



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

SELECT COMMITTEE ON THE FREE TRADE AGREEMENT  
BETWEEN AUSTRALIA AND THE UNITED STATES OF  
AMERICA

**Reference: Free Trade Agreement between Australia and the USA**

TUESDAY, 22 JUNE 2004

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**

**SELECT COMMITTEE ON THE FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND  
THE UNITED STATES OF AMERICA**

**Tuesday, 22 June 2004**

**Members:** Senator Cook (*Chair*), Senator Brandis (*Deputy Chair*), Senators Boswell, Conroy, Ferris, Harris, O'Brien and Ridgeway

**Senators in attendance:** Senators Boswell, Brandis, Conroy, Cook, Ferris and O'Brien

**Terms of reference for the inquiry:**

To inquire into and report on:

1. The Free Trade Agreement between Australia and the United States of America to ensure it is in Australia's national interest; and
2. The impacts of the agreement on Australia's economic, trade, investment and social and environment policies, including, but not limited to, agriculture, health, education and the media.

**WITNESSES**

<b>APPLE, Mr Nixon, National Research Officer, Australian Manufacturing Workers Union .....</b>	<b>20</b>
<b>BATTAGLENE, Mr Anthony Nicholas, Director, International and Regulatory Affairs, Winemakers Federation of Australia .....</b>	<b>36</b>
<b>BERRY, Mr John, General Manager, Corporate Affairs, Australia Meat Holdings Pty Ltd .....</b>	<b>14</b>
<b>BRAIN, Dr Peter, National Institute of Economic and Industry Research .....</b>	<b>20</b>
<b>COY, Ms Maree, General Manager, Baxter Healthcare .....</b>	<b>40</b>
<b>JEFFRIESS, Mr Brian Charles, President, Tuna Boat Owners Association of Australia .....</b>	<b>1</b>
<b>KEIR, Mr John, Joint Chief Executive, Australia Meat Holdings Pty Ltd .....</b>	<b>14</b>
<b>MANNING, Dr Ian, National Institute of Economic and Industry Research .....</b>	<b>20</b>



**Committee met at 3.41 p.m.****JEFFRIESS, Mr Brian Charles, President, Tuna Boat Owners Association of Australia**

**CHAIR**—I declare open this meeting of the Senate select committee inquiring into the Australia-US free trade agreement. The terms of this inquiry are available from the secretariat staff. Today's hearing is public. This could change if the committee decides to take evidence in private. Witnesses are reminded that evidence is protected by parliamentary privilege. Witnesses should 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 that 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 will be 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.

Welcome, Mr Jeffriess. Thank you for making your time available. I understand you have already been afflicted by the vicissitudes of Canberra at this time of the year. We have your submission.

**Senator BOSWELL**—Chair, I have to leave in a few minutes. The fishing industry, particularly the tuna boat industry, is one of the big winners in the free trade agreement. Could you explain what advantages you get from the free trade agreement as far as tuna is concerned?

**Mr Jeffriess**—We need volume to survive. We have no tariff protection of substance into Australia, therefore we need global volume to survive. The United States and Europe have always been shut to us because of a 35 per cent tariff in the United States and a 25 per cent tariff in the EU. This is the first opportunity we have ever had to get into the United States. We did not expect this outcome to be so positive so early. We expected, at best, a phase-down over a period because of the sensitivity of this product in the United States. It gives us the opportunity to get into what we call the boutique market in the United States. In our terms, it could substantially increase our volume.

**Senator BOSWELL**—Is 'boutique' canned tuna?

**Mr Jeffriess**—In canned tuna there are two types of market. There is a boutique, upper quality market, which we would compete in and which is probably 20 per cent or 30 per cent of the total market. That is massive. Then the large volume market of about 70 per cent or 75 per cent is taken up by product that we could never compete with even at zero protection. So we are talking about competing in that upper quality canned tuna market. We already are very competitive in the United States with the high-quality tuna market—that is raw tuna—so that is not a problem for us. We have always had duty-free entry there. As I say, the tariff was 35 per cent, even for entry to the boutique market, and we would be competing against US domestic production, production particularly from US dependencies like Samoa and the free trade agreement with Ecuador, so we could never compete in that market.

**Senator BOSWELL**—I am glad we have a happy customer.

**Mr Jeffriess**—Unexpectedly, yes. The Australian tuna industry, and particularly our company, competes in three areas: the high-quality sashimi market, which we export to Japan predominantly—about \$260 million of exports; a lower quality but long-line product; and the canned market. In the canned market, we are the only producer in Australia. There were five up until 1990 but then they gradually faded away. Port Lincoln is the only surviving cannery. We have about 40 per cent of the market. As I say, to survive globally in the longer term we have to have volume and this type of opportunity. We are working towards the same outcome in the European Union to get special access to the opportunities we need to achieve that volume. We employ about 300 direct employees. We are probably the largest private employer in South Australia, so it is important not just to the Eyre Peninsula but to regional South Australia. With no real tariff protection to compete against particularly Thai imports, the only way to survive is to get this kind of global access.

As I say, we produce tuna which would compete in the US boutique market. The total market is worth about \$US1½ billion. Just the boutique market is around 20 per cent to 25 per cent of that market. So it is a massive market. We are working towards the same outcome in the European Union through another avenue—a bilateral agreement with the commission rather than a free trade agreement.

Why this is unexpected to us is that it is an extremely sensitive product in the United States. For one of their dependencies, Samoa, it is virtually their only industry. They have free trade agreements, of course, with major canned tuna producers like Mexico and Ecuador. The opposition in the US Congress was substantial—not that they are worried about us; they are worried about creating a precedent for their impending free trade agreement with Thailand. If they give Australia duty-free access, they would have no rationale really not to give Thailand the same privilege. So getting zero access on day one of this agreement was an unexpected surprise.

**Senator O'BRIEN**—If I understand you, your evidence in essence is your organisation's analysis of the impact of the free trade agreement on your members' industry?

**Mr Jeffriess**—That is correct. We have a wider view as well. We have been waiting right throughout the Kennedy Round, let alone the Uruguay Round, for these types of things to happen. We believe from long experience that a lot of these advantages can only happen bilaterally, unfortunately, not multilaterally.

**Senator O'BRIEN**—The types of products that you are talking about are the growth in canned tuna?

**Mr Jeffriess**—Yes.

**Senator O'BRIEN**—Skipjack tuna?

**Mr Jeffriess**—As I said, there are two types of canned tuna—real volume made from albacore and other lower quality species, such as bonito; and a higher quality 'mixed' product, as we call it—with which we would compete in the American market.

**Senator O'BRIEN**—A high-quality, mixed product—mixed tuna with different species of tuna?

**Mr Jeffriess**—In our case, we mix it with vegetables which has a special appeal in the United States. The way it is done in Port Lincoln is not done anywhere else in the world at this stage. We now know that other people would follow. We have every reason to believe we would achieve reasonable penetration. In our terms, that represents significant increases in volume.

**Senator O'BRIEN**—Is that because someone else is doing the same thing?

**Mr Jeffriess**—It is a bit like the sashimi market. The innovation in Port Lincoln is substantial enough to maintain a gap for a substantial period.

**Senator O'BRIEN**—I am still trying to follow: is the mixed product that you described as the opportunity for the South Australian cannery a product that is already in the US market that you are trying to emulate or is it a new product?

**Mr Jeffriess**—No, that type of product is not there.

**Senator O'BRIEN**—Is that like the flavoured tunas that we see on our supermarket shelves?

**Mr Jeffriess**—We call them Tempters, yes; it is the Tempters brand.

**Senator O'BRIEN**—And currently no-one else supplies those to the US market?

**Mr Jeffriess**—Thailand has been trying, like us, but the tariff protection is too substantial to allow access.

**Senator O'BRIEN**—What species of tuna is required for that product?

**Mr Jeffriess**—We produce it with skipjack tuna. There is no difference between skipjack tuna and yellowfin tuna, which is the other species used, in terms of the outcome, if your production technology is adequate.

**Senator O'BRIEN**—What about the availability of the resource?

**Mr Jeffriess**—Skipjack is probably—and there is plenty of literature on this—one of the few species which is underfished at this stage. That is not to say that the western Pacific agreement which is currently being put in place will not have to take some early action. But the amount of skipjack available to us, particularly from our own and New Zealand's waters, is more than sustainable at this stage.

**Senator O'BRIEN**—I am assuming from what you are saying that there is an enormous opportunity to expand the catch if you are going to take advantage of the US market—or does that mean you will transfer product from one market to another?

**Mr Jeffriess**—No, we would not transfer from one to the other, but we would give a security of markets—there is no question about that—which is important. The amount of skipjack that we catch to produce in Port Lincoln for the Australian market is very small compared with the western Pacific catch of skipjack, which is over a million tonnes a year. It is by far the largest fishery in the world in terms of value.

**Senator O'BRIEN**—So how many additional tonnes do you expect we would need to catch to take a significant share of the US market?

**Mr Jeffriess**—Between us and New Zealand, we currently catch about 20,000 tonnes a year. We would need to catch an extra 10,000 tonnes, which from the perspective of western Pacific's million tonnes—and this is the same stock—is a very small amount.

**Senator O'BRIEN**—I am not an expert on the life cycle or the travel arrangements of that species. I take it that it is the same travel pattern—that it goes through both regions?

**Mr Jeffriess**—The western Pacific stock is mainly in the tropical area, in countries like Micronesia and Papua New Guinea, so the fish which come down, which are carried by the eastern current or the western current into the Great Australian Bight, are essentially lost. Those lost fish do not belong in temperate waters; they belong in tropical waters. The actual catch goes up and down. But between us and New Zealand, we catch that amount.

**Senator O'BRIEN**—What work has been done on the availability of the species to be caught? Is there a history of catching more than we currently catch?

**Mr Jeffriess**—We have not needed to catch more. Because we are the only customer in Australia, we send our boats out and they catch what they are requested to catch.

**Senator O'BRIEN**—I am just wondering about the viability of a proposal to increase our trade into the US market if it is reliant on increased catch volumes.

**Mr Jeffriess**—That is the least of our problems—let us put it that way—in terms of penetrating that market. The biggest problem is the actual brand under which we would operate. That is a type of non-tariff barrier in the market itself. A simple example is the 'kosher' brand required in the United States. Getting the 'kosher' brand on your product is not an overnight process. All those things are the normal market challenges.

**Senator O'BRIEN**—Does that mean that the fish have to be processed in a certain way?

**Mr Jeffriess**—Yes.

**Senator O'BRIEN**—In a way that is different to the current processes, I take it?

**Mr Jeffriess**—It is a minimal difference in our case. Our processes have always been of that high quality anyway, simply because we have had to make the capital investment because of our labour costs.

**Senator O'BRIEN**—Total canned tuna exports for 2002-03 were 183 tonnes, worth \$1.29 million, but only 62 tonnes of canned fish in total—I do not know how much of that was tuna—went to the United States. Do you know how much of that was tuna?

**Mr Jeffriess**—To the United States?

**Senator O'BRIEN**—Yes.

**Mr Jeffriess**—Nil.

**Senator O'BRIEN**—Nil?

**Mr Jeffriess**—That is right.

**Senator O'BRIEN**—The 183 tonnes we exported in 2002-03 would come from the 10,000-tonne catch? Is that how I should understand those figures?

**Mr Jeffriess**—What is canned tuna in that small amount is exports to New Zealand and Singapore. It is essentially test marketing.

