COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Reference: General Agreement on Trade in Services and Australia-United States Free Trade Agreement

THURSDAY, 24 JULY 2003

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Thursday, 24 July 2003

Members: Senator Cook *(Chair)*, Senator Sandy Macdonald *(Deputy Chair)*, Senators Hogg, Johnston, Marshall and Ridgeway

Participating members: Senators Abetz, Boswell, Brandis, Brown, Carr, Chapman, Collins, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Knowles, Lees, Lightfoot, Mackay, Mason, McGauran, Murphy, Nettle, Payne, Santoro, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Cook, Nettle and Ridgeway

Terms of reference for the inquiry:

To inquire into and report on:

1. The relevant issues involved in the negotiation of the General Agreement on Trade in Services (GATS) in the Doha Development Round of the World Trade Organisation, including but not limited to:
   a) the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation
   b) Australia's goals and strategy for the negotiations, including the formulation of and response to requests, the transparency of the process and government accountability
   c) The GATS negotiations in the context of the 'development' objectives of the Doha Round
   d) The impact of the GATS on the provision of, and access to, public services provided by government, such as health, education and water
   e) The impact of the GATS on the ability of all levels of government to regulate services and own public assets
2. The issues for Australia in the negotiation of a Free Trade Agreement with the United States of America including but not limited to:
   a) the economic, regional, social, cultural, environmental and policy impact of such an agreement
   b) Australia's goals and strategy for negotiations including the formulation of our mandate, the transparency of the process and government accountability
   c) The impact on the Doha Development Round

WITNESSES

Committee met at 9.35 a.m.

HANSEN, Mr Robert Bruce, Managing Director, Peanut Company of Australia

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee. Today the committee continues its public hearings into the General Agreement on Trade in Services and the proposed US-Australia free trade agreement. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private.

I will now make some remarks about parliamentary privilege. These are general remarks; they are not aimed at any one individual. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as chair and the committee will consider the request. Should a witness expect to present evidence to the committee that reflects adversely on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which, in the committee's view, reflects adversely on that person and to offer that person an opportunity to respond. Witnesses will be invited to make a brief opening statement to the committee before the committee embarks on its questions.

Our first witness is Mr Robert Hansen from the Peanut Company of Australia. We have your submission, which we have numbered 153. Given the formal remarks I have just made, the floor is now yours to address us on your submission.

Mr Hansen—I have prepared a testimony which I have given you a copy of. I refer to a number of references in that document which I have also submitted to you. The company I represent covers the majority of the peanuts produced within Australia. We process and market 40,000 to 50,000 tonnes of peanuts annually, both domestically and internationally. We probably sell between 70 and 80 per cent of the peanuts consumed within Australia. We also market in New Zealand, the United Kingdom and Japan.

We are strongly in favour of a free trade agreement—one that has no tariff and no quotas. That is what we really mean—free trade. We are one of the lowest cost producers in the world. I would not say that we are the lowest cost, but we are one of the lowest cost producers in the world, yet we do not have access to many of the major markets internationally. In the US, you only have access if you have quota. We cannot market a single peanut into the US—not one. I cannot even take a peanut in in my back pocket, yet they can sell every peanut they like into Australia, the only restriction being a five per cent tariff coming into Australia.

We would like access to the US market. It is the biggest edible peanut market internationally. They consume in the range of 1.6 million tons annually. The next biggest market after that is Europe, consuming about 700 thousand or 800 thousand tonnes. The biggest producers in the world are the Chinese. They produce nearly 15 million tonnes of peanuts. The majority of that—70 to 80 per cent—goes into crushing. So the amount consumed within China is actually a small percentage of the production.

The international peanut market is distorted, mainly by the USA's quota systems. The Japanese also have a quota and tariff system. The Chinese have implicit government policies, the same as the Indians, and the Argentineans have export tariffs. We are basically one of the only free traders in the international market, and we believe we would substantially benefit by a freeing of trade, especially within the USA and Japan because of the types of peanuts they eat and the quality that they demand.

The PCA is a unique producer in the world. We are targeting producing very high quality peanuts. We have a significant program designed towards producing all of our peanuts as hi oleic. Hi oleic gives extended shelf life, health benefits and improved eating qualities. We are HACCP approved. We are the only producer world wide that can give paddock-to-plate assurance to any consumer world wide. We are very low in foreign materials. We have nil agricultural contaminants in our product, we are low in heavy metals and we are very low in aflatoxin, making us unique internationally.

In essence, what we are really asking for is a level playing field in the peanut industry. The USA is the main distorter to that program. Any change we can get to the US program will be a significant benefit to us and US consumers.

CHAIR—I have a few questions, as I am sure other committee members do. Firstly, as a general question, have you engaged in consultations with the Department of Foreign Affairs and Trade on the Australia-US free trade agreement? If you have, how do you evaluate the quality of your access? Are you satisfied with the direction they are taking as a consequence of the discussions they have had with you, if they have had them?

Mr Hansen—Yes. I have had contact with the Department of Foreign Affairs and Trade. As well as putting a submission into the Senate, I have actually put a submission into the Department of Foreign Affairs and Trade, and a copy is in the folder I have given to the committee. As to the outcomes, it is a bit early to say at this stage. I know that they are pressing our position but it is too early to state any outcomes.

CHAIR—Is your contact with them limited to providing them with a submission, or have you sat down and discussed with them the details and background to your submission and the weight of support peanut producers have for the position that has been put forward by you?

Mr Hansen—I have had several phone calls. I have not sat in Canberra with the department. I actually sat with the people in Washington when I was in Washington 18 months ago. I sat down with the same people who are now in Canberra, including Virginia Greville, and went through our position. We have had many discussions on the phone on what our position is. I was intending to go to Canberra to put our position face to face in either August or September.

CHAIR—Do you have any understanding with the department that when it comes to the pointy end of these negotiations, when you come to a position in which the negotiations are concluded and consideration is being given to accepting or rejecting an outcome, that at that point you will be consulted?

Mr Hansen—Yes, I do.

CHAIR—Is that an understanding that you will be consulted and your views will be listened to at this stage ?

Mr Hansen—Yes, we have been consulted so far. They have regularly asked us what our position is and we have gone back to them and stated what our position is. They continue to come back to ask, 'What should our position be on this and what should our position be on that?' We keep them updated on what the position should be.

CHAIR—You have said that in the United States—in the land of free enterprise, if I may put it that way—you cannot even get into the market to compete.

Mr Hansen—Correct.

CHAIR—As a consequence, you want an Australia-US free trade agreement. I also understood you to say that other markets world wide have restrictions applied to them as well. In this debate that is going on as to whether it is better for Australia to press through the WTO to open global markets or to put the balance of its effort into a bilateral agreement with the United States, speaking for your industry, do you have a view as to which is the best way of proceeding?

Mr Hansen—I have not put a lot of thought into other agreements. We are a relatively small industry and we need to focus our efforts. The USA are the dominant player in the edible peanut market internationally, so they have the dominant influence. That is demonstrated by some of the papers I have presented to you. US production is the significant influence on the world price. Any changes in the US program would significantly alter what happens to worldwide production, processing and pricing.

CHAIR—As a result of the agreement at President Bush's ranch at Crawford, Texas, earlier this year we now know that the deadline to complete the Australia-US free trade agreement has been brought forward with the objective of trying to complete the negotiations this year and complete the adoption of it, assuming a good outcome, about March next year. That appears now to be the new deadline. The WTO negotiations on agriculture are bogged down. The mid-term review of the WTO negotiations occurs at Cancun in Mexico in September of this year, but agriculture is the sector in those global negotiations that is well behind the timetable. That means, just in the timetabling of it, that it is possible that you will have a proposal from these negotiations with the US to consider ahead of a global consideration of opening of markets. Given that, if Australia as the leader of the Cairns Group accepts the US bilateral proposal, it will to some extent flag that that is an acceptable level of opening for the multilateral round. It is just a matter of the timetabling of these two things. Do you have a view as to whether Australia should proceed on that timetable?

Mr Hansen—I do not have significant knowledge in this area, so I cannot really make a comment. I think my original comments are probably relevant. In this commodity—and we do not like to consider it a commodity—the US is basically the dominant player and has the significant impact. It underpins the world market. The way the new program is managed in the US since 2001 actually sets the benchmark price internationally. Some of the other trade issues that are happening would have less significance to the peanut program, I would have thought.

CHAIR—Let me put a view to you and ask you if you agree with it. It may be the same answer you have given—which is a perfectly reasonable answer, by the way. This is not a cross-examination; it is a matter of trying to obtain your views and the views of your organisation. Given the construct that I have just put about the timetable and the influence Australia agreeing to a bilateral arrangement with the US on agriculture, ahead of the global round deciding what the agricultural deal will be, would you agree—and this is the part that I am asking for your comment on—that the strongest possible deal with the US is what is required from the farm sector least we drag down the possible level of international accord on agricultural trade?

Mr Hansen—As I said, I am not an expert in this field, but I have been involved in agriculture and buying agricultural products for nearly 30 years. We have been promised a free trade level playing field throughout my whole professional career. If the US will give us a free trade agreement, I believe that would be a significant step forward and it may force the hand of some of the other international players. We know the US have significant incentives for their domestic producers, but the Europeans support them three or four times more than what the US does. A layman's view is that, having an agreement with the US, may accelerate some other agreements.

CHAIR—That is not just a layman's view; there is a professional view by negotiators that that may work that way as well. It depends on the big unknown—what the level of opening is that is obtained with the US.

Mr Hansen—Correct.

CHAIR—What subsidies do Australian peanut producers attract from the Australian government?

Mr Hansen—The only subsidies that I am aware are in the research and development area, where farmers put in their one per cent levy and the federal government contributes at a fifty-fifty rate. There is some state government support for the breeding program, which may contribute $A500,000 a year. That is the total level of support federally.

CHAIR—So, apart from research and development, in which you match the Commonwealth, and some support given to you by the state government on breeding, that is all the support given to your industry from a government source. That is all that there is; the rest of it you have to do yourself?

Mr Hansen—Correct.

CHAIR—Turning to the Americans, can you tell us what sort of domestic support their government gives them?

Mr Hansen—The world price for peanuts is about $US250 a tonne. That is for farmer stock, not for the edible peanut component. US farmers are paid about $US550 a tonne—I am talking metric tonnes. When you look at the documents you get confused between the tonnes because Americans talk short tonnes, which is only 2,000 pounds so you have to make that adjustment. US farmers are paid about $US550 a tonne, which is more than double the world price.

CHAIR—Are they paid that as a farming subsidy?

Mr Hansen—It is partly a farming subsidy. The government guarantees in the market loan $US355 a short tonne, and they get that topped up to $495—to the target price—per short tonne. They have a special phrase like 'loan deficiency payment'—I cannot remember the exact words, but the words are in the file I have given you—and they do it that way so that that amount, that top up from $355, goes into the amber box under the world trade negotiations and therefore is not considered a production subsidy.

They also then support the breeding program totally. Between the US government and US universities, they pay nearly $US30 million into breeding programs. Total agricultural research in the US is somewhere between $US60 million and $US100 million on peanuts per annum. Other protections for the US program include that to import into the US you need a quota. The only people who have quotas to import into the US are Argentina, Mexico and China and that amounts to, from memory, 50,000 edible tonnes, representing two per cent or three per cent of US domestic consumption. Anything more than the 50,000 tonnes attracts a huge tariff—I think it is 160 per cent of the import price.

CHAIR—If I may summarise it: as far as farming is concerned, you get zero support from the government and they get double the world price support from the government.

Mr Hansen—Correct.

CHAIR—As far as research and development is concerned, you have to match what the government offers.

Mr Hansen—Correct.

CHAIR—Their research and development is paid straight out of government coffers to the tune of $100 million or more.

Mr Hansen—Potentially, yes.

CHAIR—As far as the breeding program is concerned, you get about $400,000, I think you said, from the state government.

Mr Hansen—It is $500,000.

CHAIR—The entire breeding program in the United States is picked up by the US taxpayer.

Mr Hansen—Basically, yes.

CHAIR—It is not a level playing field.

Mr Hansen—No.

CHAIR—In fact it is quite a distorted playing field.

Mr Hansen—Exactly, yes.

CHAIR—And then, of course, you cannot even take a peanut into the US in your hip pocket and sell it.

Mr Hansen—Correct. I cannot sell it; I might be able to give it away.

CHAIR—In a bilateral negotiation, and this is what is established with the department as being the case, you can deal with the market access or tariff issues with respect to products but you cannot deal with the subsidies. They are universal subsidies across the board. You can deal with those subsidies in a multilateral context on a world level in negotiations but not in bilateral negotiations because they cannot work out which farmer's product is going to compete with Australian goods.

Mr Hansen—I understand, yes.

CHAIR—If you were to have open access with the US, as you are seeking, you will still have to battle a farming product that is subsidised at twice the international price.

Mr Hansen—Correct.

CHAIR—How can you compete? Even if you have the ability to compete—which you do not have now—how can you compete in that climate?

Mr Hansen—We are efficient producers. You have to go to the economics. Basically, we understand what the US shellers are paying farmers. By the time they pay the market loan price and various other components of the price structure, we would have a lower price structure than US shellers, especially the west coast USA purchasers. There are virtually no peanuts produced on the west coast of the USA. The majority are produced on the east coast, so the trucking and freight cost to the west coast would be similar to our own cost into the west coast of the USA. So we can compete with manufacturers in San Francisco and Los Angeles.

That is why I emphasise that we believe that we are unique. We are doing things that are relatively unique compared with the USA. Most of the producers in the USA are limited, or their hands are bound, by the USA program on what they can produce and how they can sell it, because they have to sell it under USDA standards. One small example is foreign material. Their USDA measure is 0.1 per cent foreign material. That is their standard and that is what they sell on the international market. We sign off with all our customers at 0.0001 per cent foreign material and our customer complaint rate runs at one piece of foreign material per 1,000 tonnes delivered. That is a huge difference from what the US people market at. I can give other examples along the same line. That is because we consider ourselves an ingredient supplier to most of our customers in Australia, because we want to supply safe food. The rules in the USA are different. We believe that gives us an advantage. We are already in the process of talking to a number of USA manufacturers about how we would actually get product to them in the USA.

CHAIR—That is an interesting answer, but can I just come back to first principles here. The ability to win a market depends on price, quality and timeliness of service. In price, there is the

cost of shipping your goods. In your answer you say that, on the west coast where they have a trucking cost component from the east coast, that virtually neutralises our cost of transport.

Mr Hansen—That is correct.

CHAIR—In your submission in chief you argued that the quality of the Australian peanut is clean—it does not have the same heavy metal content as other peanuts—and one could put a clean, green ring of confidence around the Australian product compared with other products. You are an efficient industry, so I think timeliness is not a consideration here. You are then left with the fact that, before an American farmer competes with an Australian peanut farmer, they are handed a subsidy of twice the world price. So, on price, it would seem that you are twice the world price behind before you even start. Are you saying in those circumstances that you are still competitive?

Mr Hansen—We are. We are competitive because the vertical integrators are actually buying the product from farmers. They have to pay a price, and that price is dearer than what we still pay to our farmers. The only reason they are able to compete domestically is that they have a quota that guarantees the US sheller 97 per cent of the US market. So he does not have to compete with anybody like us or China now.

Also, it is quite well known and it is in the public literature—I have put it in the charts there—that the average USA farmer's cost of production in 1995 was $US508 a short tonne. The target price that the government is guaranteeing them is $495—that is in today's prices. So the difference there is $13, but in today's prices it is probably $30 or $40. That is represented in what is happening in the acreage planted in the US. Acreage has declined in the US every year since 1992 because farmers above the $US508 figure cannot compete or stay in production even though they are guaranteed $US495 a short tonne. There were 1.26 million acres planted this year, which is the smallest planting in the USA since 1915. So even though they are getting that huge support, they still cannot make it pay.

CHAIR—America is a proud nationalistic country. They can put the American flag on their product and say: 'Support American farmers. Buy American products.' You cannot. Can you still compete?

Mr Hansen—That would be an interesting question. I cannot answer that.

CHAIR—It is an absolute imperative—and this is my conclusion; disagree or agree with it if you wish—that you actually get full market opening as soon as possible out of a bilateral trade agreement.

Mr Hansen—Correct.

CHAIR—If the proposal comes forward with anything significantly less than that, do you walk away and withdraw approval for the agreement?

Mr Hansen—No. In our submissions we have asked for limited access for the first five or six years, with full open access after six to eight years. What we have said is that the Chilean

agreement would not be acceptable, where it takes 12 to 15 years to get full market access. That is the position we have put forward to Department of Foreign Affairs and Trade.

CHAIR—In the US they invented the slogan: 'All politics is local.'

Mr Hansen—They already have that.

CHAIR—That means that politics in the United States is more about pork-barrelling than it is almost anywhere else. Florida—the state of the 'hanging chads' at the last presidential election—is a major peanut producing state in the United States. The other major peanut producing state in the US is Texas, the home of the President. Florida's governor is the President's brother.

Mr Hansen—I think four or five of the last presidents have come from Georgia.

CHAIR—And Georgia is the other major peanut producing state.

Mr Hansen—President Carter is a major peanut producer.

CHAIR—It is fair to say that US peanut farmers have political clout.

Mr Hansen—Yes, they do.

CHAIR—And that is demonstrated anyway by the level of subsidy that they have.

Mr Hansen—Correct.

CHAIR—So this will be a tough negotiation, won't it?

Mr Hansen—Yes, it will. I am not assuming that it will be an easy run. The reality is that, with the current program in place, economics are already dictating the rules and acreage is declining every year. They are going to have to import, regardless of what the rest of us think.

CHAIR—Because their own system is decayed and broken down?

Mr Hansen—Yes. Three or four comments ago I think you hit the point on the head. If the US government takes a backwards step internally and says, 'Yes, US farmers are the backbone of the US economy and we're going to protect them at any cost,' and therefore they up the domestic subsidy—which they have done; in the last four or five years, when the US farmers have got into problems, they have gone back and handed out another $400 million or $500 million as a gratuitous gift—

CHAIR—They are good at doing that.

Mr Hansen—Exactly. They have done that to keep US farmers in production.

CHAIR—And US voters happy.

Mr Hansen—Yes. If they continue on that basis, we will not be able to compete. I see that as the biggest negative to this whole situation. At the moment it is virtually irrelevant whether we get a free trade agreement or not, because I am competing internationally anyway. We have to compete with everybody on the world market in our own right with our small resources, and any movement of the free trade agreement will be of benefit to us.

CHAIR—If America were to subsidise the export of peanuts, you would have an unfair competition in your foreign markets.

Mr Hansen—I have lost out over that too, I suppose. They actually give a $10 million a year subsidy for US farmers. They actually pay them $10 million a year to market into Europe. It is like an export enhancement program.

CHAIR—But the European market is governed by quotas as well.

Mr Hansen—No, there are no quotas in the European peanut market.

CHAIR—That is interesting.

Mr Hansen—Because they do not produce any peanuts.

CHAIR—So not only are they preventing you carrying a single peanut into the United States for sale and not only are they subsidising to twice the world price their farming production; they are competing against your efficient production in third markets, where we would normally have an advantage, by subsidising their exporters as well and are potentially taking market share from Australia.

Mr Hansen—That is right.

CHAIR—A moment ago I asked: if you do not get the deal you want, do you walk away? I think your response was, 'Well, no or probably not.' I do not know whether this is what you intended but it seemed slightly vague, and I can understand why it would be. You are not saying to us, are you, that anything, no matter how small, that comes out of an FTA on peanuts, if anything does, is acceptable to you?

Mr Hansen—No, we are not saying that. We do not want the Chilean style agreement where tariffs are phased out over 15 years so we get no benefits until the year 2018. That is not a free trade agreement. We have asked for an increasing quota initially of a relatively small amount—1,000 tonne a year growing to 12,000 tonne a year—and then free market access after six to eight years. If we do not get a quota initially, the agreement will be significantly watered down in our eyes.

CHAIR—But at some point do you say, 'Look, this is just a joke; it's not worth it; we're out of here'?

Mr Hansen—I do not know. You should not put your negotiating position on the table before you get there. We entered this process late last year because we took the view that there would be a free trade agreement, regardless of the peanut industry's views—and I still believe there will

be. If after going through this process we get any improvement at all over what the Chileans or somebody else got from a free trade agreement, we will be better off than we were six months ago. So if we can have a presence in negotiations, which is what we are attempting to do, and we can have an impact in some way on the process with the USA free trade agreement and get some movement on the USA position, we will definitely be better off than we were in November 2002.

CHAIR—If I am a peanut purchaser in Australia, how do I tell that I am eating Australian peanuts and not American ones?

Mr Hansen—There is origin labelling within Australia, though it is not very strong.

CHAIR—But we should look for it?

Mr Hansen—Yes.

Senator NETTLE—What other countries does the Australian peanut market currently export to? What is the significance of those different markets in terms of overall peanut export from Australia?

Mr Hansen—We currently market in New Zealand, Japan and the United Kingdom. We have about 30 per cent or 40 per cent of the New Zealand market. We have been marketing 2,000 tonne to 3,000 tonne in the United Kingdom for about 10 years. We are just starting to expand our operations in Japan. We will export 600 tonne or 700 tonne into Japan this year. The main reason that we are getting access to the Japanese market is the movement towards hi oleic peanuts. Hi oleic peanuts have definite processing and shelf life benefits for manufacturers. That is why we have a huge amount of interest in what we are doing in Japan.

Senator NETTLE—If you are able to secure the market access you want in the United States, how would that impact on your ability to maintain those current export markets in Japan, New Zealand and the UK, particularly on any capacity to expand your market share within Japan?

Mr Hansen—We have two expansion programs running. We have one in Bundaberg. Last year we farmed about 200 hectares in Bundaberg. This year we are farming 800 hectares and we have expressions of interest for the planting of 4,000 to 5,000 hectares in Bundaberg this coming summer. That is purely because sugar prices are depressed, farmers are looking for alternative crops and peanuts are a very profitable crop in that respect. Also, there have been huge technological developments in our industry over the last five to seven years, which have made it easier for farmers to get entry to the industry. There were large barriers before that. We are assuming that a number of sugarcane producing regions will move to production of peanuts. As I said, we have acreage in Bundaberg and we have some small acreage in the Mackay region as well. Also, there are huge areas in the Northern Territory that are useable as peanut production regions. We have two pilot programs in the Northern Territory now. We will probably produce 2,000 tonne this September-October in the Northern Territory, with a view to expanding that to something like 20,000 tonne in the next five years.

Senator NETTLE—Do you think access to the US market would impact on your ability to export to the countries you currently export to and to expand those markets?

Mr Hansen—No. In actual fact, it will enhance our position in those markets.

Senator NETTLE—Why will it enhance your position?

Mr Hansen—As I tried to explain earlier, production in the US is the dominant pricing factor for the USA market and for the European market. Freighting from Suffolk, Charlottesville and Savannah in the USA takes only four or five days to get into the European market. When they have a large crop in the USA, it depresses prices in Rotterdam. The benchmark for this commodity is the Rotterdam market price, and the USA is the main influence on that. If the USA do not export to Rotterdam, which is highly possible this year—with the smallest acreage they have planted for nearly 80 years, there is already concern within the US that they will be net importers this year—that will have an influence on the price in Rotterdam. Basically, that will enhance our marketing position in several other destinations.

Senator RIDGEWAY—I am interested in some of your answers to Senator Cook. As I understand it, your submission essentially focuses on the question of access to the US market.

Mr Hansen—That is correct.

Senator RIDGEWAY—And one of the key parts of being able to promote the Australian peanut is looking at high quality compared with what your competitors might be producing.

Mr Hansen—Yes.

Senator RIDGEWAY—You also talk about the size of the Australian peanut production industry being small in comparison with that of the US and you talk about a short lead time, if there is to be anything, being six to eight years as opposed to 15 years under the Chilean agreement.

Mr Hansen—Yes.

