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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

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SENATE

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

Tuesday, 15 June 2004

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

Senators in attendance: Senators Boswell, Brandis, Conroy, Cook, Harris, O'Brien, Ridgeway

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.

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Committee met at 4.00 p.m.

PROWSE, Mr Wayne, Export Marketing Manager, Horticulture Australia Ltd

WEBSTER, Mr John Pitman, Managing Director, Horticulture Australia Ltd

CHAIR—I declare open this hearing of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America. This is a meeting of the Senate select committee. The terms of reference of this committee are available, and anyone wishing for a copy can obtain one from the secretariat table to my right. This is a public hearing. That means that members of the public can attend. That may change if matters that need to be canvassed in camera are raised; the committee will then decide to hold its meetings in private.

Because this is a meeting of the Senate, it is covered by parliamentary privilege. I advise that people giving evidence to a Senate committee covered by privilege should be aware that false or misleading evidence may result in a charge of contempt of the Senate. People giving evidence should also be advised that if in the course of their evidence they say things that might be regarded as detrimental to an individual then it is our obligation and the obligation of all Senate committees to extend to that individual the right to reply and hear them in their own defence. Therefore, anyone thinking of saying things that may be in that category ought to consider whether we should go in camera to hear that evidence. The right of parliamentary privilege is a very important right and none of us want to be party to any alleged abuse of it.

I welcome witnesses from Horticulture Australia. Thank you very much for making yourselves available to come and speak to us about your organisation's views on this agreement. I invite you to make an opening statement and then to answer questions from the committee.

Mr Webster—Thank you for the opportunity to attend today. I will give you a bit of background before getting into the substance of the free trade agreement. First of all, horticulture is often not understood fully. It is a \$6.4 billion industry at farm gate according to ABARE's data for 2003-04. That actually makes it larger than the wool industry and the dairy industry combined. It covers all fruits, vegetables, nuts, nurseries, turf and even extractives like pyrethrum and poppies from Tasmania. It is a growth industry. In fact, one in five rural employees are involved in horticulture.

Horticulture Australia as an organisation is similar to models that were established by the government in other industries. It is a partnership with member industries to invest R&D in marketing funds to address key industry issues. I also acknowledge the partnership with government in that regard, because those levies are collected by the government and the government matches dollar for dollar the funding of all expenditures on research and development.

This year, Horticulture Australia has invested something like \$60 million in research and another \$10 million in marketing. Obviously, market access is a major strategic initiative within that expenditure. To assist in the market access issues, we have established something called the Horticulture Market Access Committee—HMAC for short. It is there to establish and provide a single voice for horticulture on market access issues. It has industry representatives covering a selection of horticulture industries. It also has representatives from the Department of Foreign

Affairs and Trade, Biosecurity Australia, DAFF policy, AQIS, and even state government because of state governments' involvement particularly in disinfestation issues. That committee advises the government on industry priorities, on sanitary and phytosanitary issues which are so important to us, on bilaterals such as this US free trade agreement, and also on the multilaterals such as the current Doha Round of WTO.

Horticulture has been very actively involved in the US free trade negotiations. We provided multiple submissions to the government—I think there were something like five rounds of negotiations prior to the final set. We attended the final negotiations in Washington as part of the NFF delegation, and we have provided submissions to this committee and to the other committee that is looking at this issue.

I would like to put on record our thanks to a few people in this regard. I convey apologies from Stephen Winter, our market access coordinator, who cannot be here. He has put a huge amount of effort into this matter. Our member industries have also provided detailed support in pulling this information together. I also thank our negotiators, who tirelessly worked for our industry. I refer in particular to Allan McKinnon of DFAT, as the chief agricultural negotiator over there. He was well supported by Virginia Greville from DAFF. They were led well by Steve Deady from DFAT. No doubt there were a host of other officers behind them. Irrespective of the outcome of the negotiations, there was overwhelming consensus by the NFF crew in Washington regarding our gratitude for the huge effort that was put in by those negotiators.

What came out of it for horticulture? On the positive side, as we stand at the moment, 98 per cent of Australian fresh exports into the United States face tariffs. Under the agreement as struck so far, 99 per cent would actually be tariff free immediately and the remaining tariffs will be eliminated over a transition period, and that does go out to 18 years in some cases. But at the end of the period, for horticulture it is actually a free trade agreement, albeit having to wait for 18 years in some cases for that to occur.

