environmental standards or other matters that we have touched upon may also be a poor economy. As a consequence it finds itself at the end of the bus stop where the global community can then say, ‘Because you have such a poor record in respect of that we should punish you further by not allowing you to trade or by putting restrictions on how you trade.’ That eventual result will affect the people living in that country. It will then create a system where the eventual losers are those people trying to eke out a reasonable living, not Australia that started the policy.

Dr Anderson—That is already happening, but it is happening in a rather arbitrary and discriminatory way. The appeal of the multilateral process was, ‘We’ll introduce a rules based approach and we’ll get rid of this arbitrary discriminatory punishment going on and we’ll punish people in a rules based way.’

Senator LUDWIG—That is my next question. Are we just swapping to a systematic way of punishing people?

Dr Anderson—That is the danger. The danger is that you institutionalise the previous imperial power relations in an institutional structure. There is a great danger of it.

Senator LUDWIG—Then everyone says that is fair because the rule says that you can be punished.

Dr Anderson—Then the decision making process becomes very important, as does where the power lies in the decision making process. That is why some attention needs to be paid to how this consensual decision making process is developed. That is why I say that the obvious comparison is to look at UNCTAD, or another UN agency, and compare the other options with the way it currently happens, the way they attempted to cut the deal in Seattle, for example.

Senator LUDWIG—Thank you, that has been very helpful.

Mr ADAMS—If you go to history, people have been excluded from trade. That is why we have had several wars. Has excluding people from trade caused a world to go to war?

Dr Anderson—In part.

Senator MASON—You go into depression as well.

Mr ADAMS—Yes, that is true.

CHAIR—I just want to ask you a couple of things about the concept of the global commons. I have not heard that term before. Is that one you coined?

Dr Anderson—No, it has been around for a while.

CHAIR—The submission seems to, in a sense, draw a border around what you describe as essential services—is it right to say that it quarantines them from private enterprise?

Dr Anderson—Yes, I think that is fair.

CHAIR—Thank you for your submissions and evidence.

Senator COONEY—As I understand your submission, the way the World Trade Organisation is working now is that it sometimes gives a respectability to decisions which do not deserve it. It is a bit like money laundering. You take money which is ill got and put it through a process and it then comes out the other end looking better than it really deserves to look.

Dr Anderson—I think that is the danger of the decision making process at the moment.

Senator COONEY—Are you saying that you start off with a decision that may well be ill based, put it through the laundering process and it comes out having a status it does not really deserve? Is that your proposition?

Dr Anderson—Yes.

Senator COONEY—I think you are suggesting that the way over that is to make this process more open, at least for a start. You go further than that and say that, if the process is made more open, there should be more people able to have a say there. Would you go that far? At the moment it is confined to governments and a particular department—the Department of Foreign Affairs and Trade. Do you feel that that is too limited a mindset to bring? You are really only bringing one mindset to the whole thing, are you not?

Dr Anderson—Yes, I think that is right. If it is in DFAT and DFAT says, ‘We have a view of who our stakeholders are and our stakeholders are this group of people,’ then we do not have a need to participate in a wider process.

Senator COONEY—As a decision of that one department—not even the government—a whole series of people is going to be excluded.

Dr Anderson—Yes.

Senator COONEY—I can see your point.

CHAIR—Thank you, Dr Anderson.

[12.06 p.m.]

LARSON, Ms Susanne, Policy Manager, Screen Producers Association of Australia

PECOTIC, Ms Adrienne Helen Frances, Television Councillor, Screen Producers Association of Australia

CHAIR—Welcome. Although you do not have to give evidence under oath today, these are legal proceedings of the parliament and they warrant the same respect as they would if they took place in the House of Representatives or the Senate. Hence, giving false or misleading evidence is a very serious matter. Ms Pecotic, do you appear in any additional capacity?

Ms Pecotic—I also represent Grundy Television Pty Ltd.

CHAIR—Thank you. We have a brief written submission from Mr Herd. Ms Larson, if you would like to make an opening statement based on that or add anything please do so and then we will have some cross-examination afterwards.

Ms Larson—Our submission, as you can see, is very brief. SPAA has made many submissions on this matter over the years and our policy is pretty well known. We strongly believe in exempting cultural industries from the WTO and any other treaties—we have talked about the MAI, GATT and every treaty that has come up in the last decade—for the very obvious reason that protecting Australian culture and identity is essential. That might sound a bit odd coming from my accented voice, but I am living in Australia now—and if I wanted to watch American television all day I would still be living there. One of the quotes I found in an old paper of ours—which was done in association with the Australian Screen Directors Association, the Writers Guild and the Media, Entertainment and Arts Alliance—was:

The production and circulation of cultural goods and services matters not only for culture but for democracy. Unregulated markets and internationalisation may inhibit rather than encourage cultural production and distribution, because cultural goods and services convey information which helps to shape people's opinions, values and tastes. Access to and participation in culture imply issues related to freedom of expression and opinion and its extension, the people's right to know. These rights and freedoms are intimately linked to the vitality of democracies.

I thought that very much summed up our cultural argument. From a trade point of view, the film and television production industry is incredibly liberalised now; there are only minuscule barriers to entry. The balance of trade is more than four to one against us. In 1998-99, there were exports of \$148 million, compared with imports of \$638 million. In feature film over the last decade, Australian film has never taken more than 10 per cent of the box office; the other 90 per cent is overwhelmingly American. The only barriers are in the ownership of the broadcasters and, again, that is only restricted not banned. The Canadians invest in Channel 10, the UK invests in Optus Cable, and the US in Foxtel cable and in AUSTAR.

The major studios in the country—Fox Studios and Warners—are American. Several major television production companies—Grundy and Artist Services—were recently bought by Pearson and Granada, major investors from the UK. Yoram Gross is half owned by a German animation company. So we do not believe there are significant barriers to trade: we are very much on the back foot as it starts. Every country except the US has cultural barriers to entry, and the majority of them are much stronger than Australia's. We think we are not funded well

enough and that our barriers and Australian content standards and subsidies are not strong enough.

We often use Canada as the best comparison due to its relative size and its similar challenges from the English-speaking American market. Their content quotas for free-to-air and cable television range from 60 per cent to 95 per cent Canadian content. Their funding is probably double ours. We have 55 per cent free-to-air Australian content and we are struggling to get 10 per cent on cable TV for documentaries and had to struggle to get it in drama. The US commercial networks do not show one hour of non-US product on their television: their box office is 97 per cent US. The other countries' barriers, which are constructed very deliberately for cultural reasons and designed to block the financial power of the US conglomerates, work in our favour because they help other small countries have access to our films and some of our television shows. They are our main conclusions.

Senator LUDWIG—You are effectively arguing simply that we maintain Australian content. What is the Australian broadcasters' record in maintaining Australian content and encouraging the Australian film industry?

Ms Pecotic—First of all, I am sorry not to have been here for the beginning of the presentation. My understanding is that there are broader cultural measures in place than just Australian content in the Australian film and television industry. Australian content would be the principal one for commercial television. In terms of the broadcasters, as I understand it—Susanne will obviously correct me—the Australian networks are complying with their obligations under the Australian content regulation at this point in time. Strangely enough, there are more difficulties with funding and so forth in having Australian content on the public broadcaster: the ABC. In some instances, the ABC is falling below the standard mandated for the commercial networks because of a lack of funding. There are different issues in that regard.

As to the need for Australian content on commercial television, I think the best thing to do would be to look at examples of countries where they do not have that type of regulation. Our closest neighbour, New Zealand, has either less than 20 per cent or around 20 per cent local content on its commercial channels. The New Zealand government and industry are now looking closely at introducing local content regulation in order to preserve—or, in fact, introduce in their case—a measure of local cultural programming to a mass audience on New Zealand television. In most of the other English speaking countries it is perhaps not relevant: the US is a country that has an appetite for American programming only. In the UK there is very little even US programming because of audience requirements. Of course it now subscribes to the European regulations so the UK must fit within them. Canada has strong local content and cultural incentives for local film and television and other audiovisual products. I believe South Africa has been trying to introduce standards over the last few years.

Ms Larson—I did a very unofficial—it probably should not be quoted—poll on the—

Senator LUDWIG—Maybe you should not quote it here.