Senator RIDGEWAY—You are no doubt aware of the comments that have been made by Meat and Livestock Australia and the National Farmers Federation and that they take a similar view. Given the access that they are looking for, do you think that, in terms of what you are seeking as an outcome, the likelihood will be some sort of transitionary arrangement? Will that disadvantage you, or are you really saying that competing on the international market at the moment will satisfy your constituents' concerns and that getting into the US market at some stage in the future, perhaps in 15 years time, will still provide your customers with opportunities to get into the US marketplace? I am trying to understand the advantage or disadvantage of the position you are in. I am not quite clear on that. I understand the six to eight years—it is better to get in earlier rather than later. But isn't it still the same in 15 years time if you are not already in the US marketplace?

Mr Hansen—Yes. We are only asking for limited access initially. The reason is exactly in the question that Senator Kerry Nettle just asked. It takes time to scale up. We cannot go into a new production region and say, 'Righto, we want to produce 20,000 tonnes.' Basically, even if we have the cultivars—the new varieties—that will work in that region, everybody within the region

needs to gain confidence with the crop, and generally it takes time to build that confidence in the crop. That is exactly what is happening in Bundaberg right now.

We have asked a limit on access on peanuts that we thought would not scare the US negotiators too much yet would be at a level we could cope with in the foreseeable future. In the long term, we will never get total access. If we got to 20 per cent access within the US market, even in an open free market, that would be fantastic, and that is probably all we could ever expect. A much more realistic position is probably five per cent or 10 per cent. We are looking for a premium because we have a premium product and we do not intend to compete on the commodity market.

As for the Australian meat and livestock's submission, I am not aware of their submission. I must admit I have not followed the other submissions. We have been using our own team and working with DFAT on what we can and cannot achieve. What we have tried to put forward is the position that we think we could achieve without too much dissent on their side. If we are to get a free trade agreement, the most important thing will be to keep all the side agreements out. It will be beneficial for us to keep out as many side agreements as we possibly can. That is why we have taken the position that we have.

Senator RIDGEWAY—It perplexes me that most of your submission seems to be export oriented. Looking at the size of the Australian industry compared with that of the US, we heard from Professor Ross Garnaut on Tuesday of this week, who put forward a number of views. I do not want to put words in his mouth, but he indicated that, unless there was a serious attempt to deal with the question of subsidies, particularly under the US Farm Bill, there would be very little benefit for the agricultural industry in this country. He also indicated that, even if you were able to get some small concessions, given the size of the US economy and the Australian economy, which was put in the context of being the size of the state of Pennsylvania—

Mr Hansen—Correct.

Senator RIDGEWAY—Do you feel confident that any tweaking by the US would still not deliver the sorts of benefits you would be seeking?

Mr Hansen—I can understand people putting that submission in general for agricultural crops for the USA. If you look at all the other crops that they subsidise—cotton, sugar, beef—the market loan price set for those commodities is above the cost of production. That is the market price. I am not talking about the target price. In the case of peanuts, the target price they have set is less than the USA cost of production. Peanuts are different to the other commodities, and it is purely because of the negotiating position that the parties took in the USA negotiations back in 2001 that that outcome eventuated. In actual fact, although the US government is subsidising US farmers at 100 per cent more than the world price, US acreage is still declining, and that is the penultimate test. The USA farmers are saying, 'Even though you're giving us 100 per cent more than the world price, we still cannot produce those profitably.' That is why acreage continues to decline. It is almost irrelevant to what is going to happen—and I should not say this in this context because that undermines our negotiating position. But if the free trade agreement does not come into effect, the USA will still have to import peanuts this summer because they will not produce sufficient to meet domestic consumption.

Senator RIDGEWAY—That leads into my next question, which is: if it is not going to be full and free access—which is what are you seeking, and presumably the outcome will be a compromised one—have you given any thought to what would be a threshold in those concessions that would satisfy your industry in terms of access to the US marketplace beyond just the six- to eight-year conditions? Are there things in relation to the way that their subsidy work that would still be favourable to your industry?

Mr Hansen—The honest answer to that is probably no, we have not thought much further than our position that is on the table at this stage.

Senator RIDGEWAY—I will go to what the impact might be in terms of Australian peanut production and the companies that are out there and so on. Have you given much thought to US access to the Australian marketplace? If we are talking about transition arrangements, whether they are six to eight years or 15 years, presumably conditions are going to change over that time in that there will be a range of research and development activities—let us presume genetically modified crop. Can you tell us about some of the things that are happening in peanut production? You have mentioned some of the different varieties that are coming forward. Is there something that might occur from a US perspective that makes them more competitive or more likely to deal with exporting from their perspective to an Australian marketplace that might interfere with Australian businesses?

Mr Hansen—Yes, there are three events that would make this difficult for us. Firstly, the US virtually has free access to the Australian market now, and you have to remember that that is a given. Secondly, if the Australian dollar went back to parity or strengthened significantly against the US dollar, we would be disadvantaged. A good example of that is that in the USA the cost to shell peanuts is about $US200 a tonne. Our processing costs are $A200 a tonne. So at the moment we have the exchange rate differential as an advantage to us.

The second point, the one Senator Cook made, is that if the US government decided that peanut farmers were the backbone of the US economy and gave them another $1 billion and kept them in production, we could not compete—and they have done that in the past. They did it in 1999 and I think they did it in 2000 when they had wet harvest years. They just gave out a free gift to the US peanut farmers. I cannot remember the exact dollars, but it was a huge amount of money.

The third point is that, yes, they are working on new cultivars. That is where most of the technological development is going. They have some of the best cultivars in the world because they have some of the best scientists working on them. We have agreements with three US universities—Florida, Georgia and North Carolina—and we are using their genetic material in our own program here in Australia. Unless there were a government decree that said that they were not able to sell us that material, I cannot see how we would be disadvantaged. We are disadvantaged in time because they can release the material in the USA this year and effectively, because of our quarantine restrictions, we cannot get access to that material commercially for approximately five years after the US. So there is something like a five-year delay.

In that genetic program they have things happening on GMOs, but I would suspect that they will not have genetic material or commercial cultivars to release from that program until at least

2015 and maybe even 2020. Peanuts are much harder to genetically modify than other organisms. There are some unique characteristics about the crop that make it hard to do that.

Senator RIDGEWAY—I suppose that with the quid pro quo arrangement there would be an expectation on Australia to undertake or do certain things. Are there issues that the committee might not be aware of with quarantine or labelling laws that America might expect in terms of changes either in reducing the standards or changing the labelling in such a way as to interfere, for example, with the best arguments that have been made in relation to health and wellbeing? You would be aware that allergies are on the rise as they relate to peanuts, additives and so on for Australian children. Is there something there that Australians need to be aware of and something that Americans might be requesting that does have an impact in relation to the Australian population?

Mr Hansen—I am not aware of anything. I know their origin labelling will probably be stiffer than ours. Ours is not all that strong really—made in Australia labelling, I mean. In the US they are already legislating for 'Made in USA', and the agricultural lobby is pushing hard for that. On allergens, we have had allergen labelling on peanuts in Australia since 1980s—this is not a new event; it has been there for 25 years. I do not see that as being any different. In fact, the USA has had more problems with peanut allergens than Australia has had. I do not know why that is so, but they have had a lot more problems relating to it.

Just as an aside, there are some communities in the world that do not have allergenicity problems with peanuts at all. If you talk to the Japanese, they say, 'What the hell are you talking about? What are peanuts and allergens? We don't know anything about this.' The population must not be susceptible to the peanut protein in that way, I would say. I am not aware of any legislation in relation to peanuts that we would have any issues with. In actual fact, our food rules in Australia are tougher than in the US. Food rules in the US are not as tough as people think they are, and they are not enforced in actual fact.

Senator RIDGEWAY—But doesn't that present a possible quandary in the future? If there is an expectation, for example, from the US that the tough food standards that we have be lowered to the American standard, does that present a problem? I guess what I am looking at here is not only the social or health argument but also what the economic argument is going to be—I think you would agree that they are all interrelated—for example, if Australian businesses are tarred with the wrong brush as a result of changes that have been necessary. You would have seen the Canadian examples in terms of certain chemicals in weed and pesticide control, where they have been challenged in the US and successful cases have been brought forward. I am thinking more in terms of whether Australian laws will potentially be affected in the future and whether you have given thought to that.

Mr Hansen—Yes, we have given thought to that. In actual fact, we see it as an opportunity. Australian food regulations are quite good and reasonably well enforced. The Japanese will have similar food legislation in July 2004 and the Europeans in January 2005. We see those as opportunities for us, because we are basically the only peanut producer world wide that can actually supply a certificate to say, 'Those peanuts came from those paddocks and those consumers ate them.' Internationally, we are the only producers that can do that. That is a big statement. The USA lags behind in that program.

It would be a benefit for us in companies like Kraft, Mars, Cadbury and Nestle, because they expect it these days. When we deliver a peanut, they want to have an assurance within Australia, Japan and Europe that it is safe to eat it. In the USA, the USA peanut producers hide behind the USDA standards, which actually gives them some protection—that is, they do not have to supply peanuts that are safe to eat.

The last point to make with regard to that question is: you would have a bigger political problem if you wanted to water down food legislation in Australia than I would have. I think that is an important point.

CHAIR—I have one quick, follow-up question. Despite the fact that American peanut farmers are subsidised to twice the world price and the plantings are declining anyway, you have said that you think this is an opportunity for Australia to pick up that gap in the market where production has declined because of lack of planting and that all that is symptomatic of an inefficient industry.

Mr Hansen—Correct.

CHAIR—However, why wouldn't an American peanut farmer simply goes to his or her legislator and say that the level of subsidy is insufficient to provide peanut farmers with an incentive to plant the crop to a level to meet national demand? They have always done that in the past. We have agreed in this discussion that they have political influence. Why wouldn't they just simply do that and get a subsidy of three times the world price?

Mr Hansen—That is the biggest threat to this whole thing. There are probably only two answers to that. One is that in my view—certainly from my visits to Washington—there is definitely a mood in the USA wanting to become more free trade orientated. Second, they are starting to raise huge budget deficits and they are not as philanthropic with their money as they were two or three years ago. They happen to be spending it on planes and bombs and things and not on agriculture. Whether they will actually have the resources to do it in the future is probably a good question as well. I cannot really answer that. It depend on the political philosophy at the time. For the last 30 or 40 years, the political philosophy has been 'US farmers are the backbone of the US economy and we will support them to the hilt.' There has definitely been a mood change in the last five years, from what I have seen in Washington. I do not know what Warren Truss and Mark Vaile are seeing, but I suspect that they are seeing the same—that there is definitely a mood to get their economy in line with the rest of the world.

CHAIR—I hope you are right. I hope this is a case of what they say is what they do. I have always paid attention to what they do rather than what they say. Thank you very much, Mr Hansen. It has been a very useful session for us.

[10.35 a.m.]

FAIRBROTHER, Dr Jeffory Graham, Executive Director, Australian Chicken Meat Federation Incorporated

CHAIR—I welcome to the table Dr Fairbrother from the Australian Chicken Meat Federation. Dr Fairbrother, please feel free to address us on your submission, at the conclusion of which, if you would not mind, we would like to ask you a few questions.

Dr Fairbrother—Thank you very much for the opportunity to attend today and to give our story on what we think about a free trade agreement with the United States. What I would like to do this morning is to look at two separate issues, both of which are of about equal importance to my industry. The second issue I will talk about is largely dependent on the first. The first issue relates to quarantine and its involvement in the free trade agreement.

The United States has been pushing for a relaxation in Australia's quarantine system regarding poultry of some type for a very long time—indeed, since the time that I was employed with the Commonwealth department of health, and that goes back to the late 1960s. It is still on the US government's agenda, as Robert Zoellick clearly indicated to the US Congress in November last year. Thailand and some EU countries have also been on a similar trail for nearly 10 years. The 1996 Senate report on the importation of cooked chicken meat covered this in quite a lot of detail. Even though the US regards our quarantine as a non-tariff barrier, it has not challenged our cooked chicken meat protocol in the WHO. We believe the US may attempt to get quarantine through the back door through this FTA.

Our federation has continually adopted the stance that Australia's quarantine integrity should not be a negotiation item in trade agreements. We are pleased that Ministers Mark Vaile and Warren Truss have given the industry assurances—and, in fact, assurances in writing—that, in any negotiations with the US, Australia's quarantine will not be compromised.

Our poultry industry is remarkably free of serious diseases, and we still have a policy of stamping out emergency and exotic diseases. Having said that, I am well aware of the problem that our industry has had with the Australian Newcastle disease virus in recent years. Unfortunately, that has been a problem. I do not want to put our egg colleagues into the frame but it has been a problem that has emanated from the egg laying industry and has affected our industry as well. The saving grace is that the Australian Newcastle disease has been stamped out successfully each time.

The severity of the pathogenic Australian Newcastle disease strain down not compare with the pathogenicity of the United States strain, which devastated the layer chicken flocks in California in late 2002 until quite recently. The US government picked up a bill for about $100 million for that outbreak in California. The fact that we now have a national disease management plan established for Australia, including vaccination, indicates how seriously our industry and even the state and Commonwealth governments take emergency animal diseases in this country.

The second issue that is addressed in the federation's submission relates to the foreseen effects of importation of raw chicken meat. I will speak first about the two industries in perspective. The Australian chicken meat industry has assets of about $6 billion. Its turnover is about $3.6 billion year and it generates 120,000 jobs through the economy. This figure of 120,000 includes about 40,000 people who are in direct employment across the mainland states. The flow-on effects to the economy of the chicken meat industry is reflected in the generation of jobs.

There are of course other supply industries partly dependent on the viability and expansion of the industry for the security of their employees—for example, the pharmaceutical industry, veterinary services, packaging and refrigerated road transport. In that downstream area, reflecting the strong industry connection with retail activity and final consumer demands, are the wide variety of outlets for chicken meat, including fast food, catering and restaurant sectors, which are terribly important if we are going to talk about imports.

Australian production in 2002 was $428 million birds or 700 tonnes, which sounds a lot. The United States is now by far the world's largest producer and exporter and the world leader in technology and consumer product development—and I have a great deal sympathy with what Bob Hansen was talking about. The industry in the United States has been benchmarked and researched in depth by our federation as an aid to our own competitive improvement. Huge economies of scale, the advantage of little regulation, low feed and labour costs and significant subsidies have combined to make the US the world's lowest cost producer of chicken meat; however, this status has recently been challenged by Brazil, who are now producing chicken a few cents cheaper a kilo than the industry in the United States. I mentioned that our production was 428 million birds or 700 tonne in 2002. The US production in 2002 was 14,500 tonne, which equated to about eight billion chickens, and its exports were more than three times the total Australian production.

Compared with Australia's other meat industries that are significant exporters, the chicken meat industry is predominately a domestic oriented industry. This is a consequence of the realities of the world poultry meat trade and does not relate to the inherent economic efficiency of our industry—which is a very competitive industry in the Australian situation. The Australian chicken meat industry should, with sound government policy approaches, including the maintenance of a strict quarantine regime, reach a stage of development where a progressive improvement in export performance is secured. But the realities of the world industry and trade in chicken meat suggested a transformation of the multi-domestic character of the Australian chicken meat industry in the short term really is quite unrealistic. Estimates of the cost of quarantine relaxation on what would be realistic assumptions of about 40 per cent import penetration are $3.5 billion GDP, $900 million in household income and about 35,000 jobs lost. Those figures were based on work done by the NIEIR people in 2000.

We also have a problem with the games played in the SPS agreement and with the non-tariff trade barriers. We adhere to a quarantine policy consistent with the WTO SPS agreement and are free of any charge of employing non-tariff barriers to provide economic protection of our industries. Non-tariff barriers are rampant in world chicken meat trade, with exporters and importers frequently imposing measures to provide advantage to their local industries. Notoriously, the United States, Brazil and Thailand all refuse to allow chicken meat imports from each other, citing SPS grounds, although import risk assessment processes have never been initiated.

The EU has banned imports from the United States since 1997 on SPS grounds—and that is just related to chlorine in a water supply. In addition, the EU has recently altered its tariff schedule to choke off imports from Thailand and Brazil and has imposed onerous shipment-by-shipment inspection procedures on those countries. The Thai problem was that they found a residue of nitrofuren, which is illegal in the EU. The EU is pursing its environmental and precautionary principle agenda in the WTO Doha Round—which will, if successful, further restrain imports of chicken meat.

Another example of the corruptness of the international chicken meat market relates to the free trade agreement between the United States and Mexico. The United States refuses to allow imports of chicken meat from Mexico on SPS grounds. Mexico in turn—which has been flooded with chicken meat imports from the United States as its tariffs under NAFTA fell from 99 per cent to 49 per cent and are scheduled to all to zero in 2003—has recently imposed SPS measures to restrain US imports. As a consequence, the two countries are now negotiating to allow the revision of NAFTA to restore Mexico's tariffs to 99 per cent, with a scheduled reduction to zero over five years in return for the lifting of Mexico's SPS measures against the United States. However, the United States has not changed its SPS measures against Mexico. I understand that this issue has, to some extent, been resolved between these two countries.

Just to conclude, what we are asking this Senate inquiry to have a look at is the affirmation of a strong support for Australia's longstanding, very conservative and WTO legal quarantine regime. Australia's quarantine must not be relaxed or used to negotiate in coin or to be traded off for commercial advantage in other areas of these FTA negotiations. We would also like to seek details of the Australia-US officials' discussions on quarantine over the last 12 months and what understanding, if any, has been reached that bears on Australia's 1997 protocol on cooked chicken meat and the handling of the current risk assessment on uncooked chicken meat.

We would like to see satisfaction from the committee that the full range of issues covering the protection of Australia's human and animal health environment are addressed in any proposed negotiation affecting Australia's traditional and very conservative approach to quarantine protection of its rural based industries and its natural environment. What I am really saying is that we have been protected under quarantine for years, and for good and just reasons. We do not think that negotiations that weaken Australia's quarantine in order to get a deal on a free trade agreement should be on the agenda. If it is, we will get into a whole range of things relating to economic issues in our industry.

CHAIR—I must say I think you have the sympathetic ear of the committee on that point. Can I ask you a couple of questions quickly, because I think you were in the room when the previous witness was here and it would save us going into the same degree of detail through these questions. First of all, in your consultations with the department, how do you rate the level of access and willingness to listen to your point of view?

Dr Fairbrother—With DFAT, it is pretty good. We have had a long association with them because we have been fighting this battle for a long time. We have been at meetings, telephone conversations, hook-ups and things like that, and our access to them is pretty good. We assume that what they are telling us is what is really happening. You cannot always guarantee that, mind you, but you would really hope that that was the case. Also, now that AFFA has taken over the role of looking at quarantine issues, which seems to have moved from DFAT to AFFA recently,

we have a fairly good relationship with AFFA. We have certainly been involved in the import risk assessment. Although we have had a number of problems, I would imagine that most have been resolved at this stage. I could not say that we do not have access to them on a personal basis; we know them reasonably well.

CHAIR—When it comes to the pointy end of these negotiations—the point at which you make a decision to accept a deal or to seek to modify it or in fact to reject it outright—are you confident that you will have the same level of access and you will be listened to then as you are now?

Dr Fairbrother—I think that would be unlikely. I say that because it is very difficult when you are working with government departments on issues that are very sensitive. We found that, in the risk assessment with AFFA, there are certain things they want to talk to you about and there are certain things they do not want to talk to you about. I would certainly hope that we would see a draft before it was finalised, but I would hope that we would have a pretty fair idea beforehand of what they were going to say, particularly about quarantine issues. I would not be 100 per cent confident; I would be hopeful.

CHAIR—But, from your industry's point of view, you would like to see the black letter of the deal before it is agreed?

Dr Fairbrother—Certainly.

CHAIR—And be able to comment on it in a manner in which you believe your comments were listened to, taken on board and acted on?

Dr Fairbrother—I think that is absolutely essential. We say exactly the same thing about the import risk assessment, because there is always a difference of opinion when scientists get together on what is a fair go—what is real and what is unreal. We would hope that we would have the same situation on that as we would on this FTA.

CHAIR—The basis of a lot what you have put to us is about quarantine. My understanding of what you are saying—if I am wrong, please correct this—is that quarantine has to be based on scientific measures consistent with WTO standards and, specifically—you are putting this to us as well and I am looking for confirmation—it ought not be used artificially as a barrier to trade.

Dr Fairbrother—I agree with that.

CHAIR—Strongly?

Dr Fairbrother—Yes. At this stage, whilst it has been suggested to us by the EU, Thailand and by the United States that our protocols that came up from a risk assessment on cooked chicken meat were effectively a non-tariff trade barrier, none of these countries has been prepared to challenge us in the WTO. They cannot have it both ways—they cannot say your science is screwed up if they are not prepared to challenge it. I could also add that, to our knowledge, the US has never done a risk assessment in this area. To our knowledge also, it has never been done in Europe. It costs money to have a risk assessment done properly. The fact that we produced a protocol that said: 'Yes, you could bring cooked chicken in if you did this, this

and this,' and the times and temperatures of the cooking were not to the liking of these countries, they said 'It's non-scientific and it's a non-tariff trade barrier.' That has never been challenged.

CHAIR—I do not want to put words in your mouth, so correct me again if I am wrong. Are you putting to us that, in your judgment, some countries that do or may manipulate quarantine standards as trade barriers are the first to accuse Australia of doing so, when we do not?

Dr Fairbrother—Yes, I think that is right. You only have to look at the Mexico story or at the Europeans. When the Americans beat them in the WTO on hormonal implants in cattle, there had to be some sort of way out or retaliation by the EU. So they just issued a statement: 'We're not having any more chicken from the United States because you use chlorine in the water. Chlorine can be regarded as a carcinogen so we're not going to have it,' but they use chlorinated water in their water supply. If that is not an artificial barrier, what is? That was just so absolutely blatant. The United States still do not have access to Europe for chicken, although they have access to plenty of other places. So, yes, I do think it is manipulated by other countries.

CHAIR—The advantage Australia has in selling its exports abroad is that it is disease free as a consequence of our practice and our quarantine standards. Is that a fair statement?

Dr Fairbrother—That is a fair statement under normal situations. The fact that we have had problems with Newcastle disease of course cut off anything we were exporting. We also have this ludicrous situation where we have an outbreak in Victoria on one egg-laying farm and that property is killed off within about 24 hours, 36 hours perhaps,. And all exports from Australia are banned. It is the same situation in New South Wales, and I suppose New South Wales is about as big as most of the European countries put together. They have an outbreak in Denmark, and it is not the whole of Europe that is banned; it is just Denmark. The logic of this sort of situation defies my intelligence. I just cannot understand how they get away with it.

Having said that, we lost exports to Japan and we lost exports to the Pacific islands, which is our major area for exports. It is only recently that these have come back. However, I would have to give the market access people in AFFA due praise for the way they have worked their hearts out to try to convince countries that Victoria is an awfully long way from Perth and an awfully long way from Brisbane and that, really and truly, you cannot have the whole country locked up because of this. They have worked well on that, and they have certainly helped. Our export is only about 2½ per cent or three per cent, and the reason that we cannot export other than to perhaps niche markets and value-added products is simply because we just cannot compete internationally. If you look firstly at the United States start on volume, their major ingredient in feed is maize or corn, which is at the best of times $100 a tonne less than wheat in Australia, which is our major feed ingredient. In the benchmarking analysis that we have done, they are about 57c a kilo lower than us, and they are huge exporters around the world. So we will only ever expect, in reality, to export to our near neighbours.

We do not really see ourselves as great exporters in the world situation, but we do see ourselves as an import replacement industry. We have developed an industry in Australia that is highly efficient. I think everyone would agree if they looked at the price you pay for chicken today compared with other meat products. Our disease free status means we do not spend as much money in the disease area. We have breeding stock that is as good as anywhere in the world, and we have processing facilities that would match anything around the world. In the

past, most of our processing technology has come from overseas because there is no manufacture of chicken processing equipment in Australia, with a few very minor exceptions. That all has to be imported in any case, and I guess that most of that comes in free of tariff. So we have world's best practice throughout our industry and throughout our farming side as well. We have some very dedicated people in the farming area.