One single tariff rate quota was negotiated, and that was for avocados. Even though there is a tariff rate quota there, the substance of that TRQ was seen as a substantially positive outcome for the avocado industry. However, there are no exports in avocados until the sanitary and phytosanitary issues, which are outside the free trade agreement, are completed. The other good thing is that we have a bunch of industries that are now seeking access to the United States under the sanitary and phytosanitary arrangements, and all of those fresh products will immediately have zero tariff under the agreement. So there is potential for new products to be exported from Australia to the United States.

The other thing we see as positive is that there is no alteration under these agreements to the quarantine market access arrangements, and determinations will continue to be made strictly on the basis of science. On the down side, there were a set of items, particularly in chapter 20, regarding processed products, currently valued at \$7½ million in trade, which do not achieve immediate market access; in fact, a number of those take 18 years to get tariff elimination. The other negative is that the time period for tariff reduction certainly will take longer than the agreement that was struck previously by the US and Chile. There are also a number of products into Australia that had up to about five per cent tariffs, and those tariffs are taken off immediately. So Australia offered a genuine free trade agreement as an opening case. We do have products that have a five per cent barrier at the moment. When that five per cent tariff

comes off, that will have a negative impact on those Australian industries as far as the competitiveness of imported product is concerned.

The other thing—and it got a lot of airplay—is the price based safeguards in there for horticultural items. About 31 of them were in the agreement. However, we would need to take into account that over half of those are not exported at the moment. Of those that are exported, there were only three with an export value of around \$650,000 that had a price which, anywhere over the last five years, would have triggered the safeguards.

In summary, if you look at chapters 6, 7 and 8, which are about fresh produce for horticulture going into the United States, well over 99 per cent of those products will be tariff free on day one. That is a significant plus for the industry. The negative, of course, is the fact that for chapter 20, the processed products, there is not the same sort of immediate benefit. The other issue is the negative side of the tariffs coming off immediately for products coming into Australia, particularly some of the nut products.

The SPS issues are of major importance to us. These are our major issues as far as trade around the world goes. We understand there is no change to current science based risk assessment. We do also understand that the current informal arrangements between Australia and the US will be formalised under these arrangements. Those arrangements, however, are not decision making bodies and there is no loss to Australian sovereignty in this regard. Those assurances were made very clearly over in Washington, and we have seen nothing and the NFF has seen nothing, as I understand it, to convey anything other than that point.

The final point I would make—and, Chair, I am conscious of your earlier comment about parliamentary privilege—is that a couple of submissions have passed by my desk and I would urge you to put significant weight on the NFF and the agricultural industry submissions when they relate to agriculture. I do not think I need to say much more.

CHAIR—You can if you wish. The remark I made in my opening remarks about referring to individuals is really about individuals, not organisations, so if you want to make a broader comment that is probably okay. I do not think you are about to sully the reputation of an individual, Mr Webster.

Mr Webster—I guess the point is I have seen some of those submissions. There is a significant amount of rigour that went into the NFF's and the individual industries' activities in this regard, over a huge amount of time with a huge amount of effort, and some of the submissions I have seen that purport to put an agricultural point of view that do not come out of agriculture do not seem to show a full understanding of the facts or the issues.

CHAIR—Do you have any comments, Mr Prowse?

Mr Prowse—I have no further comment.

Senator O'BRIEN—Mr Webster, during the recent Senate estimates hearings I asked some questions of officers from DAFF about the FTA and quarantine matters. Officers from Biosecurity Australia told the committee that they prioritise their work program based on the priorities of the industry in terms of addressing quarantine issues with the USDA. Is that correct?

Mr Webster—It certainly is. The Horticultural Market Access Committee sits down and we have a huge number of applications from individual industries to gain market access into overseas markets. As I said, the major barrier for us is sanitary and phytosanitary issues. We are very conscious of the fact that Biosecurity Australia has limited resources and unless the industry works out what the priorities are it will then be, if you like, first in, best dressed. So the Horticultural Market Access Committee provides those recommendations to Biosecurity Australia. In fact, Biosecurity Australia and other elements of government actually sit around the table as part of that committee as well. But, yes, we do provide those recommendations.

Senator O'BRIEN—So the Horticultural Market Access Committee sits down and decides the priority?