Ms Larson—Actually, it can be quoted, although I would hate to have someone from Channel 10 come in and hit me. During this week's prime time viewing—this is the first week of the rating season on TV—of the 176 hours between 6 p.m. and 11 p.m., defined as prime

time by the ABA, there are 92 hours of non-Australian content and 84 hours of Australian content. Of that 84 hours of Australian content, 50 hours are news and sport. So, if we are talking drama, there is a huge disparity in what you are watching during prime time.

Ms Pecotic—It is interesting to benchmark other countries, particularly European countries and Canada. A lot of those countries exclude news, current affairs and sport from complying with the percentage of local content that they require on air. It is a different way of doing it. We have a quota for drama and documentary but a lot have, for example, up to a 50 per cent quota which is not allowed to include news, sport and current affairs, I guess the assumption being that there will be a local appetite for that which will not need to be regulated.

Senator LUDWIG—Looking at the other side of the equation, do you understand that Australia has reasonable access to overseas markets or are there, in your view, difficulties accessing overseas markets by Australian producers?

Ms Pecotic—Prior to the last 10 years, or perhaps a little further back than that, Australia has not had much success in exporting TV programs overseas. Grundy Television was probably one of the first companies to do it in a big way. In fact, it was the program *Neighbours* which made an entrée for Australian television programming into the UK and elsewhere. Speaking from our company's point of view, for many years Reg Grundy was trying to break into the American market. It was incredibly difficult to do that. The only way he was able to have any success there—and he did have a couple of prime time game shows on in the US market—was by going to America, establishing a company in America. He engaged Americans, but controlled the process, producing an American program with Americans on American television.

Mr ADAMS—As a joint venture?

Ms Pecotic—He did not joint venture it. His method was to take the know-how he had developed in Australia to other countries. He then much more successfully took that process to Germany in particular, to the UK and to five or seven European countries. He took the ideas, the formats and the expertise that he developed here to Europe and effectively produced local programs in those countries. For example, *Sons and Daughters* was produced here as a television serial. We had little success, until *Neighbours* broke through, in selling that filmed program on air. There were some sales, but they were limited. What Grundy did was to go to Germany, sell the idea of the program—the scripts, the format—and make a German version for German television. It was the first time that Germany had had serial drama. It was incredibly successful and there are now five or six German serial drama programs on German television which, conversely, use up the programming slots and make it more difficult for a tape sale of something like *Water Rats*, *Neighbours* or any other Australian program to slot into that market.

What I am trying to say is that approximately five years ago there was a peak of packaged television sales, particularly into the European market, but since then and since the European regulations, and also since those countries developed an appetite for their own local programming and it became regulated, there are fewer opportunities to sell taped Australian cultural product into those markets. It is still much more of a market for us than is the US, but there is less opportunity. I do not think in any way that that would be a reason for suggesting that their barriers should go down because we should then have more opportunity to sell.

In my experience it does not work that way. I think we would lose much more in Australia from not having protection of any kind for our own cultural product than if we said, 'Well, great, we can now go back and sell into Germany because there are no regulations.' The principal market for Australian television in particular—and my expertise is in television—is in Australia. We do not make a program principally for Germany or principally for the UK or principally for anywhere else unless we go there—which my company does—and make it there for them.

Senator LUDWIG—Thank you very much.

Senator COONEY—I ask you to clarify this: you spoke about a cultural industry, which gives a picture of an industry that is trying to export and ought to be protected, but I think you also have another theme and that is that the Australian 'essence' should be displayed in television. This is a different sort of concept. In one case you are selling a product and in another case you are selling the heart and the soul, if you like, or the spiritual dimension of Australia. Do you divide those in any way? May I also say that even with your accent, you have the right name. I think Henry Lawson's father's name was the same, wasn't it?

Ms Larson—Yes, he was a Larson not a Lawson.

Senator COONEY—So what do you say about that question?

Ms Larson—That is one of SPAA's ongoing struggles in Canberra and with the media: in which portfolio does film and television belong? Are we in industry? Are we in arts? Are we in communications? We are in all three, and I do not think you can divorce the art from the industry. We spent last year with the Productivity Commission extensively and—

Senator COONEY—Did it have a lot of heart and soul?

Ms Larson—We love the Productivity Commission. At the end of the hearings, the submissions, the second submissions and the second set of hearings, they changed their minds. Their original draft report sought to eliminate Australian content rules, but by the end they understood both the economic and cultural democracy rules behind those rules. We thought that that was an important understanding. The economics are very difficult for television. For example, to make a half-hour episode of *Friends* costs more than \$A10 million and that sells to a network here for approximately \$A30,000. So you could purchase half an hour of a show that has been heavily promoted around the world, whose stars are all household names and are on the covers of magazines—which are owned by the same companies that are promoting the television show and that entire publicity juggernaut that takes over the whole world, especially the English-speaking world—or you could spend 10 times that to make an Australian show. It is much easier to buy *Friends*.

Ms Pecotic—It is more successful economically.

Ms Larson—Economically all the networks would love not to pay for Australian product. However, they are Australian and they know that Australian product will rate—it just costs. Australians want to watch Australian programs. At the end of the year last year I think seven of the top 10 shows in the ratings were Australian. They just cost more.

Senator COONEY—Have you been to the Department of Foreign Affairs and Trade about these matters?

Ms Larson—Yes.

Senator COONEY—What sort of a response did you get from them? Is there any heart and soul in the Department of Foreign Affairs and Trade?

CHAIR—They only watch *Yes, Minister!*

Ms Larson—We have on the record Mr Vaile's comments on different occasions that he would continue to pursue a cultural carve-out, for want of a better word, and that he understands the importance of—

Senator COONEY—Has any occasion arisen where you might have wanted to have an input into what is put before the World Trade Organisation?

Ms Larson—Unfortunately, I have only been at SPAA for two years.

Senator COONEY—I was just wondering whether what you are doing now is going through a pre-emptive strike or whether some incident gave rise to your submission.

Ms Larson—No, this has just been an ongoing watching brief for us that we have been doing for as long as I can remember through my files. When a lot of the issues have gone to dispute hearings and so on, they have often been with the EU and we have joined in. It is usually the US versus the EU. We are usually on the side of the EU for keeping the cultural barriers as they stand.

Mr BYRNE—With respect to the closer economic relations protocol, I am staring at one portion of the submission where the Prime Minister was looking towards extending that to America and some South American countries. Could you give me an update as to where that is actually going? What dangers do you see if we do establish that with respect to New Zealand as an example of your concerns?

Ms Larson—This Friday submissions are due on a New Zealand committee's examination of the economic rationale of this CER. We are in close consultation with SPADA which is the New Zealand Screen Producers and Directors Association. We would both be recommending that we exempt. There seems to be broad agreement between both countries that the entire Blue Sky case was a mistake from New Zealand's point of view. It has not had any major impact. What is more important for them is that, if they instigate New Zealand content quotas, which they probably will—it just takes time to set them up, but they have the different models under examination—they will be much more disadvantaged by the amount of Australian product that will be counted as New Zealand product there than the other way around here. In Australia last year there were only a couple of movies and *Xena* that were New Zealand product in the drama quota. There were a lot of good documentaries.

Mr BYRNE—Do you know how discussions are going with America with respect to that closer economic relationship? Have you been advised of that or not?

Ms Larson—We have only recently found out about the beginning of these bilateral discussions. Various arts organisations have written to Senator Alston asking him to please clarify where they are going and what they mean.

Mr BYRNE—Does it require that they jointly agree to an exemption clause if they establish these particular relations?

Ms Larson—From my understanding, that usually occurs.

Mr BYRNE—Right. So if we did enter into agreement with America, and there was some difficulty with respect to the exemption clause, would that not pose a fairly substantial threat to Australia industry?

Ms Larson—Yes, it could.

Ms Pecotic—If the interpretation was the same as the legal case on Blue Sky, and if the government was not able to sustain the legislation that it intended to introduce after the Blue Sky legislation to say only the New Zealand CER would be excluded from the ABA broadcasting act, potentially American product would be able to fulfil all of the quota, and the other measures currently in place to support the Australian film and television industry and cultural product could not be quarantined. I assume it would have to be made available to the American industry as well. That would be ironic seeing as there is no similar support in America for its own industry.

Mr BYRNE—If that has been the case, haven't you been consulted, given that you are the premium bodies concerned, with respect to the ramifications of this?

Ms Larson—With the newly announced discussions?

Mr BYRNE—Yes.

Ms Larson—No, we have not yet. We found out about it through our own sources.