CHAIR—Do the US subsidise their exports of chicken meat?

Dr Fairbrother—The US do very funny things. The answer to your question is, yes, there is an export subsidy. I cannot quote, but I can provide that information.

CHAIR—So they can export to our market and compete with us on a subsidised basis?

Dr Fairbrother—They could. Currently, of course, they cannot get in and this is what they do not like.

CHAIR—But if they complied with the quarantine standards?

Dr Fairbrother—Yes. It would depend on what the risk assessment says, but the United States certainly has more serious exotic disease outbreaks—for example, Newcastle disease and very virulent avian influenza. They also have a problem with salmonellas that we do not have in Australia. One of the prime ones is a salmonella called enteritidis, which caused the devastation in the UK egg industry and the demise of Edwina Currie a number of years ago. They have also had the same sort of problem in the north-east of the United States. That organism is not in our poultry flocks in Australia at all.

There is another salmonella—typhimurium DT104. The DT stands for 'definitive type', because they do not know what else to call it. So they have that problem in the United States. It is also rampant in Europe. The word we get from the food microbiologists around the world is: 'Do anything, but don't import chicken into your country. If you get these two organisms in, you're history.' The situation is that those are not covered in the import risk assessment that AFFA is doing. They should be included by FSANZ, which will be looking at human health aspects, but all they say is: 'Yes, it is a high priority for looking at as it comes into the country.' The chicken comes into the country, reaches the wharf and they say, 'Test it.' When we are looking at an import penetration of about 40 per cent, how much testing will be done to make sure those organisms are not there? We do see this as a major area of concern to our industry, but this all hangs on science and risk assessments.

CHAIR—I think adhering to past practice—not testing each animal but random testing of the shipment—is the answer.

Dr Fairbrother—Yes.

CHAIR—Is domestic production in the US subsidised?

Dr Fairbrother—It is subsidised in a number of ways. It is subsidised at the farm level to start with—there is a break built into the Farm Bill if you are planting any grain, so you are subsidised. There are not federal level subsidies direct, but there are direct subsidies at state

levels. They have a fairly robust meat inspection program which is totally paid for by the United States consumers, whereas we are on full cost recovery in that area. They have very good support for developmental areas from the United States department of agriculture—they always have had. We get very little support. They have good support on research through their universities and, as Bob Hansen said, the only subsidy that we get in this country is the dollar-for-dollar matching grant on research.

CHAIR—On R&D.

Dr Fairbrother—There is one exception. We convinced the Commonwealth government they should give us dollar for dollar through the FarmBis program for our benchmarking studies, which I think amounted to $175,000 over three years.

CHAIR—I put this to the previous witness as well. The ability to sell depends on price, quality and timeliness of delivery. On price they are subsidised and you are not?

Dr Fairbrother—Yes.

CHAIR—On quality we are better?

Dr Fairbrother—On quality I would say that we are as good as anybody in the world.

CHAIR—Bearing in mind your comment about Australia and regional outbreaks, nonetheless an impartial person would say that the Australian chicken meat industry produces a better quality product than does the United States chicken meat industry.

Dr Fairbrother—We would say that.

CHAIR—Of course you would, but is that a fair comment?

Dr Fairbrother—I think you would probably have to say that it is pretty much the same.

CHAIR—Okay, on parity. You are an efficient industry, so one would imagine timeliness of delivery to market is not an issue.

Dr Fairbrother—That is not an issue, no.

CHAIR—So, if you get the access to export to the United States, you are an unsubsidised industry competing on their home turf with a subsidised industry.

Dr Fairbrother—Yes.

CHAIR—It is a bit like the Thorpedo standing on his blocks waiting for the opposition to complete two or three laps of the pool before he dives in, and you are both judged at the time of arrival at the end of the race. That is the sort of comparison we are looking at.

Dr Fairbrother—Yes.

CHAIR—How can you compete if you get access to the American industry, given that distortion?

Dr Fairbrother—I do not think we can. I do not think there is any chance in the world.

CHAIR—Therefore you require a complete level playing field—that is, the subsidies are to be removed as well. It is not just access; it is subsidies as well.

Dr Fairbrother—Yes, and I think when we are looking at the subsidies we might find more than we are aware of at present. But, even given that, I still think we would be pushing to compete against the United States in an export area.

CHAIR—Are there economies of scale?

Dr Fairbrother—Yes, there are—huge. They are 21 times the size of us and they export three times what we produce.

CHAIR—So, at the very least, you would want subsidies that are paid by America to American exporters of chicken meat to be removed so that we do not get subsidised American product should they meet our quarantine standards in Australia?

Dr Fairbrother—Yes. That is the crux of the whole thing. It starts at the farm level and sort of works its way through.

Senator NETTLE—Following on from Senator Cook's line of questioning, is it correct to say that your main concern in relation to the US-Australia free trade agreement relates to Australia's quarantine standards and America's capacity to export to Australia rather than necessarily your capability to export to the United States?4

Dr Fairbrother—Yes, that is dead right. We are concerned about what might happen if birds from the US or other countries come into this country, where their disease status is different, where the human health status of their product is different. We see this as something that could devastate the industry.

When we talk about the possibility of 40 per cent import penetration, this is not something that we just have dreamed up. It is only a matter of looking at what happens around the world when these really big exporters get stuck in. The British chicken industry has been just about decimated by cheap imports, and a lot of these are coming out of Thailand and Europe. The Americans of course set the benchmark in international trade, and so cheap imports are the order of the day. Our concern is that, with a large number of birds coming into the country, the chance of a quarantine break is increased. You only have to see the effect of the avian influenza problem. I use Hong Kong as an example, where people have died from avian influenza that has mutated. We do not have this in Australia at present, but you do not know where it is around the world. The only way to keep it out is to try to stop it at the barrier—do not bring it in at all. The Newcastle disease in the United States is totally different from the home grown Newcastle disease. The more imports that come into the country, the greater the risk that we will have of bringing a disease into this country. The results of that could be absolutely devastating.

Who can forget the problem that we had with the Australian strain of Newcastle disease on Mangrove Mountain, where we killed two million birds. There is more of a story to that than I want to go into here; nevertheless, that is the sort of thing that can happen. That was an Australian Newcastle disease that did not spread like the ones in California, where it spread right across five states and it cost $100 million to subsidise the people involved. At this stage that has been paid for by the US government, but I understand now that they are going to follow the Australian idea of it being more a fifty-fifty deal with some of these diseases. We are very fortunate actually in that we have that sort of set-up through Animal Health Australia. I am sorry; that is a long way of saying that I see our major concern being a quarantine issue—if quarantine is broken down, the chances of our bringing something into this country that will affect the avian population and the human health population will increase dramatically.

Senator NETTLE—You have answered all my other questions along the way.

Dr Fairbrother—I might add that we do not want to see a strain of Newcastle disease come in that will affect our native bird population. We have talked about this for a long time, and it is one of the things that is subject to the risk assessment. So far, Newcastle disease of Australian origin has not affected our native bird population. We would not have a clue of what it might do to our native bird population if the type from the United States came in—let alone Thailand; we are not talking about Thailand. That will come up later, obviously, when we talk about the Thai FTA.

I should also mention that we are not affiliated with the National Farmers Federation in Australia, and they certainly do not speak for us on anything. There are reasons for that that there is no point in going into, but we are just not a member and they do not talk for us. We have to run our own race on these things.

CHAIR—I understand from your submission that in principle you support the negotiation of a free trade agreement with the United States.

Dr Fairbrother—Certainly; you have to.

CHAIR—But I understand also from what up have put to us that, if there is any tinkering with quarantine, you will walk away from that commitment.

Dr Fairbrother—Yes, indeed.

Senator RIDGEWAY—I have probably missed most of what you have had to say in response, and I agree with you in terms of the quarantine concerns. Given that you would have heard the questioning that I put to the peanut industry representative, are there particular issues that you are concerned with about the way that Australia currently goes about dealing with the issue of risk assessment? I note that in your report you are concerned about issues that started many years ago but there has still been no result in terms of the IRA process. Could you talk about that? I know it is not directly related to the terms of reference of the inquiry, but it would be useful in relation to the arguments that will come up in the future on issues of biosecurity and so on.

Dr Fairbrother—Yes. I think the new system of import risk assessments is vastly improved on when we virtually had no system at all, and it is very structured now. I think Biosecurity Australia do what they can to follow precisely the rules that are laid down. We have run into problems, though, in some areas where we believe that there has been perhaps government pressure on Biosecurity Australia to get things done more quickly. The team they have at Biosecurity Australia right now are very professional people—I do not think there is any doubt about that—but there are areas in their modelling that we would have problems with, and I think over time this will be overcome. I do not think that it matters that it takes a number of years to go through an import risk assessment if you get it right at the end.

Certainly the people in other countries—the EU is a prime example—are not happy with our quarantine at all. I notice that the EU in its general comment on our risk assessment process is specifically not happy with chicken and with pork. The interesting thing is that there is no way that the EU would want to bring chicken into Australia, because its cost of production is one that we can meet—even with its subsidies, its cost of production would be about as high as ours. So there is criticism of the speed with which Biosecurity Australia acts. I would hate to think that there would be any government pressure on this process, because I think it is the keystone for keeping diseases out of this country, not just poultry ones but diseases generally. I think the big wake-up was the foot-and-mouth disease outbreak in England. Suddenly people have realised that biosecurity is fairly important as far as agriculture is concerned. I think that was a timely wake-up to the Commonwealth government and probably to the state governments as well.

I think the process is professional—so long as there is adequate chance for an industry input. We are talking about an industry that we like to think we know a fair bit about, and you are talking about scientists in government, many of whom would have never been on a chicken farm let alone in a processing plant. We have offered, obviously, to take people around and do this, and I am sure this will be taken up in due course. So the process is much better than it was—I do not think there is any doubt about that—so long as the politicians keep out of it and let the people who know what they are talking about in that area, with all due respect, get on with their job and consult with the people who they are going to report on. It has not been too bad this time.

Senator RIDGEWAY—As a follow-on from that—and you may have covered this in my absence—on page 6 of your submission you talk about the ACMF being concerned that the draft method for risk assessment issues by biosecurity may reflect US pressure, particularly as it indicates that Australia's 1997 protocol, to which you referred in your opening statement, will be reopened in 2003. Is there something that leads you to that conclusion?

Dr Fairbrother—Certainly there was at that stage because of some of the things in the methods paper. We found the issuing of a methods paper on how we are conducting risk assessment quite extraordinary. It is not part of the formal process, and we were told that this was done because it gave us a chance for an early look at how they were going. We suggested to Biosecurity Australia that, if they are asking for comments on their methods paper, they ought to stop what they are doing until we discuss the method. But this was not the situation. However, as a result of a few whinges to Minister Truss, we had a major meeting with the IRA staff of Biosecurity Australia and we resolved most of those issues after this submission was made. However, I am still concerned that there was political influence to try to get the draft risk assessment out prior to the free trade agreements. The Americans have been onto this chicken

story about quarantine for a long time and, 'Why can't we get in?' but I think it is also fair to say that that is a push by the United States department of agriculture and not by the American industry generally. We have contact with our colleagues at the American National Chicken Council and I believe they are not pushing for imports into Australia. But if it is open to them on a platter, I think that would be a different issue. Anywhere you can sell an extra chicken, probably from a United States point of view or from that of other countries, could be a bonus. So I do think that there was that possibility that there might have been some pressure to get the thing done more quickly.

There is the fact that Robert Zoellick in 2002 made the statement that, as far as he was concerned, and the US in their negotiations, quarantine would certainly be on the agenda. I think it is very important to notice whether quarantine will be tinkered around the edges with, as Senator Cook said. I think it should be an absolute no; I do not think that should be part of this deal at all. Every country has its own right under the WTO and the SBS agreement to set its standards based on good science, and I think that is the clue. Don't let us talk about trading the chicken meat industry off for beef—or even for peanuts. As I say, we have been given assurances that that would not be the case, but that is why I would not mind seeing a copy of that draft agreement, the FTA, before it comes out so that we might have one last shot if we think we are being taken for a ride.

Senator RIDGEWAY—Even if you do come out with something that satisfies your expectations that there is no tinkering around with existing quarantine laws and standards in terms of some of the cases that have come up, more particularly under the NAFTA between Canada and the US—not so much related to agricultural products but to chemicals and so on—as far as the dispute mechanisms go, both under a possible free trade agreement and even under GATT, do you have particular concerns about those standards or laws or regulations being challenged as non-trade barriers but interfering with trade itself in a free and open and unfettered way? Is that something that your association has looked at?

Dr Fairbrother—If you look at the international chicken market, that is what is happening right now. We would be concerned about residues. The United States uses products in the production of chicken that we are not allowed to use in Australia—fluoroquinolone is one. A huge debate is going on at present around the world and in Australia about antibiotic resistance and cutting antibiotics completely out of the total animal production, which is ludicrous. Nevertheless, there is an area there, and that could easily come up as a non-tariff trade barrier in some people's minds. A prime example is Thailand trying to get into the EU. Someone found a residue of nitrofuran, and that whole trade stopped overnight. I think these sorts of issues can come up. As things progress that is, or could become a major issue.

CHAIR—I suppose if there is an Australia-Thai free trade agreement we will look forward to seeing you again, Dr Fairbrother.

Dr Fairbrother—I enjoy coming along but, as you probably know, Senator Cook, my story has not changed much over the last 10 years.

CHAIR—Indeed. The point you have registered with us is that you would not mind looking at the black letter of the final text before it is concluded.

Dr Fairbrother—Yes.

CHAIR—It may well be that is the view of the parliament as well. Thank you very much.

Proceedings suspended from 11.20 a.m. to 11.30 a.m.

MOHLE, Ms Beth, Project Officer, Queensland Nurses Union

SCHRADER, Dr Tracy, National Committee Member, Doctors Reform Society

TEMPLETON, Ms Terrie, Committee Member, WTO Watch Queensland and The Alliance to Expose GATS

CHAIR—I welcome the Queensland Nurses Union, the Doctors Reform Society, WTO Watch Queensland and the Alliance to Expose GATS to the hearing. We have submissions from the Queensland Nurses Union and from the Doctors Reform Society, and we thank you for that. I now invite you to address those submissions.

Ms Mohle—I am here today representing the Queensland Nurses Union Secretary, Gay Hawksworth. Thank you for the opportunity to address this important Senate inquiry into GATS and the US-Australia free trade agreement. I do not intend to revisit the QNU's written submission in any detail; rather, I would just like to highlight eight key issues of concern that we would like to give an overview on today.

Firstly, there is a fundamental problem with the complexity of the agenda that your inquiry is examining. The sheer volume of materials requiring consideration alone is overwhelming. The QNU believes that a key challenge for government is how to deal with this complexity and, more importantly, how the issues can be distilled so they can be appropriately considered by the community. The trade agenda is not on a human scale and yet it will have real consequences for our community.

Secondly, although there have been improvements in recent times in openness and transparency on the part of the Department of Foreign Affairs and Trade regarding GATS and the Australia-US free trade agreement negotiations, in our view there is still room for significant improvement. Again, the problem of the sheer volume and complexity of material remains a barrier to genuine community input into the debate. We have raised this issue on a number of occasions in consultations with DFAT and Commonwealth department of health.

The QNU is a member of the community based organisation called the Alliance to Expose GATS. The Doctors Reform Society and WTO Watch are also members of that organisation. We had a number of teleconferences with DFAT where we continued to raise that issue, and we agreed that we would give some consideration to how we can improve community input and consultation on this matter. We have provided in writing to DFAT, via the department of health, some suggestions in that regard. I would be happy to table a copy of that correspondence for the committee today. We did spend a considerable amount of time discussing it at a recent meeting because we think that that is a critical issue that must be addressed.

We are also concerned about the issue of proper scrutiny of trade agreements. We believe that, given the likely significant implications of entering into such agreements, close scrutiny by both houses of parliament is required prior to any agreement being entered into or further commitments being given under existing agreements.

Exploitation of power imbalances is fundamental to trade liberalisation negotiations. There will be winners and losers in negotiations both between and within countries. There are competing interests at stake—for example, the interests of a transnational pharmaceutical company are unlikely to be consistent with the interests of the Australian consumer. How are these competing interests to be reconciled?

Another point is the lack of a common framework or bottom line with respect to the maintenance of standards, such as labour rights, human rights and environmental standards. This is a key issue of concern for the QNU. In our view, the lack of an internationally agreed framework of underpinning principles for trade negotiations is a critical issue that must be addressed.

The QNU also remains extremely concerned that trade negotiations could threaten the ability of government to provide services to the community. Our concerns in this regard are heightened because of the current domestic agenda in health whereby universal access to health care is threatened by the increasing shift to a user pays system. We draw the committee's attention to a joint submission to the recent World Health Assembly by a number of peak health bodies titled 'The GATS threat to public health'. I can provide a copy of this document to the committee if you so desire. I think it provides a very useful and very brief—which is a good thing, given the volume of materials that I am sure you have to consider—summary of what the issues of concern are. The QNU agrees with the conclusion of this paper—that is, that no country should commit its health services to GATS.

The second last point that we would like to make is that the maintenance of standards with respect to the regulation of nursing is of particular concern, given that we have been advised that a number of countries are seeking relaxation of educational preparation standards for nurses through GATS negotiations. Although we have been verbally advised that Australia is unlikely to accede to these requests, we request that the Australian government give a firm public commitment that the current regulatory arrangements for nurses and other health professionals will not be compromised in a GATS or free trade agreement negotiation.

The last point that we would like to make is that the QNU remains concerned that the Pharmaceutical Benefits Scheme could be compromised through trade liberalisation, especially through a free trade agreement with the USA. Trade minister Vaile has recently given assurances that the government remains committed to the maintenance of the PBS. However, we want commitments that the PBS will not be retained in name only. It is essential that economic and clinical evaluation processes inherent in the PBS be maintained. The PBS has been extremely successful in containing pharmaceutical costs in Australia, and many experts agree that it represents worlds best practice in terms of economic and clinical evaluation processes.

A 2001 research report from the Productivity Commission entitled *International pharmaceutical price differences* attests to the comparative success of the PBS. This report paid particular attention to the stringent economic evaluations that must be undertaken and the price setting mechanism known as 'reference pricing'. The report concluded that these mechanisms significantly contribute to comparative containment of drug costs. Reference pricing is particularly important. It is a mechanism for the setting of reimbursement prices paid by government for a drug listed on the PBS. Defined therapeutically equivalent subgroups of drugs have the reimbursement price set at the price of the lowest drug in that subgroup. We believe that

it is this reference pricing arrangement, in particular, that the US pharmaceutical lobby seeks to abolish because it successfully keeps a cap on the prices paid for drugs in Australia. It is not enough for Minister Vaile to say that the PBS will not be abolished. The minister must give commitments that the current economic evaluation and price referencing methodologies will be retained.

Dr Schrader—Firstly, I would like to make some general comments on economic globalisation and free trade agreements and then I will make some comments more specifically in relation to health and implications for Australia's health care system from both the GATS and the proposed Australia-US free trade agreement. Most of what I will be saying will be found in more detail with references in the Doctors Reform Society's submission.

I will start briefly with the problems with the philosophical and economic principles behind the free market ideology, which appears to have been taken across board and presented as the only way for everyone—for all countries and for all situations—with little critical analysis, such as looking at differing impacts, differing local conditions and alternatives. It needs to be recognised that this economic agenda and the trade agreements are based on an ideology and not an unassailable economic truth. This free market economic globalisation is primarily concerned with the generation of wealth, not wealth distribution, equity, democratic principles or social and physical wellbeing. When measuring benefit by growth in GDP, these factors are not taken into account along with the costs of economic growth or the distribution of benefits.

Growing inequalities both between and within nations cannot be ignored. These inequalities result in poorer health outcomes. Inequality is a most powerful factor affecting population health. Free market may be beneficial in some markets, but not generally in so-called essential or public services such as health care where there are overriding issues of common good and public interest. Resources generated through economic growth do not automatically help the poor or disadvantaged. The free market does not deal with social justice, wealth distribution or inequities. Governments are supposed to act on behalf of citizens and be responsible for distributing and channelling resources—for instance, via public services such as health care.

Free trade agreements aim to facilitate international trade by private corporations by reducing so-called barriers to trade in services, which are largely domestic regulatory barriers. So this extends far beyond traditional trade matters to include how a government regulates within its borders. This results in limiting policy flexibility and a government's ability to regulate. It is undemocratic. Power is taken from national or local communities and given to international profit seeking businesses and international trade tribunals.

The affirmation of the right to regulate in the GATS preamble has only limited legal effect and does not exempt a government from conforming to their GATS commitments. Regulations are clearly listed among government measures restricted by the GATS. Governments retain their freedom to regulate only to the extent that the regulations they adopt are compatible with the GATS. These commitments become locked in. Reversal of commitments are practically impossible and exceptions have to be made at the time that the commitments are made. Future policies or whatever cannot be excluded at the time that the commitment is made.

This is clearly an erosion of democracy. It does not allow for change in policy with change of government or public opinion or to reverse policies where there are negative consequences or if

failed privatisation experiments come to notice. A problem here in Australia at the moment is that the increasing privatisation of health care, a push to a user pays system and the proposed changes to Medicare currently before the government may become impossible to reverse if there is a change of government or public opinion.

With health care delivery, protecting population health requires adequate funding for public health systems and universal coverage for individual health care. A comparatively high level of government involvement is required to ensure that health services are accessible, efficient and adequately funded. There is sound international evidence that universal health insurance schemes such as Medicare, with risk pooling across society in both funding and service delivery, provide the most effective and efficient health systems. As Beth mentioned earlier, the government funded Pharmaceutical Benefits Scheme, the PBS, has also been successful in this regard. It has kept prices down and enabled access to prescription medicines at affordable prices. Its success has been recognised internationally.

Public health care, the Pharmaceutical Benefits Scheme and mandatory universal health insurance schemes such as Medicare may be at odds with the market driven principles which underlie free trade agreements. Free trade agreements generally favour market-based as opposed to government administered structures in areas of obligations. Public health services, along with other public services, are not automatically exempt from the GATS. You would probably have read in our submission—and in other submissions as well—that there is obvious ambiguity in article 1.3(c) of the GATS, which defines government services that are exempt. Similar definitions of public services or services in government authority are found in other free trade agreements—for example, NAFTA and the proposed free trade agreement of the Americas.

In the GATS in the health area Australia has already committed to chiropody, podiatry, dental services and health insurance. This leaves Medicare vulnerable because there is uncertainty around the definition of 'public health insurance', and this can be open to interpretation. I think it is highly unlikely that Medicare is exempt under article 1.3(c) because 1.3(c) basically says that it has to be 'neither on a commercial basis, nor in competition with one or more service suppliers'—and this obviously does not apply. Or it could be as DFAT has suggested DFAT believes that Medicare is exempt because it is classified as 'part of a statutory system of social security' under the GATS annex on financial services 1.b(ii). I believe that public compulsory health insurance is more likely to be considered a public service rather than a social security. In potential disputes under WTO and GATS rules self-definition cannot be relied upon. Trade tribunals decide these matters.

Another area of concern is whether Medicare can be defined as a monopoly supplier, because a national compulsory health insurance is usually classified as a monopoly. Expansion of services from a monopoly supplier is difficult due to requirements to negotiate compensation in areas where there are already obligations. In Australia's case, because we already have obligations in dental services, if Medicare wanted to expand to cover dental services, there could be trade disputes in that area and in health insurance as well. Even if Medicare were excluded because it is a public health insurer, if it wanted to expand in areas of physiotherapy, occupational therapy and other areas covered at present under private health insurance, this could be impossible. The European community and Canada have stated that they will not be negotiating health care. Although in Australia's case there appears to be no specific offers at this stage in the specific health care area, DFAT have consistently said that everything will be on the

negotiating table, and there is no guarantee that in future negotiations down the track health care will not come up for negotiation.