Mr Webster—When an industry puts in a submission to seek market access, we actually put a bit of rigour into that. It is not a matter of an industry saying, 'We want market access.' They actually have to go away, look at it and ask: 'Is there a genuine market? What is the landed price of the Australian product versus competitor product? What is the importance of it to the industry? What are the technical barriers that might need to be solved? How long would it take to solve those? Is the submission supported by the industry generally?' There are quite a range of issues like that which we look at to take account of relative priorities between competing interests. Whilst all issues still go through to Biosecurity Australia as long as they pass the merit test, what we do is basically rank them so that, when Biosecurity Australia is in the negotiations, they have a very clear picture as to which are our highest priorities and which ones we would like to pursue but are obviously not the top priority.

Mr Webster—When an industry puts in a submission to seek market access, we put a bit of rigour into that. So it is not a matter of an industry saying, 'We want market access.' They have to go away and see whether there is a genuine market; what the landed price of the Australian product versus the competitor product is; what the importance of it is to the industry; what technical barriers might need to be solved and how long it would take to solve those; and whether the submission is supported by the industry. There are quite a range of issues like that that we look at, to take account of the relative priorities between competing interests. Whilst all issues still go through to Biosecurity Australia, as long as they pass the merit test we basically rank them so that when Biosecurity Australia is in the negotiations they have a very clear picture as to which are our highest priorities and which ones we would like to pursue but are obviously not the top priority.

Senator O'BRIEN—Does the Horticultural Market Access Committee provide a list to Biosecurity Australia?

Mr Webster—It is not so much a list. These things are ongoing. My other role is chair of the Horticultural Market Access Committee. As new submissions come through, we prioritise them. We have provided advice on some of the previous ones which are already on the books. It is difficult to change the priority once they are on the books, but all new ones that come in are certainly prioritised.

Senator O'BRIEN—What does that mean? Biosecurity Australia say that they prioritise their work based on the priorities of your industry.

Mr Webster—That is right.

Senator O'BRIEN—HMAC determines the priorities. I think that is what you have already told us.

Mr Webster—Yes.

Senator O'BRIEN—How does that work? Is there a list or do you say, 'Our priorities have changed,' or do you email them something?

Mr Webster—No, it is debated around the table. It is based on a scoring mechanism based on the information that I mentioned, and that information is passed on formally to Biosecurity Australia.

Senator O'BRIEN—So you write to them?

Mr Webster—Yes, we write to them. It is in the minutes of the meeting, and they are also present at the meeting. It is very much a formal process.

Senator O'BRIEN—The department tell me they are now focusing on avocados and tropical fruit. Does that mean that they comprise your priority list or that they are on top of your priority list?

Mr Webster—It would be the ranking of them within our priority list. We have tropical fruit and, from memory, cherries, mangoes and avocados are the ones that are on the top of that list at the moment. Effectively there would be hundreds around the world. I have not got the list of all of them in front of me. As far as the free trade agreement is concerned, the key issue is that sanitary and phytosanitary arrangements for individual products are outside the FTA. It is quite interesting from a horticulturist's perspective. On products where we do not have access for sanitary and phytosanitary reasons, it does not matter what the tariff is because we cannot get access. So the major priority for horticulture on almost all market access issues is to gain access.

Senator O'BRIEN—It is curious that you say sanitary and phytosanitary are outside the FTA. A protocol is being established under the FTA in relation to sanitary and phytosanitary matters; therefore, how can that be outside the agreement?

Mr Webster—As I understand it, there was certainly broad discussion on how to facilitate the pursuance of sanitary and phytosanitary issues under the FTA, and those arrangements formalise current informal arrangements. At the moment, similar arrangements are happening with China. As an industry, we are certainly supportive of issues that can speed up the sanitary and phytosanitary process between Australia and overseas countries.

Senator O'BRIEN—Can you supply the committee with your priority list? You mentioned that you do not have it here.

Mr Webster—Yes, we certainly can. The list covers all countries, all products. I have probably got a copy here with me.

Senator O'BRIEN—If you can find it after you have finished giving evidence, I am sure the secretariat will help you copy it. Do you know how many technical market access requests have been made in relation to horticultural products into the United States?

Mr Webster—It is certainly on that list.

Senator O'BRIEN—Does the list tell us when those requests were made?

Mr Prowse—It does.

Senator O'BRIEN—It will be very useful. It will give us a sense of how long some of these assessments have been running. Is it true to say that the import risk assessment, for example, for Australian bees into the US has been running for a very long time—many years? That being the case, are there any horticultural products that are in a similar situation?