Mr BYRNE—Do you anticipate being consulted, given that it could obliterate your industries?

Ms Larson—I think that would be a good thing. We have not heard. Again, countries that are smaller in some ways and bigger in others like Australia—and we are talking WTO—have relied on the very strong cultural arguments that the EU presents as a block. Bilateral discussions with the US cast things in a very different light. I did like the quote of someone that I have not been able to find the source of. 'Are we willing to trade our entire national industry for a leg of lamb?'

Mr BYRNE—That is good.

Mr ADAMS—That is how it works.

Ms Larson—I know. Again going back to whether this is about culture, art or identity, the cultural industries are a \$2 billion industry and broadcasting alone employs 0.5 per cent of the working population.

Mr BYRNE—If you are looking into the future, is Australian industry sustainable—withstanding the threats that we have discussed—with respect to the ongoing costs of Australian production and its uptake in the Australian commercial market and the Australia populace? You have these mandated standards. Are Australians actually going to continue to watch Australian made product? Do you see any potential diminution in the demand for Australian made products?

Ms Larson—No, I actually feel the exact opposite. I think the more avenues there are now with pay TV and the commercial free-to-air the more there is demand for your own cultural product, because there is such a media overload and people have access to so much. As I said, the rating figures for Australian programs are actually going up and not down.

Mr BYRNE—Are Grundy's anticipating greater demand for the product?

Ms Pecotic—Certainly. Speaking as general manager for the local company, we anticipate growth. We are looking at producing more television programming for the Australian market, but we also understand the commercial dynamics and it is always important to produce efficiently. I must say that our comparisons across the world show that the Australian industry is one of the most efficient at producing low cost, effective programming in film and television. This is in comparison not just to the US but also to Europe; I probably could not say throughout the whole world.

Mr BYRNE—But the danger could be that if, for example, we entered into this closer economic relations agreement, given the economies of scale, they could just flood us and it would make it less viable for you.

Ms Pecotic—If there was no regulation for the commercial broadcasters or nothing introduced for pay television or whatever other technological platforms, that may arise. We can see that there are different platforms coming in the next 10 to 20 years, and one of the things about this sort of process is that you have to be aware not to limit. Are we just going to protect free-to-air or we are going to carve out a particular type of technology? Technology changes rapidly and we know now that there will be some rapid changes in the next period. The important thing is to be aware, just because of the economics, that, if we did not have the regulation, what would not happen is that there would be no Australian programming on television. I would not expect that to happen. What would happen is that there would be event television, a bit like a loss leader, as in 'We have to have David Jones or whomever in the shopping centre'. The various networks would say, 'We may have to have *Water Rats* or we may have to have a big, full budget mini series this year or a couple of times a year in order to make people think, "Yes, we've to watch channel 10, 9, 7 or whatever it's going to be."' But what would be lost is the balance of programming that first of all sustains economically the producers' models of being able to produce something that was event television.

I worry about these cultural arguments which suggest that the only thing that is cultural is opera, a feature film or a big event TV. Some people would not realise until they were actually

sitting there watching the American version of *Who wants to be a millionaire?* for example, that it is a big difference culturally to an Australian viewer if your kids are sitting there watching the US version of *Who wants to be a millionaire?* or if they are watching Australian contestants competing in a program that has been made culturally relevant to Australia through the questions, the faces that you see and voices that you hear. I think that part of the argument sometimes gets lost when we are talking culture and art, because that is just as much a business. Certainly for Grundy Television producing that program is part of our business model, but it is also a cultural issue. The program is culturally Australian if it is an Australian show and it is made with Australian people. I have picked the wrong example, because *Who wants to be a millionaire?* is a very high rating prime time program and it probably would be one of those event television examples. But there are many other shows that are currently in front of your kids watching TV that are Australian voices that would not be produced because the economics of it. The business model for the broadcaster just does not make sense if they can choose for \$10,000 or \$5,000 a half-hour US program, whether it was a children's program, a cartoon or whatever it is.

Mr BYRNE—Other than *Who wants to be a millionaire?*, what are the examples we might be looking at of shows which have the Australian voice-overs that could be American? Could you give me examples of the shows.

Ms Pecotic—If you watch pay television at all, if you turn on TV1—and my own child sits in front of *Cartoon Network* most afternoons—you quickly get an example of what American shows people could be watching as a replacement or substitute. Australians are very happy to sit and watch re-runs of *Bewitched*—or whatever the latest American show is.

Mr BYRNE—Senator Cooney has just made a very helpful intervention, in a sense. Could you take that on notice and get back to the committee with specific examples of Australian programs on television that have that connection and could, under your scenario, then become Americanised—for want of a better term?

Ms Pecotic—Do you mean in which the same format is being produced in America and could replace it?

Mr BYRNE—Yes.

Ms Pecotic—Sure. Certainly *Family Feud*, if it were on air, and *Wheel of Fortune* would be examples. A lot of game shows are also now produced internationally.

Mr BYRNE—It would be very helpful if you could provide the committee with some examples.

Ms Pecotic—Sure.

Ms Larson—What we have often found is that it goes the other way. Because the Americans seem unable to understand any other accent than their own, programs like the highest rating dramas in England over the last few years—such as *Cracker* and *Cold Feet*, which was recently on Channel 7—made their own American shows using those scripts, and they both bombed. *Cold Feet* was a classic example. I do not know if you have ever seen the show, but it is about

three couples and they all have very distinctive looks. None is a particularly perfect person. When they re-made the show, they made them into six very pretty, very nice people, and lost all the individuality that made the show work. Even though they had the same words, it just did not work.

Senator MASON—I have a very quick question. My colleagues have covered the mechanics of it very well, but I want to pick up something that Mr Byrne said. Your argument is in favour of a cultural cartel, as it were. You say that there should be exceptions to free trade with respect to cultural product or cultural industries. Ms Larson, you said in your oral presentation at the beginning that this is necessary to protect democracy, and that particular cultural circumstances may be hidden behind TV shows such as *Friends*. On cultural products and cultural industries, you mentioned opera before and other things, but perhaps the most profound cultural industry is literature and books. Australians read a lot of literature and books, and the market operates there. You can read the federalist papers or the more recent Gore Vidal or Norman Mailer, fiction or non-fiction, and we do not protect Australian writers as opposed to American writers. It is market driven. Why should we protect Australian TV industries?

Ms Larson—It is predicated on a different economic argument. The way television works around the world is that the primary country pays 90 per cent of the cost of making a television program. In the US, the network on which *Friends* shows would have paid 95 per cent of that. In the UK, 95 per cent of the cost of making *Prime Suspect* would be paid by the network. In Australia, our networks do not do quite as well—that is an argument for another forum—but they still pay 60 to 70 per cent of the licence fee of that cost. Every sale to every country over that is gravy for the US and the UK. For Australian TV producers, those sales have dried up and that is causing quite a strong economic problem in the industry. In the book industry, a cost of a book is a cost of a book: there is the paper, but you are only paying for the talent. Do you understand what I mean?

Senator MASON—Yes, I do.

Ms Larson—The markets are structured very differently.

Senator MASON—Can't the cultural impact be even more profound through books and literature? You wouldn't be arguing, Ms Larson, that we should protect Australian authors and inhibit the free trade of ideas, books and literature, would you?

Ms Larson—Absolutely not, but I think we are arguing that this industry is wide open. There is nothing stopping any program from any country appearing on Australian TV and there is nothing stopping any film being released here. With the new pay TV and whatever might happen with broadband and access over the Internet, there will be even fewer barriers.

Senator MASON—So we will leave literature to the market. We are not going to have some sort of balanced literature; we will just leave it to the market?

Ms Pecotic—I do not think that we can speak on the question of literature because it is not our area of expertise.

Senator MASON—No. But you see the point. When you start talking about culture, literature is a fundamental aspect of culture without any doubt, and when you start saying we need to somehow have some balance of Australian and American culture and so forth, I have never heard the argument raised that that should be the case with the free flow of ideas, literature and so forth, yet it is an extremely important aspect of culture, literature and books. Why do we do it here and not there? It is a fair question.

Ms Larson—I think, again, that if you go to the Productivity Commission's report where they considered that very argument—'Why are we doing this?'—you will see it is because the barriers to entry are so high. This government has chosen, as the US government has chosen, for example, to have three commercial networks and the two other networks. The value of those networks is immense. They have given a lot of trust. The barriers of entry to book publishing I do not believe are as high.