**Senator O'BRIEN**—That is what the Australian fisheries statistics tell me was the tuna export in 2002-03: 183 tonnes.

**Mr Jeffriess**—Of canned tuna?

**Senator O'BRIEN**—Yes.

**Mr Jeffriess**—As I say, most of it goes to New Zealand and small markets like Singapore where we are test marketing all the time.

**Senator O'BRIEN**—What happens to the other 10,000 tonnes?

**Mr Jeffriess**—It is all marketed domestically. Our brand has 40 per cent of the Australian market. Imports obviously have 60 per cent.

**Senator O'BRIEN**—Do we import any fish from the United States?

**Mr Jeffriess**—For canning?

**Senator O'BRIEN**—Canned fish from the United States.

**Mr Jeffriess**—Not to my knowledge. Some people may import from particular boutique canneries—canned sardines, for example. Canned salmon, of course, we import. We market that ourselves; we just do not produce the product.

**Senator O'BRIEN**—What is the impact of the free trade agreement on those imports into Australia?

**Mr Jeffriess**—They have always had duty-free access. The only tariff remaining in Australia is the five per cent and that is effectively abolished by the Thai free trade agreement with Australia.

**Senator O'BRIEN**—Does the fish that is imported now have a five per cent tariff?

**Mr Jeffriess**—If you import loins to make into cans, yes; but if you import the cans it is five per cent for some countries and not others. Effectively, the global competitor is Thailand and under the free trade agreement with Thailand that tariff is abolished from 2008.

**Senator O'BRIEN**—A story appeared in the *Australian* of 10 February this year which quoted the Port Lincoln tuna processors as saying that they expected a jump in income of \$20 million within 12 months and would need 50 extra staff. On 13 February Mr Vaile used the \$20 million number but said it was conservative and referred to an increase in staff of 70. Which is the correct number, or is that still a matter of art, not science?

**Mr Jeffriess**—Those things are estimates. It depends on the time it takes to get into that market—the instant capacity we have. We have been more successful in the domestic market than we could have imagined and that has absorbed a lot of our capacity. Access to the American market and the EU market is the only way we can survive in the long term.

**Senator O'BRIEN**—I am just trying to rationalise what you just said: you said you have been more successful in the Australian market than you could have imagined but your long-term survival is dependent on the US and the EU markets. Are you underselling the domestic market?

**Mr Jeffriess**—No. What I am taking is a realistic view of the import competition. Once the Australia free trade agreement with Thailand enters into force and the current five per cent tariff is abolished it will be very difficult for anyone to compete with the Thai product. The next supplier is mainland China, which will follow in the next decade. That is a realistic view. The only way we can survive in many industries in South Australia is to be niche marketing into markets like the United States. An opportunity was never available before.

**Senator O'BRIEN**—In the case of Thailand that five per cent tariff is not a nuisance tariff?

**Mr Jeffriess**—No, not at all.

**Senator O'BRIEN**—Its removal will make us uncompetitive with the Thai?

**Mr Jeffriess**—No, it makes it much more difficult to compete—we are not necessarily uncompetitive. Once mainland China gears up that has its own challenges for us.

**Senator O'BRIEN**—Is there a significant fish stock there that we do not have access to?

**Mr Jeffriess**—No, but there is significant processing capacity in China. We are aware of that. People are already doing that. For example, if the Norwegians export salmon to the rest of Europe they often send it to China for processing and then bring it back to Europe. They are the economics of global production. We are putting in capital equipment now which has to be amortised over 20 years. You have to be realistic about that amortisation period. That is what we are trying to be. The only way we can survive is volume.

**Senator O'BRIEN**—How much canned tuna would we need to export to the United States to make the trade worth \$20 million?

**Mr Jeffriess**—That would be an increase in the Port Lincoln production of about 30 per cent. As I said before, as a percentage of the American market it is miniscule.

**Senator O'BRIEN**—Does that mean an increase of about 3,000 tonnes?

**Mr Jeffriess**—A bit more—3,500 tonnes. That is in fresh fish equivalent, which are the terms we always talk in.

**Senator O'BRIEN**—Are there any safeguards in place for tuna products in the agreement?

**Mr Jeffriess**—There are the normal safeguard clauses, which are common to every trade agreement. We have them in the Thai trade agreement. The meaningfulness of them is doubtful. The Americans are not worried about Australian competition. As I say, it is only niche marketing. What they are worried about—it is in the publicity already—is the pending free trade agreement with Thailand. They are worried that the Thai will, obviously, insist on the same treatment. That is what worries the American industry and their political representatives.

**Senator O'BRIEN**—Do you think that that is going to block the endorsement of the US-Australia free trade agreement from the US point of view?

**Mr Jeffriess**—No, not at all. They are now moving on to the negotiation of the agreement with Thailand. That is where the problem occurs. I cannot overemphasise the dependence of these US dependencies on that particular US market. You are talking about the whole of American Samoa depending on that particular access. They know they cannot compete with Thailand in that market without that kind of preferential access.

**Senator O'BRIEN**—With regard to the opportunity for Australian product from the Port Lincoln cannery to get into the market, what market research has been done on the products that you propose to sell there?

**Mr Jeffriess**—We have done a lot of market research. One of the ways you make an assessment of these things is by looking at the interest from the potential American marketers, and that has been very substantial. At this stage the product that Port Lincoln produces is unique. As I said, others will no doubt follow. The Thai are trying to match the quality of that product now and they will eventually do it. We are confident that we can be competitive in the American market, but we need volume to do it. We need more volume than we have now. That, in turn, makes you more competitive in the domestic market. It is quite a straightforward process.

**Senator FERRIS**—Mr Jeffriess, there has been a good deal of evidence to this select committee on bilateral versus multilateral. I notice in the summary section of your submission you discuss the amount of time—you say it is decades—for the Uruguay and Doha rounds to deliver any benefits to your industry. Can you just take us through what has happened in those rounds in relation to industries such as yours? Obviously you have said it is preferable to wait for a bit longer with Seattle and Cancun and all the rest of them, but can you just talk us through the bilateral versus multilateral? We have had a lot of evidence which suggests that multilateral is preferable to these bilateral arrangements.

**Mr Jeffriess**—In our case, bilateral action targeting access for specific products is really the only way to best achieve market access. I believe this applies to most processed rural products, and New Zealand is a good example of where this has been successful. New Zealand is a far superior operator to Australia in this area, with special bilateral arrangements even when they are outside full trade agreements. We are trying to organise the same thing, and the Australian rock lobster industry has done the same thing with the EU. These products in the United States and the EU, particularly now in Spain, are so sensitive to local political pressure that they get lost in the maze of a multilateral agreement. It is only by targeting them in a bilateral agreement that you can best achieve these outcomes. It is not the only way of course, but it is the best way to achieve them.

The actual tariff protection to the United States industry since Kennedy, first, and Uruguay has actually increased, because what they have done is adjust the actual terminology they use in the tariff itself. So ours has gone from something like 20 per cent to 35 per cent. There are other products where multilateral negotiations are probably superior, but certainly not in, I would say, rural processed commodities.

**Senator FERRIS**—In relation to your industry—given that you are the only cannery in Australia and given your proximity to the clean water, the tuna farms and so on that have been developed—to what extent would you say the failure of Uruguay and Doha has held back the natural development of your industry? If it had been successful at multilateral levels, can you just sketch for me how you would see your industry operating now? What markets would you see it would be in? You said you had 300 employees. What number of employee do you think there might be?

**Mr Jeffriess**—To answer the question, the problem for us is that because of the delay in Doha, for example, to invest in a big purse seine to catch this type of fish for canning is \$20 million. You really have to be very confident it is going to happen. After the failure of the Uruguay Round, where we specifically targeted this product to try and get some Australian negotiating coin, that was a major blow to us. You cannot invest the kind of money that we are required to invest without some type of surety. We did not believe, frankly, that this bilateral agreement would achieve such an early outcome because of the political sensitivity of this product in the United States. So, to some extent, it will take us some time to gear up to achieve the types of outcomes which Senator O'Brien was referring to.

**Senator FERRIS**—That was going to be my next question. In terms of extra infrastructure investment, I imagine, both perhaps in the farms and also in the processing plant—which I am happy to say I have visited several times—can you just take us through how you would see yourself gearing up? I think Senator O'Brien asked about whether you had done any market research, but what about upward structural adjustment, I suppose you would say, to take up the opportunities that this agreement will offer your industry?

**Mr Jeffriess**—It can only happen over a period of two or three years. That kind of investment is substantial now the market is opened up. When competing internationally in the United States and anywhere else, currency movements and a whole range of things come into play. What we are talking about is major investment of, considering it is rural South Australia, tens of millions of dollars. To some extent, that is cross-subsidised by the success of tuna farming and the profits

from there, but these people who own this cannery are willing to put those types of dollars in. Anyone who goes there can see how successful it is.

**Senator FERRIS**—It is actually owned by local families, isn't it?

**Mr Jeffriess**—That is right.

**Senator FERRIS**—Are you telling us those families are ready and willing to make this investment to enable your industry to take advantage of these extra opportunities?

**Mr Jeffriess**—Yes.

**Senator FERRIS**—You do not see that there is likely to be increased pressure from any other companies in Australia that might set up?

**Mr Jeffriess**—No. It is not conceivable that anyone else could set up a cannery in Australia.

**Senator FERRIS**—How will this change the face of Port Lincoln?

**Mr Jeffriess**—It underpins the security. When you are competing in a domestic market with a tight free trade agreement, it will make it that much more difficult to compete et cetera.

**CHAIR**—We have a division in the Senate. We have to suspend proceedings for a minute or two.

#### **Proceedings suspended from 4.10 p.m. to 4.20 p.m.**

**CHAIR**—Mr Jeffriess, you were completing an answer to a question from Senator Ferris. The proper thing is to allow you now to complete your answer.

**Mr Jeffriess**—Basically the question was along the lines of: are the people who own the cannery willing to gear up to handle that type of volume? Yes, they are.

**Senator O'BRIEN**—Over what period?

**Mr Jeffriess**—That would depend on how quickly we could establish a brand. We do not own the brand under which we market in Australia—that is, the John West brand, which is owned by Simplot. We would need to establish our own brand or operate through another current American brand. Those negotiations are taking time.

**Senator O'BRIEN**—If I understand you, the process of investment will follow the process of establishing or registering or acquiring a brand.

**Mr Jeffriess**—The catching capacity we already have. The manufacturing capacity we would have to expand, yes.

**Senator O'BRIEN**—What is the lead time on such decision making?

**Mr Jeffriess**—The implementation of those decisions, once we establish the brand, can be made within months.

**Senator O'BRIEN**—So it is just purchasing more cooking equipment?

**Mr Jeffriess**—That is correct. The cooking equipment we have; it is the production line, space and those types of things that we do not have.

**Senator O'BRIEN**—Will this mean a diversion of product from the Australian market or other markets?

**Mr Jeffriess**—No, it would not.

**Senator O'BRIEN**—Will it mean different production techniques as against the two products?

**Mr Jeffriess**—No, it would not. The product is attractive in its own right.

**Senator O'BRIEN**—So whatever changes are made will be applied to the Australian market as well?

**Mr Jeffriess**—The benefit for our domestic marketing gives a more competitive cost structure.

**Senator O'BRIEN**—I am asking you whether you will modify all the product or you will be running different product runs—one for the United States and one for Australia?