On a free trade agreement with the United States, it is fairly obvious that public services will be a target for US industry interests. PhRMA—the Pharmaceutical Research and Manufacturers of America—are the United States drug industry group. They have been plugging hard at the US Congress hearings into the FTA held in Washington. Lobbyists from this group have said that Australian drug prices are too low and that companies are missing out from this. As Beth has said, it is not good enough to say that the PBS will be maintained. This means very little. We want it to be not touched at all—no commitments or compromises in this area. It must be able to achieve its goals and provide accessible, affordable pharmaceuticals for the Australian population in the most cost-effective way.

We can also look at experiences of Canada and Mexico with the United States in connection with the NAFTA, especially under chapter 11 on investment, expropriation and compensation where corporations can sue governments directly. The investor state dispute settlement procedures allow foreign companies to make claims for compensation, for nationalisation or expropriation of their services directly to the relevant national government. It includes a broad definition of expropriation, covering direct and indirect expropriation as well as measurements tantamount to expropriation. So their definition is very broad. There is also the enforceable requirement for compensation. This makes expansion of the public component of the health system extremely expensive and impractical when compulsory compensation matters have to be taken into account. It greatly diminishes policy flexibility, because expansion of public services is only possible with compensation. If Australia had been privy to such an agreement with such a provision and the accompanying investor state dispute settlement procedures at the time, Medibank or Medicare may never have come into existence.

A number of cases under NAFTA have been about environmental and health issues, and hardly any at all, if any, have been about expropriation of property or whatever. In the Canadian case, they have been on public policy issues. I will quickly go through a few of the DRS recommendations. One is that there be adequate protection of public services and provision for governments to determine issues of national concern. There should be clarity of definitions and exemption of public services and government authority that are not open to discretionary interpretation, such as article 1.3(c). There must be effective exceptions for health care systems to be incorporated into any treaties or trade agreements. There should be a self-defining exemption for health policies, similar to the national security exemptions under the GATT and the GATS. This should include all health related fields such as professional services, health insurance, electronic health services, research and development as well as health insurance under the financial sector.

The protection of Medicare and the Pharmaceutical Benefits Scheme must be paramount and any possible ramifications should be thoroughly investigated. Public health insurance needs to be explicitly shielded from any commitments on health insurance. Governments should be able to designate and maintain monopolies. Also, there should be a narrow definition of expropriation so that public expansion of Medicare or the PBS is not interpreted as an expropriation; and it should not include compulsory compensation. There should be no investor state dispute settlement procedures that allow investors to directly challenge public policy measures.

Provisions for the right to regulate should be explicit, and decisions on legitimate domestic political objectives should not be determined by trade tribunals.

Finally, the primacy of international human rights laws over international trade and investment treaties needs to be recognised. I have been talking mainly about health care but health goes across all sectors, as our previous speaker, Dr Fairbrother, was saying about quarantine issues and environmental protection. All these things have impacts on health of the nation, probably more so than the actual health care system.

CHAIR—Thank you. Ms Templeton, do you wish to speak at this point?

Ms Templeton—Yes, if I may.

CHAIR—Please proceed.

Ms Templeton—I represent two groups today: firstly, the Alliance to Expose GATS, of which the QNU and the DRS are also members; and also WTO Watch (Queensland), which is another grassroots community group. I will be addressing points made in my submission, which basically deals with the nuts and bolts of the actual agreement—although I hasten to say at this point that I am neither an international trade lawyer nor an academic; however I have read widely on the subject. I will touch very briefly on some of the concerns to civil society about the agreement itself.

First of all, I will address assessment. The agreement itself requires that a comprehensive assessment be carried out, particularly for the benefit of the developing countries. As Beth has said, this agreement is so complex and touches on such new territory that the developing countries really struggle to come to terms with it—and so, I believe, do some of the developed countries. Hardly a meeting goes past of the Council for Trade in Services where developing countries do not call for this assessment to take place, but the 'member driven' organisation has so far totally ignored those requests. We are unsure of the sort of assessment that has taken place at the national level within Australia, but we can say that the recommendations of the 2000 Joint Standing Committee on Treaties into Australia's relationship with the WTO have not to our knowledge been carried out. That inquiry recommended, among other things, that the government should commission multidisciplinary research to evaluate the socioeconomic impact of trade liberalisation in Australia since the WTO Uruguay Round. The second recommendation says that, in evaluating whether Australia should enter into any future WTO agreements, the government should assess the likely socioeconomic impacts on industry sectors and surrounding communities. The third one calls for the establishment of a specific joint standing committee to deal with trade agreements and their socioeconomic impacts.

As Tracy has said, one of the areas of great concern to civil society and NGOs, not just in Australia but around world, is the status of public services under the GATS. If you look at the national security exception in the agreement, you will see that it is crafted in such a watertight manner that countries are able to define for themselves what constitute their national security needs and they are able to take any measures they deem necessary to deal with those measures. One would imagine that, if the WTO were serious about protecting public services and allowing their exception from the agreement, it would have been possible to craft just such a watertight

agreement. But in fact what we have is something that the government of British Columbia believes in reality excludes very few public services.

In a lot of countries public hospitals operate alongside private hospitals, and it is the same with education and a lot of other sectors. The WTO itself says that in many countries the hospital sector is made up of government and privately owned entities, which both operate on a commercial basis and charge the patient or his insurance for the treatment provided. It seems unrealistic in such cases to argue for continued application of article 1.3 and to maintain that no competitive relationship exists. If a competitive relationship exists, then public services are not excluded from the GATS. If public services are not excluded, they are subject to the general obligations of the GATS, which are transparency, most favoured nation status and also possibly—and I will touch on this in a moment—a requirement that all legislation be not more burdensome than necessary. Potentially we have a system where all legislation, laws and conventions which govern the provision of public services have a requirement that they be least trade restrictive. I submit to the committee that 'least trade restrictive' regulation does not necessarily mean legislation that is in the public interest.

It should be remembered that whether a particular public service in a particular country is in fact subject to the GATS and not excluded under that government authority exclusion will ultimately be decided by a WTO dispute panel consisting of three trade bureaucrats. The government of Germany has recently recognised that. On 1 July this year, the German parliament passed a motion which said in part that the German Bundestag sees the need for clearly elucidating the definition of the term 'provision of basic public services' in the GATS negotiations in order to avoid quarrels and dispute settlement procedures at the WTO and to secure the provision of basic public services through government action. So I think we need to be very concerned about the status of public services under the GATS.

The GATS is somewhat unprecedented in that the rules have not yet been set in concrete. Commentators say that it is unprecedented in the history of international treaty making that binding commitments are being made by WTO members into a trade agreement whose rules are not even finalised. When the GATS was signed in 1995, it was regarded as a work in progress and working parties were set up to draw up rules on such important areas as domestic regulation, emergency safeguards, government procurement and subsidies. These working parties have been meeting regularly since 1995 and have so far not managed to draw up a system of rules in any of those areas; in fact, the working party on subsidies has not even managed to find a definition of 'subsidies' yet. However we can say that the WTO regards all government funding as a subsidy.

As far as domestic regulation goes, it is one of those areas where the rules are still under negotiation. This is an area that is of great concern to civil society. Governments across the world assure their constituents that GATS protects the right of governments to regulate, but they base their comments on the preamble to the GATS and the Doha ministerial statement, neither of which is binding in international law. The WTO says that governments are free in principle to pursue any national policy objectives provided that the measures are compatible with the GATS. To be compatible with the GATS, all regulations, laws, protocols and even unwritten conventions at all levels of government—federal, state and local—will have to be not more burdensome than necessary or perhaps least trade restrictive or perhaps pro-competitive, depending on what the working party finally agrees to. Perhaps all measures will have to be able

to pass a necessity test to ensure that they are least trade restrictive or least burdensome or pro-competitive or not more burdensome than necessary.

The EU has recently proposed that the rules on domestic regulation, which you will recall are not yet decided, should apply not just to those sectors which have been committed in countries' schedules but also horizontally across all service sectors. The GATS aims to establish general rules that discipline how governments develop and implement domestic regulations. It is hard to imagine how a top-down process of global rule making can respect local conditions and sensibilities that are so central to shaping responsible government. GATS one-size-fits-all rules could set uniform limits on how governments from Alaska to Zanzibar regulate, ignoring their cultural and ecological diversity as well as their right to choose their own protections.

The national treatment requirements of the GATS are draconian. As well as requiring that foreign service suppliers be treated no less favourably than domestic service suppliers, it actually protects future potential trade flows and future opportunities for competition. So it extends not just into the present but into the future. Market access provisions, which again apply to just those sectors which are scheduled, forbid limits on the number of service suppliers, the value of service transactions, the number of service operations, the number of natural persons and the participation of foreign capital, joint ventures and legal entities. It is the market access provisions that have given the GATS the name of the 'MAI in disguise' because the investment provisions are so extensive. The environmental protection under GATS is much weaker than that under the GATT and the history of the GATT, as far as the environment goes, is not unblemished—for example, there is no mention of measures to protect exhaustible natural resources. So the environment is an area of major concern.

In conclusion, a former director of the WTO has said that neither governments nor industries have yet appreciated the scope of these guarantees or the full value of existing commitments under GATS. However, some WTO members are coming to a realisation of these things. The EU, for example, forgot to schedule a most favoured notion exception and had to change its preferential arrangements with Caribbean banana producers. Canada also forgot to schedule an MFN exception for its car industry, and now 50,000 jobs are at risk. Zambia has realised that the commitments they made in construction and tourism preclude a number of policy opportunities for development, such as joint ventures and local content requirements, and is considering trying to reverse its commitments. The US has realised that, by committing the broad sector of sporting and recreational activities instead of using the UN product classification, it may have committed its public libraries. Kenya has realised that, by committing health insurance, a two-tier health system is developing and public provision of health care for the poor is being compromised. India has realised that, by committing tourism, many of its small tourism operators are being put out of business. That is just the beginning.

CHAIR—You indicated that you are going to table a document. Are you able to do that now?

Ms Mohle—Yes.

CHAIR—The Royal Australian Nursing Federation appeared before us in Canberra on Tuesday, and I think you are the Queensland branch of that organisation. Are you familiar with their submission to us as delivered to us on Tuesday?

Ms Mohle—No, I have not caught up with their submission on Tuesday.

CHAIR—If you were familiar with it and agreed with it I would be saved from asking you a lot of questions. But, if you were to disagree with it and hold a different point of view from the one put by them to us, I would be interested in that difference.

Ms Mohle—I would hope that we would be consistent in our views.

CHAIR—I think from what you have said and what I have read, there is an amazing degree of congruence between what your federal organisation has said and what you are putting to us. Dr Schrader, as far as the Doctors Reform Society is concerned, I think this is the first time that this organisation has appeared in this hearing and you are the first person therefore to have presented views on behalf of that society to us as we are constituted with these terms of reference. Without in any way ignoring the points made by Ms Mohle about the volume and complexity of information and implications involved in this, can I ask whether you have consulted with the Department of Foreign Affairs and Trade about your concerns; and, if you have, what has been their reaction?

Dr Schrader—Yes, I have as a representative of the Doctors Reform Society in community meetings and, as Beth said, I have been involved with phone hook-ups and teleconferences as well.

CHAIR—How do you evaluate that contact? Has it been adequate or inadequate?

Dr Schrader—On the community level it seems superficial at times. Some of these points are covered in the document you have just received; it goes into these in more detail. Sometimes notice of meetings is short, and not all community groups get invited. Often there is no feedback afterwards. But at least they have started listening.

Ms Mohle—There has been a distinct change in attitude I think with our last meeting. The first community consultation we had in Brisbane was with a number of groups. With the second one they had of that nature, some people did not get invited—all of the unions were left off the invitation list.

Dr Schrader—It was a smaller group.

Ms Mohle—The three of us have actually had a teleconference with DFAT people generally. That was a very lengthy teleconference, about two hours long, where there was a fair bit of tension. But I think they realised that we had legitimate concerns and really wanted to participate appropriately in this process. The second teleconference we had after that involved health representatives as well as DFAT ones. The tone seems to have changed significantly. The first teleconference said, 'This is secret; you cannot actually divulge that you have had this,' and we have kept in confidence the information that was discussed there. The second teleconference said, 'Please let it be known that we have consulted with you; we do want it to get out that we are talking and we are listening.' So there has been a change.

Dr Schrader—There has been an improvement.

CHAIR—Everyone on this committee speaks for themselves and no-one speaks for all of us until we all agree, and we have not conferred. What is in my mind in terms of our responsibilities to report back to the Senate is to look at the process by which we as a nation decide to conduct trade negotiations in whatever form, what the mandate for those negotiations is and how it is achieved—and that involves a consideration of priority of objectives as well—what our negotiating strategy may be and the process by which we then conclude a trade agreement. That is under the box of 'process', in my mind. There is a separate issue then about the content of that box: what the nature and quality are of those deals and how they serve the national interest. Sticking with the process part for the moment, in your discussions with DFAT are you in a position to say whether you feel that, when these negotiations come towards their conclusion and there is a consideration about what Australia signs off on and commits to, you will have an ability to comment further on the quality of the likely outcome?

Ms Mohle—I have no sense that that will be the case and certainly no commitment has been given in that regard. They are the sorts of issues that we want to have addressed, that it is not good enough that we have these ad hoc consultations that some people are involved in and some people are not. But there is no way that we can demonstrate that our opinions have been taken account of and have been responded to and that we will get an opportunity to provide final comment on something as important as a free trade agreement. We would certainly expect that that should be the case, given the potential implications of it.

CHAIR—Perhaps I can put it this way: it seems to me that a lot of what has been put represents an anxiety about what might happen, and it is for people to decide what they are concerned about for themselves. I do not question the legitimacy of their anxiety about particular things, but people are anxious to know the outcome. Clearly we are not in a position of knowing the outcome or likely outcome now. The bottom line, in my mind, is: when we have the shape of an outcome before us, how do we then respond to the implications of that? But thank you for those remarks.

I think I would be remiss if I did not say that the process under the Australian Constitution is clearly that the executive wing of government has the power to conclude an international treaty, and that involves commitments on trade as well as anything else. The process that the government have adopted—and to some extent this is set out in estimates hearings discussion on the Singapore free trade agreement—is that they get to a point of agreement, they announce the agreement and they refer that agreement to the joint treaties committee of the parliament. The committee examines it, reports and makes recommendations. In consideration of that process, the government then conclude and the country is then committed to the agreement that has been concluded. If there is legislation necessary to bring domestic law into conformity with the agreement, that legislation is then passed to the parliament and the parliament decides whether it enacts that legislation or not. In that process, the Senate, as the house of review, decides whether it supports that legislation. That process means that the deal is not completed until the legislation is passed. But you get to an awkward situation where, legitimately, a government can commit itself to a package and conceivably the legislature could dissent on the basis of consequential legislation.

This goes to the remarks and anxieties of Dr Schrader about Medicare. Medicare is obviously a major issue not only in domestic health in Australia but politically as well, and it is famously a matter of public debate right now, which I do not intend to get into a debate about. I know that

there are varying views about Medicare, but I happen to have very strong ones—as I am sure does the rest of this committee—and they are not at all inconsistent with the importance of Medicare and the PBS in terms of what you have raised. Ms Templeton, have you had consultations with the department?

Ms Templeton—Yes. I have been involved in all the consultations that have been held in Brisbane, going back before the Seattle ministerial.

CHAIR—Could you comment for us on how you evaluate the worth.

Ms Templeton—There certainly has been a change over the period; DFAT is probably listening. But I must say that I personally and others have come away with no real confidence that much notice will be taken of our views. We have no strong sense we are influencing policy in any way.

CHAIR—I note what has been said about the investor state clause and what has been said about that provision being not inconsistent with a lot of the argument made on that clause. I note for the record that in the Singapore free trade agreement, in a change of policy with a developed country, for the first time Australia has investor state clauses with I think at least 11—maybe it is 19—developing countries. However, we had not had them with a developed country until the Singapore free trade agreement. I note what has been said about the investor state clause, and I think that is a matter of considerable interest to the committee, but my question is on GATS, bearing in mind the point of view that has been put. Converse to that point of view, DFAT has argued—and it says this in its discussion paper—that services delivered by government in these areas are delivered for a range of social policy reasons that are unique. This means that the services differ from privately delivered services even in the same sector; therefore, it is argued, these types of government services will not be caught by GATS because they are not delivered 'in competition' with private service providers. Do you have any comment?

Dr Schrader—In my submission, in section 3.2 'Exclusions and exceptions' I talk about article 1.3 of GATS. As Terrie quoted as well, the actual words of the WTO are:

The hospital sector in many countries, however, is made up of government- and privately- owned entities which both operate on a commercial basis, charging the patient or his insurance for the treatment provided. Supplementary subsidies may be granted for social, regional and similar policy purposes.

This is the bit I would like to emphasise:

It seems unrealistic in such cases to argue for continued application of Article 1:3 and/or maintain that no competitive relationship exists between the two groups of suppliers or services.

It is not clear, and I do not think it can be relied on that 1.3 will protect. There are volumes of literature on this as well.

CHAIR—The WTO does not impose policy; it is a forum for governments and it requires the consent of each party to reach an agreement. In the GATS sector it requires governments to accept, come forward and cherry pick—that is, 'We will do this, or we won't do that.' It is a question of not so much the WTO but what the government decides to do. They are saying

here—and this is the comment that I have referred to—that, as far as social policy reasons are concerned, they will not proceed. Does that in any way mollify it for you?

Dr Schrader—There is top-down and bottom up. There are the general obligations that go across all sectors. Domestic regulation and most favoured nations are the top-down elements—the general obligations of the GATS. They apply to all sectors except for these ones that are so-called under government authority without competition and commercial presence or whatever. So there are aspects of the GATS that do go across all sectors, but then there are the specific obligations where the governments can choose the bottom-up aspects. But we already have dental services and health insurance, and the definition of health insurance is not clear-cut.

Senator NETTLE—Perhaps carrying on from the comment that Senator Cook made in relation to the WTO being a forum for governments to put forward their positions in relation to decision making, I think it is worth noting in that debate that there does also exist within the WTO a disputes mechanism that makes rulings that then need to be adhered to and precedents are set in that forum. So I think it is worth putting that balance into the equation. I have a question for Beth in relation to the PBS reference pricing, which is something that we talked about when we were in Canberra with the ANU National Centre for Epidemiology and Population Health. We talked about this particular issue and it being the focus of the pharmaceutical industries in the United States. I asked them, and I ask you: do you have any analysis that you have done or comments that you would like to make in relation to what the impact would be on prices of medicines for people under the PBS if the reference pricing scheme was to be targeted as the US pharmaceutical companies would like?

Ms Mohle—I mentioned the Productivity Commission research report that was done a few years ago—the analysis of the current situation with regards to pharmaceutical pricing across eight different OECD countries. You probably would have seen the research that the Australia Institute have done in relation to the Pharmaceutical Benefits Scheme. They make various predictions in that regard. I think their predictions range between increases of 90 per cent and 100 per cent, depending on whether you are concession card holder or a non-concession card holder.

The bottom line is that that is a very important mechanism—and Tracy might want to comment on this as a doctor—from a clinical perspective because they are therapeutically equivalent agents. Pharmaceutical companies quite often try to maintain the price that they charge for drugs by bringing in 'me too' pharmaceuticals, thereby artificially inflating the price of pharmaceuticals. Certainly it is the view of the Productivity Commission—and they are not known as being overly economically irrational on matters like this—that it is a very significant component of the PBS price referencing that has maintained and kept down drug prices in Australia. The only thing that I could refer to, which you probably already have seen, is the Australia Institute research, and I do have a copy if the committee would like it.

CHAIR—I think it is an exhibit.

Ms Mohle—That is the only research that has been done in that regard that I am aware of.

Senator NETTLE—The other comment that I want to make relates to the inclusion of core labour standards within a free trade agreement. This is something that has been raised with the

committee by a number of trade unions in particular. In evidence given to the committee by the ACTU, they commented on what they understood to be the US Department of Labor's view of how labour standards should be included within the free trade agreement, which was that neither government lessen their existing domestic laws in relation to labour standards. I know this view is quite different from that put forward by trade unions in terms of the sorts of labour standards they believe are appropriate to put into such a free trade agreement.

I think it is worth mentioning that, in the context of discussions about the inclusion of labour standards in free trade agreements, there are many disparate views in terms of how those labour standards should be include into the agreement. I do not have any further comments. I would just say thank you to all of your for your submissions. Many of the views that you have put to the committee today have been put to us in submissions by a range of different community groups over the last couple of days, so we have had some opportunity in the previous days to explore many of these issues with them. Once again, thank you for your submissions.

Senator RIDGEWAY—Ms Templeton, could you provide us with a copy of the submission that you presented today? I am not sure whether we have a copy of it and I am certainly interested in the anecdotal information that you have referred to, particularly in relation to British Columbia examples under NAFTA. As a follow-up to that—and this is a question to all of the witnesses—could you assist me in some of my thinking on the issue? We heard from proponents at hearings we held in Melbourne that they take the view that Australia, compared with the US and indeed many other countries, is already an open and liberalised society so, in a comparative context, a free trade agreement might not mean much at all.

In terms of dismantling, deregulating or privatising, which seem to be the issues that you focus on, I think Senator Cook has already made the point that most of these things will happen in the parliament with or without a free trade agreement. Do you agree with the view that has been expressed by some of the proponents that Australia is already an open and liberalised society compared with the US? We have heard here this morning from those involved in the chicken meat industry, the peanut industry and all the rest that the US is a protectionist society. Do you have a view about that in relation to what the Australian government proposes? Secondly, under NAFTA or other trade agreements that have been established, presumably there are consequences or outcomes that demonstrate what you have put forward in your various submissions. I am really interested in trying to find the evidence that says, 'This is what the disastrous consequence is going to be.'

Ms Templeton—You are quite right: Australia is a fairly open country compared with a lot of others. But I think the difference between voluntarily undertaking such things as privatisation and deregulation is quite different from undertakings those things under GATS, because GATS makes it much more difficult to reverse those policies should they fail or should there be a change of government to a different colour. Any commitments made under GATS are locked in for three years and to reverse them compensation has to be paid to other WTO members who may suffer loss as a result of those changes to commitments. So I think that is a very big difference. I think by locking these things into a trade agreement you are interfering with the normal ebb and flow of government. It may be the prevailing view that privatisation, deregulation and openness are wonderful things at the moment, but 20 years down the track it might be quite a different story. The GATS just locks it in and makes it much more difficult to have any sort of turnaround. I think that is of concern.

There are some dreadful stories coming out from NAFTA. For example, United Parcels Service in the United States is suing the Canadian government for millions and millions of dollars—I have forgotten the exact sum, but perhaps $160 million—because, they claim, that Canada Post, which is publicly owned, is levering its position as the deliverer of the standard letter to gain advantage in the competitive areas of its operation. So that is one nasty thing that is happening. That is a direct threat to the public ownership. Anyway, Canada has paid out a lot of compensation money.

There is another case involving the makers of a petrol additive called MBTE, which is made in Canada. The M component of that is a substance which is attracted to water and, from any petrol spills, it leeches its way into the groundwater and makes it not dangerous but very unpalatable, and it affects communities' drinking waters. California, which is the worst affected state, has tried to ban the M component of the MBTE, and it is working its way through the NAFTA system. The argument is that banning the MBTE is trade restrictive and, as all legislation under NAFTA has to be least trade restrictive, a least trade restrictive way of dealing with that problem would be for all the petrol stations to dig up their underground storage tanks and make sure they do not leak. So it can be taken to extremes.

CHAIR—There were also matters raised under the investor state provision, which Dr Schrader has referred to.

Ms Templeton—Yes.

Senator RIDGEWAY—Is the example you refer to in California an issue where the US national government is taking action or applying pressure on a state government, or are we talking about Canada and the US?

Ms Templeton—It is the Canadian government that is bringing the action.

Dr Schrader—But it was California that produced the legislation. So local government legislation and state government legislation all come under it, but it is the national government that gets the case brought against it.

Senator RIDGEWAY—You mentioned something in relation to British Columbia and the health care system.