Senator MASON—There are some, but not nearly as high.

Ms Larson—So I think that is the fundamental basis.

Ms Pecotic—That is what I was going to say. I was going to say access. The question is whether your public have access to that product, and obviously access to television and film is first through a great deal of investment in producing that program, which is what underpins the economic industry infrastructure, and then controlling all of the technology of being able to deliver it to the public. Even with book and music publishing—and I do not know what the current status is because I am not aware of that—there was a lot of discussion about how copyright and its exploitation—in other words, not being able to flood the market here with books that were published elsewhere—allowed the local book and music publishers to have sufficient of an economic model to invest in publishing local music and local product.

Senator MASON—That is precisely the question. You spoke about CDs before and the music industry. We have gone through that whole debate. Similarly, with books, a lot of us here—I will not mention any names—probably get a lot of our books from Amazon.com because books are much, much cheaper in the United States. Formerly British publishing houses had these monopolies that have finally been responsive to the marketplace. I am always very suspicious of them and suspicious of the arguments put forward by ARIA, and I am always suspicious of people with special pleading, but I do understand your point about TV. The point of entry and the access is expensive—it is a highly regulated industry. I do understand that.

Senator COONEY—I suppose the other thing to say, as a matter of fact, is that there are lots of Australian books being published by Australian audiences and whatnot, whereas with television you see a decline in that.

Ms Larson—Yes. I think also you have to separate film and television. For example, Australian films can make it as big in the US as not. It is a talent base thing in the same way a novel can take off in the US, whereas we do not have access to the US TV networks.

Senator MASON—But you would feature in them.

Mr ADAMS—It is a totally different medium, isn't it—a book and television? There is a real difference in the medium and the way that it is delivered. I just want to go back to those figures you mentioned about the American networks. Is it 95 per cent American?

Ms Larson—Aside from PBS, the public education channel, there is nothing not American on commercial TV.

Mr ADAMS—Nothing?

Ms Larson—Nothing. There has not been in my living memory, and I grew up there.

Mr ADAMS—Have you spoken to DFAT about that? What have we raised when this issue has been raised at negotiation level? Has Australia put in a bid and said, 'You Americans do not run anything there but American'? Have you talked to our negotiators at all on that basis?

Ms Pecotic—I would imagine that part of the difficulty there is that American networks are not broadcasting only American programming because it is regulated. Their market operates on the basis that that is all they need to do and that is what their audience wants them to do so there is no requirement for regulation in America to protect, if you like, that situation. They would say, 'Well, if you have got an Australian show that is good enough, hey, go and sell it.' Many Australians have tried over and over and over, but the homogenous nature of the American market is such that you cannot get through that. It is very difficult. We have had some break-out films that have managed to find a market in the US, but it is not because the US regulates its television industry.

Mr ADAMS—There are other forces.

Ms Pecotic—Yes.

Ms Larson—It is the same as, for example, Japan. Japan is an enormous market that we would love to have, but because of the language we never will.

Ms Pecotic—I must say that until *Neighbours* sold into the UK, there would have been a lot of people say, 'The English only want to watch their English stuff and there is no way they will watch other programs. Why are you even trying to sell this Australian program into that market?'

Mr ADAMS—We had that problem with wine until we got the wine writers to change the perception that France was not the only place in the world that made good wine. The British had this fixation from history, and I think we are dealing with those sorts of questions.

Ms Pecotic—I will give you an interesting example because there is one area that I found out about only relatively recently. There is one area where we are having some success with audio-visual product going into the US market, and that is with cartoons. Yoram Gross is an Australian producer which produces cartoons quite successfully. *Blinky Bill* was one of its programs, if you are familiar with it. Yoram Gross mentioned to me recently that it was able to have success in selling Australian produced cartoons into the American market because children were tolerant of unusual voices on cartoons. Donald Duck sounds like Donald Duck, so they

were happy for *Blinky Bill* to sound the way he did. It amazed me, but suddenly it was very logical. I was just told that it did not matter that they were Australian accents. It was completely acceptable and, therefore, the audience would tolerate it. Whereas if you have Australian accents on *Neighbours* or a film, the Americans are going, 'What did they say?' They do not tolerate the programming, and they will not accept it. In cartoons they were able to find a small market for children's programming in that sense. So that was interesting. Whereas in live action, if the child was a person or an actor and had the Australian accent, that would not be nearly as well tolerated. But if it is a little cartoon character, they all sound funny.

Mr ADAMS—Like the Tassie devil.

Ms Pecotic—Yes.

Ms Larson—One of the marketing consultants who helped the wine industry with their programs spoke at our annual conference last year. We very much follow the wine industry. In fact, I think it was today's paper that said that sales of Australian wine have now overtaken France this year, increasing from one per cent to 20 per cent of the market in 10 years.

Mr ADAMS—Like your industry, the wine industry is a little complex. We jumped a few technologies and did not have to deal with culture in hand-making wine as the French have to deal with culture and domestic politics.

Ms Larson—If any of you sit on any other appropriations committees, we are constantly seeking funding for more marketing. We work with Austrade. In fact, we have a delegation going to Germany and Ireland in May—again, trying to market for those European Union markets.

Mr ADAMS—Has there been any academic work done to see what effect the general media has on society? I suppose it is pretty big task to carry out.

Ms Larson—I think the problem is: how do you take it away and put it back and measure it? As we said, when New Zealand went through their entire deregulation over the last few years and they deregulated television, their New Zealand content dropped to 20 per cent. It actually became an election issue of, 'We want more New Zealand content on TV.' The ALP actually campaigned, that was one of their policies, that they would start putting New Zealand content back on TV. Whether people voted for that, I do not know. How do you divide up what makes people vote?

Mr ADAMS—Sure. I guess the other measuring stick on that is advertising because, where television has gone with advertising in Third World countries, Peter Stuyvesant cigarettes have taken off in certain areas. I guess there is some work there, but do you know what impact television and film have on culture? I am just looking for that.

Ms Larson—There was a major study done before the last ABA content review. It was very qualitative though. It was opinion polls of what people like to see. Another cigarette study was done in Australia that showed the brands of cigarettes of each code when companies could still advertise and sponsor. Whether it was rugby or Australian rules, brands were smoked more by teenagers and young adult men following a sport. There was a distinct cause and effect.

Senator COONEY—Did you get asked about the last great Australian silent movie in 1928?

Mr ADAMS—That was *For the term of his natural life*.

Senator COONEY—You are right.

Mr ADAMS—But Barney was very young when he starred in it.

Senator COONEY—That was a Tasmanian film.

Mr ADAMS—That was Marcus Clarke's *For the term of his natural life*. Some of the film was burnt in one of the holds of one of the ships in Port Arthur bay. As they set fire to it they unfortunately lost a lot of the old film. But that film still exists. The glass that they made to put the roof back on the penitentiary still exists as well. It is quite an interesting little phenomenon there.

Mr WILKIE—I want to comment as well. I think that often we lose track of where we have come from in film and television in Australia. I think we actually made the first ever motion picture in the world.

Ms Larson—Absolutely.

Mr WILKIE—I do not think people realise that. We have a great Victorian hero. We might be related.

Mr ADAMS—We used to distribute about 50 per cent Australian content.

Mr WILKIE—That is right. In fact, it was only when Hollywood took off that we really lost our industry. I think we really need to educate people about where we have come from.

CHAIR—Can I just sum up a few things? We have distilled from what you have said that the animation sector of the industry is doing quite well. It has certain advantages.

Ms Pecotic—I did not actually quite say that. I said that they had less of a barrier to the market in the US in children's animation because the language was not a problem.

CHAIR—I appreciate what you say. The cinema production, likewise, has good access abroad and so forth. It is healthy. It boils down to television drama more or less, does it? That is what seems to be coming out.

Ms Pecotic—I would say not. My point about *Who wants to be a millionaire?* that I was making before is that, in the absence of the sort of television content regulation that we have at the moment, you may have a one-off high event television drama that goes to air but you would not have a *Wheel of fortune* or a family program or a children's program.

Ms Larson—Or a *Burke's backyard*.

Ms Pecotic—A reality program. Those are the sorts of shows that have a big impact on Australians viewing Australian culture. Those sorts of programs would be the ones that would be uneconomical from the point of view of replacing them.