**Mr Jeffriess**—No, we would not.

**Senator O'BRIEN**—Which of those two propositions?

**Mr Jeffriess**—It is the same product.

**Senator O'BRIEN**—You would be running the same product, so whatever changes you have got to make to fit the United States market for kosher branding, I think you said—

**Mr Jeffriess**—Kosher approved—

**Senator O'BRIEN**—What does that mean?

**Mr Jeffriess**—They are approved by certain religious groups in the United States.

**Senator O'BRIEN**—I thought that was what you meant.

**CHAIR**—The Jewish community, to be precise.

**Senator O'BRIEN**—Whatever changes you have to make would apply to all the product that you supply to the Australian market. Does that differentiate your product from other imported product in any way?

**Mr Jeffriess**—In the United States?

**Senator O'BRIEN**—No, here.

**Mr Jeffriess**—No. The product is the same. Kosher requires slight changes in production technology. We would use the same protection technology. It does not produce any kind of a different product.

**Senator O'BRIEN**—Where can we access the information about the availability of the additional catch?

**Mr Jeffriess**—Through the South Pacific Commission documents, or I can supply them.

**Senator O'BRIEN**—I would appreciate it if you could help us out that way.

**Mr Jeffriess**—I will supply the web sites. It is quite freely available. It is in the Australian literature as well.

**Senator O'BRIEN**—Thank you.

**CHAIR**—I have a couple of questions. You are aware of the dolphin tuna case for the WTO?

**Mr Jeffriess**—Yes.

**CHAIR**—As I recall, that is a case that arose in an argument about the collateral catching of dolphins in catching wild fish.

**Mr Jeffriess**—Catching wild yellowfin tuna, yes.

**CHAIR**—Are you aware of whether the question of dolphin detectors on fishing boats was raised in these negotiations?

**Mr Jeffriess**—It would not have been raised, because dolphins do not move with skipjack tuna, which is the tuna we can in Australia. Dolphins only move in one place in the world with tuna—that is, in the eastern Pacific off Mexico and other Latin American countries—and that is with yellowfin tuna. That is the only tuna, for some reason, that they mix with. There is plenty of literature on that in the western Pacific where we source our fish—only skipjack.

**CHAIR**—So are you telling me that Americans did not raise the question in this case because they believed your fishery was exempt from the potential of catching dolphins with the tuna?

**Mr Jeffriess**—We would be subject, like anybody else, to the same audits but they are not audits which would provide any more than just a nominal approach, simply because the type of

fish that we can does not mix with dolphins. In fact, in the whole western and central Pacific dolphins do not move with any tuna alone but skipjack.

**CHAIR**—With regard to the American distributors that you are negotiating with to take advantage of this opening in the market if the free trade agreement goes through, can you tell us whether the cans on the supermarket shelf will have ‘Australian tuna’ on them or whether they will not indicate the country of origin?

**Mr Jeffriess**—It compulsorily will include the country of origin under American labelling regulations. It will say in any case ‘Made in Australia’ even if it was not compulsory. We are a strong believer that that is a seller in the global market.

**CHAIR**—Yes, and so am I, but there is always a potential in the United States for people to restrict their purchases to US products. There are campaigns at state level to encourage that, which may inhibit market penetration. I do not know whether those particular buy-local campaigns are prohibited under this FTA.

**Mr Jeffriess**—I would not have thought that the normal approach like the ‘Made in Australia’ campaign and logo, which is quite normal in the United States, could be prohibited at all. It is not in any way contra to WTO requirements et cetera.

**CHAIR**—I was asking with respect to this agreement.

**Mr Jeffriess**—I know of nothing in the agreement which says that. I have not read anything in the agreement to that effect.

**CHAIR**—It has been put to us that the ISO quality standard will not apply in this market. Are your companies qualified to the ISO standard, do you know?

**Mr Jeffriess**—No, because we believe genuinely that ISO 14000 or 9002, which are the appropriate ones, are basically a waste of time.

**CHAIR**—So you are not qualified to those standards?

**Mr Jeffriess**—We satisfy other much higher standards in our view, which are required by AQIS. That standard is far superior to ISO. ISO is a very subjective, very subjectively audited branding of a product and we do not believe that it has any real meaning, because it does not have the government imprimatur.

**CHAIR**—Are you satisfied that you will meet American quality standards?

**Mr Jeffriess**—Well in excess of their quality standards, yes.

**CHAIR**—You have checked that?

**Mr Jeffriess**—We have checked every aspect of the market that we can. We satisfy all the regulations that we are aware of, yes.

**CHAIR**—So you have checked that you will meet their quality standards and the answer is yes?

**Mr Jeffriess**—Yes.

**CHAIR**—I have no further questions for you, Mr Jeffries. Thank you.

[4.29 p.m.]

**BERRY, Mr John, General Manager, Corporate Affairs, Australia Meat Holdings Pty Ltd**

**KEIR, Mr John, Joint Chief Executive, Australia Meat Holdings Pty Ltd**

**CHAIR**—Welcome. You are invited now to address us now for a few minutes.

**Mr Keir**—Our company's position is that we are in support of the agreement as it specifically relates to the meat industry. We do not wish to comment on the agreement in its broader sense, but we are supportive of it as it pertains to the meat industry. It delivers some immediate benefits to us in so much as the US\$4.4c a kilogram on the 378,214 metric tonnes under the WTO quota drops off as of day one. The quantum of the additional tonnage under the FTA of 70,000 metric tonnes puts us at a figure that this industry has traditionally never achieved. Given that there are some concerns about the availability on the supply-side to generate sufficient livestock to deliver that tonnage going forward, we think it is a very appropriate amount of tonnage to be awarded.

**CHAIR**—Is that the point you wish to impress upon us?

**Mr Keir**—I guess they are the two points that we wish to impress upon you: firstly, the fact that the US\$4.4c a kilogram drops off from day one—so that is an immediate benefit, we would argue, to the industry of somewhere in the order of \$A16 to \$A20 million—and, secondly, the incremental increase over 18 years of the 70,000 tonnes, which we would argue places the industry in a good position to continue to expand its exports to the US market.

**CHAIR**—Can you tell us a bit about Australia Meat Holdings? Who are you?

**Mr Keir**—We are a wholly-owned American company. We are a non-listed US company. Historically we have been owned by a group of Americans for a number of years now. They bought an interest in this organisation in 1991. We came together in 1986 when four Australian processing companies—all Australian owned: two family companies and two companies who had entities listed on the Australian Stock Exchange—formed a fifth company called Australia Meat Holdings. We continued under that ownership until 1988. In 1988 one of those companies acquired all the shares of Australia Meat Holdings—namely, Elders.

In 1991 Elders sold a 50 per cent stake in this organisation to a US group called ConAgra Foods, a listed US company. They maintained that ownership and in fact increased it. In 1996 they became 100 per cent holders of this company. In 2002 we had a change in ownership. We were taken out of the publicly listed company domain. We are now a private US company which is 46 per cent owned by ConAgra Foods and has two other shareholders, one of whom owns 44 per cent and one of whom owns 10 per cent of the organisation. We are basically meat processors. We process in round figures 1.4 million cattle per calendar year.

We are responsible for approximately 20 per cent of Australia's kill. We are responsible for approximately 26 per cent of Australia's exports. Our business is biased towards export. Our business is approximately 85 per cent export and 15 per cent domestic. We run four feedlots. We

have a one-time feeding capacity of 100,000 animals. We consume somewhere in the order of 350,000 tonnes of grain per year. We operate a couple of further processing businesses using approximately 20,000 tonnes of Australian product which we value add to make into hamburgers, pizza toppings and the like. We operate a third-party marketing arm which acquires third-party processor product and on-sells that product. We have a top line of approximately \$A2.5 billion. I think that gives you a fairly quick thumbnail sketch of who we are.

**CHAIR**—It does indeed, and it gives us a very comprehensive overview. Can you tell us about your company structure? As far as the Australian operations are concerned, are they governed by an Australian board?

**Mr Keir**—We operate under the structure of joint CEOs. My colleague Peter White and I have that joint responsibility. We have four Australian directors. Both Peter White and I are directors and we have two US directors. We answer to a parent company that is based in Greeley in Colorado: Swift and Co. Our line of communication to them is via their president or chief operating officer and thence to the board.

**CHAIR**—Where was the decision by the Australian subsidiary, Australia Meat Holdings, to appear and make submissions to this inquiry made? Was it made in Australia?

**Mr Keir**—It was most certainly made here. We have a degree of independence that is probably not recognised by a lot of people in business. We are very much in charge of our own destiny here and we have very supportive shareholders.

**CHAIR**—Were you required to clear that decision with your international owners?

**Mr Keir**—No.

**CHAIR**—Are they aware you are giving evidence to us?

**Mr Keir**—No, they are not—not unless somebody from that end has told them. We certainly have not told them from here.

**CHAIR**—I can vouch for myself: I have not told them.

**Senator O'BRIEN**—I am sure, Mr Keir, you are not worried about whether we have told them. I want to thank you and Mr Berry for your time in making yourselves available to this committee. The beef industry sought an increase of 30,000 tonnes on top of what was delivered through this agreement and a phase-in to achieve the changes in 15 rather than 18 years. I take it you would agree that, obviously, that would be a much better outcome.

**Mr Keir**—I think I would have to agree with that. The only thing I would point out to you—and I am sure you are aware of it—is that these negotiations took place under what I consider to be the most extraordinary set of circumstances for the beef industry. These negotiations were immediately post 23 December, which was when BSE was detected in the US. There was quite a lot of emotion within the meat industry. There had been an enormous fluctuation in their livestock values and their related meat prices. They had been excluded from all export markets. Whilst we would have been considerably more joyous if we had received 100,000 tonnes over an

implementation period of 15 years, we believe that, nevertheless, the outcome that has been achieved is a very good outcome.

**Senator O'BRIEN**—What is the capacity of the Australian industry to fill an increased quota?

**Mr Keir**—You would be aware of the controversy that takes place every time we get close to our quota. We filled our quota, as you are aware, in the shipping year 2002—which is effectively calendar year 2002 almost. That is the first time we have filled our US quota for 10 years. When you look at the background behind the filling of that quota in that particular year, you see that it happened against the backdrop of a market failure in Japan. We argue that it will be touch and go whether we fill our quota this year. In 2004 we have another market failure in that Canada, which has traditionally taken 80,000 of Australian product a year, will take very little product because of the BSE implications. Consequently you have another market failure. If we could exclude any market failure situations, it would be very doubtful whether we could fill our quota in the next two or three years.

**Senator O'BRIEN**—What are the production cycles in the US and Australia likely to throw up in the next, say, five years?

**Mr Keir**—For a couple of years now the US pundits have been forecasting that the US cattle cycle is at its bottom, but we have not seen it thus far. The herd continues to contract over there. Their tonnage of red meat produced continues to go down. When you look at MLA figures in this country—the most recent figures that I am aware of were in February and were done by Dr Peter Barnard—you find that they forecast a reduction in the Australian slaughter numbers for the calendar year 2004 of somewhere in the order of 600,000 head. Given that this is mid-June, we have not seen reductions of that magnitude. Nationally, our current year-to-date numbers are running at around 130,000 fewer than in the calendar year 2003 but, given the amount of rain there has been in southern Australia, South Australia, Victoria and southern New South Wales over the last four weeks, and with the expectation of more winter rain to come, one would sense that the throughput at southern Australian abattoirs will drop off significantly in the next three or four months. So we may well see fewer than that 600,000 head that were slaughtered in 2003.

**Senator O'BRIEN**—Does that mean that we can build the production cycle in the years to come because of retention of herd while there is pasture?