Mr Webster—There is no doubt that, from an industry perspective, there are a large number of issues that are being addressed by countries overseas that we would like to see pursued faster. We face an interesting dilemma because on the one hand we give Biosecurity Australia a degree of difficulty in trying to get them to speed up activities on our behalf to open up overseas markets, while on the other hand we give them significant difficulty when they are looking at the same sort of speed at products imported into Australia. So they find themselves in a bit of a hard place in looking after both those aspects. From our perspective, a major reason why we work so closely with them is to see whether we can speed up the progress of these sanitary and phytosanitary issues across all those markets.

Senator O'BRIEN—So you work with Biosecurity Australia in relation to their dealings with the USDA. Do you operate directly with the USDA—for example, in the way that the Philippines industry does with Australia on banana issues—in relation to some of our import risk assessment issues with the US?

Mr Webster—We do not do it on a regular basis. The sanitary and phytosanitary issues involve government to government negotiations. Industry can do some things to facilitate that. For example, we are working with the good knowledge of both Foreign Affairs and Trade and Biosecurity Australia to try to get a better environment for the speeding up of sanitary and phytosanitary matters into China. China is our major priority as a market for that since they joined the WTO. Industry can facilitate those things, not only by providing priorities for Biosecurity Australia but also by working with agencies within those countries to have an environment which is more conducive to speeding these things up. We certainly do those sorts of things if and when the opportunity prevails.

Senator O'BRIEN—Is the US quarantine system a science based system, in the view of Horticulture Australia?

Mr Webster—I think Australia is the only one that plays by the Marquis of Queensberry rules in this game. If that answers the question—

Senator O'BRIEN—I take it that means no?

Mr Webster—Everybody under the WTO has to follow the WTO rules. Many other countries then find other technical barriers that provide greater commercial costs in bringing the products into Australia. Australia does not tend to do that. The US definitely follows the WTO protocols for sanitary and phytosanitary, as I understand it. We have to go through the import risk assessments to get our products in, just as they have to do to get their products into Australia.

Senator O'BRIEN—I think we have established that. My question was: was theirs purely a science based issue or did it take into account other factors such as trade matters? I am taking your answer to that to be yes.

Mr Webster—I think the evidence from the free trade agreement discussions was that the political system in the United States has a greater capacity to apply pressure to government decisions than it does here in Australia.

Senator O'BRIEN—Avocados would be a key export for us, but under current arrangements they are still subject to quarantine restrictions?

Mr Webster—That is right. The avocado industry is a significant growth industry. I mean that in the sense literally of trees in the ground.

Senator O'BRIEN—It is a significant growth industry both ways.

Mr Webster—That is right. They are certainly targeting the US as a potential market for this increased production. So the 4,000-tonne tariff rate quota into the United States would certainly seem to be positive. That was one of the examples of significant success during the negotiations. The original offer on that was 250 tonnes. We provided the data, courtesy of the avocado industry, on the number of trees in the ground and that convinced them that the data they had on our current industry size and current exports was not an indication of the true growth of the industry, which led to the increase to 4,000 tonnes and 10 per cent growth through to year 18.

Senator O'BRIEN—But those exports are still the subject of quarantine restrictions?

Mr Webster—Absolutely.

Senator O'BRIEN—And also subject to restrictions in relation to volumes at certain times of the year?

Mr Webster—Yes. That figure was discussed with the industry directly while the negotiations were going on and they believed that that size of tariff rate quota was a very successful number for access into the United States. But you are absolutely right: not one kilo goes until the sanitary and phytosanitary arrangements are progressed.

Senator O'BRIEN—Are tropical fruit subject to quarantine restriction?

Mr Webster—Every product—every individual item, not as a total of tropical fruit—has to pass this import risk assessment before it can basically leave this country and get into an overseas country, and vice versa getting into Australia.

Senator O'BRIEN—In relation to the new structure that is proposed in relation to quarantine matters as part of the free trade agreement, as we referred to earlier, what is your organisation's understanding of the proposed committee on sanitary and phytosanitary matters? How does your organisation understand that that will operate and what are the advantages to horticulture?