CHAIR—As a threshold question, why should we in parliament do anything to help television at all? Is television such a tremendous thing for our citizens that we should help it? Why shouldn't we watch less television and have more books or chat more to the family or to the neighbours? Is it so good that we should be so enthusiastic about subsidising it? Would we be better just to study more or read the Bible or something?

Ms Pecotic—I would encourage all of those things. I encourage my seven-year-old to pursue those things as well. I have a TV set in my lounge room. When my seven-year-old comes home from school, she wants to watch television. I think three hours is about the average television viewing time of the Australian population at the moment. Do not quote me on that but I think it is about that. You have set a gateway question. If you accept that there is television penetration through over 90 per cent of households in Australia and the viewership is about three hours, then you are saying, 'What should they be watching?' Do we have to ask a question? Does the government have any role to play in looking at what the Australian public is viewing on television? I think that is really the question.

It would be great if we spent more time outdoors and studied and had more money and education and so on and so forth. For me, the issue is that when my seven-year-old comes home she says, 'Can I sit down and watch TV?' All that is available to her to watch is *Pokemon* and *Friends* and whatever, just putting my Australian person hat on, I would be thinking: what is she learning about? Where is she seeing who she is? She would not be seeing it.

CHAIR—I appreciate that you could not always make a choice, in the sense of asking your children or even committing yourself—we could all do that—to not watch the foreign programs and watch only the Australian ones. In some ways that leads us to the ABC, which we have not discussed enough. To be frank, we parliamentarians have a poor record with the commercial networks—they have great political power and therefore it is very difficult for governments to deal with them—whereas the ABC is the national broadcaster and has editorial independence. We understand this access argument you have put and I do not think we dispute it. Would you support, for example, a second ABC network funded by advertisements in order to promote more of your programming? Would you advocate that; or limited advertising on the ABC, such as SBS carries, in order to fund more of your product; or multichannelling?

Ms Pecotic—Interesting question.

Ms Larson—I do not think I could answer that on behalf of our membership at this point, unfortunately.

CHAIR—So you want the access but you want the taxpayer to pay for it?

Ms Larson—At the moment the ABC is not making any programs, so it is not even really an issue.

CHAIR—They are very short of funding.

Ms Larson—Very short of funding.

Ms Pecotic—That really is an issue for our members and one that we could speak on.

Senator COONEY—I would take the fifth amendment quickly, if I was you!

CHAIR—With respect, if you would like to issue a call for more funding, then you really ought to be willing to say whether or not you would accept advertisements for funding. It is a reasonable question.

Ms Pecotic—Personally, I do not know the analysis between advertising on a public broadcaster and its integrity and independence. That, I believe, is the issue. I have not studied it; I am not qualified to speak on it. I work in commercial television, but we also provide programming from time to time to the ABC. Whether it is appropriate for the ABC, because of its independence issues, to have advertising, I cannot speak to that. From my point of view as a commercial independent television producer, I have no objection to more funding for the ABC in whichever way it would be able to be accessed. If it were more a commercial model, presumably there would be pluses and minuses on public policy grounds. I am not versed in public policy grounds to be able to speak to them.

Certainly I would like to see more Australian programming on the ABC where it falls short of what is regulated on commercial channels. The ABC buys more from the BBC than all the other commercial networks put together. That, in itself, tells a lot about what the ABC has to do in order to have anything on air.

CHAIR—I agree, it is quite a puzzle. So if the government next week made it possible or in fact forced the ABC to carry ads and thereby earn extra revenue, would the Screen Producers Association oppose that?

Ms Larson—We would have to poll our members. We represent over 500 members, so I do not think I could speak until the members were polled and council had an opinion.

CHAIR—Oh, well—their jobs. Thanks for the evidence. It has been quite comprehensive and members of the committee seem very satisfied and entertained by the discussion.

Proceedings suspended from 12.59 p.m. to 14.10 p.m.

WANSBROUGH, Reverend Dr Ann Patricia, Research and Liaison, UnitingCare NSW-ACT

CHAIR—We have got the written submission; it is very professionally prepared. You may like to make a few remarks around that, and then we will have questions from the committee members.

Rev. Wansbrough—Thank you for this opportunity to address the committee. In beginning my remarks I should point out to the committee that the Uniting Church is actually a very large organisation of civil society. It is a large economic entity and a major provider of community services, especially in the area of aged care, children's services and family support. The Uniting Church is also a significant supplier of education and health services. We are a significant

advocate of human rights in public policy. Like all the mainstream churches, we support human rights as the basic benchmarks for government and society. It is in that context that UnitingCare NSW-ACT makes this submission.

We have a number of concerns about the current situation with the WTO. The first is the lack of transparency in Australia's negotiations with the WTO and within the WTO itself. We see that as a problem both in Australia and within the WTO. There is a failure to publish all the relevant documentation and a failure to encourage community consultation. That is important because the issues at stake affect not only the business community but also the whole of society. There are not only technical questions but also questions of national goals and human aspirations. Even the technical questions need widespread debate and discussion; there is no one economic theory that is adequate as a basis of public policy.

The question of transparency and accountability is a question of democracy. It is a question of how public policy is legitimated in a pluralist society. As Jurgen Habermas has said in his works on the basis of law in contemporary society, public policy needs to be formed by the participation of all the relevant people—those who will be affected by the policy. International trade affects everyone and everyone needs to be heard or have the opportunity at least to speak.

Second, we are concerned about the WTO reliance on the least trade restrictive practice as its criterion for assessing government policy. We believe that undermines government responsibilities in other areas in international and domestic law. Those areas—as I am sure I am not the first to say in this hearing—are human rights, labour rights, responsible use of the environment, questions of quarantine and questions of health. The problem here is that the WTO rulings in disputes are binding, whereas other international bodies such as the UN Human Rights Committee and the ILO make comments and criticisms but do not make binding rulings. This means that there is a lack of balance in the way governments are called to account.

Our third concern is about the way WTO negotiations take place and that, in the development of their advice papers, there is no formal place for non-government organisations. This stands in contrast to the UN processes. The failure to include non-government organisations means that crucial information about how changes in trade policy impact on people is not available to the discussion or decision making process. It is a recipe for human and social disaster. Economists are not experts on the human aspects of the development of public policy. They lose sight of the goal of all economic and government activity, which should be human flourishing. Greater trade in itself is not a guarantee of human flourishing. We need wider input into the process.

The fourth concern is about GATS, the General Agreement on Trade in Services. While there are a number of services that can be treated in much the same way as, for instance, merely commercial activity, this is not true of all services. Transport, communication, water, electricity and gas are not merely inputs to industry but crucial aspects of human life that need to be accessible to all people, including those on low incomes. Even more importantly, housing, health, education and social services involve fundamental human rights. While at the present time governments can exempt such services as an exercise of government responsibility, the WTO papers on trade in services seem to be seeking to keep this exemption as narrow as possible.

The problem here is that services need to be both accessible to everyone and appropriate—for example, there are cultural dimensions. Equally important is the fact that those services are most appropriately provided through civil society, and that will be diminished if the WTO agenda is achieved. Citizens at the moment organise themselves through free associations such as churches, benevolent institutions and community groups. When governments support such organisations they are investing not just in services but in civil society itself. This is quite a different matter from merely paying business organisations to provide services. WTO services documents show no understanding of the importance of the community sector or civil society. Essentially, you cannot trade in care.

We have a final comment. It is often argued that we need to accept the WTO regime because it opens up markets to Australian companies. UnitingCare would urge this committee to take seriously the fact that Australian companies have, on many occasions, made very bad decisions concerning other nations. The Ok Tedi fiasco is an obvious example of when an Australian company not only was part of a consortium that damaged the environment on which people depended for their survival but also tried to restrict the rights of those people to obtain compensation through Australian courts. That was offensive both to the Papua New Guinean people involved and to the many Australian citizens who did not want Australia to value trade above human rights and basic human dignity.

Trade has a proper place, but as a means not an end. The WTO and Australia's relationship with it need to be reformed to take account of the concerns of large sections of the Australian population and the churches.

Mr ADAMS—I thought you had a very good point in relation to the alleviation of poverty. Have you seen any articles, stories or anything written—I have asked this of several witnesses—on an increase in trade eliminating poverty in the Third World?