**Mr Keir**—There are people saying the drought has broken. Droughts do not break with one fall of rain and nor do they break in one week. They tend to break over a long period. This drought, being such a widespread one, will reflect that as we go forward. A big part of New South Wales is still very much in drought. Whilst there has been some rain in the last month and it has been of significant benefit to the wheat and cereal crops, at this stage, because of its seasonal nature and the dryness of the country prior to its falling, it has had only a minimal impact on the grass country. I think most people would be reluctant to start herd building at this stage. In fact, many people in New South Wales would be more focused on retention rather than rebuilding.

**Senator O'BRIEN**—What about the US? You said the herd size has contracted; it is almost at its bottom. Does that mean we can see it rebound, particularly if the Japanese market reopens?

**Mr Keir**—The US herd is running at somewhere less than 100 million—around 98½ or 99 million. That is the lowest it has been for 50 years. There were pundits who were prepared to say that 101 or 102 million was the bottom of it, but we have not seen female retention in that country the way many people have forecast in the last two or three years. The point about the reopening of the Japanese market is that it is not a done deal by a long way yet. I am not professing to be close to that, but the general consensus seems to be that it will not happen prior to Christmas.

One thing that has become very evident through this period of US exclusion from overseas markets has been the loyalty that the US consumer has shown to red meat as a product. Even though they are prohibited from sending any product to most overseas markets—there is an odd market that has accepted their product, but they are only one or two in number and they are very small in quantity—they have enjoyed a price, after the initial volatility, that is right up there in the top 10 per cent of prices they have ever received. That is a consequence of their consumer demand. Whether that is driven by the Atkins diet or by loyalty to the product I am not 100 per cent sure. The one fact that does come through very clearly is that they do not have a lot of beef surplus. There is no problem sending Australian meat there today and finding a buyer for it virtually forthwith.

**Senator O'BRIEN**—So our ability to fill the quota is based on our ability to produce the cattle for it?

**Mr Keir**—Most certainly, that is correct.

**Senator O'BRIEN**—Can you give me some advice on the likelihood of the quantum based safeguard and the price linked safeguard being triggered?

**Mr Keir**—That is a very complex issue that I suggest you address to somebody with greater mathematical skills than I. I have a layman's knowledge of it, but there would be people more competent than I to answer that question.

**Senator O'BRIEN**—Are you aware of Dr Barnard's view of the pros and cons of the deal? Can we accept his view as given in evidence to us about the worth of the deal?

**Mr Keir**—I have not seen that document but my understanding of it is that, like all in industry, he was looking for a tonnage of 100,000 tonnes and an implementation period of 15 years. Sure, we would have loved to get that also, but we operate in an international environment and we are meat processors, not negotiators in the international trade area. We understand that, in any negotiating process, there has to be some give and take. We think the number that has been arrived at is a reasonably fair number for the industry to go forward with.

**Senator O'BRIEN**—One of things that I had a conversation with Mr Barnard about—and I have also had a conversation with the Australian Consumers Association about this—was the issue of how the tariff reduction will impact on price. My understanding is that there has been some discounting of the value of that in any assessment of the value of the trade deal to Australia. Certainly the Australian Consumers Association put the view that every reduction in tariff inevitably leads to a reduction in price. If we apply that to the US4.4c a pound then we do not get the figure that you are talking about. What is your experience in that regard?

**Mr Keir**—I do not agree. I think price is a factor of supply and demand. Currently red meat is enjoying unprecedented popularity in the US, as is our red meat in Japan—I cannot say red meat in general in Japan because the consumption has actually dropped rather than risen, but sales of Australian meat have gone up and so have the prices in both markets.

**Senator O'BRIEN**—I understand that that is your opinion, but my question is: what is your experience with a market in which a statutory price component is removed?

**Mr Keir**—It depends on the supply and demand that is prevalent at the time it is removed. If it were to be removed tomorrow in this particular environment, I think it would transfer into higher prices because there is a very strong demand in both those major markets for our product. If you speak about the US specifically, our view would be that if the tariff were to be taken off tomorrow then we would enjoy the benefit of that—it would translate directly to our bottom line.

**Senator O'BRIEN**—So you pay the tariff at the moment, not the importer?

**Mr Keir**—It is all part of the equation, but, yes, it comes back to the price that we receive for the beef.

**Senator O'BRIEN**—So it is the importer who pays it and he factors it into the price he pays you?

**Mr Keir**—Correct.

**Senator O'BRIEN**—So you would expect that if the tariff is removed then he will increase the price paid to you?

**Mr Keir**—He is using an animal protein which is competing against the same animal protein produced in another country and alternate animal proteins. It is all done on a comparative basis. If the tariff was not there then I am sure we would receive more money for the beef.

**Senator O'BRIEN**—That is the problem I have. If he buys it from you, irrespective of the tariff, at X cents a pound and pays 4.4c a pound then why won't he just say, 'Well, I've been buying off you at X cents a pound and I will keep buying off you at X cents a pound—and the tariff gain is mine'?

**Mr Keir**—But implicit in argument is the fact that this is a steady, stable business. It is not. This is a very volatile business and it is driven by an enormous number of factors—the principal one being supply and demand. Prices do not remain steady in this business for any more than sometimes hours at a time—if that. You could trade the same product today at a somewhat different value tomorrow or the following day compared to what you do today.

**Senator O'BRIEN**—So what you are saying is that the importer has the ability to pay more because he is not paying the tariff?

**Mr Keir**—Correct.

**Senator O'BRIEN**—And you expect that market forces will mean that they will pass that saving on to the Australian exporter?

**Mr Keir**—Correct.

**Senator O'BRIEN**—We have conflicting evidence on that then, from your industry as well as from others. We will have to make an assessment on that. Can you tell me how important the development of a comprehensive national livestock ID scheme is in ensuring ongoing access to the US market?

**Mr Keir**—NLIS is a vehicle which gives trace back for the animal in the event of a disease outbreak or a major incident such as BSE. In the event that we had a case of BSE in this country, in our view we would suffer the same fate that Canada and the US suffered—that is, all countries in the world would prohibit the importation of Australia meat. We are unsure what would happen with pipeline product, but most certainly we would not be in a position to load any product out. Our view would be that the pipeline product would be returned. If we are in a position to trace back the offending animal and find its companion animals then we may be able to isolate the problem significantly earlier than we can under today's paper based system.

Having said that, if we were to fast forward and say, 'We've got NLIS tomorrow and we've now had it in place for five years,' I envisage that within that five-year period you would go to your trading partners at a government to government level, explain the concept of NLIS, demonstrate the capabilities it had with regard to trace back and engender in those trading partners some degree of confidence that you did have some control of the situation and that in fact you would contain any future major disease implication significantly more effectively than we can today with the paper based system.

**Senator O'BRIEN**—What if the US significantly upgrades its animal identification scheme? What would that mean for Australia?

**Mr Keir**—Once again, that is the dilemma we face. Currently you have negotiations going on between Canada and the US for the introduction of Canadian cattle into the US and you have negotiations going on between Japan and the US for the export of US product to Japan. Those two sets of negotiations are inextricably linked. Whatever comes out of those, our view is that we will be made to achieve some sort of equivalency with those two sets negotiations. In the case of Japan, Japan have full trace back and they also have full neurological testing of every animal. That is what they are currently attempting to impose on the US which is being resisted. Our view is that, once it is established what level of testing and what level of identification will be required, we will have to have nothing less than that—and probably something significantly greater.

**Senator O'BRIEN**—Thank you.

**CHAIR**—Thank you very much, Mr Keir and Mr Berry. We appreciate you giving your time to this inquiry and making the remarks you have.

**Proceedings suspended from 4.55 p.m. to 5.16 p.m.**

**APPLE, Mr Nixon, National Research Officer, Australian Manufacturing Workers Union**

**BRAIN, Dr Peter, National Institute of Economic and Industry Research**

**MANNING, Dr Ian, National Institute of Economic and Industry Research**

**CHAIR**—Welcome. Dr Brain, for the ACTU, AWU and AMWU in Melbourne the other day you began by making a presentation to us about the views and philosophies that underpin the study that you have undertaken. I know that you were pushed by me to bring that to a conclusion a little ahead of when you may have chosen to, so if there are any things that you want to add on reflection that you did not have a chance to then please include them now. There is an opportunity for all of you to address your study and for the committee to ask questions on it.

**Dr Brain**—We did not think that you would want a recap but I will take the opportunity. Basically that address was to put the thing in context. We thought it was important to look ahead in terms of evaluating the relevance of these sorts of things in the environment that is likely to be faced by the nation. Although it is not central to our study—but it is certainly background—we are coming from the idea that in the not too distant future, whether it be in one year or five years, Australia will be desperately looking for new drivers of growth because the current debt-driven driver will have run its course and the constraint of the balance of payments is likely to become more binding. The sorts of issues that are relevant to evaluating the benefit of the free trade agreement will be very important in determining our ability to transfer the economy onto a new path and a new set of drivers. In that context I was talking about the imbalances in the economy and how we thought that correction of those imbalances, which is part and parcel of finding new drivers, is likely to require the sorts of instruments that we think are going to be undermined, or at least circumscribed to a great extent, by the operations and provisions of the free trade agreement. That was the context of that little address.

In terms of our study and where we fitted in, we first of all took the government's study—the study undertaken by the CIE—and we subjected that to what we thought were appropriate tests as to what answers might come up with alternative methodologies that could be employed. Basically we were looking not for a whole-system approach to the problem, which can disguise the basic driver mechanisms or what is determining the outcomes of any bottom line assessment, but for a fairly transparent way of looking at these things. In any quantitative assessment it all comes down to parameters and elasticities that you feed into any system to get a conclusion.

We looked around and we thought the best way of recalculating the CIE estimates, at least in terms of the trade liberalisation, was to go to the US and find the best and latest estimates of the parameters that are relevant in assessing these sorts of outcomes. Those parameters are a country's market share with respect to change in US tariffs against that country's imports, the elasticity of substitution for a given good between different countries that go into the US. We thought we would find those estimates and then just redo the calculations. We thought we would look also at what had happened to Canada in terms of its trade agreement with the US and the carry down of that into NAFTA and we would then just draw some conclusions. But also we wanted not to simply decide on a point estimate but to develop a framework which would allow us to take into account a range of different alternatives and combine them into a rational framework that would assign probabilities to different ranges and outcomes. Everything then would be taken into account and, therefore, the argument basically would be one of a test of

logic of the assessment of the probability given to each possible alternative on each given issue. That is what we did.

Using our methodology of the latest estimates of parameters based on actual data and looking at the Canadian performance under Canadian free trade, the bottom line was that we did not get a net trade liberalisation outcome—that being merchandise exports less merchandise imports—that was all that different from the CIE study. In that sense our study says, ‘Okay, on our methodology there is not all that much difference.’ Then we moved on and looked in more detail at the whole raft of issues that we thought the CIE either had not done well outside the trade liberalisation area or had basically ignored. Those issues related to copyright, procurement both in Australia and in the US market, foreign investment and the constraints on using industry policy levers that governments around the world use to establish new and emerging technology industries and important things like the implications for the pharmaceutical scheme.

Basically, in looking at all those issues we did exactly the same thing that we did on the trade liberalisation issue. We looked at the range of alternative possibilities, we assigned probability rankings in what we thought were rational or logical ways within those sorts of parameters, and we came down to expected outcomes and a range of possible outcomes. In doing that we found that, once a more holistic or better balanced approach—in our view, anyway—is taken to these issues it is likely, on our assessment, that the negatives from considering the broader picture outweigh the positives from keeping a narrow focus on just the trade liberalisation issues. That is where our conclusion stands. In relation to the question on notice, we have sent to you this afternoon the impact on manufacturing employment which you requested.