Ms Templeton—The latest round of the GATS negotiation began in 2000. That was really when communities became aware of the implications of this agreement. The government of British Columbia has done research. It is documented in my submission. They have done extensive research and that has shown that, according to the definition, government services must be supplied neither on a competitive basis nor in competition. So, if those services are to be excluded, both those things must apply. In reality, looking at the sorts of ways services are supplied in modern economies, the number of services excluded is very small. I would be happy to provide you with that report. There is a web reference in my submission to where that can be viewed.

Senator RIDGEWAY—That would be great. Are you aware of any actual anecdotal examples of changes in the health care system in Canada, for example? I presumed that was what you were referring to in your opening statements.

Ms Templeton—The Canadians have a similar health care system to ours and they have made similar commitments to ours in that they have made commitments under financial and insurance services, and health insurance is included in that category. A number of countries have just woken up to that fact, including Kenya. They had not realised they had committed health insurance because of the way it was classified. A number of Canadian NGOs are quite convinced that they have committed their equivalent of Medicare under that commitment in health insurance, which means that they will no longer be able to extend their Medicare to cover other areas not presently covered.

Ms Mohle—On that point, the Canadians recently concluded a national independent commission of inquiry into the future of their health system. As part of that process, a number of very detailed information, discussion and research papers were produced. There were a couple in particular on the implications of GATS and free trade agreements on the Canadian health system. That analysis is really worth having a look at. There is a reference to that in our submission and in Tracy's as well, but it is really worth looking at. It is really quite a balanced analysis, with the pros and cons of trade liberalisation for health care and what needs to be done to make sure that the Canadian health system is protected. It would be very beneficial if such a detailed level of analysis were undertaken by our government for areas such as health before we go entering into any agreements.

Ms Templeton—The Canadians have had 15-odd years of living under NAFTA and so they are very active in the discussion and dissection of trade agreements. I think I have recommended in my submission that it would be very beneficial for the committee to contact some of these Canadian groups.

Dr Schrader—I have here, from the Canadian Centre for Policy Alternatives, a whole section on all the NAFTA cases to March 2003. It goes through the date that each case was filed, the complaining investor, the issue, the NAFTA article cited, the amount claimed and the status of the case at present, whether it has been through or it is still being negotiated or whether it has been withdrawn.

CHAIR—Would you mind tabling that for our records?

Dr Schrader—You can have this. It is also available on the Internet. In New Zealand—and I do not know all the details—they have had problems with failed privatisation of the railway or whatever and they are trying to renationalise it. That has given concern. There was also a promise in the elections about local content or whatever. Now they have been told that they cannot do that because of their GATS commitments. These are some local examples. There are lots of NAFTA ones. An interesting one is another Canadian one, with Philip Morris, the tobacco company. It is in my submission. They have had two claims against the Canadian government under these expropriation laws. One was for generic packaging of cigarettes—just a white packet or something or other. That did not actually go through, because the Canadian government decided that it was easier to just drop the idea of putting out this generic packaging. Then there was a more recent one, which has not actually gone through either, where it was suggested that

the words 'light' and 'mild' be removed from cigarette packets because they give a false impression that cigarettes are safer. Philip Morris said that that was an expropriation of their brand names under the NAFTA expropriations. I have a great quote here.

CHAIR—It is in your submission.

Dr Schrader—Yes. Philip Morris argued that, if the Canadian regulation were to go into effect, the company would deserve compensation, under NAFTA chapter 11, from Canadian taxpayers because it had invested millions developing brand identity and consumer loyalty. There have also been leaked documents from the European Commission about a request of developing nations to loosen up their tobacco distribution laws and alcohol distribution laws. So, as I was saying, it is not just the health system; these things in public health go across all sectors.

Ms Templeton—There is another thing—and I cannot express an expert opinion on this because I am not an expert—and that is, again, that the situation of public services is crucial, because our quarantine of course is a public service. Should it not be excluded from the GATS, it will be subject to the most favoured nation requirements. The EC bananas case was won under the most favoured nation clause.

CHAIR—Yes, but our quarantine laws are consistent with the WTO. At the end of the day it is what this country signs up to that is significant because, when we sign up to it, that commits us to it.

Ms Templeton—Not for the top-down ones.

Dr Schrader—No, the general obligations go across all sectors.

Ms Templeton—Yes, all sectors.

CHAIR—No.

Dr Schrader—Most favoured nation does.

CHAIR—No. We are a sovereign power.

Ms Templeton—So, under GATS?

Dr Schrader—No.

CHAIR—Absolutely not. The WTO does not impose on countries particular rules. By Australia becoming a member of the WTO, it accepts most favoured nation treatment—and so it should, by the way. But we then negotiate the removal of barriers through the WTO for our exports, while of course opening our own economy. On GATS—and this is the significance of this inquiry—with the way GATS is structured, we select what we commit to, and what we do not commit to we leave aside.

Dr Schrader—But that is for specific obligations, not for general obligations. General obligations go right across, and that is monopolies—

CHAIR—That is the general obligations if we are talking about the constitution of the WTO.

Dr Schrader—Monopolies, subsidies, most favoured nation, transparency—they are the ones in the general obligations and they go across all sectors, unless you are excluded in that 1.3.

Ms Templeton—Everything.

Dr Schrader—It is only for the specific obligations that you choose.

CHAIR—We can have this debate—

Dr Schrader—And it is the only international court that can actually bind.

CHAIR—It is not an international court.

Dr Schrader—No—it is the only international tribunal or whatever that actually can compel governments to their decisions.

CHAIR—It can compel governments to abide by the obligations that they have undertaken.

Dr Schrader—Yes.

CHAIR—That is why the obligations that governments undertake—

Dr Schrader—But, once you sign in, you have signed in to the general obligations.

CHAIR—We are debating what the facts are here. That is not the purpose of this inquiry and we are running so far behind it is not funny. Can I just say that the way in which it does work is that you accept the constitution of the WTO when you join it. Australia has joined it and has been part of it since its earliest formation as the GATT and now as the WTO since 1994—and that has not been a disputed argument publicly. You then negotiate agreements and, in the GATS area, you decide which elements of potential policy you accept. Your argument, I think—or one of the arguments put—is that governments change, so a government of a particular political complexion can bind future governments. That is a valid argument, I believe. But the key question here, in my view, is not to blame the organisation but to have accountability and responsibility by the government of the nation about the commitments and obligations it undertakes. I am sorry, Dr Schrader, I am not intending to cut you off. You may reserve your right to debate that at some future time, and you too, Ms Templeton. Senator Nettle did thank you all for appearing and I join in that sentiment, as I am sure Senator Ridgeway does. Thank you.

[12.38 p.m.]

EDWARDS, Mr Geoffrey Pearce (Private capacity)

SANDERS, Mr Richard David (Private capacity)

CHAIR—Welcome. We have your submissions and we have taken note of them. We invite you to address us briefly and then be available to answer questions.

Mr Edwards—Thank you. I am a PhD student in public policy and politics at Griffith University. You have my previous submission. Today I have tabled a few overheads. I would like to run through them very quickly and I will skip some of them. With your agreement, Chairman, I will follow up later—perhaps next week, after the hearing—with a more detailed paper for the staff's benefit, with academic footnotes and references.

My paper has three themes: firstly, that the free trade theory on which GATS and the FTA are based is faulty; secondly, that the model that the government is promoting is fatally flawed and is just ignoring the evidence of its failures; and, thirdly, that the material put to the committee by the Department of Foreign Affairs and Trade is quite incompetent analytically and has some flavour of contamination by cronyism.

Briefly, the theory of comparative advantage, which underpins free trade, rests upon two assumptions, neither of which is valid. The first is that employment is full, and of course we now know that most countries have surplus labour. The second one is that labour and capital are not mobile across international borders. Famously, some people in the government are trying to minimise the mobility of labour across international borders. I will not comment on that, but I will just comment that 97 per cent of world transfers of funds are not supported by tangible goods and services. So the assumption about immobility of capital is nonsense. With those two planks demolished, the foundations of the theoretical basis of the free trade theory are invalidated.

Secondly, I will give you some evidence. I have put a quote on page 3 of today's overheads, from the latest authoritative report from the office of the UNDP. It says that the only systematic relationship between countries' average tariff and non-tariff restrictions and growth is that countries seek to abolish these restrictions as they get richer, and the attempt is to gain trade advantage. Australia's infant economy found its feet behind tariff fences of a kind which we are now seeking to break down.

I will move very quickly to the question of efficiency, which is an ambiguous word. The transport of goods between countries can be regarded as efficient in an economic sense because the traders can make a profit out of it, exploiting differences of exchange rates and other factors. But in terms of the input of resources, it can be wastefully inefficient. I have a chart—I only have a couple of copies today—which shows the peak rate of production of oil. We are now in the age of peaking of oil. The most authoritative geological advice is that, by the year 2010, the rate of production will decline. So the question arises of whether, after that date, we will have enough energy to ship and fly basic goods around the world.

I will skip the fifth sheet and move quickly to the sixth. I would again like to draw attention to Canada's experience. This seems to be missing from DFAT's analysis. A great deal can be learned from Canada. I have quoted a couple of statements there from an authoritative academic work. I will skip page 6 and move quickly to pages 7 and 8, on which I have highlighted the 10 major impacts that this think tank identified from the NAFTA. I will skip through them very quickly. First, there has been a long period of painful restructuring. The increase in jobs from exports is more than outweighed by the loss of jobs through imports. Second, there has been a negative social adjustment, not entirely through trade but also through other aspects of the neoliberal agenda. Third, there are the investor state cases, which we have heard about, so I will move past that. Fourth, there are the protections for social services, which we also heard about this morning. Fifth, NAFTA has gutted the auto pact and established a domestic investment floor. Minimum content requirements have been eliminated. Sixth, the manufacturing productivity gap, which was supposed to narrow, has widened. Seventh, Canada has been losing out as a preferred location for investors, and most of the investment was in the form of takeovers anyway. Eighth, Canada has become more vulnerable to US trade sanctions, not less. Ninth, there has been no significant diversification of the industrial base. Tenth, there has been a weakening of internal trade and commercial linkages.

I will skip through the ninth page and move on to the role of the committee as a guardian of the public interest. I argue that DFAT has not served the role of providing professionally independent policy analysis, and I suggest that the committee has an opportunity to make up that deficiency. I will skip the first point because that has already been made in submissions. I move to DFAT's incapacity. There are two pieces of evidence which I will present. The first is that the material they have published on the Web really only presents one point of view. They have presented reports from two consultants. Another consultant, ACIL, has produced a report which refutes the claims of financial bonanza. I wrote to DFAT and asked, 'What policy analysis have you done to evaluate the ACIL claims compared with the ones you have published on your web site?' The FOI officer replied that there was no such document. The conclusion I drew was that there is no internal policy debate within DFAT about the claims that are being made in the public arena about their analysis.

The second point I make is that DFAT shows some signs of being under regulatory capture. DFAT commissioned the APEC Study Centre to run an analysis of the US free trade agreement. The study centre is chaired by Alan Oxley, who is also a director of a business group which has made a submission to this committee. I understand that, of the 30 or so members of that group, some 18 are international corporations. It is unethical of DFAT to commission advocacy material from only one side of the ideological divide. It is even worse to commission this material from a group which is a lobbyist, to not expose that and to present that as dispassionate strategic analysis. Another point I would make under this heading is that the latest book by DFAT in its series of economic reports by the Economic Analytical Unit is *Globalisation: Keeping the gains*. On the front page you will see that it is sponsored by BHP Billiton and ANZ. On at least nine occasions since April 2000, Australian Embassy staff in Jakarta have lobbied Indonesian parliamentarians and officials on behalf of BHP Billiton and other mining companies to undermine a ban on mining in protected forests in eastern Indonesia. I put it to you that DFAT's support for undermining Indonesian sovereignty on behalf of its corporate sponsor is reprehensible.

My conclusions are that Australia is siding with corporate power. These two agreements are about corporate power not the advantages of free trade, and they potentially side with US corporate capitalism against the interests of Australian producers and communities. There is clearly an intention by the government to align Australia with the US economy. I suggest that that is a strategically flawed policy. The US economy has passed its peak. The era of cheap oil is over and it is leaving the US locked into a high-energy, high-inequality, high-environmental impact and high-debt economic model, which is unsustainable. DFAT has fallen for regulatory capture under the influence of the corporate sector, which stands to gain most from these agreements, and its advice is polluted. I hold high hopes that the committee will be able to remedy that. I will skip the recommendations and point out that I have in an appendix outlined a few possible questions that the committee might like to put to DFAT in due course—in its own words, of course. There are some dot points on issues which appear to me, from an analytical perspective, to be deficient in the analysis that the public service has done on these two subjects.

Mr Sanders—The first thing I would like to raise is something Mr Edwards pointed out, and that is the theoretical poverty of this whole area of free trade. We are really in a position like that of Galileo or Copernicus when they were trying to convince people that the world was round, not flat. The theory that we—that a lot of the mainstream of academia—is adhering to is flat earth theory. We understand from the work of Kuhn and the insights of paradigmatic theory that there is a tendency to stay in the old story as long as you can and finally, when the evidence is too great, to move into a new paradigm. As Mr Edwards said, there is no sound theoretical basis to the free trade argument. All of the free trade arguments are ultimately grounded in the theory of comparative advantage, and comparative advantage simply does not exist in the modern world with mobile capital. All we have is the default position, which is absolute advantage. Absolute advantage means that if you are a strong economy you will do very well and if you are a weak economy, such as Australia—weak in the sense of being small—then you are not going to do very well at all.

While it is true that free trade, freeing up trade and trade liberalisation does increase GDP, we also have to look at what that means in terms of quality of life and where society is heading. GDP adds costs and benefits together, as you are probably well aware. When you do an analysis where you subtract costs from benefits of growth, all of the studies that I have seen for Western countries indicate that, somewhere around the seventies, the costs of economic growth exceeded the benefits. In other words, as the economy grows we actually end up being worse off, not better off. The benefits and the costs go to different people. There are benefits. There is a big mountain of benefits, and there is a slightly bigger mountain of costs. The benefits go to the wealthy—to the investors who own things—and the costs get shared amongst society. This is highly problematic. We have a situation at the moment where the 280-odd richest people in the world own as much wealth as the bottom 50 per cent of the world's population. This is the logic of what we are talking about. Free trade is a great thing if you are wealthy, but for ordinary people it is of no benefit at all.

I found it interesting that even Sir Leon Brittan's group, the Liberalisation of Trade in Services Group in the UK—which is sort of a who's who of the UK establishment—in one of their own minutes, when they were discussing the problems of the non-government organisations exposing the free trade arguments, said:

... the pro-GATS case was vulnerable when the NGOs asked for proof of where the economic benefits of liberalisation lay.

What we repeatedly see in all the documentation is assertion of benefit. But, when you look at studies that actually evaluate benefits and costs—there are a few studies now coming out of the World Bank and the United Nations—they indicate that these benefits are just not accruing, particularly in the developing countries.

We have to start waking up to the fact that this theory is a bit like the naked emperor—it does not hold that much substance. Ideologically it suits the powerful. If you study economic history, you see that economic theory is essentially the process of selective selection of the ideas of certain theorists that suit the point of view of the powerful. If you go through the mathematical logic of that theory, you will find it has absolute gaps where the logic just does not join up. In other words, the theory has had to be stitched together to make it work.

If we are serious about the welfare of Australia, then we have to think very seriously about the theoretical basis on which we make our decisions. In that regard, I am highly concerned by DFAT. I was invited as a non-government organisation representative to attend one of their policy training sessions for three days in Canberra last year. They are wonderful people. They all absolutely believe in what they do and what they believe, but they all believe the same thing. I presented various members there with documents that I had taken with me that I guess puts the lie to the mainstream view, and they were quite shocked to read some of this information and they were starting in their own minds to question things. This shocks me that these people are not even aware of the literature in the field in which they operate. By whatever process they are selected, there is some sort of ideological sieve or something that seems to ensure those departments end up with people who have a certain kind of mind-set and do not even think about what the other side of the story may be. This is extremely dangerous. The public service exists to serve and protect the public interest, and it cannot do that by taking just one side of the argument. It has to take a balanced view.

I was also very concerned about the way that DFAT quite openly uses what I would call propaganda. One particular session I attended was about the importance of trade. It was by the Trade Advocacy and Outreach Section. They were very concerned that the general public had not cottoned on to their way of seeing things and that they needed to educate the public to the correct view. They are now preparing curriculum material for school years 3 to 12, including the high school economics curriculum. I would see that as indoctrination. In answering questions, the presenter of this particular talk was talking of this big marketing push and of bringing the public along. I took some verbatim quotes while I was there. He said, 'It is ideological, political, and I am comfortable to acknowledge this.' He also said, 'We look for information that bolsters our own view.' I think the Senate needs to be aware that this attitude is within that department and that these people are not capable of giving balanced, open, fair and fearless advice.

The liberalisation of agriculture seems to be the rationale behind our free trade position. It is an irrational basis. The history of this goes back to the Hawke years, when a bunch of ag economists basically captured the ear of government at that time and said that this was a great idea. But we are all aware of the ecological damage that agriculture is wreaking on our continent. Our continent is dying, and the capacity for this continent to continue to produce the levels of agricultural production that it does at the moment is not there in the longer term. So it seems strange to me that we would even be pursuing a policy of trying to export more agricultural produce, particularly when you consider that only 2.67 per cent of our GDP comes from agriculture. I also find it interesting that Minister Vaile keeps putting around the notion that

70 per cent of what is produced agriculturally in this country is exported, when the figures as substantiated by the ABS are around the 30 per cent mark. This puts a completely different perspective on the whole issue.

I want to make a couple of points on the free trade agreement. The Centre for Independent Studies study that DFAT is relying on to substantiate its position says that the benefit to Australia from a free trade agreement with the US at best has a present net value of $9.9 billion over 20 years. If you do the calculations, that works out to $26.05 per person per year. That is the benefit that we will get out of this agreement at best—and, in their own words, it is probably more like $13. It will probably be about half of that, because we are not going to get open slather free trade.

So why are we doing it? What is the story? It seems irrational that we are going to put our Pharmaceutical Benefits Scheme at risk and we are going to lose control over Australian content in the media and all of the other things that these people are seeking. When we look at the agricultural dimension of it, Mr Zoellick has said that it is the intention of the United States government that American farmers will be able to export more agricultural produce into Australia. What is going to happen to our farmers, the ones who are left? Maybe this is the way of solving the ecological crisis. Perhaps that is the logic there. I do not know. But for our farmers to think that they are going to benefit from this is nonsense. There will be some small sectors that will, for sure.

The other point, which applies to all free trade, but it is US free trade where I became particularly and painfully aware of this, is the imbalance of investment. If the world or the US invests more in us than we invest in them, then the net flow of wealth is out. This is what is happening to this country every day—$30 million to $40 million goes out. Yet this country is quite capable of producing most of the things that we need. We do not need to put ourselves into a debt relationship with the rest of the world such that our economy is bled $30 million or $40 million every day.

So why are we pursuing this? I put it to you that it is basically because this is an agenda that suits corporate power. David Hartridge, former director of the WTO services division, said that without the enormous pressure generated by the American financial services sector, particularly companies like American Express and CityCorp, there would have been no services agreement and therefore perhaps no Uruguay Round and no WTO. I wrote an extensive article in the *Financial Review* a couple of years back where I documented the way in which this whole agenda is a corporate agenda. Corporations will do very well out of this, but why do we pander to them? Why do not we take into account the wellbeing of the people of Australia? The wellbeing of those of us who are not investors in any significant way will ultimately depend on the wealth that stays inside Australia. If it is all flowing out, if it is all owned somewhere else, then we will just be tenants in our own land.

CHAIR—Thank you both for your expressions of view.

Senator NETTLE—The view that both of you have expressed to us generally in relation to the independence or impartiality of the material that DFAT has commissioned has been expressed to the committee in the last couple of days. My question goes to the processes by which you believe consultations with community groups should have happened on these issues.

Also, correct me if I am wrong, but I have a sense that both of you believe in parliament having an increasing role in the decisions in relation to trade agreements. Senator Cook has pointed out many times that the current Constitution gives that power to the executive rather than to the parliament. Do you have any thoughts on those two issues—both how consultation should have occurred and the role for the parliament? I am happy to hear comments now or to take further material later.

Mr Sanders—I have been to a couple of DFAT consultations. At the first one I attended they basically did not want to listen at all and, whenever people put a different position to the big long presentation that they put, they argued against what the community people were saying. I do not think it was their role to be arguing their position. It was as if they were saying, 'You people really don't understand. This is the way it is.' That was the first one I attended. I attended another one earlier this year, and the attitude was quite strange. We were told, 'This is all very secret. You can't tell anybody about it,' which I thought was very strange. They said, 'Nothing that is said goes from this room.' It makes me wonder why they said that. Again, when people made points, there was a bit of refutation or putting the other side of the argument rather than listening. At the end, we asked whether any note would be taken of what we had submitted, and basically the response was no. It was not a direct no, but it was implicit in the answer.

Mr Edwards—I have a couple of points. In my dealings with DFAT they are invariably polite and most gracious. However, I have the impression that, if you start to get onto issues which are a bit complex or go against their preconceived ideas, there is a dead end. Either they do not reply to those letters or emails or they just do not accept it and that is the end of the discussion. There is a problem there. I notice that they have changed the composition of their advisory council. They had the Trade Policy Advisory Council and now they have the WTO Advisory Group with a different composition. Perhaps they realised that they had a problem.

However, I was tracking the submissions made to DFAT on the *Advancing the national interest* paper a year ago and have been tracking the submissions made to this committee. Confining my discussion to *Advancing the national interest*, it appears that absolutely no attention was paid to almost any of the submissions except those that favoured the preconceived ideas from *Advancing the national interest*. A very wide range of NGOs, community groups and semipublic agencies made submissions about social justice, environmental issues and human rights and almost none of that appeared in the eventual document. It defined Australia's national interest in just two terms—security and prosperity. It defined free trade and free financial flows as basically the pathway to prosperity, as though there are no other pathways to prosperity and no other interests such as human rights and environmental or social justice issues. I know I am getting off the track of this committee, but my experience over the *Advancing the national interest* case indicates to me that DFAT is unwilling to engage with the issues at a conceptual and evidentiary level.

On the role of this committee, my perception is that this committee is being asked by the nature of the submissions being put to it to do a task which ought to have been the role of the Public Service, which is to predigest the material, come up with strong policy analysis and maybe options, evaluate the options, evaluate people's submissions and come up with a conclusion, then the government makes its executive decision and then the Senate in its correct role reviews it, as the chair said earlier. That is not happening. That predigestion, evaluation and analysis is not happening. The government has jumped to endorse this free trade agreement even

before this committee started its deliberations and before the submissions closed. The government has committed itself, which has made DFAT powerless, which proves my point about their analytical inadequacy. That whole task of evaluating and analysing is tending to be pushed up to the role of the committee, and I believe that is unhealthy for the federation.

Senator RIDGEWAY—As a comment to respond to, you are no doubt both aware of the two reports that have been commissioned that say very different things about whether a free trade agreement with the US will provide any benefits to Australia and the debate that has gone on in the media talking about the variations in views put forward. Based on the views that you have expressed here today and what you regard as some of the conceptual flaws in how the whole process should have been dealt with, are you surprised that the reports themselves do not agree on what might be substantial benefits for Australia or otherwise?

Mr Edwards—My view is that, firstly, both of those reports adopt the neoliberal model and therefore in my view are still sitting on the unstable foundation of comparative advantage. Neither of them in my view is conceptually, theoretically or intellectually robust. Secondly, the differences are really in relation to the modelling. The modelling in both cases is based on general equilibrium modelling, which assumes that there is some ideal state in the economy which the market will head us towards—if only government would set the bounds of the market correctly, there would be this general idyllic state. I think that is invalid. Thirdly, that spat between them really does not matter much because we are only talking about, at the most, 0.3 or 0.4 per cent of GDP. If the government really wants to do something about GDP, the simplest thing to do is to put the unemployed to work immediately. Six per cent of our population is unemployed. If we assume half of them do not want to work, there is at least a three per cent gain in productivity immediately just from putting the unemployed to work. So there is a lack of cause and effect as to how we are going to get to prosperity. DFAT has jumped to the conclusion that trade is the way to go, but there are other pathways.