Rev. Wansbrough—I have not seen such literature. My impression is that there are a variety of forms of analysis being used that give a variety of answers. But my impression from the concerns of development organisations involved with less developed nations is that just increasing trade is certainly not the way to go. I believe that is acknowledged by people at the World Bank, who are increasingly involving non-government organisations because the way you go about development is crucially important to the effect that it has. Trade alone does not have a good effect on people if it is not designed specifically to take account of their needs.

Mr ADAMS—Development has to take in social development as well as economic development at the same time.

Rev. Wansbrough—That is what we would say, yes.

Mr ADAMS—Do you deliver services internationally? Your church is an international body: does it deliver services all over the world of a similar nature?

Rev. Wansbrough—No. UnitingCare is specifically about delivering services throughout Australia. We do have an aid organisation as part of our national structure, but it does not see itself as delivering services in other nations on its own but works in partnership with churches in other nations. Where we can, we offer resources that are requested. So we do not in our own

right deliver services, because we would see that as contrary to respecting people in particular nations. We believe in sharing our resources, not in taking over the provision of services.

Mr ADAMS—Of course. I am just trying to get to whether you are an international body. Are you linked with international bodies? Do you have access to other bodies?

Rev. Wansbrough—We are a member of the Christian Conference of Asia, the World Council of Churches, the World Methodist Council and the World Alliance of Reformed Churches. So we have interaction with churches from all over the world.

Mr ADAMS—Are these bodies actually dealing with some of these issues that we are dealing with here now in this committee? Has the WTO been on the agenda of those bodies?

Rev. Wansbrough—It has, yes. I can certainly say there are papers published by the World Council of Churches. The Christian Conference of Asia two years ago held a regional conference in Darwin for Asian churches where some of these issues of globalisation and civil society and so on were the main agenda. It was a conference on church in society. It is certainly on the agenda of the World Alliance of Reformed Churches, which does studies on what is happening economically. There is a shared set of themes along the lines that I am talking about. The churches are saying to these organisations, ‘Look, people are getting hurt where trade ignores these other important dimensions of government responsibility in the way society works.’

Senator MASON—I could not see it in your written submission but you did quote from Jurgen Habermas. You said something to the effect that policy has to be determined by all those affected. This morning I was asking Dr Ranald some questions relating to that, and this is a little bit of history. This committee was set up because there was much concern within the community, and indeed within government itself, that the Australian people were being left out of the treaty making process. I think it is fair to say that that is the case whether it is multilateral treaties, conventions or bilateral treaties. You say that people should be consulted about treaties we enter into. I think all of us would accept that. What do you say to the argument—I put this morning to Dr Ranald—that in my state of Queensland I do not think it is incorrect to say that there are many, perhaps a large majority, of people who are very concerned, for example, about many of the treaties and many of the conventions we have signed and the obligations we have signed up to. They believe it has been done, not in secret necessarily, although some would say that, but some would also say without due recourse to the public.

You are arguing the same thing, yet at the same time you are taking on board so many of the very conventions and treaties that they oppose, such as human rights and environmental treaties. I just find it paradoxical, whether it was Dr Ranald’s contribution this morning or yours now. It is not paradoxical, not even necessarily inconsistent, but it is interesting that there are two underlying themes. You will readily accept international human rights covenants and environmental treaties and so forth as being very important, and perhaps they are. I can tell you now that many people in Queensland, many of my constituents, are not so enthusiastic about those very conventions, for the very same reasons that you say you are against the World Trade Organisation. What do you have to say to that?

Rev. Wansbrough—I cannot speak for the situation in Queensland but it is my understanding that the development of the human rights declaration in 1948 was built on quite widespread discussion around the world and in a wide variety of organisations. For example, the Australian delegation in 1948 included Bishop Burgmann from the Anglican church who was able to accept that invitation in part because it had been on the agenda on the Lambeth Conference in 1948 so there had been a lot of discussion in the Anglican church. There was also a Catholic person who I cannot remember but there had, of course, for many years been Catholic social teaching so there had been in fact a variety of ways in which people had debated human rights around the world to get us to the point where that declaration was made.

Senator MASON—Can I give you a specific example? The Convention on the Rights of the Child is something that has been very controversial in the broader community because it gives certain rights to children that many people regard as inappropriate. What I am saying is that the exact same arguments you make here about community participation in the World Trade Organisation process they make, and in fact they make more vehemently than you do, about the lack of community consultation in the United Nations process. This committee has been to Queensland and we had several hundred people there all saying the same thing: ‘We do not want these treaties. We are against these treaties. We do not agree with these rights.’

Senator LUDWIG—Isn’t that a problem of executive management by not including people in the forum and apprising them of it? What I think the Reverend Dr Wansbrough is quite fairly putting is that the mechanism of the WTO in her view is deficient and she has identified, as I understand it, a lack of accountability, a lack of transparency and some of those basic issues which we have heard earlier. It was quite clearly articulated from the UN’s point of view that they were on a model that at least allowed accountability.

Senator MASON—The Habermas quote for example is broader than that. It is simply saying that all policy has to be determined by all those affected, and if you go that broadly you encompass everyone and you encompass both models—whether it is the UN or the World Trade Organisation.

Rev. Wansbrough—Habermas also goes further: he points out that there needs to be some criteria for that debate, and one of the criteria is that people need to be informed. It would have to be said that there is a lot of misunderstanding about things like the—

Senator MASON—Reverend, you are informed but my Queensland constituents are not informed?

Rev. Wansbrough—Yes, and what is the government doing about better educating people on human rights? We are in a decade for human rights education and there is not a great deal of evidence of an improvement in human rights education in Australia. There is a woeful ignorance, I would agree. The churches do as much as they can to relate the things that we say to human rights as a way of educating people but there is a responsibility on this government to be doing more than it is doing to make sure people do understand the nature of those treaties, the sorts of situations that they are trying to deal with and also the widespread people’s movements who see these covenants as absolutely fundamental to their very survival.

Senator MASON—Sure, but others are exactly opposed. We saw in Western Australia over the weekend a large vote for a party or an organisation that would be dead opposed to what you are saying. More to the point, you might argue that the government has a duty, as it does, to educate its people about trade policy.

Rev. Wansbrough—I would agree that you do have a responsibility to educate about trade policy, but it is not just about trade from a business point of view; it is about its impact on the whole of society and people seeing the ramifications of it. We are not against trade or against international trade. We simply think it needs to be in balance with other considerations that affect the wellbeing of humankind.

Senator MASON—We all agree with that.

Rev. Wansbrough—We are saying that the mechanisms are not adequate to achieve that at the moment.

Senator MASON—Let me move on. Do you think human services—health, education and welfare—should be open to international competition? You mention in your submission that some services have a high human component, such as education, health services and social services. Let us just take one: education. Do you think, for example, education should be open to international competition?

Rev. Wansbrough—I think you need to break that down into various components of education.

Senator MASON—Let us say tertiary education.

Rev. Wansbrough—Even that is a very broad area which encompasses a number of different types of education. There is a need, I believe, for national governments to fund institutions which can operate with academic freedom to develop critical thinking about the whole of society and the way we think and act. That is a fundamental requirement which cannot be achieved through a business relationship or by commercial activity. The very nature of the activity requires that there be some independence.

There are some forms of particular training—technical training and maybe some forms of professional training—where it may well be appropriate to have a wider base, provided that that also takes into account the implications for the society of what is happening. For example, information technology, whoever provides the education at the moment, is often dealt with almost as something in its own right apart from its implications for society. That is a problem that needs to be corrected.

At the Davos meeting of the World Economic Forum, there was all this talk about where information and technology were leading us, and according to one of the newspaper columns last week, someone got up and said, ‘Haven’t we just described hell?’ because everyone would be open to being communicated with, working, being accessible to business demands and so on 24 hours a day, seven days a week. That is hell. It is not where humankind really wants to go. It means nothing for human life, but you are not going to get those sorts of questions asked by a business organisation training people merely to improve the technology in its delivery.

Senator MASON—My question really was: you are not excluding the possibility that it would be appropriate in some circumstances? That is all I wanted to know. Finally, you mentioned Habermas, but giving Habermas the flick for a second, you did mention civil society, and I have got to say that it is important and you are quite right that it is often overlooked. In the past you have had public institutions (government and so forth), private institutions (the family and so forth) and voluntary institutions (trade unions, the Red Cross and everything else) which are extremely important and should not be taken for granted—it is very true. Recently, I was lucky enough to go to Japan and only now are they, in a sense, discovering a civil society, one of voluntarism, philanthropy and welfare on a community basis, not a governmental basis. So I just wanted to say, despite my reservation with Mr Habermas, I do take your point on civil society. My question is: do you think globalisation is necessarily anathema to civil society?