Mr Webster—I do not pretend to have a full understanding of how the committee would operate, but the discussions on these committees were debated out fully over in Washington at the end of January. We were given a very clear understanding at the time that these committees formalised current arrangements which were in place and that they would facilitate the SPS issues going through but that none of those committees can actually make decisions. The sovereignty for decision making on SPS issues is retained by Australia for imports into Australia. No doubt the sovereignty is also retained by the United States for imports into the United States. To answer the question on whether we support these issues, we do support—

Senator O'BRIEN—No, that was not the question. I wanted to know if you knew how they would operate and I wanted to know the advantages to horticulture.

Mr Webster—As to how it will operate, my understanding is not enough to give you any further details than you have. As to the advantages, which we have discussed before, they relate to the fact that, if we can have anything that speeds up the addressing of sanitary and phytosanitary issues, given the number of issues we have in a number of markets around the world, we see the speeding up of sanitary and phytosanitary issues as positive.

Senator O'BRIEN—What about the standing technical working group? What do you understand will be the role of that?

Mr Webster—I cannot offer you any additional details. I have discussed this issue with colleagues in the National Farmers Federation. They have looked at it more broadly. They have also come to the conclusion that there does not appear to be anything which is of concern. As I said, the same assurances were made on the discussions whilst in Washington. I cannot speak on the detailed terms of reference of the committee, but my understanding is that all committees will basically facilitate or speed up the review of the sanitary and phytosanitary issues, which we see as positive.

Senator O'BRIEN—I take it that you understand, from what the NFF have told us, that these bodies will make decisions which effectively will be some form of recommendation to be taken into account in some way—that they are there to resolve disputed matters. Is that your understanding?

Mr Webster—No, it is not actually.

Senator O'BRIEN—They are not there to resolve disputes?

Mr Webster—That would imply decisions on science, for example, and that is not my understanding. My understanding is that they are there purely to facilitate the communication between the two countries on issues of priority and things like that—not to resolve issues of science. My understanding is that they do not have a decision-making capability in that regard.

Senator O'BRIEN—So they are not there to resolve disputed matters between the countries?

Mr Webster—I said not on matters of science, and import risk assessment issues are based on science.

Senator O'BRIEN—What is the standing technical working group going to do then?

Mr Webster—I cannot offer you any additional information.

Senator O'BRIEN—But you said that the NFF had given you to understand that these groups would somehow assist your industry.

Mr Webster—That is right.

Senator O'BRIEN—I take it from what you have been saying that your organisation has been involved in an ongoing way in the process, but you do not know what the standing technical working group will do.

Mr Webster—Not in detail, no.

Senator O'BRIEN—Do you know what Biosecurity Australia does at the moment on behalf of your industry in relation to working with its counterpart in the USA?

Mr Webster—I have an overall understanding.

Senator O'BRIEN—Do you understand that the role of Biosecurity Australia will change as a result of the free trade agreement?

Mr Webster—I understand that it will not change its role as a basis of the free trade agreement.

Senator O'BRIEN—As a matter of interest, are you aware of Biosecurity Australia's IRA handbook?

Mr Webster—Yes.

Senator O'BRIEN—You know how that is established?

Mr Webster—How the handbook was established?

Senator O'BRIEN—Yes.

Mr Webster—Or how the process works?

Senator O'BRIEN—Are you aware that the handbook is effectively approved by the director of Biosecurity Australia? It is not a matter of law; it is not a regulation laid down by the parliament or approved by the parliament. It is established by Biosecurity Australia.

Mr Webster—Am I aware of that?

Senator O'BRIEN—Yes.

Mr Webster—Not specifically.

Senator O'BRIEN—I am just wondering what would be your view of the ability for Biosecurity Australia to change processes without reference to the parliament and what relevance that might have to decisions of a standing technical working group.

Mr Webster—As I understand it, the rules of engagement, if you like, on these issues are WTO rules. I do not know the answer to the second part of your question. The WTO rules quite specifically state that it is a science based risk assessment. Biosecurity Australia is our agency that manages that process. We scrutinise—obviously very closely—when that process is used on products into Australia to ensure that we do not see any risk from imported products bringing pests and disease with them. I would assume that overseas countries likewise would place the same scrutiny on the work that Biosecurity Australia does on our products into those countries.