**CHAIR**—I have not seen that answer, but I will dig it out. I turn to a couple of questions. Have you had a chance to see the study analysing the free trade agreement undertaken by the consultant to this committee, Dr Philippa Dee, now that it has been publicly released?

**Dr Brain**—No, we have not been through that study. My understanding is that her assessment was based in terms of the narrower focus of the CIE study. Therefore—I could be wrong—her conclusions would be more pessimistic than ours in relation to those narrower issues.

**CHAIR**—Her conclusions on net welfare gains to the Australian community were much smaller than those in the CIE study. But if you have not read her study then it seems to me it is unlikely that I can fairly question you on it.

**Dr Brain**—I got the impression that her negatives were more to do with the methodology around the CIE estimates that they had provided rather than the broader approach that we had taken. Therefore, my impression was that she would argue that we had been too optimistic, too, in those areas.

**CHAIR**—I think that would be true. Therefore, you might address us on that point. Why should we regard you as not being too optimistic? Are you being too optimistic?

**Dr Brain**—That is an interesting exercise. I think where we could be optimistic is in determining our upper limit. We said: ‘Let’s say Australia entered into a free trade agreement with Canada in 1989—as the US did. How would we have done, compared to the negatives that actually happened?’ Because of the crowding out by Canada against Australia we lost that

benefit. In setting, if you like, a practical maximum for the benefit, we said, ‘Let’s say we can turn back the clock now.’ From memory, I think we lost a half a percentage share of the US market because of Canada and NAFTA. We said, ‘Let’s assume that we can get that back.’

The reality is that if we had gone with Canada into the agreement in 1989 we might well have not lost that half a percentage share in the US market. But some of those firms that could have driven that response in 1989 have now gone out of business or changed their structure. All sorts of things have happened, so that platform is no longer there. When you read the Canadian study put out by the University of Saskatchewan in relation to the Australian free trade agreement you see what they think of our prospects for clawing back that market share lost because of the early first mover advantage of Canada in the US. Basically, they do not think we are going to do much good at all, because they have the first mover advantage. Our capacity in a lot of these areas has now gone, compared to the competitiveness of Canada as it would have been in the late eighties. So, yes, you could argue that we are being quite optimistic in that regard.

**CHAIR**—I have a series of questions related to the Dr Dee study, but I will just move on for a moment. I think on page 106 of your study at reference 10.3, AUSTFA and the cost of pharmaceuticals, you have provided us with an analysis from your perspective of how the free trade agreement might impact on the cost of pharmaceutical medicines.

**Dr Brain**—It is obvious; you just have to look at the table of the contributions as an important element. Our thinking basically is as follows. The first thing we asked ourselves was, ‘Well, let’s look at the agreed principles on pharmaceuticals in the agreement.’ They basically revolve around reward for innovation and R&D. The second thing we looked at was the public record of what the objectives of the pharmaceutical industry in the US would be in the context of this agreement with the added context that, as far as I know, this is the first time that pharmaceutical pricing arrangements have been included in a free trade agreement. What the American industry clearly does not like about the Australian Pharmaceutical Benefits Scheme as it is currently is that it delivers low-cost medicines in conflict—or what they perceive as conflict—with the perceived principles. It does that by making the rewards for getting onto the list so great that companies have to compete very fiercely in order to get on it.

This is not a criticism or my saying that they are evil or anything, but faced with that sort of arrangement it is only natural that you would love to do away with it—not so much because Australia is a great deliverer of profits to the American pharmaceutical industry but purely on the basis that it is a model which, if it were imported to the US or more vigorously elsewhere, such as in the European jurisdiction, could be quite costly. From that perspective, you would want to weaken that scheme. We think that the principles included in the agreement and the mechanisms that have been put in there in terms of the operation of the system will, in fact, by hook or by crook, lead to a convergence of Australian prices with US prices.

**CHAIR**—Is there an additional comment?

**Dr Manning**—I have an additional comment. From our reading of the document, it looks as though a breach of procurement principles is involved. Even though it is at some distance, if you are a government buying, in this case, pharmaceuticals, it is not a good idea to allow representatives of the vendors into your procurement process.

**Mr Apple**—I think the third factor was the uncertainty when the institute looked at the operations of the medicines working group and the uncertainty around the review mechanism. They then considered the dispute resolution procedure outlined in 21.2(c), which applies to chapters 2, 3, 5, 10, 15 and 17. That particular set of review mechanisms led the institute to conclude, on the balance of probabilities and given the objectives of the global pharmaceutical companies, that the PBS would probably end up in a disputes panel with a number of other issues. It was also considered that clause 17.10 and the potential implications for delaying the introduction of generic drugs would put upward pressure on drug prices through the extension of new use patents.

Because these things have been said by other parties, I think the value of the institute's work is less to regurgitate those arguments, which at the end of the day are largely subjective, but is rather to ask: if Drahos and his colleagues are right and we put their estimates into the CIE framework of looking at it over 20 years in a net present value sense with a five per cent discount rate, and given the CIE outcome of \$55 billion, what is the effect from pharmaceuticals? Suddenly you come up with a minus \$29 billion factor. All of a sudden you are offsetting a great deal of what were seen in the CIE as potential upside benefits.

**CHAIR**—I want to go into some detail about pharmaceuticals for a moment. There are two elements to it as you have presented it to us. The first is the independent review, the medicines working group and the impact they might have on pricing, as you have described. The second, which you have just referred to, is article 17.10—and I think the relevant provision is 17.10.4. The way in which it has been submitted to us by some who have appeared before us is that that provision can create evergreening—the ability to extend patents of drugs. I want to ask you some direct questions about both of those things. The agreement, which no doubt you have looked at, makes it plain what the purpose of the independent review and the medicines working group is without providing us at this point with the detailed regulations on how they will be structured.

Last evening, we had a roundtable discussion with various people associated with health, which included the AMA, various academics, the department of health and the chief negotiator. We focused for about 4½ hours on trying to get to the bottom of what all this meant. Obviously senators will have arrived at their own conclusions following being exposed in some detail to the points of view that were put, but for the sake of this discussion can you tell us why you think—I assume you do from what you have said—that the broad purpose of both the independent review and the medicines working group would lead to higher priced drugs being eventually admitted to the PBS? Also, is it your view that article 17.10.4 leads to a potential for evergreening?

**Dr Manning**—Our first point is that we are pointing to the very strong uncertainty of this provision. If I am right, we put as our top balance that there will be hardly any downside for the pharmaceuticals scheme, but we put it as most probable that there will be some downside, and as the lower bound we say that there will be quite a lot of downside. So I agree with what you have just put—that the wording of the document is very obscure or rather—

**Senator BRANDIS**—Just because it is obscure to you does not mean it is obscure. It might mean that you simply do not understand it because you do not have the expertise. The people who do profess expertise—that is, international trade lawyers—find it not obscure at all.

**CHAIR**—Please complete your answer, Doctor.

**Dr Manning**—We are not certain as to exactly what the effects will be in actual operation. However, as economists, we have looked at the international drug industry and are very impressed with its continued high profit rate. According to economic theory, competition should remove that. It has not. We can only assume that this is because of the industry's expertise in exploiting its patented advantages, which are a government provision, and also in exploiting government procurement, because as you are well aware sick people are not generally rich people. Usually therefore some form of subsidisation of drug purchase is required. So, because of our general view of the industry, as articulated by, among others, the Industry Commission, we are inclined to look very carefully at any change in the balance of power that might be involved. I agree that the changes to procurement provisions are not direct. However, the matters of appeal against listing do have the potential to change both listing requirements and prices.

**CHAIR**—Next I want to go to your section which commences at page 36 in your report. That is headed: '5. The core methodology: the generation of probability distributions for motor vehicle industry outcomes'. Can you just describe to me as a layperson what these charts are supposed to establish?

**Dr Brain**—The basic methodology we used was what is described in the literature as a triang distribution, which is fully described by the specification of the concepts of the mean likely outcome, the practical maximum outcome, the practical minimum outcome and the probabilities that the practical minimum and maximum will be exceeded. This appealed to us because it is a reasonably intuitive way of combining a lot of information in relation to an issue, in the sense that, although there is obviously an element of subjectivity, it is transparent subjectivity, and it does allow people to assess fairly easily the logic of your argument. We all do, I think, intuitively look at things in terms of a reasonable or practical range of possible outcomes and in relation also to where we expect the mode that is specified to be—that point which is likely to have the highest probability of outcome.

**CHAIR**—What am I to assume from these studies? If you can put it for me in plain language, what do you believe this establishes?

**Dr Brain**—In terms of the motor vehicle industry, what we said was that there is a range of views. The possibility in terms of the maximum outcome is that indeed we may export utilities or four-wheel drives to the US by using some capacity that could become available in the Australian motor vehicle industry, providing the American motor vehicle industry would allow it. But on the balance of possibilities, although that is a possibility, at this stage it is unlikely that those decisions would be made because of the various complexities of decision making in the US motor vehicle industry irrespective of cost. On the other hand, based on US assessments of how much of the Australian motor vehicle market they could capture through exports from the United States—I think figures around \$US500 million have been specified—there is a possibility in terms of the Australian free trade agreement. That is a possibility, but in our view it is unlikely. It has a low probability of being achieved simply because of the reasonably low degree of substitutability—at this stage at least—between Australian motor vehicles and those produced in the US. That is specifying the upper and lower bounds. The figures on page 44, given that sort of assessment, give you a probability ranking in terms of outcomes of the likely benefit.

**CHAIR**—So we see in this table something akin to table 7.1 in the CIE study. In that case it was about jobs. This is about exports and imports and the direct net benefits.

**Dr Brain**—That is correct.

**CHAIR**—Where do I go to see the job impacts of that?

**Dr Brain**—In terms of the motor vehicle industry or the total?

**CHAIR**—Firstly, the motor vehicle industry. I understand manufacturing was one of your focuses.

**Dr Brain**—I will give you the manufacturing jobs in total. I will email it off this afternoon. The overall bottom line outcome is to go through all the different issues and specify these probability distributions where the declining distribution gives you in any given read-off of the distribution the probability that the outcome will be lower or closer to the origin. For example, for the motor vehicle industry, figure 5.4 shows there is a 25 per cent probability that it will be lower than minus \$2.2 billion in terms of net benefit, and so on. So we go through all the different issues, specify these probabilities, then we combine them all to get a bottom line outcome with all the probabilities interacting to give you the total bottom line probability. Those bottom line probabilities for employment are given on page 115.

**CHAIR**—On page 115 there are two graphs: figures 11.6 and 11.7.

**Dr Brain**—What I am doing here is focusing on figures 11.5 and 11.6. Figure 11.5 shows the average annual change in employment compared to what otherwise would have been the case. In other words, what the variable represents is a baseline going out, then we take the deviation from the baseline as a result of all these factors being put into the mix and average that difference. It is the year-by-year differentials averaged. What we see from that graph is that, taking 100 minus 25 per cent, with a 75 per cent probability the outcome will be greater than a job loss of 64,598.

**CHAIR**—This is not a time series graph, though. This is a static snapshot, is it?

**Dr Brain**—No. It is the average over the years 2005 to 2025. The final year, 2025, is in figure 11.6.

**CHAIR**—I see that now.

**Dr Brain**—You can see that we have mucked up the dollars.

**CHAIR**—So there is a 25 per cent probability according to figure 11.6. But what is that figure there?

**Dr Brain**—The other way of interpreting it is that there is a 75 per cent probability that you will get fewer job losses than 195,000 in 2025. The year 2025 will be greater than the average because all this is phased-in. Some of the effects, like foreign investment and those sorts of things, do not start cutting in until 2008 or 2009.