Rev. Wansbrough—I think we need to be careful about using the term globalisation. There has been strong internationalisation of trade and there are many things about that that are beneficial. Everyone in this room probably takes for granted a whole lot of benefits that have come from international trade. Globalisation is a different matter, and the agenda of the WTO is highly relevant to this. People like Linda Weiss at Sydney University have made a very clear distinction between internationalisation of trade and globalisation, where the creation of a single global market becomes separated from nations and national interest; and once you limit the power of government on trade, that is what you are seeking to do. That separation of trade from the interests of particular groups, which for convenience in this context are nations, can in fact undermine the whole enterprise because, as has been argued by many people, markets for their functioning actually depend on society, on structures, on agreed conventions, on law, for example, but also things like trust, integrity and cultural understanding. When you have a global market, you cut off those roots in a way that can be very harmful. At the risk of raising yet another name that might not appeal to you, Karl Polanyi has written about this and about how, historically, markets have been embedded in societies and that has enabled their functioning. He argues that once you disembed them you undermine their capacity to function.

Senator MASON—We have returned to where I started, and that is that sometimes international interests have to be circumscribed to fit national interests. That is why I asked the question about human rights conventions. Everyone talks internationally there and then they talk nationally in terms of trade, and then vice versa. That is the paradox you have to overcome.

Rev. Wansbrough—It is not a paradox. I am experienced in my international experience.

Senator MASON—It is a paradox we hear on this committee all the time.

Mr BYRNE—With respect to competitive tendering for social services, and looking at a model, how has compulsory competitive tendering for social services worked in this country?

Rev. Wansbrough—That is not a question I came prepared to answer.

Mr BYRNE—Would you be prepared to venture an opinion?

Rev. Wansbrough—What do you mean by ‘how is it working’?

Mr BYRNE—How do you think the provision of social services has been affected in this country where tenders have been invited for social services and when some people who were providing a service lost out in the tender process and were not able to provide that service?

Rev. Wansbrough—At the moment some of the churches are making some attempt to get some sense of what the agencies are feeling about what has happened. Our impression is that there are a number of concerns: that competitive tendering is not the best form of relationship between government and civil society for the delivery of services; that it has actually damaged important cooperative relationships within civil society, for example; that there are some useful elements of tendering but there are also some harmful elements; and that, down the track, we might well want to raise a number of issues with government about that.

Mr BYRNE—You are basically stipulating here that there could be some difficulty if you opened it up to international service providers. From my perspective, I receive feedback from people in my neck of the woods that indicates that it has had a very harmful effect on the provision of services to people in the region I represent.

Rev. Wansbrough—Certainly we are also hearing some people expressing concerns. At the moment we are not in a good position to evaluate the damage against the benefits. My personal impression is that the damage may be outweighing the benefits.

Mr BYRNE—With respect to Senator Mason's point about human rights treaties, what consultation process did government undertake before they implemented compulsory competitive tendering? We have implemented a policy. Are you aware of what public consultation occurred prior to government introducing it?

Rev. Wansbrough—I am not aware. That is not my normal area of responsibility.

Mr BYRNE—I am sorry to ask you the question, but I guess it is in response to what Senator Mason was saying—that government has implemented a policy without any consultation in the country and it has had a deleterious effect. It is just, to some extent, a counterpoint to what Senator Mason was saying. I am sorry to put you in that situation. I was asking you those questions because it is quite clear—

Senator MASON—No, it is not. It is an illustration, Mr Byrne, of a consistent problem.

Mr BYRNE—It is an illustration of the problem of governments not consulting. The point I was making was that obviously that is an example, in the domestic sense, of a policy that has been implemented without consultation that you are postulating has fairly deleterious effects.

Rev. Wansbrough—Certainly 12 months ago there was a lot of concern being expressed about the impact of the second round of Job Network contracts. There are certainly a lot of issues that are worthy of discussion that do not seem to have been discussed. My belief is that, if there had been full consultation, many of those issues would have been raised as possibilities and the community sector would have sought a somewhat different way of doing it, which would not have us competing against each other in a damaging way.

Mr BYRNE—It basically illustrates the point and buttresses your point, does it not, that governments basically have to consult, as do politicians, with the appropriate people before they implement a policy like that?

Rev. Wansbrough—Yes.

Mr BYRNE—I guess it adds weight to the points that you are making here. Do you have any examples of some sort of community services being provided by international agencies in, say, Third World countries or other countries where there are fairly deleterious effects?

Rev. Wansbrough—That is not my area of expertise.

Senator LUDWIG—What is your area of expertise? I do not have it before me. Would you be able to give me a short description of what your doctorate is about.

Rev. Wansbrough—My doctorate is on methodology—using church social teaching to assess policy directions of government policy.

Senator LUDWIG—Whereabouts was that through?

Rev. Wansbrough—Sydney University. It actually looked both at church teaching and at the public policy context, the human rights framework. I should point out that Australia has ratified those human rights covenants and even this government, in raising questions about the reporting mechanism, seems to have been at some pains to say that it is not actually questioning the human rights covenants themselves. So my doctorate looked at that context and then at the church context and then at how to responsibly assess public policy. I draw on the work of other agencies and academics in order to make my submissions.

Senator LUDWIG—Yes, we understand you are representing the UnitingCare.

Senator COONEY—I want to follow up one point. I understand your submission about the need to take in social ramifications of the World Trade Organisation. Has your organisation anything to say about the people who actually do the trading? You spoke about the fact that you have to take a perspective other than an economic one, but do you have anything to say about the situation where you might have economists and people in a particular government department, such as DFAT, organising world trade without enough reference to the actual people who have to develop information technology or produce services or sell their material? You might not want to say anything about that.

Rev. Wansbrough—I am not quite sure what you are getting at with the question.

Senator COONEY—The impression I have is that you have talked about the economics of it all as if economics covered the situation of people who take part in international trade—the manufacturers or the producers and the sellers—and you seem to have contrasted that with the position of those who might feel a social impact from it. I am not sure whether you are accurate or whether my impression is accurate that you are lumping together the economists, who are the people that work out, if you like, the theory or the ideology of it all, and the people who actually do the manufacturing and the selling. Do you put them in together or do you see a difference

between the economists who might develop a theory and the people who actually have to carry out the international trade?

Rev. Wansbrough—No, there is clearly a difference. There is the involvement of economists in developing public policy, and there are businesses who, it seems to me, use economic theory when it suits them to pursue their interests. Economic theory actually gets used in a couple of ways. It gets used as a lobbying tool as well as a legitimate tool of analysis.

Senator COONEY—So your organisation would not see that the economic theory might have a harsh impact upon the people who have actually got to make the goods or produce the services and sell them?

Rev. Wansbrough—That is a different question.

Senator COONEY—That is the question I asked.

Rev. Wansbrough—There are a number of economic theories around from a number of schools of economic thought. It seems to me that the acceptance of least trade restrictive practices as the prime criterion rests on a particular approach to economics and the way the economy works in the role of government. It puts all the emphasis on allowing the market to be free to get on with operating. But there are other economic theories that would say that that is not a wise approach and that government has a more significant role to play in keeping the economic cycle operating and ensuring that prosperity is widely shared.

Senator COONEY—I do not know whether you were here this morning, but we had what I thought was a very lucid explanation of how people distinguish between fair trade and free trade and about the investment network. There was a submission from the Australian Institute of Steel Construction. I do not know whether you heard that explanation but it was in that context I was asking that question. It seems to me that the answer is that you are more directing your submission to the issue of the social impact of the World Trade Organisation. Would I be right in that?

Rev. Wansbrough—Yes, we would see that as our area of expertise and responsibility.

Senator COONEY—Thank you for that.

Senator LUDWIG—Dealing with a bit more specificity in terms of your submission, you mentioned obviously the GATS and you talk specifically about education and health as an example of the broader social area of human interaction that these treaties have on people's lives. Have you raised your concerns with DFAT?