Senator O'BRIEN—My difficulty with your evidence is that you have told us how positively you see the agreement. I am exploring what you understand the agreement to mean, particularly in relation to these sanitary and phytosanitary issues. We know that the agreement provides for the establishment of a bilateral standing technical working group. You know that. You suggest that it does not have any role in resolving disputed matters, but clearly the documentation implies something in that vein. You say that you are not aware of the process by which Biosecurity Australia establishes the protocols for our own import risk assessment process.

Mr Webster—I do not think I said that.

Senator O'BRIEN—What did you say?

Mr Webster—I understand basically the philosophy of the science based risk assessment, which sounds a little different from the words you used there.

Senator O'BRIEN—I am not sure that it was, but the process is that the risk assessment is conducted in accordance with the handbook, which is a creature of Biosecurity Australia and no-one else—the director of quarantine. We have this bilateral arrangement to deal with matters which are in dispute between the two countries in relation to our own quarantine issues and in relation to theirs. Would your organisation be concerned to know that, by the director of quarantine changing the handbook, an Australian import risk assessment might have to have regard to a matter determined by the standing working group?

Mr Webster—The director of quarantine, did you say?

Senator O'BRIEN—Yes. The director of quarantine can alter the handbook. That is how it happens. Was your organisation aware of that?

Mr Webster—We would be obviously concerned about anything that disturbed the science based import risk assessment system established under WTO principles.

Senator O'BRIEN—I am trying to establish how you understand the agreement. You are giving some support to the agreement. I am trying to understand whether you have assessed some of the potential ramifications of the agreement. It is apparent that you have not had a look at the operations of Biosecurity Australia to the extent of knowing how an import risk assessment process works.

Mr Webster—I do not think that is strictly correct. You have to look at the relative roles of industries and the government in these things. We do not try to second-guess the government structures that have been put in place by parliament, but we try to add value where we can—with our knowledge of the industry and the impacts on it. We do have a very strong partnership with Biosecurity Australia on addressing those issues, as I said, and we also have a very vigilant look at those issues, as has been reasonably evident with some of the things that have been discussed lately on import risk assessment on horticultural products into Australia. Both the banana industry and the apple industry are obviously showing significant interest in how that process works. There is no lack of interest and understanding on how this operates. The area where I am having difficulty is the emphasis on the sanitary and phytosanitary part of the FTA when, as I understand it—and it has been reinforced by anything we have seen and also by the NFF discussions—it does not change the basic premise of the current arrangements, which is that there is a science based system with the sovereignty retained in Australia. If you tell me that is wrong, I guess we would be concerned.

Senator O'BRIEN—I understand that others will want to ask questions. The point that I have been making is that the ground rules for our own import risk assessment process are set by the director of quarantine. We have a bilateral arrangement to deal with matters of dispute. I have expressed concern that, if that bilateral arrangement leads to a statement that X is a resolution of the matter of science, protocol or handling to resolve the import risk assessment process, it is possible for the director of quarantine to mandate that our import risk assessment processes have regard to that. It is not the case at the moment, but under our current processes that could happen. I wanted to know whether that had been considered by Horticulture Australia.

Mr Webster—Not specifically.

Senator O'BRIEN—Considered in its understanding of the agreement. And the answer is that you have not considered that as a possibility.

Mr Webster—That is correct.

Senator BOSWELL—I note that you are supportive of the free trade agreement. What do you see as the main opportunities? I understand that we have a \$49 million citrus industry and \$11.5 million macadamia industry—16 per cent. What other prospects do you see opening up?

Mr Webster—You have to put horticulture in perspective with some of the other industries that are putting billions of dollars worth of product in. It is not that size. Horticulture as an industry has basically spread itself fairly thinly over many markets. Total fresh produce, on the latest numbers, is just over \$70 million, and there are about \$11½ million worth of processed products. If you take the citrus industry as an example, they certainly see it as positive. There is about a \$US500,000 reduction based on the tariff, which will be, according to the exporters, retained here in Australia. But, more than that, broader citrus product into the United States has

been looked at under the sanitary and phytosanitary arrangements. The citrus industry sees expanding its product into the United States as a possibility. The macadamia industry certainly sees opportunities into the United States. There is a range of these, which are in table 7 of our submission. That not only brings it into competitive position with some of the other countries but also gives opportunity for some of the value-added product. The difficulty with some of the value-added products is that, for example, if you put chocolate on them they become a dairy product and there is an opportunity for putting some product in there on one of those tariff lines. We have discussed avocados. We certainly see that as a major opportunity if the sanitary and phytosanitary issues are covered.