**CHAIR**—When I looked at the figures in the CIE study in table 7.1 and totalled up all the notations of ‘occupation’—as I think it is fair to call them—as to what I thought were manufacturing occupations, one of the entries in what I made to be the manufacturing column in

their study was leather or leather goods, which showed, as I recall, quite an extraordinary increase in jobs for that sector. There were job reductions in mechanical components and automotive components. I am going to ask Dr Stoeckel this but are you able to offer any views about the likely impact on leather goods or leather products?

**Dr Brain**—Yes. If you have a minute, I will try to bring it up on the system.

**Mr Apple**—Chair, has the committee received the two graphs on manufacturing employment that Peter sent up?

**CHAIR**—We do not seem to have those two graphs.

**Mr Apple**—They were sent today to the email address on the Senate inquiry's web site. I will give you a brief summary. Your question was: for those 57,000, on average, job losses per year and the large job losses at the end of 2025, how many were in manufacturing? The material we sent today said that, on average, the job losses in manufacturing compared to the situation without the agreement was 17,300 and that by 2025 manufacturing would have approximately 39,000 fewer jobs than would otherwise have been the case.

**CHAIR**—I have the graphs now.

**Mr Apple**—It is the same methodology in terms of the distribution of the 25 per cent probability and the 75 per cent probability.

**Dr Brain**—The thing to remember about 7.2 in CIE is that they are more akin to our analysis in table 4.1 and so on. So it is a question of what export increase we basically have for that industry. For leather goods exported to the US we have 2.2 per cent of output. Leather and leather substitutes are up 9.2 per cent. We have to aggregate that. That should be aggregated in table 3.3.

**CHAIR**—What I am asking, and you may not be in a position to answer this question—you may need to refer back to your notes—is this: what is the explanation for that? It shows increased exports on your table 3.3 and on the CIE model in the job distribution it shows a dramatic increase in jobs, which, in my calculations, on the CIE calculations, turned the manufacturing sector into a positive employer under this agreement, not a negative one. The anomalies seem to be quite a dramatic increase in jobs in this area, which, notionally at least, appears to be confirmed by your table 3.3. What is it that causes that change?

**Dr Brain**—I think we will do better justice to it if we give you a written response to that.

**CHAIR**—Okay.

**Dr Brain**—It obviously goes back to the fact that the tariff cut must be in percentage terms quite high. That is in our table 3.3—we gave those percentage changes. It must also go down to the fact that the tariff elasticity of imports with respect to tariffs is also quite high.

**CHAIR**—Okay.

**Dr Brain**—What you are asking is what the quantitative significance of that is. Our output shows a high percentage, so that must be the reason.

**Senator BRANDIS**—Doctor Brain, you said in your evidence, and I made a note of it, ‘This is the first time pharmaceutical pricing arrangements have been included in an FTA.’

**Dr Brain**—I said I thought it was.

**Senator BRANDIS**—Yes, sorry. But you do think, don’t you, that pharmaceutical pricing arrangements are included in this FTA?

**Dr Brain**—I think that mechanisms have been included in this FTA that will in effect produce that outcome, yes.

**Senator BRANDIS**—I am wondering how you think that could be the case, when, as we now know from the expert evidence we heard last night, there is no price review mechanism whatsoever in the FTA for pharmaceutical goods? Did you know that?

**Dr Brain**—What we are basing our assessment on is the dispute resolution procedures, as outlined in 21.2(c), which we think also applies to chapters 2, 3, 5, 10, 15 and 17 of the agreement.

**Senator BRANDIS**—I do not know whether you happened to be listening to the evidence we had last night or have had the opportunity to consult the *Hansard* record of yesterday’s proceedings.

**CHAIR**—It is not out yet.

**Senator BRANDIS**—It is not out yet, I am told. Let me be the first to give you the good news and reassure you that, for a variety of reasons that I am happy to take you through, it is simply not possible for the dispute resolution mechanism in 21.2(c) to have the effect that you fear it may have on pharmaceutical prices, most obviously because the whole of chapter 21 of the agreement, which deals with dispute resolution, *ex hypothesi* can only operate on a dispute arising under the agreement. That is what it is there for. There is nothing in the agreement that provides for any mechanism by way of review or setting in the first instance. The agreement absolutely does not speak to the question of pharmaceutical prices, so it is not possible for a dispute about pharmaceutical prices to arise under the agreement. Did you not appreciate that, Dr Brain, when you gave that evidence before? My questions are to Dr Brain in the first instance. I do not want to shut out Dr Manning or Mr Apple if they want to say something, but I am testing the accuracy of the evidence given by Dr Brain. Perhaps we could have him respond in the first instance.

**Dr Brain**—My evidence is based on the assessment of putting myself in the position of the American pharmaceutical industry—what is on the record in terms of their objectives and how they consider the benefit or the operation of—

**Senator BRANDIS**—I can understand that you might be—

**CHAIR**—Order!

**Senator BRANDIS**—Mr Chairman—

**CHAIR**—No! We are not going to go through this again, Senator.

**Senator BRANDIS**—Mr Chairman, govern your temper, please.

**CHAIR**—Just you obey the chair, Senator Brandis.

**Senator BRANDIS**—Your conduct of these proceedings has been a disgrace. You have been partial. You have been bad-tempered. You have not governed yourself by the same procedural rules—

**CHAIR**—Senator Brandis, bring yourself to order or I will close these proceedings instantly!

**Senator BRANDIS**—Well, close the proceedings.

**CHAIR**—Senator Brandis, bring yourself to order. You will withdraw the reflection on the chair now.

**Senator BRANDIS**—No reflection on the chair was intended.

**CHAIR**—A reflection on the chair was made. Withdraw those remarks now, please.

**Senator BRANDIS**—If a reflection on the chair was made, to that extent I withdraw.

**CHAIR**—Okay.

**Dr Brain**—Can I just—

**CHAIR**—No. The chair has the floor.

**Senator FERRIS**—What? Still?

**CHAIR**—The chair has the floor—

**Senator FERRIS**—You have had the floor for an hour. I do not know why we are even sitting here.

**Senator BRANDIS**—The chair has had the floor of this committee all the time.

**CHAIR**—The chair has the floor as the presiding person in this hearing.

**Senator FERRIS**—You have had the floor for an hour.

**CHAIR**—Order! Order on this committee!

**Senator FERRIS**—Stop shouting.

**CHAIR**—Come to order, Senator!

**Senator FERRIS**—Don't shout.

**CHAIR**—Come to order, Senator!

**Senator FERRIS**—I will not be shouted at, Senator Cook.

**CHAIR**—Come to order!

**Senator FERRIS**—I am in order and I am asking you to stop shouting.

**Senator BRANDIS**—Until Senator Cook behaves himself, we should suspend the proceedings.

**CHAIR**—Order! I am standing now as the presiding officer of this committee and I ask for silence while I make a ruling. Can we have some silence? I am here to find out the information that the witnesses are providing. I want to hear the answers of the witnesses before they are intervened on with further additional questions. I am interested in hearing the full answer. Let us now hear the full answer that the witness was providing. Then you can ask your additional questions, Senator Brandis.

**Senator BRANDIS**—I have a point of order, Chair. During the course of your conduct of these proceedings and when you have been the senator with the call, you have, with no objection so far as I am aware from any government senators and certainly with no objection from yourself as the chair, consistently interrupted the answers of witnesses when they were answering questions, in most cases for the very sensible reason of directing the witnesses' attention to the issue that you wanted them to focus on in their response. That is a helpful procedure. It certainly attracts no criticism from me. I invite you to apply the same principle to government senators as you have been happy to apply to yourself.

**CHAIR**—I reject that analysis. There is no point of order. Proceed, Dr Brain.

**Senator BRANDIS**—You cannot remember where you were, Dr Brain. Do you want me to ask the question again?

**Dr Brain**—No. I will turn over to Ian Manning. I would just like to say that there is a study put out by the government on the record which says that there will be zero costs or insignificant costs in terms of the agreement in relation to pharmaceuticals. But we have simply done—

**Senator BRANDIS**—Before you turn over to Dr Manning I want to ask you some more questions arising out of that answer, so why don't you finish your answer and then I will ask you some more questions.

**Dr Brain**—The evidence that we have presented in relation to pharmaceuticals takes into account the view, as Ian Manning has already said, that there may be additional costs with the

agreement but in our judgment, from a variety of sources, puts a more practical assessment in relation to what we consider to be the evidence for a logical conclusion on likely future costs, and we stand by that.

**Senator BRANDIS**—You said that is a logical conclusion. I am sure you believe it is, if you are prepared to say that it is. Can you tell me how, as a matter of logic, this agreement can impose pressure on pharmaceutical prices when the agreement contains no mechanism for price review? It is just not part of the agreement at all. So how can that, in your opinion, happen?

**Dr Brain**—I will just go back to what I said at the beginning. We make that assessment on the basis of looking at what are the agreed principles on pharmaceuticals which are in the agreement, which is all about rewarding innovation and R&D.

**Senator BRANDIS**—From a legal point of view this is a legal document so perhaps, not being a lawyer, you are at a disadvantage here, but you do not look at principles in order to determine the way a mechanism operates, you look at what the mechanism says. But if we were to look at principles, I am just wondering, Dr Brain, why you are focusing on one of the principles mentioned in the agreement and have not so much as breathed a word on another of the principles also recited in the pharmaceutical section of the agreement—that is, the need for medicines to be affordable. If one of the principles of the agreement is to keep medicines affordable and if the right approach to construing this agreement, as you would have it, is to construe it by reference to the principles, that would suggest, would it not, that the agreement is not going to cause pharmaceutical prices to rise if it is one of its stated principles to keep them affordable?

**Dr Brain**—That is not our view. It is not our view because, technical or legal aspects aside, what this relationship is about is a power relationship between the two parties. In relation to this issue it is our judgment that Australia's position is not hugely advantaged. Secondly, you talk about—

**Senator BRANDIS**—Can I ask you to pause there.

**Dr Brain**—Could I just answer the question in relation to—

**Senator BRANDIS**—If you are going to go on to another point, I just want to challenge you on that first part of your answer. May I do that?

**Dr Brain**—Yes, sure.

**Senator BRANDIS**—You say it is a power relationship. You appreciate, surely, that where two parties have a contract—because that is what this agreement is; it is a contract between two countries—in relation to the resolution of any disputes that might arise under that agreement they stand in a relationship of equality in the eyes of the dispute tribunal. They have equal rights under the agreement. Their rights are the rights the agreement gives them. The fact that America is a more powerful country than Australia is, from a dispute resolution point of view, irrelevant. Surely you understand that.

**Dr Brain**—I was going to go on and talk about the concept of affordable medicine. If we look at this week's *Economist*, there is a graph showing health expenditure as a per cent of GDP. In the US, currently that expenditure is 14.4 per cent of GDP, compared to Australia where it is around nine per cent. Not all but a substantial part of that cost differential is the higher cost of drugs in the United States. Using that evidence, the American concept of affordability will presumably be based on their own benchmarks, not on what we consider to be affordable medicine.

**Senator BRANDIS**—Why do you say 'presumably'? This is an agreement between two parties. They both say they want affordable medicines. I would have thought as a matter of logic that medicines would be only affordable according to the common view of those two parties—that is, if they are affordable according to the principles of both.