Mr Sanders—I am not surprised that they are coming to different conclusions and, like Mr Edwards, I disagree with the conclusions that they are both coming to, because I think they are based on false premises. Modelling is basically a process making your assumptions become a self-fulfilling prophecy—whatever assumptions you put in the front of it are what come out the other end. What is it really worth? You are just telling yourself what you already presumed you knew. So what is its worth? As the people in DFAT were basically saying in regard to what I was calling propaganda before, if they can come up with something that gives them the politically correct answer, the answer that sounds good and fits the flat earth model, then that is what we see. But I do not think we should put any weight on that kind of evidence. I do not think it is worth the paper it is written on to be quite frank.

Senator RIDGEWAY—So you are not surprised. Earlier in the week, I believe Professor Garnaut made the comment, without putting words into his mouth, that it was unusual that no assessment had been done by the Productivity Commission, which historically had done that for many years and in this particular case had not.

Mr Sanders—Yes, it is probably a bit unusual to not see the Productivity Commission engaged here.

Mr Edwards—The Productivity Commission is also likely to use a neoliberal model and to do modelling on the basis of general equilibrium theory. They are counting angels on the head of a pin, to use an inappropriate analogy. They are still both fictional representations of reality. They need to come back to evidence and start not from assumptions but from objectives. What do the government and the parliament wish to achieve with trade policy? Let us start from the objectives. The objectives would be things like prosperity, equality, environmental concerns and social justice. There would be a range of objectives which the government or the parliament would put in. How do we get there? What kinds of trade policies do we put in place to get there? Then you look at the evidence of what has happened internationally, and then you craft a trade policy according to the objectives that the government wants to meet. The whole idea of starting with the assumptions that trade will bring growth, that growth is good and that growth can continue forever and then exactly modelling the quantified benefits of those assumptions is an invalid way of crafting a genuine, robust trade policy.

CHAIR—I do not have any questions but, lest my lack of questions be regarded as a criticism, I will state for the record that I am an adherent of the view that, while you might fundamentally disagree with someone, you would fight to the death for their right to give their opinion. I thank you for your opinion, but I indicate that I fundamentally disagree with what you have put. I think the criticism of Ricardian economic theory is wrong. I think you are a bit too hard on DFAT. I am opposed to the politicisation of the Australian Public Service, and I think that is occurring. But DFAT is a functional department required to serve the needs of its minister and of the government. If there is a criticism of the work they do, criticise their task master who sets them the job that they have to perform. We could go on, but we are not a debating forum, we are an evidence taking forum. I thank you for your opinions.

Proceedings suspended from 1.18 p.m. to 2.05 p.m.

McDONALD, Professor Jan (Private capacity)

CHAIR—Welcome. We thank you for your submission. We extend an opportunity for you to address us on that submission and to be available, if you would, to take questions from the committee. Please proceed.

Prof. McDonald—I am speaking to you today in my personal professional capacity; I am not speaking on behalf of Griffith University Law School or the university itself. I am making this submission today not as an expert in GATS but as an environmental lawyer who for over a decade has researched and published on the relationship between the rules of the World Trade Organisation and trade liberalisation generally and its impact on environmental protection initiatives domestically and internationally.

My submission concerns the GATS and its relationship with and its impacts upon the environment. I am not talking today about the economic critique of the GATS and the liberalisation project that GATS is reflective of, although I recognise that there are legitimate concerns about the scale effects of trade liberalisation contributing to greater consumption and greater draw-down on natural resources. I am also not talking about some of the issues that have been raised in other submissions regarding the impact of GATS upon developing countries, nor am I talking about the impacts or potential impacts of GATS upon the retention of Australian cultural identity or economic identity in terms of buying Australian made. I want to make those provisos to start with just to make clear that my primary concern today is to highlight a couple of issues regarding the operation of the rules of GATS and the way in which they may potentially impede local, state and national environmental initiatives in relation to both the development of new environmental laws and the enforcement of existing environmental laws.

That means that my discussion is necessarily quite limited. I will focus primarily on the operation of article 6(4), which essentially is equivalent to the TBT agreement and the SPS agreements that are part of or parallel to the General Agreement on Tariffs and Trade in relation to trade in goods. Article 6(4) recognises that, regardless of MFN and national treatment commitments and market access commitments, once those sorts of commitments have been made by countries in relation to particular service sectors, those members should not use domestic regulations as another backdoor way of imposing discriminatory trade restrictions on trading partners in relation to services. It is a standard mechanism, and it is recognised in relation to trade in goods that the emergence of nontariff barriers to trade came in at the same time as tariff barriers to trade went down. So it is really trying to recognise that there are many ways to skin a cat and you can protect domestic industry overtly or covertly. That is all very well.

The concern is in relation to the way in which those measures may inadvertently curtail legitimate social and environmental regulation. That is my first point—that article 6(4) is currently being reconsidered in terms of the clarification of its operation: the way in which it should be implemented, particularly in particular service sectors. My recommendation is that the Australian government take very great care with the way it articulates the concept of whether a domestic regulation is more burdensome than necessary to achieve a legitimate policy objective.

The corollary of that is the absence in the GATS of appropriate exceptions for legitimate environmental protection mechanisms. I understand that you have received several submissions in relation to GATS containing an exception to measures that are necessary for the protection of human, animal or plant life or health but that it contains no equivalent to GATT article XX(g) in relation to the conservation of exhaustible natural resources. I am not suggesting that we can in any way hope to amend the GATS in relation to that absence, but it does bring home the importance of being very careful and very cautious from the outset about what service sectors Australia commits to. If in the future, as scientific evidence becomes clearer and environmental crises become more obvious, we do not have the power to introduce and implement new and appropriate environmental regulations and to justify them under this exception, essentially we will be stuck with a market that does not truly internalise the environmental costs.

We might also be in a very bizarre situation, to which I have alluded in an earlier inquiry into investment liberalisation, where foreign investors in a particular service sector might actually be in a stronger position than domestic service providers to seek compensation or to challenge domestic environmental regulations. That is obviously undesirable. So, although it might be preferable to have a GATS that includes an equivalent to GATT article XX(g) on conservation—and I do not see that as likely—it does mean that we should be extremely cautious about the sorts of areas that we open up.

There are some issues that I am happy to take questions on in relation to the operation of the TBT agreement, the SPS agreement and so on, and I also have brought with me a recent paper in relation to the way in which the TBT agreement in particular has interpreted its provisions regarding technical barriers to trade and the obligations to harmonise and minimise domestic regulations that are no more burdensome than necessary. But I would make one other important point about the way in which mode 3 in particular may affect environmental regulation. That relates to the simple reality that it is harder to actually enforce existing environmental laws in relation to foreign suppliers, even when they have a financial commercial presence in Australia.

We have had several incidents in the last few years involving either near misses or actual collisions on the Great Barrier Reef. At least one of those has involved a foreign owned ship where a fine was paid and essentially that was the end of the matter. There was no sense of moral opprobrium attached to the plea of guilty that went with that. It was a simple financial transaction. Much of our environmental enforcement regime depends upon the operation within the Australian society of those moral sanctions as well as the actual imposition of criminal or civil liability. So, wherever we are considering expanding into new service sectors our liberalisation commitments, we need to examine very clearly ahead of time the regulatory framework that those services operate under to ensure that the enforcement mechanisms that exist are adequate to constrain behaviour in relation to foreign as well as domestic actors.

Just to conclude that point, I want to make clear that from an environmental standpoint I do not oppose foreign service providers operating in Australia. There are plenty of Australian companies that flout Australian environmental standards and, if there are more conscientious, more thorough and more committed foreign service providers that can do the same job, from an environmental standpoint I do not mind. My concern is to make sure that, by committing ourselves under the GATS to new service liberalisations, we do not make it more difficult to alter and respond within our regulatory framework.

Senator NETTLE—I want to ask about a different environmental angle on the US-Australia free trade agreement, rather than GATS, and I do not know whether you have looked at this at all. The committee has received a late submission from an organisation called Trade Watch, which has not had the opportunity to appear before the committee. It involves people out of Melbourne University. That organisation has been trying to do some modelling of the environmental impacts on the agricultural sector as a possible outcome of the direction in which they perceive the US-Australia free trade agreement may be going. They are looking at issues around the sustainability of various agricultural practices that exist in Australia and how they may be impacted on by changes to agriculture out of the free trade agreement. They are also looking at land use patterns in Australia. Do you have any comments to make on that? Not having seen their submission, you may not. Perhaps you might be interested in looking at that submission and making a subsequent communication to the committee. I notice that your submission focuses on issues of environmental regulation in relation to international law, and I wonder whether you have looked, in an environmental sense, at some of the other issues around free trade agreements in terms of modelling and implications on agricultural practices in Australia.

Prof. McDonald—I am not an economist, so I have not done any modelling. The issue you raise can be addressed from a couple of different angles. It is certainly true to say that, because of the heavy subsidisation in financial terms of US agriculture, even in the current context it is harder for Australian agricultural industry to introduce or to observe higher environmental standards—that is, to internalise more environmental costs: to pay more for water, to use fewer pesticides and to move to some other form of more sustainable agriculture. So the removal of high levels of subsidisation to US agriculture may actually assist Australian producers in their move towards more sustainable practices. But that is only likely to happen if, simultaneously with the introduction of those bilateral liberalisation initiatives, Australian industry is actually encouraged to do that rather than simply take a higher profit. It may be that, while there are some gains on one side, the pressures associated with more intense liberalisation make that more difficult.

Senator NETTLE—I think the point you make about the removal of subsidies being a potential opportunity to look at sustainable agricultural practices is very true. The point I put back to you is that part of the discussion we have been having throughout the committee hearing process has been around the implications of bilateral trade negotiations as opposed to multilateral negotiations. Given that the US-Australia free trade agreement explicitly does not incorporate looking at issues of payment of domestic subsidies to agriculture in the United States, there no capacity to even look for that opportunity in terms of changes to agricultural practices within the bilateral agreement, whereas throughout the WTO negotiations there is potentially more opportunity to be involved.

Prof. McDonald—I have not looked at the detail of the FTA at all. That observation was a broader comment about global agriculture. I am happy to have a look at the other aspects of the Trade Watch submission and provide you with a written response. That is probably the safest thing for me to do.

Senator NETTLE—It would be useful if you would do that. You also commented in your oral submission on article XX(g) of GATT, which relates to the conservation of natural resources, that you did not necessarily think it was likely that there was a capacity to incorporate

such a commitment into GATS. Many submissions to the committee throughout this process have looked at models for changing the GATS negotiations in the WTO on a range of issues relating to transparency and public services. Some have been about including environmental and labour standards in trade negotiation agreements. Many people have indicated that they would like to see that be the case. Given that organisations have expressed a view to the committee about including environmental standards within GATS, do you see a mechanism such as article XX(g) within GATT as being a way to address some of the concerns that those organisations have raised? Are there other mechanisms that you think would be more expansive or more fulsome in addressing some of those environmental standards within international trade agreements?

Prof. McDonald—There are a few different ways of approaching that question. The reason I said I do not think there will be any amendment to GATS is simply observation of the 'real politik' of international trade negotiations, however much I think that GATS could benefit from the insertion of a paragraph (g) clause. A clause or provision of that kind, provided that the measure is applied in a manner that does not constitute arbitrary or disguised discrimination or a disguised trade barrier—disagreement does not prevent measures relating to the conservation of exhaustible natural resources—has been interpreted in an increasingly liberal way by the WTO appellate body. It is increasingly recognising the balance that is involved when a member seeks to invoke paragraph (g). In recent years the appellate body has actually upheld a unilaterally imposed complete trade ban by the United States on imports of wild shrimp from areas that have not been able to certify the use of turtle excluder devices, for example. That has been an incredible evolution in the environmental sensitivity of appellate body jurisprudence in a very short period of time.

I have far more confidence than other critics of the WTO regime that the appellate body is doing all it can, within the legal framework that it is obliged to observe, to allay many of the concerns and the criticisms that have been made of the WTO's insensitivity to environmental concerns. I certainly cannot speak for labour standards, because I actually think that labour standards raise a completely different set of issues—whether they are transboundary, whether they affect as many people and those sorts of issues. I think it would be great if we could get a paragraph (g) in there, but I do not expect that to happen.

In its absence, what needs to happen within the architecture of the existing GATS framework is that, whenever we agree to open up new sectors, it has to be made explicit—it cannot be implied; it has to be explicit—that this is done within an evolving and non-static regulatory environment within Australia. If that is done, it should be possible then to recognise and respond to new environmental challenges as and when they arise. The structure of GATS is such that there are not really very many blanket undertakings; the primary one really is in relation to MFN treatment and transparency—and they are not going to raise really significant environmental issues. It would still be permissible, for example, to discriminate in a tender process between one supplier with a good environmental track record and one with a bad environmental track record, provided you built that into your tender documents to start with. So I do not think that is a problem.

To me, the issue there is for Australia to make sure that its new undertakings are absolutely explicit about reserving Australia's right to introduce and enforce new environmental laws—including restrictions on resource exploitation, should the need arise in the future—without that

giving rise to any right to compensation within the global trade context. It may be that governments decide it is appropriate to award compensation in some circumstances, but that should be done on an entirely domestic, national basis.

The final comment I would make there is in relation to other mechanisms that might be used. Within the job of work that is being foreshadowed by article VI.4, there is still the possibility to use that mechanism to introduce environmental standards at the international level. I am really referring there to the potential of organisations like ISO, the FAO, Codex Alimentarius and other standard-setting bodies that guide the international harmonisation project under the TBT and SPS agreements to set appropriate environmental standards. I do not think we should have environmental standards as such in the GATS, because they will then be set in stone, they can never change and they will be narrowly interpreted. What we should have is the provision for environmental exceptions or, when you are determining whether domestic regulatory regimes are reasonably necessary for the social purpose you are trying to achieve—in other words, meeting the requirements of article VI.4—if a move starts to be made towards an international harmonisation regime, the possibility of using the bodies that might emerge to do that to advance the environmental and social objectives we are trying to achieve. I suppose I am really saying there that I see that as the art of the possible.

Senator NETTLE—I have one more question, and you may have already answered this in your response to the last question. The comment that you made in relation to foreign corporations and their ability to enforce varying degrees of environmental standards is an argument that I have heard before and have some support for. What is the best mechanism for ensuring that corporations, no matter where they are operating, meet perceived environmental standards? When you gave the example to us, it seemed to relate to domestic environmental standards of wherever the corporation was coming from. What mechanism do you believe is best? Do you believe that an international environmental standard perhaps more in line with what you have just described is the best way to go forward? What do you think is the best model for ensuring that they meet those standards?

Prof. McDonald—There are very few situations where a single international environmental standard is appropriate in relation to service providers in a particular country. I say that as a general starting point. But with the idea of having international standards you are going to end up with such a generalised set of principles that they will have to be made relevant to a local context in any event.

There are two parts to the issue of enforcement. One relates to the obligations that we as a nation might feel we owe to our trading partners when Australian companies that are service providers operate within their territory. The obvious example is BHP in relation to Ok Tedi. The other is the concerns that we might have about the difficulties of enforcing Australian environmental standards on foreigners operating within Australia. So we should have some mechanisms in place, outside of the GATS framework, by which the residents of other countries into which our companies operate can have some means of accessing Australian courts and Australian dispute settlement mechanisms to resolve concerns about environmental damage in their country.

I know that that proposal was rejected by the Joint Standing Committee on Treaties when some of these issues were raised by Senator Vicky Bourne in relation to the imposition of

liability on multinational corporations, but that was part of a broader package that was rejected in toto. There are still some very good reasons why, as a procedural issue, we should allow for the use of our legal frameworks for public interest groups or individuals in countries that simply do not have the same luxury of the rule of law that we have in Australia.

In relation to Australian environmental standards, there is a range of ways in which we could improve the enforcement regime here to make sure that we catch everyone, whether it is Australian companies or foreign service providers in Australia. One of the most underused mechanisms in Australia is the requirement of the lodgment of a bond or some other appropriate security instrument when potentially difficult or environmentally sensitive activities are being undertaken. To date, that has not involved the sums of money that would give the service provider a stake in ensuring compliance. To me, one of the most important requirements is the lodgment of some sort of financial security. But another obvious way in which that could be done is by requiring executive officers of the company to actually reside in Australia so that particularly the threat of corporate officer liability can be made more real.

Senator NETTLE—The final proposal that you put up in relation to company directors residing within Australia raises one of the other issues being flagged in these negotiations, particularly with the United States, around the role of the Financial Investment Review Board and a range of other financial mechanisms put in place to bring in some of that sort of accountability in terms of directors' residences. If you perceive that as one of the mechanisms by which we can ensure environmental standards in this instance and if that is potentially under threat through the changes being proposed by the United States in relation to the free trade agreement around the Foreign Investment Review Board—but it is more broad than that—then potentially is there a danger of taking away one of those possible standards to be used for improving environmental regulation? I know you said that you have not looked into the free trade agreement and so it is difficult to answer that question.

Prof. McDonald—In relation to its environmental oversight activities, the Foreign Investment Review Board has not exactly excelled itself. We would have to substantially revamp the role and operation of the FIRB before that would be the mechanism to achieve some of these things.

It may be that many of these things could be addressed by simply undertaking an appropriate sustainability impact assessment on a sector-specific basis. Each time we think about opening up a new sector we could say, 'Okay, what are the regulations, what are the requirements that affect the sector?' Let us do a worst case scenario. For example, suppose Australia is offered an expansion in relation to mining exploration and drilling; that is part of the new offer that Australia has put on the table. Let us do a scenario. Let us say that we allow in a company to undertake that exploration and drilling activity; we set a whole range of environmental conditions on the way in which they conduct that drilling, and they flout them all. So what are our mechanisms for enforcing those environmental conditions? Let us have a look at the mineral exploration legislation and what enforcement regime it actually sets up. Is that going to be meaningful if the company has simply come in and appointed Australian contractors to essentially do the job while it takes the contract? I am suggesting that we need to do some sector-specific modelling of worst case scenarios from an environmental perspective to follow through on the way in which our existing environmental regulatory regime would actually enforce non-compliance against a mode 3 operator.

Senator NETTLE—I suppose that, behind those assumptions in terms of the model you talk about, we need to ensure that no international trade agreements take away our capacity to have in place that environmental regulation that we can use.

Prof. McDonald—That was my starting point: we already have environmental regulations in place and, by international standards, they are pretty good. They might not be enforced as well as we would like, but the standards themselves are generally of quite a high standard. So we need to make sure that (a) they can be enforced in their existing condition and (b) that in the future we still preserve the right to upgrade those requirements should the need arise.

CHAIR—That last point is the point of your submission, isn't it? That is the nub of it?

Prof. McDonald—Yes.

CHAIR—You have raised an interesting question. We can put it in this context. We have the International Labour Organisation set up after the end of the First World War as an employer, government and workers' body to debate internally at international level what labour standards should be. When they resolve a debate and articulate the outcome, then those conventions are recommended, but it is up to the individual countries as an exercise of their sovereign power to choose to adopt them or not—and Australia has adopted a huge number and the US has adopted three. In terms of labour standards, there is, if you like, an international regulatory framework that enables the debate of the stakeholders, the formation of basic principles, and then the sovereign right of nations to decide how they embrace those principles. Latterly we have core labour standards—it started out as seven and I think it is now 13—which are regarded as the essence of what the argument is all about, and they are being recommended for inclusion.

There are other areas where there are international standards, but in the environment there is no international agency through which there is a process that sets international environmental standards. There are developments like the Earth Summit and the Kyoto protocol, which equally invite countries to sign on to them, but there is no constancy of international environmental standards—and I would argue that, justifiably, there is not. I say that because, firstly, if you had them, they would be lowest common denominator standards—which would not suit a number of countries, including Australia; secondly, this is an area of evolving debate and, with better knowledge, greater science and more experience, we become better informed as to what level those standards should be pitched at. So it is more of an ongoing thing than the establishment of basic principles governing labour, for example. So far so good.

The WTO is a continuance of the GATS set up at Bretton Woods after World War II to find a way of ending trade disputes that cause world wars and to create a basis for international prosperity by opening up the global economy for development. People might argue about whether that is a good or bad thing, whether Bretton Woods got it right or whether the spirit of Bretton Woods lives in the modern day. All those are fields for debate, but that was the basic context of it. So the WTO focuses on trade and on the removal of artificial barriers to trade.

I think the point you made about the dispute settlement procedures and jurisprudence on environmental issues is right. The trans-Atlantic neurosis—that Europe wants a more regulatory approach and is aggressive in pushing that, while the United States wants a less regulatory approach and is aggressive in pushing that—is being played out here. In the WTO, that means

over time a moderation of the attitude that was taken earlier about a narrow trade reading and a more sympathetic view to a consideration of what the environmental impacts might be. I think that is evolving.

I am sorry about this introduction, but I am coming to the point; I think there is a very thorny point right at the core of this. The World Trade Organisation, which was formed in 1994, itself accepted environment as an issue in its constitution. It did not accept labour standards, although at the Singapore summit in 1997 for the first time it adopted words—but they are not constitutionally binding words; they are words for debate on labour standards. Maybe at the broad level it is best left for sovereign nations to decide what they do in their negotiations on trade matters to protect their right to set environmental standards backed by the evolution of trade law, in the context of the jurisprudence of the dispute settling committee. That might be a conservative response to what you are saying. But it seems to me that you are putting up a big flag and saying that in the GATS negotiations the principal concern should be that sovereign governments carve out of GATS a qualification that, irrespective of how the rest of their commitments under GATS work, they reserve the right to set their own environmental standards.

I think the trade response to that would be that we can comprehend and understand that. However, not everyone is an honest player in this field, and sometimes idealistic views and approaches are manipulated by nefarious people to create an unjust, unfair or inappropriate outcome. Environmental standards might be manipulated as trade barriers and therefore not deliver any net advantage to the environment but deliver a negative to economic development. I do not see any way of resolving that argument other than through a robust democracy, alert and forceful about what its environmental attitudes might be—in our context, that would mean a national debate about this—and a strengthening of jurisprudence in the WTO. But it seems to me that your next step—and I am really just trying to comprehend your submission—is to say, 'However, there ought to be a specific provision in the GATS arrangements themselves embedded in the GATS protocol in Geneva for all nations, not just Australia, to have the right of an environmental carve-out.' Is that the nub of what you are saying?

Prof. McDonald—I suppose that would be at the top of my wish list, but I have not actually made that submission because I do not think it is going to happen—and I do not see that there is a problem with that.

CHAIR—In public life, there are a lot of things I say and do which I do not think will bear fruit but I think they need to be said or done in order to set a direction, a vision or an approach. So you are perfectly free to set your own direction or vision—whether it will be picked up today or next century is another matter. So feel free to put that. But you are actually not putting that view. You are putting a more pragmatic—if I might use that term in its right sense—view; that is, this is not going to happen, so how do we make the best of what we have in order to get the maximum outcome? So can you reiterate for me what exactly you are asking us to support?

Prof. McDonald—I am talking about new undertakings that Australia offers in this and future rounds of negotiation under GATS in relation to market access and national treatment. When you look at the list of undertakings, there are no restrictions now. There is nothing there; it just says 'none, none, none, none' and then 'subject to horizontal agreements' in relation to mode 4. That bothers me because it is essentially saying that we have removed any form of volume or value based restrictions on foreign investment in relation to market access and there are no other

restrictions. When you read that in conjunction with article IV.4, you see that there is a great potential for any sort of new environmental requirement to be regarded as an unnecessary barrier to further trade and further access. I guess what I am proposing is that we be a little bit more circumspect in the way in which we design those undertakings.