Rev. Wansbrough—The answer is that we have raised some of these concerns with DFAT. In fact, a couple of years ago they did a public consultation about future directions for multilateral trade negotiations. UnitingCare was one of many community organisations that made submissions to that inquiry, and we found ourselves dismissed in about one paragraph in what was already a very thin report from DFAT. We were not at all impressed with DFAT's approach to dealing with submissions made to it. It seemed to be fairly dismissive of attempts to say that there are other dimensions that need to be taken into account. In fact, we then wrote to this

committee drawing attention to the inadequacy of that report, particularly in light of what this committee had had to say in its report on the MAI.

Senator LUDWIG—If the GATS treaty were ever to be ratified, what health and education arguments would need to be treated differently by the WTO to satisfy some of your concerns? Do you have a view on how we should deal with it?

Rev. Wansbrough—Our impression is that the WTO wants to make as narrow as possible the way governments keep services out of that agreement. Our view is that governments should negotiate for an opting-in thing, whereby certain services, after consultation, may be included. But the onus should not be on those who want services like health, education and social services exempted to argue that case; the onus ought to be the other way, in that those services should be seen as the sort of things that are best done elsewhere.

Senator LUDWIG—But you can see the interrelatedness. Are you saying that it is okay for telecommunications, transport services and a whole range of other services to be at least considered within the WTO framework for a GATS style agreement but that health, education and social services should not be? Where do you draw the line? Today we heard SPAA talk about where they might fit in. They actually opened up the debate by saying that, broadly, it might be arts or communication or a mixture of both. Where do you say telecommunications is not social services, education or health?

Rev. Wansbrough—There are probably three areas of services. There are services like social services, health and education, which need to be handled quite differently and should not be subject to that agreement. There are services like telecommunications, where there may be some elements that are appropriately included and some of them that are not. That needs to be debated and there need to be some proposals on the table for people to talk about and negotiate. I do not think it is fair to expect an organisation like UnitingCare to say what the mechanism should be on the divisions. We can assess what will be the impact. We do not have the research capacity to initiate that sort of detailed technical proposal. But there are other services like retail and business services where we would probably have little argument about their inclusion.

Senator LUDWIG—Where would our export of educational services come in, in that framework? We are large exporters of educational products, and it is a growing market for Australian educational institutions. What should we do about that? Should we put it in a basket?

Rev. Wansbrough—We need to respect other nations and their right to determine the basis on which we provide those services to them. There has been a significant shift in the way some nations understand the role we can play in providing educational services to them. For example, Malaysia once sent people to Australia to train as doctors. Now they import some of our medical educators to Malaysia to provide services in their context, which seems to me a very sensible approach for them to take. The adjustment has to be made by our educators understanding their context, while those they are educating remain in their own context. Governments should have that sort of freedom to determine how services are delivered. The idea that anyone should have the right to provide services without regard to other nations' interests is not helpful to any nation.

Senator LUDWIG—Thank you very much. I enjoyed your submission.

Senator SCHACHT—Do you believe that human rights are universal?

Rev. Wansbrough—Yes.

Senator SCHACHT—I am a bit concerned that you are raising the issue that we should respect other countries' cultures—cultural relativism is the name sometimes given to it, I think. Some countries and the regimes that run them use their own culture as an excuse to abuse human rights. Isn't there a broader issue here of universal human rights overriding the cultural narrowness of a particular country where they are clearly abusing individual human rights?

Rev. Wansbrough—That is a very large issue to raise.

Senator SCHACHT—You raised it, I did not.

Rev. Wansbrough—It is a serious issue. Part of the point of having international human rights is so that people can say to a government that it is not meeting the internationally accepted benchmarks. That is appropriate. But that does not undermine the basic view that, until a government has been shown to have a policy that is destructive of the human rights of its own people, it should have a right to determine the policies for its own nation. If those policies are against human rights then it is appropriate to criticise them, but I do not think it is appropriate to use that as an excuse for saying, 'Let's just let business go where it likes and do things the way it likes.'

Senator SCHACHT—I am talking about health and education. If we have people coming to Australia to be educated in our universities as doctors, nurses, teachers, et cetera, hopefully they will be inculcated with certain values about democracy and human rights which we all support. It may well favour Malaysia that they do not come here and get that education but that they get it in Malaysia, which, to say the least, in terms of the role of women in that country, is not equal and not democratic. Why wouldn't Dr Mahathir be arguing that he wants it done in his country so that the oppressive regime he runs, racially and against women, is continued? I do not think you can have it both ways.

Rev. Wansbrough—It seems to me public policy involves balancing a number of different concerns. That is clearly one of them. There are some legitimate concerns about some countries and we should address those concerns, but the idea that we know better than other countries is also problematic.

Senator SCHACHT—I am sorry, we are not talking about us knowing better. These are issues of universal human rights that have been declared in United Nations declarations. Clearly, in a number of countries, including Malaysia, those rights do not exist fully. Why should we agree that Malaysia can adopt policies under economic sovereignty that continue to oppress its own people?

Rev. Wansbrough—That is not what we are saying.

Senator SCHACHT—You said we should take into account what I think is termed, in relation to human rights, cultural relativism. I have had discussions with regimes in these places. Every time we raise universal human rights the answer is, 'You don't understand our

culture, you don't understand our history.' That is an excuse to beat people up, put them in jail and refuse to give them democratic rights. Whenever I have heard the term cultural relativism that is what it means.

Rev. Wansbrough—And that is wrong.

Senator SCHACHT—Fine.

Mr ADAMS—What is the point here?

Senator SCHACHT—The point is that when it is said that you have got to allow exemptions for a country to have cultural differences—

Rev. Wansbrough—I did not speak about exemptions on human rights. I talked about trade relationships being based on respect for nations.

Senator SCHACHT—I have come across places where that exact excuse is used to cover up abuses of human rights. They want economic sovereignty and they claim, 'We are going to run our own country the way it is.'

Rev. Wansbrough—You are arguing on the basis that Australia's hands are clean.

Senator SCHACHT—No, not at all. I want an open debate.

Rev. Wansbrough—I have colleagues in Papua New Guinea who would argue that it was free trade which led to extraordinary damage being done in the Ok Tedi situation. Australian companies certainly did not seem to be upholding the human rights of Papua New Guineans in that context.

Senator SCHACHT—Of course, that should be part of the international debate.

Rev. Wansbrough—And that is partly why we need to look at the way the world trade mechanism operates. I believe that what you are saying is actually part of the argument. You are presenting it in a particular form, whereas it can in fact be incorporated into the argument.

Senator SCHACHT—I have some limited experience on human rights delegations to the Third World to countries that have had authoritarian regimes. The striking similarity of the phrases 'we will decide what is best' or 'we're not going to listen to what you're doing' are usually a cover for the abuse of human rights.

Rev. Wansbrough—I think you are misusing that argument in this context. That is not what we are arguing; we oppose abuses of human rights. But we also oppose abuses of human rights under cover of international trade and these trade restrictive practices. That is the point we are making.

Senator SCHACHT—Those Third World countries that I have visited are usually agricultural countries, producing anything from sugar cane to cotton to whatever. They have

argued vociferously that, if they had open access to the markets of the Western world, the income of their producers—and that is only the smaller farmers—would be immeasurably improved. But in the European Community, for example, they run into high tariffs on importation of sugar cane to protect sugar beet farmers. So consumers in Europe pay more and farmers in Africa get no income from access to the market. Which abuse of human rights is taking place there?

Rev. Wansbrough—There is clearly a problem with international markets that exclude developing nations from having access to markets. We support developing nations being able to have access to markets. What we are talking about is whether the logic of that means that you then open up all markets to everyone with regard only to least restrictive trade practices, which is going to the other extreme. We are saying that we do not want that other extreme. International trade is important. For countries, it is about survival and there needs to be some rules that ensure there are not harmful restrictions. Open markets can also be harmful if there are no other considerations taken into account. The agricultural situation in particular is one where there is a lot of harm at the moment because of the way nations that promote free trade do not do it in the area of agricultural products. In other areas of trade, there is a whole range of other problems, and simply using free trade as a slogan solution for everything is not a workable solution.

Senator COONEY—Given what you are saying, there is a well-known statement that goes around Third World countries. It says, ‘It is just as unfair to treat unequals as equals as it is to treat equals as unequals.’ That is a fairly current statement.

Rev. Wansbrough—One of the points about human rights and antidiscrimination law is that they are based on the view that equal treatment involves treating unequals appropriately to ensure that they have what they need to live in society or to survive in national society.

CHAIR—Thank you for your evidence.

Committee adjourned at 3.05 p.m.