**Dr Brain**—You are right, Senator Brandis, I am not a lawyer but I have been in enough litigation to know—

**Senator BRANDIS**—That is logical isn't it?

**Dr Brain**—that when you go to court they start from fifty-fifty and move upwards from there. Therefore, I would think that a practical interpretation of the operation of the principle of affordability will involve a convergence to some sort of average benchmark between the two standards.

**Senator BRANDIS**—I do not know why you think that, but anyway that is what you think. I want to come back to my initial question. We all know America is more powerful than Australia; America is more powerful than any country in the world. But we are interpreting a legal text here and I am asking you how, as a matter of logic, it is possible for this agreement to enable pharmaceutical prices to rise in Australia as a result of its operation when the agreement does not even have provision for reviewing prices? I could begin to understand your argument if there were a clause of the agreement that said, 'You can review prices and there can be a disputes tribunal that reviews prices.' I imagine you would say then that the Americans with all their firepower would come along to this price review tribunal, they would put all these arguments and they might overwhelm the Australian advocates before the price review tribunal, but there is not a price review tribunal. We know that. If there was any doubt about that it was removed in the mind of even a fairly unintelligent person by the evidence we heard from the experts last night. So, if there is no capacity to review pharmaceutical prices under this agreement, how can the fact that America is a very powerful country with a powerful pharmaceutical industry even be relevant here?

**Dr Brain**—Our assessment is made on what we think of how the way the independent review process in annex 2C 2(f) will operate.

**Senator BRANDIS**—Let me take you through it, Dr Brain, because—

**CHAIR**—Make this the last question.

**Senator BRANDIS**—No.

**CHAIR**—You will make this the last question.

**Senator BRANDIS**—No, I will not—

**CHAIR**—Yes, you will.

**Senator BRANDIS**—because I fully intend to use as much time as you used.

**CHAIR**—No, you won't. You won't be contemptuous. Make this the last question and we will now move to the next witness.

**Senator FERRIS**—That is outrageous.

**Senator BRANDIS**—I have several more questions for Dr Brain. You have occupied more than an hour, you have given the other senators 15 minutes—

**Senator FERRIS**—You cannot bully the whole committee.

**CHAIR**—Excuse me, make this the last question and we are moving on. I offered you the call at the beginning of this question period. You declined it. So did Senator Ferris. I asked questions. You now have the indulgence of the chair to ask additional questions—

**Senator BRANDIS**—As a matter of courtesy—

**CHAIR**—Do not speak while I am speaking. You now have the indulgence of the chair and I am saying we are now 15 minutes overdue—

**Senator FERRIS**—Why do you need to shout all the time?

**CHAIR**—for the next witness—

**Senator BRANDIS**—I move dissent from the chair's ruling.

**CHAIR**—You move dissent from the chair's ruling?

**Senator BRANDIS**—Yes. Put the motion. You have to put the motion immediately. Under Senate standing orders you have to put the motion—

**CHAIR**—I ask Senator O'Brien to take the chair because I wish to speak to the dissent motion.

*Senator O'Brien having taken the chair—*

**Senator COOK**—Mr Acting Chair, the agenda of this hearing was published in advance of this hearing. The agenda of this hearing is quite clear and all senators appearing on this committee know what it is. It says from 5.15 to 6 p.m. the National Institute of Economic and Industry Research will be available for evidence. It says from 6 p.m. to 6.45 p.m. the

Winemakers Federation of Australia will be available for evidence and from 6.45 to 7.15 Baxter Healthcare will be available for evidence.

The clock now shows the time as 6.15 p.m., which means we have kept the Winemakers Federation waiting and/or Baxter Healthcare waiting, for an additional 15 minutes beyond the normal time. In order to keep to the published program, while I am happy to indulge additional questions and have done so, there has to be some reasonable limit so that witnesses who have made the effort to come here can be treated with respect and courtesy by this committee and be heard. My ruling is based on extending that reasonable courtesy per virtue of the published program of this hearing. The second point I wish to make is: I have been here all afternoon for this hearing, but not all senators have been.

**Senator FERRIS**—But you are the chair.

**Senator COOK**—Yes, I am the chair of the committee—thank you for interjecting—and you would expect me to be here. I have been here all afternoon. As the chair, I offered to Senator Brandis the opportunity to question these witnesses prior to anyone else questioning them. He declined that offer, indicating at that point that there were no questions. After I pursued a series of questions, because no-one else on this committee had any questions whatsoever for the witnesses, I then took an opportunity to ask them questions. As a consequence of that we now have additional questions. These questions are running around the same point and we can spend all night doing that, but I think that is an excessive indulgence and it is appropriate for the chair to draw a senator engaging in that excessive indulgence to order. They are the reasons for my ruling.

**Senator BRANDIS**—In fairness, there should be a rough equivalence of time available between government and opposition senators. That is all I wish to say.

**ACTING CHAIR (Senator O'Brien)**—I wish to vacate the chair and speak to the motion.

**Senator BRANDIS**—You will have to give the chair to me because I am the deputy chair.

**Senator COOK**—No, you are the mover of the motion.

**Senator BRANDIS**—Perhaps Senator Ferris should take the chair.

**ACTING CHAIR**—I am happy to vacate the chair to Senator Ferris while I speak on this matter.

*Senator Ferris having taken the chair—*

**Senator O'BRIEN**—The facts as outlined by Senator Cook are correct. I have been sitting here for the entirety of these proceedings. When these witnesses appeared via teleconference I was witness to a procedure whereby Senator Cook offered the call first, I think, to Senator Ferris and then to Senator Brandis. Both senators indicated they had no questions, or words to that effect. Then Senator Cook turned to me and asked me whether I had any questions and I said no. Senator Cook then undertook to ask a number of questions. We have a timetable for hearing from these witnesses, which is set out in the agenda on the table in front of us at the moment. In

terms of that agenda, these witnesses were due to finish at 6 p.m. We have had a witness in the audience waiting to be heard for about 30 minutes. In my view Senator Cook is exercising a process of some convenience—indulgence is probably a better word—for Senator Brandis to allow him to ask questions 15 minutes past the stated time. I think that there has certainly been some acrimony in that period, which I think has probably not aided the conduct of these proceedings whereby the chair has attempted to rule on matters and that has raised the ire of Senator Brandis. Having been advised by the chair to conclude questions—

**Senator BRANDIS**—I am not angry. I am just trying to enforce procedural regularity by the chairman who has behaved in a disgraceful manner.

**ACTING CHAIR (Senator Ferris)**—Senator Brandis, I am the acting chair and I am asking you to please let Senator O'Brien finish.

**Senator COOK**—You are a disgrace.

**ACTING CHAIR**—I am the acting chair and I am asking you, Senator Cook, to allow—

**Senator COOK**—Call Senator Brandis to order.

**ACTING CHAIR**—I had done so, Senator Cook, before you interrupted. Senator O'Brien, please continue.

**Senator O'BRIEN**—I think some of the acrimony is continuing to spill out into these proceedings. The fact is that I have been a part of a great many proceedings where the chair has indicated that, there being a timetable—even with latitude given—those proceedings do come to an end, and a time is indicated for when they do come to an end. That is what the chair ruled. Regarding the dissent from that ruling—which, as I understand it, is the purpose of Senator Brandis's dissent motion—I wish to record that I believe that the chair is entitled to make the ruling that he did, and I will not be supporting the motion.

**ACTING CHAIR**—Thank you, Senator O'Brien. I will put the motion. All those in favour, please indicate by raising their hands. Those against, please now raise their hands. I use my vote as the chair to cast a vote in favour of Senator Brandis's motion.

**Senator COOK**—I think you are out of order.

**Senator O'BRIEN**—I do not think you can do that.

**Senator COOK**—You don't have a casting vote.

**ACTING CHAIR**—You appointed me acting chair, and I have used my casting vote accordingly. Please proceed, Senator Brandis.

**Senator CONROY**—Can we seek some advice from the Clerk on whether—

**Senator FERRIS**—Senator Conroy, you—

**CHAIR**—It is your political purpose to reduce this whole thing to a farce. That is the line you are constantly pursuing.

**Senator BRANDIS**—Are you chairing this meeting at the moment?

**CHAIR**—I am chairing this meeting at the moment.

**Senator BRANDIS**—All right. I am proceeding to ask my question.

**CHAIR**—I want to indicate to this—

**Senator CONROY**—Can we seek some advice from the Clerk?

**CHAIR**—Yes.

**Senator FERRIS**—There is no need to seek advice from the Clerk. We are now proceeding.

**Senator BRANDIS**—While that advice is being sought, I want to ask my question.

**Senator CONROY**—We can apply for advice from the Clerk at any stage.

**Senator FERRIS**—We will need to suspend proceedings and have a private meeting.

**Senator BRANDIS**—No, let us just ask the question.

**CHAIR**—No, we need to suspend proceedings, because I have said that this is your last question.

**Senator BRANDIS**—Your ruling has been dissented from.

**CHAIR**—Yes, and I now seek advice from the Clerk, in view of that vote. So we are not in session.

**Proceedings suspended from 6.21 p.m. to 7.02 p.m.**

**BATTAGLENE, Mr Anthony Nicholas, Director, International and Regulatory Affairs, Winemakers Federation of Australia**

**CHAIR**—The committee will come to order and we will resume our hearing. I welcome the representative from the wine industry.

**Senator O'BRIEN**—We are a subcommittee of the committee, as authorised by the private meeting. We should put that on the record, lest there be any doubt.

**CHAIR**—Thank you, Senator O'Brien. I apologise for the delay in proceedings, Mr Battaglene, and I hope that has not inconvenienced you. Please proceed to address us on the FTA.

**Mr Battaglene**—Thank you. It is a great pleasure to be here on behalf of the Winemakers Federation. I have learnt more about the parliamentary process than I ever wished to tonight.

**CHAIR**—And we have educated you more than we intended, I think.

**Mr Battaglene**—I have just a couple of brief comments to add to our submission. One is that the wine industry had been involved in developing the FTA for a long time before it became formal government policy. Certainly Southcorp as a company was very keen to push an FTA because after the Howe Leather case they saw strategic reasons to get involved in that sort of area. We supported it strongly from an industry focus. We have always seen the FTA on two levels. One is a strategic level and the second is the tactical level of what you actually get out of it—so, one, building the relationship and, two, any tariff cuts or associated requirements you get.

We were heavily involved with our colleagues from Foreign Affairs who were negotiating on the agreement. We were actively involved with them and we worked very hard to get an outcome. At the end of the day the outcome was not as large as we wanted, but we have still made benefits from the agreement and we are very supportive of having it signed off in parliament with the passing of legislation. That is all I wish to say. I am willing to answer any questions.

**Senator O'BRIEN**—I have a few questions. The agreement phases out the current tariffs over 11 years. Some start up front but some do not start to phase out for nine years. So, if I understand your submission, what you are saying is that the main benefit of the agreement is, rather than the tariff relief over time, the fact that at the end of that period you remain competitive with other beneficiaries of free trade agreements, such as Chile.

**Mr Battaglene**—The main benefits of the tariff cuts are certainly that—retaining parity with Chile and South Africa in particular and, we suspect, with Argentina, when they do a free trade agreement with the Americans. But there are two other major benefits. One is that it provides a platform for further negotiations on some of the technical issues, particularly labelling. They are a major inconvenience to our trade at the moment. We have been working very closely with their industry, without getting it across the line for agreement, and we think that this will give us a platform to take it back to them—every year if we need to. We will do that. The second one is on

some of the intellectual property issues. It enables us to get some changes on geographical indications that we have been seeking for some time. I guess it is an artefact, if you like. It is not something we sought, but something the US put forward, but it enables us to get a spot on the legislation program to get some changes we want.