I will make one observation, Mr Chairman, in relation to something you have just said. I am essentially looking at mode 3, which relates to investment. When a service provider investor comes in, it is certainly true that they come in accepting what we already have, but there is the potential under article VI.4 for these new negotiations within the Council for Trade in Services, where they are talking about developing disciplines that provide guidance on whether or not domestic regulations constitute an unnecessary barrier to trade. If those disciplines are developed in relation to a particular area and the GATS continues to impose obligations on member states, those disciplines essentially become absorbed into the obligations that are now imposed upon that state. We have seen this most recently in the sardines dispute under the TBT agreement. There is a real concern that the development of disciplines that supposedly clarify what domestic regulations can constitute an unnecessary barrier to trade could actually impose an obligation on local, state and federal government in Australia to retrospectively revisit environmental standards and take them down.

CHAIR—The trouble I have with that argument, if I may put it back to you, is that GATS does not impose; nations decide to embrace. That is a very important differentiation. That is why my emphasis is on robust democracy and a clear understanding of what it is that we are buying into when we embrace and the process by which we make those decisions. But it sits there as a regime in which we cherry pick what we want to accept. I take it that the other example that you used about the Barrier Reef is hypothetical.

Prof. McDonald—The Malaysian tanker that ran aground a couple of years ago resulted in a fairly substantial spread of antifouling substances on the reef that caused a localised kill of both the coral and fish species. It resulted in a plea of guilty by the Malaysian company. There was not even a momentary hand-wringing on the steps of the Cairns court house and they continued as usual.

CHAIR—But is that a criticism of our domestic law regulating navigation in and around the reef and the way in which we enforce our domestic law, or is that a criticism of a foreign flag vessel that went off course?

Prof. McDonald—It is actually neither, with respect. It is a note of warning that our domestic laws and their enforcement may have very different effects on a foreign service provider than on a national service provider. I draw here upon substantial literature from criminology in relation to the effects of various forms of penalties and sanctions that points to the fact that, when it comes to corporate crime—and we are talking here essentially of a form of white-collar crime—the public shaming capacity is one of the most significant tools in the armoury of environmental enforcement. When you have someone who is not resident in Australia and does not have to do business in Australia on an ongoing basis, that shaming potential is greatly reduced. So my point was actually that we need to make sure that, when we go in and, as you say, embrace new service sectors, we need to quickly trace through the regulatory structure and make sure that we have appropriate enforcement mechanisms in place to address the peculiarities or the potential peculiarities of a foreign service provider operating within that regulatory regime.

CHAIR—For the sake of this discussion, I take our regulatory regime to be what the regulations say, how well they are implemented and what the enforcement backup of those is in the event of default. That is then what the regulations are; it is not only a matter of what the law says. That is how I see them anyway. At the end of the day, they are as good as they are enforced. A foreign company operating in Australia is registered under Australian law, has an entity which is suable at law and is able to be fined or penalised in the event of default, just the same as any other company. Its directors may be offshore and, if the intent is to personally hold responsible those directors, they are at arm's length with regard to damage done by virtue of a successful fine or limitation of operation imposed by an Australian court, but they are not personally damaged—they are damaged in the corporate sense. Are you suggesting that the situation is defective because we cannot get at the directors who might be overseas and therefore there has to be some greater encouragement to have Australian directors or Australian suable entities who are liable personally? Is that the point?

Prof. McDonald—It is certainly one of the issues that I am pointing to. The evidence is that the fear of personal liability—

CHAIR—Concentrates the mind.

Prof. McDonald—Indeed. There are other mechanisms though that might also be useful, and I gave the example of having a bond or some sort of financial security. Whilst it is true that the entity may be registered in Australia, that might be the extent of their assets and the rest of their structure in Australia; and, if you do not have the human beings either, the imposition of a fine, whether it is in the nature of a civil penalty or a criminal penalty, is frankly pretty pointless. I do have a couple of extra documents if you would like them.

CHAIR—By all means.

Prof. McDonald—One is a very modest amendment to my submission to address some typographical errors and the other is a recent paper presented to the Attorney-General's trade conference last year regarding the operation of the technical barriers to trade agreement.

CHAIR—Thank you.

[2.56 p.m.]

McGOVERN, Dr Mark Francis, Lecturer, School of International Business, Queensland University of Technology

CHAIR—Welcome. I invite you to speak to the submission you have lodged with us.

Dr McGovern—My original group submission was fairly brief. Today I would like to present an augmentation to that and some supporting materials. Would you like me to provide these now?

CHAIR—Yes, please.

Dr McGovern—I am approaching this in a couple of ways. I think the process you have been through as a Senate committee is a very important one, and I compliment this committee on its initiative in investigating this area, which I think is pretty important. From the schedule, as far as I can see, I am the last of many speakers you have had. At this point I will try and raise a number of issues both to put things in context and to point out the basis of my submission, which is fairly critical in that it says we are not where we could be.

The overall position I will adopt is that, in the whole area of trade liberalisation, for a number of reasons, we have not achieved what we might have and there are a whole lot of uncertainties we need to deal with pretty carefully if we want to achieve what is possible. The original submission is on the first of these pages and has seven key points. I will speak briefly to each of these points.

The economic impacts of trade liberalisation are being consistently overstated and environmental and regional impacts in particular are being understated. There is an imbalance in the way we have reported on trade liberalisation and understood it. The second point is that impacts in general have received inadequate consideration, and there are reasons for this which are embedded in the way we have used economic theory and have approached our models. The third point is that we are not really considering the contribution to national goals from trade in an adequate way. I suggest—and I detail this in the supporting material—that some of the official Commonwealth documentation provides evidence of confusion and misrepresentation. I think there are some issues here in terms of the way the whole trade story is being discussed.

The fourth point is that in the lead-up to both the Doha Round and the US bilateral trade negotiations we seemed to be inadequately informed in our thinking as to some of the facts regarding the possible impacts of positive changes and the potential gains from trade reforms. I then draw attention to the case particularly of agriculture where, as I will demonstrate, there is wide spread confusion as to the actual trade situation and also some apparent misrepresentation, which is reasonably systematic, about the agricultural trade situation—and I will expand on that as you wish.

From those specific points, it seems that the whole argument underlying the way trade negotiation is currently carried out premised on the attainment of access is strategically

misconstrued. When we first started the trade liberalisation discussions as a nation 50 years ago, access was important because we had relative undersupply in the world. Today the strategic environment and the corporate environment have changed, and we do not seem to have taken this into account. I think there are issues there that need to be seriously discussed.

That leads me to my general conclusion that Australia is currently poorly placed to achieve what potentials there are in current trade negotiations, particularly in considering the development and influences of trade on us, the realistic prospects from the US FTA and the realisable prospects from extending GATS and Doha. I suppose I have set up a fairly comprehensive criticism of the whole process, and I would like to work through that. That is my basic overall submission. I will just point to the way I have structured the submission and then I will answer questions.

My initial point is that basically we need to be more adequately informed in what we are doing; for a number of reasons—conceptual, theoretical—we have not been. My second point is that my own position is informed from a number of areas, particularly from things like economic theory with some practical experience. There are a number of areas there which I am happy to elaborate on. I also make the point that I consider this to be a very important forum. There is a great opportunity here for the Senate to exercise a constructive leadership role, and I wish you well in your endeavours. I am happy to discuss things further as you wish.

With the particular findings I have made on the second page of my detailed points, I have paraphrased your terms of reference and looked at them as three things: consideration of impacts of various sorts, alternative potential trade regimes, and having particular regard to Australia's goals, strategies and processes. On the first point, consideration of impacts, my finding is that impacts have been at best only partially considered; impact analysis is inadequate. There are some ways we could do things better here, and there are some ways where we are always going to have difficulty. Some of the things you were discussing with Professor McDonald a minute ago come under this sort of a heading.

On the second point, we do not seem to have estimated in any satisfactory way potential gains and losses under alternative regimes; so regime analysis is inadequate. On the third point, our goals, strategies and processes appear confused; negotiations are then likely to be less effective than they might be. Indeed, we could actually achieve outcomes which are disadvantageous to the interests of Australia and Australians. I include detail as to how I have come to these findings in the half dozen pages which follow.

A final point at this stage is the way we have framed the whole trade question, which is where I think a lot of our problems have come about. We have been very good at doing things without stepping back and saying, 'What's the frame we're working in; how does trade fit into our national strategies? Where is Australia going and what part does trade play in this?' There are a number of ways we could do it. I would suggest the development of a more adequate frame from which we could consider trade and its role in Australia. That is something which we need to move towards.

The following half dozen pages go through some details, and there are several ways we can do this. I am sure we cannot get through every point this afternoon. It was not my intention that we would go through my submission point by point; rather there are a couple of ways in which it

could be used. One is that it could be used for discussion. If people would like to critique it, I am very happy to discuss critiques. That may be one way forward. There are some specific things in it that I would like to draw to your attention.

That leads me to my summary. My summary is that no adequate basis currently exists for responsible trade liberalisation. That is a sweeping statement but one which has more truth than falsity in it. We do not have an adequate basis established, and this is part of the whole problem of making a clear case for what is going on. It is part of the dispute in the community about what is going on, it is part of the lack of even corporate enthusiasm in a lot of areas and it is part of some political uncertainty. I think we need to do better and get a decent basis together. Trade is a tool. It is a potential means to advance various ends. We need to get our trade initiatives well positioned along with other initiatives. For too long we have been reliant upon one tool—the trade tool. We have seen that as the way forward, and I think that has been a strategic and operational mistake.

At the end I make a couple of suggestions and request that you consider some potential actions, and these are fourfold. The first point is that there needs to be a more adequate investigation following on from this inquiry. We need to dig a bit deeper and actually get some of these things focused. I see this as tying in with the discussion which I understand is also before this committee on the foreign affairs paper *Advancing the national interest*. I think that is part of the process, and we need to bring these things together in a constructive way. The second point is that there is a need for some decent inquiry in a fairly serious way into the situation of Australia and agriculture, including the understanding of sectoral imports and how such things have arisen. One of the things I have found in researching the area is an inability, it seems, of some in government to deal with facts. There seems to be a preference to deal with myth. This is a fairly serious problem.

My third point is about the articulation of links between trade and development. One of the things that is part of Doha and is where Australia could take a strong leadership role is in saying, 'How does trade work in with development?' At the moment I do not think we could put a decent argument. I may be wrong and I am very happy to be proven wrong on any of these points, but what is the mechanism and how does it work in a reliable fashion so that countries can say, 'Yes, trade is the way to go'? There are situations where trade is not the way to go. We need to think about development as an objective and what part trade has to play in that. I think that whole question needs to be addressed in a fairly serious fashion.

The fourth possibility is that we start thinking about some of the institutional and other developments we could have to do a better job. Are our institutions as presently structured and focused advancing our interests through trade and otherwise? These could be fairly small sorts of things we could suggest through to fairly large things. Those are my sweeping comments and I am very happy to discuss them further.

CHAIR—Thank you. Firstly, let me say that obviously everyone on this committee speaks for themselves. I only speak for myself in this, and we have not conferred yet about likely conclusions. We have not had any internal debate. I can guess but I have not done the duty of care to my colleagues to listen to their views, and so I am speaking only for myself. It is my view that there are two elements to our inquiry. Firstly, there is process. By what process does a country decide on its approach to seeking a trade arrangement; how is the mandate to negotiate

such an arrangement arrived at; what input does the community have; how is strategy then determined—strategy being as much about how you achieve your objective as about what your priorities in seeking that objective might be—and how is the final deal, when it is concluded, approved and validated by the nation? I put all that in a box headed 'process'. What is the process here? A lot of what you have said—not all but a fair amount—is related to how adequately we are informed et cetera, which goes to the base of some of the questions I have put under the heading of 'process'.

We have asked a couple of organisations that have appeared before us who have raised questions criticising the process if they would be kind enough to offer us their views as to what they think an ideal process should be. Given your academic standing and background, maybe that is a question we should put to you. Would you be prepared to give some thought to presenting us with an additional comment on those matters that I have raised in the box headed 'process'? In the modern era, what should a sovereign nation do in making these decisions? In relation to the nature of Australian democracy, our constitutional shape, our institutional structure and so forth, what should be the steps?

The second part is content. If you are going to do a deal in the present circumstances, what are the issues about content? But, before we get to content, there is what I call the headline debate that is going on, principally but not exclusively among economists, about our strategy in trade—about whether it is best for us to pursue a multilateral approach through the WTO in the Doha Round by pushing for global trade liberalisation or whether it is better for us to pursue a bilateral approach as we did with Singapore, as we are with the United States, as we are about to with Thailand and as we are seeking opportunities to do with other nations.

The third question, which is a subset of the second, is if you succeed in getting a web of effective—and that is a value laden term—bilateral agreements can you therefore influence the multilateral round by levering them up into a new multilateral consensus, such that bilateralism is a way to go? The other argument for bilateralism, of course, is 'Everyone's doing it so we can't afford to be left out.' Do you have a comment on that debate?

Dr McGovern—First of all, the process debate?

CHAIR—If you want to say something about process, please do; we are inviting opinion on that. I want to later ask you—and I have probably rolled the two questions into one—about the headline debate on strategy.

Dr McGovern—The short answer to the process question is yes; I would be happy to give further opinion and also to talk with you. I would like to get a better focus than I have, because there are several ways we could look at things. I would suggest taking things in quite a simple way just to show you where you could come from on this. The perceptual position, the analytical position and, if you like, the definitional position—that is, how you define your position—are part of the thinking. This is drawing from some of de Bono's stuff on conflicts and how to avoid them. We often get our perceptions wrong. I would be very interested in seeing how we got our perceptions of the process and where they might go—and this does lead to the second question. I would be happy to develop that, and I can be quite specific as well as general. In terms of the 'which way to go?' question, there are three ways I would answer that.

CHAIR—Before you go to the second one, please bear in mind that we are after all a political institution; we are a committee of the Australian Senate. When we ask those questions, we are really asking them from our point of view as legislators with a review obligation in our chamber. We are looking at this from the point of view: has everyone had a chance to have their say? Is there a reasonable representation of the consensus? How do you make decisions when there are competing values? These things inevitably are package deals and there are some who do better than others. You have to make a decision at the end of the day on whether the net value of the package makes it worth saying yes to or whether it is neutral or minus. We have to make those judgments, and we have to make them as a legislature.

Dr McGovern—I think an ancillary question there is: have you actually understood what you have been looking at?

CHAIR—Unquestionably; 'do we understand the issue?'

Dr McGovern—We could get lots of people's opinions on things about which they have a muddled understanding and we may actually agree to something, thinking it is okay, without anticipating issues and sometimes even possibilities. We may limit ourselves positively or negatively in the process.

CHAIR—That is true. But a trade negotiator may say that you should then have some sort of provision written in for unforeseen circumstances or whatever. That is a debate about what you include in your conditions of acceptance et cetera in such an agreement. But I do understand that what you are saying is much wider than some sort of particular item cropping up. It is: do we understand how this relates to the wider complexity of all the other issues it affects?

Dr McGovern—Yes. Just to comment on the political process, I do not know a lot of political science but the whole idea of the median voter theory I think is an interesting one: if you have a uni-dimensional argument, it is okay as long as you get people one way over the line or the other. However, if you get an issue of complexity, especially in a changing environment, the whole issue rotates, so to speak. What I think we are looking at in today's world is a rotation in our understanding of trade and the way it might work. We have moved from trade being seen as pretty good most of the time to trade as often being seen as something doubtful. The question that people in the political process need to look at is: are they stuck with an obsolete viewpoint or are those in the political process confident that the viewpoint is relevant to today's people? This is part of the deepening democracy debate, and I think you are very correct in saying that we actually need to build that. So, yes, I am very happy to offer comment, some of which will be fairly practical and straightforward and some of which will ask questions which you can choose to think about, ignore or otherwise. That is part of your prerogative and I accept that.

In terms of doing a deal, so to speak, I think there are a couple of things to think about here. We need to assess our position empirically. Who are our trading partners and what is the potential in these trading partners? We are in danger at the moment of having a three-bloc world—North Asia, the EU and North America, maybe with South America—with parts of the rest of the world, including the South Pacific, largely left out. Which party do we want to join? If we go to that sort of a game, I think we are playing someone else's game. If we start to say that Australia has its own interests and that we need to keep good economic relations with all these parties for various reasons, then we have to work out how to keep good economic relations.

I think part of our problem at the moment is that we have bundled defence, national interest, foreign affairs and trade all in the one package and said that economics is the way to do it. I think it is time that we broke commerce away from government and basically said that trade and commerce are things we will do with anyone who is a responsible trading partner. Our military alliances are going to be basically as they are for the foreseeable future, I would imagine. So we need to adopt a position where we have some subtlety in our understanding that in some circumstances we definitely do have friends and allies and, in that realm and in those circumstances, we will adopt a military role. That seems to be part of what is driving the US push: we think being part of being closer to the US is being in trade with the US.

One of the comments I make in my further detail is that you can build a scenario where, because Australia and the US are considerable competitors and we are putting ourselves in the same free trade area in agriculture, say, with some fairly heavily subsidised producers, will we actually undermine our own capacity to have a viable economy? That would be strategically, in defence terms, a silly result which could be brought about through a free trade agreement which was not thought through. Just to give it a political angle, take the comments from the federal government when the US farm bill was going through. Warren Truss from memory was saying things about a '50 per cent subsidy to the farmers', and comments were being made like: 'We don't like this.' The farm bill has gone through and they still have the subsidies and now we seem to be saying that it is time to have some trade with them.

There are many reasons why the US is going to choose to do what it will with its farmers. As much as anything, there is the viability of the financial sector with the US farm debt where it is. It is not a farm problem in the US; it is part of their sectoral structure, their subsidies. It is similar with the EU. So if we accept them where they are at, China where it is at and North Asia where it is at and inform ourselves of what the interests are and then work out which interests can be well advanced through trade, which interests through defence negotiations and which interests through diplomacy, I think we will have a bit of a subtlety in our negotiations.

My big worry in all this is that we will say, 'Oh, we've got to have a negotiation which sort of gets everything in together; free trade is part of being a closer ally.' That is a debatable issue. One of the things I have spent some time doing is looking at business in Europe, lecturing in it and researching it. Part of the development of the EU has been balancing the divergence that occurs within the single market and how to do that. Part of our trouble in looking particularly at the US free trade agreement is how we will balance the divergence which you could expect to find with free trade between the US and Australia; what institutional basis will be there to redistribute moneys to build 'social cohesion', as the Europeans term it? The Americans tend not to worry as much about social cohesion as we do. So how do we actually build that sort of thing into a free trade area? That is, I suppose, the second concern in this area.

The third concern to me is that part of our mistake if we are negotiating has been saying, 'We are going to do it anyway. We are all for free trade. We hope you will sign up soon, but we're going to do it anyway.' We have no finesse in the way we telegraph what we are going to do. We put our game plan up five or 10 years ago, and we are still sticking to it. A sporting team which said, 'This is how we are going to run each quarter of the game,' would not be winning many games. Part of our thinking needs to be a little more in terms of encouraging them to our party instead of being the plaintiff who says, 'Please take free trade. We think it's wonderful,' because

there is no first mover advantage as far as I can see. We have certainly been adopting a first mover position and, as far as I can see, the game theory does not stack up.

Getting back to the specifics of trade-offs, one of the questions that is quite clear—and I am sure that other people more knowledgeable in the area have brought it up with you—is if you look like you are focusing on the US, what will North Asia think? I think China and Japan in particular would be thinking that our strategic inputs from the country—we are getting a lot of them—are now tied up with a country which we have a defence relationship with as well. That could muddy the waters. I do not think people like, I believe, the EU Commissioner would make comments on DFAT papers without thinking that there was an issue for the EU in the whole process too.

To put the EU perspective a little more, look at the debate and, now, the challenge under the WTO on sugar between Brazil, Australia and Thailand against the EU and its regime. If you look at what outcomes might come out of that, in some ways I do not see that Australia can win much. We might win the legal case but, if we do that, we are going to basically argue against the ability of a country to choose its suppliers on grounds of development or something like that. Whether we like it or not, sugar beet has a significant cost disadvantage compared with sugar cane. The Europeans have chosen to have beet, they are going to have beet and they will do things to keep beet. We create a lot of what you might call malaise in the diplomacy area by seeking a trade resolution because we are chasing this world market, which is actually a whole series of markets—and it is our wrong idea again.

I am starting to get more complicated. Let me take it back to what I suppose is a simple point. In each case there are interests. We need to assess what the interests are and work out whether these are best done in a package deal, so to speak, or whether we say that we are a mature economy and commerce can do a lot of these things for itself. What are those areas where we let commerce do those things, and what are the areas where we should develop a defence or other relationship? Is this getting towards what you are interested in?

CHAIR—I think you answered the headline question a moment ago and we are moving into the global argument. You have couched a lot of what you have said in the form of questions. The only comment I would make is that, for countries and governments, one has to decide what actions you take. Looking at who we are and what our characteristics are, why would you not say that Australia is one of the world's most competitive agricultural producing countries, that globally we have a comparative advantage in agricultural production and export, that our ability to realise that comparative advantage is circumscribed by barriers to our exports and that therefore a priority is to remove those barriers? Why would you not say that?

Dr McGovern—In large part because comparative advantage does not drive trade; corporate strategies in part drive trade. If you look at things like Michael Porter's model, which is largely used by a whole range of people, it called for a new paradigm—building competitive advantage. We now have a model of collaborative advantage. So we actually have three models, if you like. The collaborative advantage suits the corporate supply chain developments. The competitive advantage focuses on getting your supply region oriented across the board, not just in terms of comparative advantage but a strong position from your supply region. Competitive advantage points to the possibility of gains; however, the actual distribution of returns is not in the theory. It is in market power as much as anywhere else or in institutional arrangements.

CHAIR—By whatever means you define Australia's advantage in the world, the agricultural sector—which, by comparison with other economies, is a sector of low-cost, high-quality production—is made up of a number of small holdings; it is not a corporatised sector in a classic manufactured products sense. It may be organised along industry lines with single desks and things of that nature; that is true. But whatever the definition of 'advantage', isn't it fair to say that one of the advantages that Australia has is that it can produce agricultural products efficiently, cheaply and to a good standard of quality, and those products cannot find a market in a number of other economies which, if the barriers that keep them out now were removed, we would be able to realise a greater return nationally because of our ability to sell those goods.

Dr McGovern—We may be able to realise a greater return. It depends upon the price we get to sell them for.

CHAIR—And those prices are distorted now by quotas, tariffs and/or subsidies to competitors.

Dr McGovern—And by a whole range of supply chain arrangements. There is the case of sugar, and I can provide further detail on this. Calculating the international price received from different countries, there is a whole range of prices; there is no single price for sugar, shall we say. Australia actually achieves a better price—I think it is $60 a tonne, roughly—than Brazil. That is in large part because of product quality, consistency and long-term commitments. We have actually developed trading relationships and fostered a knowledge with, say, Malaysia or somewhere like that. We have actually developed over 20 to 30 years a relationship where we are a preferred supplier on a number of grounds other than cost. Cost is part of the story but quality and reliability are also part of the story. So the idea of there being a single market price is just rubbish.

CHAIR—I accept the argument that what sells a good is not just its price but its quality and its timeliness of arrival to meet the demand of the purchaser.

Dr McGovern—Yes.

CHAIR—But in those things, timeliness of arrival is dependent upon the efficiency of transport operations, and the cost of transport is a reflection of price. But in the area of quality, again I would argue—and I think reasonably—that Australian agricultural products' quality is at world standard if not leading world standard.

Dr McGovern—Generally, yes. There has been some deterioration in some product areas with poor returns; farmers just are not producing as neatly as they might, to put it nicely. The other thing I would just mention is that it is not just the supply chain—the transport leg; it is infrastructure invested overseas. We have built wheat handling facilities in Egypt and a few other places like that. We have actually invested the ability to handle the stuff at the other end as part of our overseas co-development. We made the choice to say 'We'll provide you with the raw product and you do the manufacturing.' At that time, 20 to 30 years ago, that was an appropriate strategy. Whether it is an appropriate strategy now is another question.

Getting back to the question of what gets the product in, part of the acceptability of a product comes back to its appearance in the market. If you are seen as providing coal from an

exploitative mine with poor union conditions and whatever else, you could have a low-cost product but you will not be able to sell it in some countries. These sorts of non-tariff barriers are going to become increasingly important. It is now possible to label products much more clearly, and some of the stuff being done by a number of environmental groups and consumer groups about labelling the source or showing videos of the factory where the product is produced and all that sort of thing is changing corporate arrangements. This goes back to the question of corporate purchasing arrangements.