**Senator O'BRIEN**—Is that about the US blending rules?

**Mr Battaglene**—No, unfortunately. I wish it was. What it is about it is co-existence of GIs and trademarks. In the past that has held up things such as Great Western—the GI to be determined and Southcorp to keep using that. There are also other terms in New South Wales in particular for pending GIs. So it is a great opportunity to fix up some anomalies, if you like.

**Senator O'BRIEN**—So it is establishing the process to pursue those things rather than resolving them?

**Mr Battaglene**—It will resolve them. There is a process that will now enable us to resolve outstanding issues.

**Senator O'BRIEN**—Which provision will allow you to do that?

**Mr Battaglene**—Under chapter 17, they will bring in some amendments to the Australian Wine and Brandy Corporation Act. Those are going to be introduced today or tomorrow.

**Senator O'BRIEN**—Can you tell us which provision or which part of chapter 17 that is? Is it 17.2, trademarks including geographical indications?

**Mr Battaglene**—Yes, that is correct. It allows two things. At the moment we do not have any provision to cancel trademarks, and it will allow that and, as part of cancelling trademarks, you need to allow the possibility of changing trademarks and older trademarks, and it will allow that. It will be a really beneficial element, in my view.

**Senator O'BRIEN**—Regarding the blending issue, does the US only allow blending to come from contiguous regions?

**Mr Battaglene**—Yes. Unfortunately, that is not solved. We ran really hard on blending and the difference in the rules for 85 per cent and 95 per cent—for vintage. We ran hard and our negotiators ran hard. We were in daily contact, and I was in daily contact with the US industry, trying to push them, and he was pushing the negotiators. We did not get them across the line in the end, but they are starting to move and in a couple of years I am convinced that we will have the mechanism to finally get those back to parity.

**Senator O'BRIEN**—Are any aspects of the agreement likely to lead to additional costs?

**Mr Battaglene**—To the wine industry?

**Senator O'BRIEN**—Yes.

**Mr Battaglene**—None that I can see.

**Senator O'BRIEN**—Regarding the tariff gains, I have heard evidence from the Australian Consumers Association to this committee which suggests that whenever there is a reduction in tariff it inevitably leads to a reduction in price to the consumer: is that the position as the Winemakers Federation would see it in terms of the reduction in tariffs over time in the US?

**Mr Battaglene**—In the US?

**Senator O'BRIEN**—Yes.

**Mr Battaglene**—I would not see that. It is such a competitive market and we do not hold that much market share that it will have that impact. That all depends on the level of your market share.

**Senator O'BRIEN**—Doesn't it mean that the importer, instead of paying the government the per litre tariff, will charge that much less for the wine, to be more competitive?

**Mr Battaglene**—It is possible. At the end of the day, the distributors and retailers have the power, and they will certainly try to take it back.

**Senator O'BRIEN**—My point is that there is no real possibility of us taking the benefit of the tariff reduction for our industry.

**Mr Battaglene**—I think we will get some of the benefit. I would not say we would get the total benefit of the tariff reduction. Certainly in our modelling we did not assume we would get the total benefit. I think you are right: at the end of the day it is going to be shared around. We will get some and we will get into that position to compete with Chile and South Africa, so in that respect it is good. The tariffs were fairly small anyway and there were never major gains from tariffs. That was never the big end of town for us.

**Senator O'BRIEN**—Our main competitiveness in the US has been our quality versus price situation, which has made us very competitive against the US wines and the French wines.

**Mr Battaglene**—Yes.

**Senator O'BRIEN**—Our main challengers are coming from the newer producers of South America and South Africa.

**Mr Battaglene**—That is certainly the way we see it. We are getting a very aggressive US producer at the moment, too, because we are very high profile in their market. The other thing about the FTA is that it locks in the status quo and stops higher level barriers coming against us.

**Senator O'BRIEN**—Can you put a value figure on the agreement for the wine industry?

**Mr Battaglene**—After 11 years?

**Senator O'BRIEN**—I know it is hard. I am just asking, but don't give me a answer that you would not want someone to quote back at you.

**Mr Battaglione**—We think the benefits from tariffs, after 11 years, are \$25 million to \$30 million in real terms. We think there is probably something like \$3 million to \$5 million of input cost reductions that will come immediately, from things such as American oak and stainless steel, but we think the major benefit will be in the strategic involvement. Plus, if we can get across the line the vintage and the variety and the blending rules that is worth substantially more.

**Senator O'BRIEN**—Okay—futuristic.

**Mr Battaglione**—It is a platform for us.

**CHAIR**—Thank you very much for your evidence.

**Mr Battaglione**—It is a great pleasure.

**CHAIR**—It is a great pleasure for us to receive it. I will think of it every time I have a glass of fine wine.

**Mr Battaglione**—I am sure you will.

[7.12 p.m.]

**COY, Ms Maree, General Manager, Baxter Healthcare**

**CHAIR**—Welcome. I understand you wish to correct some impression that may have been left with us from your earlier submission.

**Ms Coy**—Yes. We wish to clarify some statements that were made on 8 June.

**CHAIR**—Please proceed.

**Ms Coy**—It is important to note that the whole topic of blood plasma and fractionation is extremely complicated and, it is useful for the committee to know, surrounded and managed and technically assessed by an array of government agencies, so it is quite a complex industry. The core of these remarks is to bring to members' attention item 5 of the FTA side letter. I will just wait for you to refer to that.

**CHAIR**—These are the same side letters all with the same date, I would imagine.

**Senator O'BRIEN**—Which particular side letter is it?

**Ms Coy**—It is dated 1 March.

**CHAIR**—Please proceed while we find it.

**Ms Coy**—The core of these remarks is to bring to members' attention item 5 of the FTA side letter which clearly states that suppliers of fractionated plasma products are obliged to use Australian blood plasma. That implies that one day there may be a company other than CSL offering fractionated plasma and that company will have no choice but to use locally sourced plasma supply. That is what we want to clarify in terms of the FTA, that in there it is really just referring to the fact that plasma fractionation will be from locally sourced plasma supply. Baxter completely accepts and understands that concept. That is the clarification that we want to make today.

Therefore, the accurate response to your important question to Dr Tsonis on 8 June about whether it would be the case that Baxter would do all its blood fractionation work in Australia is that Baxter would most definitely, as stated in the FTA side letter, use Australian sourced plasma. As Baxter has no collection facilities, it would work in collaboration with the ARCBS for the supply of this plasma and, as it has no fractionation facilities, it would—in answer to your question—fractionate this plasma abroad and return it to the ARCBS for dissemination.

The topic of imported fractionated plasma of foreign blood origin is not addressed by the FTA, nor does the FTA exert any pressure on what Australia may or may not do in the future. We also note that the FTA side letter supports the status of the ARCBS and the notion of Australia's self-sufficiency in blood supply. The obligatory use of Australian blood plasma for fractionation

eliminates the concerns regarding foreign blood plasma and, importantly, ensures the continuity of the ARCBS as principal supplier. Again, Baxter are in total support of this concept.

Senator Brandis asked other witnesses whether, as a result of the FTA, some entrepreneur could deliver a product to those who currently acquire blood plasma from Baxter. Again, the FTA does not touch on imported blood products, so that, or the consequences of that, is not really an issue here. However, in the event such input did occur, its use for fractionation would be blocked by clauses requiring the use of Australian blood plasma. We trust that these remarks are of some use to the committee and we would like to thank you for the opportunity to present this additional information. If needed, we can support it in a written format.

**CHAIR**—You do not need to support it in written form; your words are being recorded. What you have told us is effectively that the blood used in Australia that may be provided by Baxter would be Australian sourced blood but that its fractionation may occur offshore in the United States. That is my understanding of what you said; is that right?

**Ms Coy**—That is true, yes.

**CHAIR**—That means that Baxter, at least at this point, in its industry plan does not intend to fractionate blood in Australia. Is that what we are to assume?

**Ms Coy**—There is a lot of detail in that, and to set up a fractionation plant in Australia would be a very costly exercise—whether it be by Baxter or any other supplier or fractionator of these products. From a cost perspective, a certain amount of plasma is required in order to make any sort of fractionation plan viable. That is somewhere in the realm of 300 tonnes. The Australian market is only a little bit more than that. If there were going to be two fractionators here, it would be difficult to support them onshore.

**CHAIR**—The market is not big enough.

**Ms Coy**—The market is not big enough.

**CHAIR**—As I indicated when I questioned your previous representative, I am not an expert in this field so I can ask some innocent questions. Would it be possible—and I am not suggesting you would do this—if it were available, to rent time or space on the existing fractionation facilities for the purposes of doing your fractionation or to subcontract the fractionation?

**Ms Coy**—I am not too sure. I guess it depends on technologies and those sorts of things coming into play in the processes et cetera of fractionation of the companies. There are some differences I believe between the way Baxter processes and the way CSL does. I am not too sure whether that would have an impact or not. I guess anything is possible if you really start to explore it. We are fairly committed to working within the health guidelines and policies here in Australia and what is really appropriate.

**CHAIR**—So, while that may be hypothetically the case, it is not your plan at the moment?

**Ms Coy**—I would not think that that would be the option that we would take up. I guess it is fair to say that in the world there are lots of countries that are self-sufficient and have toll

fractionation offshore and then sent back to that particular country. I believe that CSL does that for Hong Kong, Malaysia, Singapore and New Zealand. So it is not that that is not possible; it is certainly already done.

**CHAIR**—Australian blood being fractionated by Baxter in the United States for reassignment back to Australia would be fractionated in the same facilities where Baxter fractionated American sourced blood?

**Ms Coy**—Yes, it would, but it would be done in an exclusive way—they would be very separate processes.

**CHAIR**—So you could identify at all times what is the discrete quantity Australian blood moving through the process?

**Ms Coy**—Absolutely.

**CHAIR**—Again I apologise for my lack of knowledge, but does that mean the facility gets cleaned and made antiseptic and then the Australian group comes through and goes out?

**Ms Coy**—Yes.

**CHAIR**—It is not mixed in with other blood?

**Ms Coy**—No, not at all.

**Senator O'BRIEN**—Just to complete my understanding, because I did not hear your earlier evidence, the issue will ultimately be whether there is an opening up and tendering out of the Australian market. What you are suggesting is that the size of the market is such that there probably is not room for two providers and so at the end of the day, if we went down that path, we would need to make a decision on whether tendering out might mean that no fractionation would occur on our shores?

**Ms Coy**—With the plasma business itself, it is really a question of what the demand on the product is and how many products are fractionated from a litre. So, obviously, the more products you have and the more demand you have for more product, the better opportunity you have to recoup your costs. But, in saying that, I believe that the market here would be too small to support two fractionators.

**Senator O'BRIEN**—The town ain't big enough for both of us! Is that an issue that is open for the Commonwealth and state governments to take into account in making a decision as to whether they would tender out?

**Ms Coy**—Yes. As a matter of fact, we have had a couple of meetings now with the NBA and had some of our counterparts in the US, who are very experienced in the fractionation side of things, just sharing with them some of the economics and cost structure of plasma fractionation to give them an appreciation of what it takes to operate such a plant. So we have endeavoured to give that appreciation to the NBA here. I do not know if that answers your question. What we wanted to do today was clarify that Baxter is in support of the blood policy here in Australia and

that in our discussions with regard to the FTA it has really been more about toll fractionation than about the supply of imported product.

**Senator O'BRIEN**—Thanks very much.

**CHAIR**—Thank you, and I apologise for keeping you waiting.

**Subcommittee adjourned at 7.24 p.m.**