CHAIR—I have one other question. I think you are the first person in this week's set of hearings who has raised the issue of developing countries and trade and development. You do that under point 3 of the suggestions that you have put forward. Could you address us for a minute on how you see the question of trade and development in the context in which you put forward this suggestion?

Dr McGovern—I think the process of development is poorly understood. We had a period in the 1950s in economics and in political circles where development was on the agenda. Since then we have had basically a capture of the intellectual ground by static models, and there is no model of development built into these things. It has just been assumed that more growth is good and more trade will lead to more growth. It has become a very mechanical model.

There is no model of the world and how it interacts and develops, and this is the structure of our thinking as developed since the 1930s in economics. Another way to put it is that there is no cosmogony—there is no view of how the world is something which can be developed. The way I have put this at various presentations is that it is like saying to a five-year-old, 'Here's your manual. Happy development; see you in five years time.' We have adopted a similar sort of approach in the way we have looked after economies. Instead of being what you might call an interested parent or some sort of responsible adult, we have basically said, 'You're on a trajectory; we can model where you are going'—and you have seen plenty of general equilibrium models and all this sort of thing in your time, with all their assumptions—'The conditioned behaviour will occur over the next three years and the child will develop at this pace,' and all this sort of stuff. This has run right through to things like the World Bank and IMF and it has not worked. It has come from people like Stiegler, with his damning indictment of some of the ways we think, and a range of issues which are basically saying that we have missed understanding how development actually works.

In the papers I have attached to the submission, I have talked about trade traps and things like that. In a country which says, 'Let's develop into sugar,' for example, you put the investment in and you expect certain prices and you expect the development to occur according to the manual or your business plan. If, a couple of years later, the prices do not work out, where do you go? You are basically producing a cash crop and you are caught in an unsustainable return. That is not only a Third World problem but also a first world problem. Part of the thinking in the 1980s that came into international business circles with trade models is that we could move from getting balance in our trade from the current account in terms of selling the goods if we made offshore investments and then, after a period of adjustment, there would be greater returns from income flows, and so the balance of payments would recover because of the strong income flows from offshore. You can see this coming through now in the graphs for Europe, say, where GDP has actually stopped over the last couple of years but gross national income has actually risen because of the returns from overseas.

So what we now have is a mix of people who have invested elsewhere on the prospect of trade. With commodity prices at, say, 20 per cent, where they were in the 1990s, the original investment decisions are suspect, because the scenarios put forward then are now far less realisable. Unfortunately, what is happening—and this is where we do need some resolution in a sensible way with that whole trade issue—is that if we are not careful, people will start undercutting and will go for low price irrespective of cost. This goes back to the earlier question with regard to being a low-cost producer. At the end of the day, that does not matter—it is the price that you will deliver for the market, for whatever reason. If you all have enough product and it is just hitting the market that is fine. But if there is an overhang in the market and you just want to get rid of it—especially if you have already paid your farmers half their income for being on the farm—you will sell the sugar for whatever you can get for it. There are lots of ways we could detail it—you might sell it at marginal cost; you might sell it as food aid; you could sell it in a whole lot of ways—but that then distorts the whole market returns for others who are trying to negotiate, whether they are Third World countries, Australia or whoever.

So we are now getting a financial imbalance coming through because of, firstly, a naive view of development and an automatic mechanism idea—that is, if we get the plan in place everything will follow—and, secondly, the strategies of some corporations and countries which have undercut the viability of some of these sectors. Now we are trying to work through a resolution, and the resolution is, in the case of sugar, an overhang of a couple of years supply. The price is going to stay low. We could cut our costs in half and it is not going to make much difference. It might mean that we have a few more producers who are a lot poorer but, in terms of our selling price, we could be high-cost or low-cost. The EU sells a lot of sugar, and its cost is always going to be higher than ours because they are using beet and we are using cane.

To bring it to a closer point, the idea of development and how trade—which is an interaction external which returns returns—and these things work over time when you are in a multi-party situation is the essence of the story. We have had a model where we have a mechanism and we sort of kick it with a certain price and the thing kicks up or, we kick it with a lower price, and it drops down a bit. We have had a very dumb robot, basically, and that has been called an economic model. We now have to take it through to a much more adequate model.

There are a number of areas in economics which contribute to this thinking—things like evolutionary economics, some of the industrial economics and a whole range of areas. In going to these models we start to move towards scenarios, propositional things, negotiations and game theory and we move away from the idea of ‘Here’s the economy; put it on its trajectory and there it goes.’ Most of our thinking at the moment is based upon a trajectory model. Going back to the five-year-old, it is like saying, ‘Here’s the kid. We have measured his attributes. Here’s the manual. We know the environment for the next couple of years. We will come back in five years and hope everything is all right.’ We need to move from what is basically a Newtonian mechanics—to put it in a wider sense—which is great for some things, into a more relativistic model. In other words, economics needs to move out of the 1700s into at least the 20th century.

I am suggesting a lot of levels here, but we have the ability to do a much more mature job and sensitively think about development in ways we could not think about it in the past. Some of this is technologically possible now—in the past we just could not do it. How will we bring it together? This goes back to a question which you discussed with Professor McDonald. To look at the impact story, if someone wants to do something and we say, ‘What are the overall impacts

of this?' and we find that it is going to cause development in such a way that we agree it is a good thing, we can say that it is not a furphy; it is a legitimate thing because they have set the objectives, they are meeting their objectives and this is the way they are doing it. If, on the other hand, someone says, 'We're going to put in a protection for the environment or to help another country,' and they are not going anywhere and the environment is no better, then you assess this in an impact frame and say, 'No, you're not achieving this.' We can actually point that sort of thing out and ask, 'Where is the gain to the environment?' So we move towards assessing specifics across the board instead of being narrowly focused on a measure like price in a market, GDP or whatever.

CHAIR—I do not have the time to go into this in much more detail, and I cannot claim to have perfectly understood all of the propositions you have put. I am a member of the Labor Party. To me, equity is an important consideration in terms of not only Australia but also globally. When you look at the world, you see that there are huge number of people living in poverty and they do not have a chance in life. The more people living in poverty, the more threat there is to our security as well. This is the philosophical base from which I operate. Anything that can help those countries grow to lift more people out of poverty and give them a better chance in life speaks to the principle of equity that I am concerned about.

I do not want to get into a philosophical debate about equity versus equality of opportunity and issues of that nature but, bearing those concepts in mind, what is wrong with saying to the European community—and Australia strongly supporting the argument—that they should open their agricultural market to developing countries that have goods in agriculture to sell so that those countries could then obtain a return from the sale of what they produce? They cannot now because they do not have access to the market. This would enable those developing economies to produce something for a return rather than be dependent on aid. What is wrong with that proposition?

Dr McGovern—The proposition sounds find. I think equity is an important part of the whole story. The question of development involves an issue of equity. How do you give your five-year-old a chance to get ahead? How do you give a country a chance to get ahead from where it is starting and in the environment it is working in, instead of assuming, 'Here's a country. Put it on its economic trajectory and away it must go'? In one way, that is just irresponsible.

If you look at, say, the sugar industry figures, most places, with the exception of Queensland, do not sell to end users—intermediaries are along the chain. Part of the problem is that intermediaries play the middle game. We can see this domestically in Australian agriculture as well. Part of the problem is that the price received at farm gate is not the price the consumer pays, and there is a gap—I call it the lucky middleman. I do not know how they do it, but I will give you a very practical example.

CHAIR—I am not really talking about one issue on its own, if addressed, solving the entire problem—that is too simplistic; it is not like that. There are priority concerns in the suite of issues and strategies that you bring to bear. It may well be that intermediaries between a developing country and a developed country market diminish the returns to the developed country by siphoning off some of the gains that would have gone to the developing country. But if they have access to the developed countries markets, at least there are gains, and the issues

regarding intermediaries and how much they siphon off and why are issues that can also be tackled.

The terms of reference of this inquiry require us to talk about the particular trade issue. In that context we are looking at market access, the removal of domestic subsidies and an ability for developing countries to obtain markets to help them grow their economies. I understand the objection you make about intermediaries but, sticking with that same argument, isn't it still true that a clear way of providing an opportunity for a developing country to develop is for that country to obtain free access in the areas where it has an advantage in the marketplace to sell their goods or services to a developed country?

Dr McGovern—I think there is a potential way—not a clear way, because it is conditional upon the way the supply chain works—to obtain access but, depending on the conditions, it may or may not be profitable. We can find examples, particularly in Third World countries, and in Eastern Europe with the transition economies there, where access is provided at less than normal economic profit. So there is some despoliation of the resources, whether it is degradation of the labour force, the natural environment or whatever else.

CHAIR—I understand that point. This committee was recently in the Solomon Islands and we saw the degradation of the forests by an impoverished country allowing a tradeable resource timber to be collected by, in this case, Malaysia—at rates that you would argue are well below global rates—because of a corrupt governance in that country and we saw that, by allowing access to their fishing grounds, there was a depletion of the natural resource of fishing, principally by Taiwan. Because of a lack of governance and proper control—in plain language, corruption—they are able to buy their right in to exploit those resources. Therefore, the comparative advantage they have is in fact removed.

In the model I am thinking of, you would clearly say that those are things to be addressed too—you do not leave them in place—but the objective here is what has to be clearly thought about: how do you help a developing country to develop? Access to the market is one thing but access to a market from a corrupt country that siphons those gains off for no benefit to the society is something else. And there are other countries I can think of that have sold mineral products internationally and obtained massive incomes—hydrocarbons in African countries is a good example—but the levels of poverty have increased as the gains have gone to a few and the distribution of the advantage of the trade has been corrupted or is too narrow. That is why I say that all of this is part of a philosophical suite of issues. But, in the trade context, why wouldn't you argue that obtaining access to closed markets for developing countries is a strong way of proceeding for helping those developing countries to develop?

Dr McGovern—I think you have just given me an example: the Solomons have obtained access to Malaysia and it did not do them any good. I think we are actually in agreement here. What I think we need is a constructive business plan which indicates the returns to the various stakeholders, including the local population. You can make that conditional upon aid or whatever else, and that can be part of an impact analysis. You actually specify out what the supply chain structure is. We know sugar leaving Australia goes out for a certain amount and it certainly pays a lot more elsewhere. Other countries have the same story.

People are going to play games along the supply chain but, if you say you are going into this market and this is the price—and we expect that price to be there—and, importantly, you calculate your risks and how these might be covered through appropriate finance, then the community can establish a business case working into an environment which is somewhat assured by agreements with the EU or Australia as appropriate. Because they are only going to be a small part of the market anyway, you can provide them with preferential access in a way which gives them some stability of returns with an appropriate distribution of returns and starts to bring things on.

Another way you can do that is a reverse way where you say to an offshore company, 'Yes, you've got an interesting mine but if you also had a school you would get different treatment.' I think some companies are actually moving towards this: given the instability in some areas, how do you build a company which does more than just mine or grow or whatever else? This is part of the triple bottom line argument and it goes back to where I think we are agreeing. If we think through how development might be articulated out both in terms of impacts and in terms of business plans, we can probably mount some good cases and get some of these things to work. I think there are some pretty good ways we could try a few things.

CHAIR—It is just that I have this view that, unless we encourage development in the developing world, our peace of mind and relevant affluence are also at risk. It is a self-interest reason; it is not an altruistic reason. I would argue the altruistic argument first, but there is a self-interest argument there.

Senator NETTLE—Dr McGovern, I am still grappling with your arguments. I suppose part of it is that the submission we first received from you covered the conclusions and we have subsequently received some of the arguments in the material you have provided today and I have not had the opportunity yet to digest all of that. I agree with many of your conclusions, but I do not know for certain, because I do not fully understand yet your arguments, whether we reached the same conclusions based on similar arguments or not. I am reading through point 3 in the materials you have given us. In the time we have left, could you take me through the arguments related to that point as you developed them in your longer submission?

Dr McGovern—Firstly, I apologise that you have had a lot given to you today. I am very happy to take it further, if you wish. Since I start off with a comment about DFAT, I would suggest that you ask DFAT's opinion on these points and see which points they might agree or disagree with. Part of the reason for this is that one of the best ways to get ahead in an economic argument is to say, 'I can argue one point, they can argue the other, and you can watch.'

Senator NETTLE—I need to indicate at this point that I am not an economist. I think it is worth letting you know that.

Dr McGovern—Yes, that is why I was trying to say: allow other people to argue in front of you and see what you think are the reasonable arguments. You do not have to believe me; you do not have to believe them. You need not understand everything. I would not want to be a horticulturalist, for example.

Trade is more than exports. One of the things that DFAT likes to report on regularly—as it did in one of the brochures I gave to the committee—is how well we are doing with exports. This

brochure, which they put out a while ago, shows exports going through the roof—that is great. Unfortunately, imports are also rising quite rapidly, and our balance of payments is not healthy. Why do a report on trade as exports and not in terms of balance of payments, which is its proper and full treatment? This is the simple problem of reporting. To present it in the way that I suggest DFAT has is misleading because it focuses on part of the story and leaves out the rest of it. It is like a salesman saying, 'I sold 200 TVs today' and, when you ask, 'At what cost?' the answer is, 'I gave them away.' We have that kind of danger here. I have worked with people from marketing, and marketers have a great idea that, if they get the volume up—the turnover up—the company must do well. That need not be the case. That is my starting point: more exports do not mean that we have got profitability.

The second point is that our net trade position is poor. The balance of payments is not strong. We have a number of problems there, and they have been discussed. I am not saying it is a drama at the moment, but it is time we started addressing it. We need to start thinking through how we are going to build some of these things, especially when we think of some of the foreign investment strategies, as I mentioned before, where companies have invested offshore—take AMP. Money goes offshore at a certain currency rate and comes back at another rate—no money is coming back from AMP investments—and that is going to affect the balance of payments, because money has gone out with an expectation. So the returns we expect in the future will not be there. So in some ways we will have a problem of capital dissipation, if we are not careful. In other words, we are putting in resources and they are not returning things to us. These sorts of questions are being overlooked in the present discussion of trade.

Going back to Senator's Cook's concerns about trading away things such as environmental amenity. Are we trading that away? We do not know. We could extend the accounts quite easily, or we could make the accounts conditional on some of these things. There are ways we could build some sensitivity into our reporting. That was the third point: reliance upon representations based on exports is basically misleading.

The fourth point is in relation to distribution. If we look at the biggest economies around the world, we see that Australia is in the top 15 to 20. There are 150 to 200 countries, depending how you want to count them, and because of our distribution we are typically in the top 15 to 20. We are a pretty useful sort of economy to sell into sometimes. It depends on where you are coming from and all that sort of stuff. We seem to keep calling ourselves a small nation, just drifting in the South Pacific. There are a lot smaller nations around the world. We are one that is reasonably accessible, and we have reasonable disposable income. In the top dozen or so countries are most of the EU members—so they are all locked up. The US is up the top with Japan. We are actually an attractive market for some products. We should remember this. Some people want to sell to us, and we need to trade off on that a bit.

The next point goes back to what I was trying to point out a little earlier. The idea, that if we can first of all get access to countries, we will have more trade that will then lead to growth and that this is all going to be good is very simplistic viewpoint. Sometimes it is the case, yes; other times, it is definitely not. We need to build sensitivity into asking: under what conditions does trade lead to what sort of growth and is that what we want? We can have very strong growth by chopping down all the trees in the botanic gardens and making fine furniture—but do we want that? This is where we need to do an impact analysis rather than simply do accounting.

We need to say not what the measure of throughput was but what the actual impact was on the economy. We do not have to keep an eye on this all the time but, if we keep a watchful eye on the impact, there are some sectors where you would say trade is fine and other sectors where you would say it is not. Agriculture is one sector at the moment where you would say, 'Yes, we have achieved high trade volumes,' but the environmental arguments, in the southern river system particularly, point out some of the costs. We need to start thinking that into our story.

So greater access as a result of liberalisation is assumed to result in more growth. Sometimes that is true and sometimes it is not. We need to move away from simple certainties and simple slogans into what I would call a sensitive understanding of the possibilities. Once again, this is where I would go back to the idea of fostering development. Yes, we can do it, but we have to be sensitive to the possibilities and work up something that works rather than something we hope might happen. That is my next point, at g, about access and profitability. We have access to a number of markets, but half of them are not profitable. One of the strategies that the Queensland Sugar Corporation uses quite successfully is to have more markets than you need so you always have the possibility of going elsewhere, and that tends to push the price pressures on them if they want your sugar.

Point h is about unfavourable links along the supply chain—for example, a couple of years ago international overinvestment by car companies in cars was about 20 per cent globally. These were big companies, but they basically stuffed up their investment calculations really seriously—we had far more capacity on the ground. So what are you going to do with this capacity? You can close some plants and all that sort of stuff. When you have individual companies making decisions, you are going to have collective failure, which leads to downward pressure on prices, so you get all the cheap cars coming into Australia. Corporate decisions elsewhere impacted then on the Australian car market. Consumers got some cheap cars, but they were only ever going to be cheap in the short term. But what impact did that have on the domestic car market and did we need to do anything about it? So that is how corporate strategies, supply chain arrangements or government arrangements can lead to trade for no profit.

I would suggest that such conditions exist in many markets today, part of the nineties growth in global investment. You may have seen graphs that show international trade rising and GDP just going across. If you think about that for a second, we have had massive growth in trade and modest growth in production—GDP. If trade is supposed to be driving the economies, it is not doing it anywhere near the level it should. Once upon a time, a bit more trade would get a bit more growth. Now we are getting a lot more trade and the same growth. So the returns are not there. Diminishing returns have set in—that is the way to think about that. In the market as it is today, which is different from the 1980s and different from the early 1990s, we have a situation where we need to think about the conditions under which we supply a market and the profitability of doing so, and then work out a strategy to get through the tight times.

All these conditions lie outside the governmental trade concerns—things like tariffs and quotas. These are things that are market influenced that corporations individually will not address. We have seen enough corporate failures now for both honest reasons, such as when they get their projections wrong, and dishonest reasons. This is where government probably needs to provide some sort of overall view of what is going on in the area. Another example where we have seen this selling without being profitable is the whole mining sector. Miners were very good at selling product, but they sold it at such a low price that most mining companies have

been taken over now. There was a problem in the markets—there was oversupply—and the result was diminished working conditions and foreign ownership of what were once Australian companies.

I will now come back to things like arrangements. When arrangements exist in one country and in another country and we have got trade between them, how do you negotiate between the two countries? With the case of agriculture, a farmer in the US might get 50 per cent subsidies, a farmer in the EU might get 70 per cent subsidies and an Australian farmer might get five per cent subsidies. In terms of their disposable income, the Australian farmer is far more exposed to the market. This will cause risk premiums and all that sort of stuff on investments. It puts them at a competitive disadvantage because of the way the arrangements are in place, which once again have nothing to do with the conditions in the quota area or even the supply chain. Now they are conditions of production. We need to link these things into our thinking. Is this making sense?

Senator NETTLE—Yes.

Dr McGovern—What I suggest, in point j, is that there are some basic incompatibilities between the regulatory regimes of the US and Australia. Chapter 11 bankruptcy is one which has been under some review. I will mention that briefly. In the US airline industry, for example, chapter 11 has been used quite extensively. Once a company files for chapter 11 all they basically need to do is cover the costs of fuel, landing fees and flight crew. They can sell their tickets down to whatever the costs of those things are and they can keep trading, and they are protected from creditors. If you put Qantas in against that sort of game—where Qantas, if it cannot meet the requirements of any creditors, has to appoint an administrator—you know where we are going to go. The other company can keep flying at maybe 20 per cent of the full cost and they can do that because the US has put in arrangements for its own reasons to protect the existing corporation to allow it time to work its way through at the expense, potentially, of creditors. Australia has made a different decision and said, 'If creditors and various stakeholders can't all be looked after then you've got to look for administration straight off.' This goes right through to the GATS arrangement.

If you have got a company that could trade in Australia operating under chapter 11 it could drive prices down and Australian companies could easily be sent into bankruptcy by an insolvent company in the US. We need to start addressing some of these things and ask whether we go to chapter 11 too and change our corporate cultures or do we say, 'No, there is a problem here and we need to work out a strategy to do this sort of stuff and put limitations on chapter 11 companies trading in Australia'? These are the sorts of things we need to think through and it is because of the differences in the regimes. If we wanted to we could go through a whole series of differences in Europe and how they have dealt with differences in regimes there too. We could get a lot of examples to inform ourselves from the European experience, but that is something for another day.

In point k, I asked how Australian companies would compete against US farmers enjoying 50 per cent income subsidies—perhaps even enjoying chapter 11 bankruptcy. It might be really efficient and all that sort of stuff, but it has to meet the full cost of production—the financial cost anyway. I saw a really interesting example of this once in a conference in Spain. This New Yorker got up and gave a presentation and he said, 'I've just done my general equilibrium model of trade for the Atlantic, and what we need to do is to have Canadians specialising in leather

shoes and the Europeans specialising in grain.' What his model had picked up when it went through the way the market was being influenced was that the subsidies that were being provided in the EU for grain made it attractive to grow grain there and the subsidies being provided in Canada made it attractive to make shoes. It was a wonderful technical paper—it was a general equilibrium model; the sort of paper that DFAT has used to inform you about the US free trade agreement—but you could see the Spaniards looking at each other saying, 'Wearing Canadian shoes?' and 'Where are we going to grow this grain?' It just did not make sense. Technically there was not a problem, but it was in the assumptions. What he had modelled was not competitive advantage; it was a subsidy regime. The subsidies were driving the trade in his model and under a free trade agreement on that sort of model that is what he predicted would be the effects across the Atlantic. So we can come up with some really silly outcomes. So this is the whole question of being regime driven rather than being based upon something like natural endowments, comparative or competitive advantages or whatever. So that is that first line. Will I continue?

Senator NETTLE—I am getting some sense of it. What I might do is take this away and read through it to get more of a sense of where you are coming from and then come back to you with more questions later. I am getting some sense of it but I think there is value in my being able to go through it.

Dr McGovern—I must apologise—I am giving you a fair amount of stuff in a condensed form. I have given the secretariat my home phone number if you want to ring there any time. I am happy also to meet up as appropriate to discuss these things. In the School of International Business there are other people with expertise who would be happy to run a roundtable or something like that if that were an appropriate thing to do at some time. To give you a simple example, over lunch today I was talking to a couple of people, one of whom was a former Austrade officer the other a specialist in Japan. Their comments were quite interesting. One of the comments that is relevant to our discussions is, as far as our Japanese expert would say, that if we went to a US free trade agreement the Japanese would see this as a repudiation of the Nara treaty of 1997. I know nothing about that, and that would seem to me to be an appropriate thing to consider in terms of how we position ourselves.

CHAIR—It is a simple treaty. It simply says that in 1997 Japan was our leading trading partner and that this is a treaty of friendship between the two countries. Article 11 of the treaty says: 'Since we are mates, if I give advantage to a third party that is better than the advantages I give to you, automatically you will get that advantage, and vice versa.'

Dr McGovern—So a most favoured nation arrangement?

CHAIR—A most favoured nation arrangement as far as Japan is concerned. It does raise the question of context of the Australia-US free trade agreement: if we adopt a zero tariff regime for American made automobiles—so they come out here tariff free—are we obliged then to adopt a zero tariff regime under the Nara treaty for Japanese made automobiles? There is a range of implications like that.

Dr McGovern—One of the points I make at 4.u is that a free trade area is usually seen as a step towards customs union and closer integration. So if you open a free trade agreement that is proper free trade agreement, the economics will drive you more towards a customs union than

not. Whether you want that, and whether that has been the policy decision, is another issue as well.

CHAIR—Thank you, Dr McGovern. Apparently there will be a few comebacks to you from the committee.

Dr McGovern—I am very happy to talk further.

CHAIR—That concludes these hearings today.

Committee adjourned at 4.08 p.m.