Senator BOSWELL—What about mangoes?

Mr Webster—Again, we see mangoes as a thing of importance, but it has to wait for the sanitary and phytosanitary issues.

Senator BOSWELL—How long will you be waiting for that?

Mr Webster—Australia gets criticised for the amount of time it takes to get products into here, and we are sure as hell critical of the time it takes other countries to look at ours. The bottom line is that there are things that sit on the agenda for up to 10 years. One of the issues with this horticultural market access committee is to be putting the acid, if you like, on Biosecurity Australia to speed these things up. We are never satisfied with the speed at which these things happen. We will put on all the pressure we can to assist them to speed them up.

Senator BOSWELL—How long did you say mangoes have been waiting to get the green light?

Mr Webster—I did not, but I have said that we will provide you with the full list of SPS issues that are facing horticulture. That should have the date they originally started.

Senator BOSWELL—What about other tropical fruits?

Mr Webster—The United States is basically the biggest consumer market in the world. That is why we think it is important to get tariff free access into there.

Senator BOSWELL—We are getting tariff free access in now, aren't we?

Mr Webster—We do not know. Some 98 per cent of our products currently face tariffs.

Senator BOSWELL—But with the free trade agreement.

Mr Webster—Then they would be tariff free. The next issue is dealing with sanitary and phytosanitary issues to get access for those products. It is an obvious target, because it is a first-world country, it can potentially pay high prices and it is the largest consumer market in the world. Anything that knocks down barriers into the United States is basically a positive.

Senator BOSWELL—We do not know how long it will take to get access to tropical fruits.

Mr Webster—We cannot get an estimated date out of the process as to when an individual sanitary or phytosanitary issue will be concluded. I guess you can understand the difficulties with that. We would certainly have difficulties in providing the same answer on countries who are undertaking their import risk assessments into Australia.

Senator BOSWELL—The avocado industry is considered a pretty positive outcome. From 2 January to September, we get in duty free; from September to January we have duty free then. Is the avocado industry happy with that? Do they see it as a positive?

Mr Webster—They see it as very positive. Without doubt, all of horticulture—

Senator BOSWELL—It is not co-cyclical or countercyclical?

Mr Webster—It is not as good as having zero tariffs and no quota on day one, but the industry believes that the volume and the timing are suitable for the expansion in their product. They signed off as positive on that during the negotiations.

Senator BOSWELL—What are we actually selling in avocados?

Mr Webster—Into the United States?

Senator BOSWELL—Yes.

Mr Webster—Nothing. We do not have sanitary or phytosanitary access at the moment.

Senator BOSWELL—So we cannot get that.

Mr Webster—We cannot.

Senator BOSWELL—We have a free trade agreement with a bit of a bottleneck as far as—

Mr Webster—We certainly have. The issue with most free trade agreements is that there is a difference between what the Doha Round looks at, what the free trade agreements look at and what the sanitary and phytosanitary issues look at. There is no doubt in my mind that the Doha Round things are the things that are going to provide the greatest advantages to agriculture, addressing issues like domestic subsidies and export subsidies in those countries. The free trade agreement—

Senator BOSWELL—We are not batting terribly well on that.

Mr Webster—No.

Senator BOSWELL—What do we have going in there? Just macadamias and citrus at the moment?

Mr Webster—The biggest ones are cut flowers, citrus and macadamia.

Senator BOSWELL—And we will be able to increase those? There will be no tariffs or quotas on those?

Mr Webster—That is correct.

Senator BOSWELL—So it is a free go on the citrus. But we have a window of opportunity.

Mr Webster—We do.

Senator BOSWELL—How big is that window?

Mr Webster—About three months. We ship very heavily for a very short period into the United States.

Senator BOSWELL—Do they want the top quality product?

Mr Webster—Absolutely top quality product. The price of the US citrus is the thing that underpins the average price of citrus in Australia. Retaining that market is of significant importance. The bottom line in relation to the tariff difference on that is that, whilst it is good to have \$US500,000 back here in Australia, it is not the major issue when you look at the relative price of the product received in the United States versus alternate export markets.

Senator BOSWELL—Do we export citrus anywhere else?

Mr Webster—Yes, we do.

Senator BOSWELL—Where else do we send citrus?

Mr Prowse—Malaysia, Singapore, Hong Kong and a little bit to Europe. Malaysia and Singapore are the largest markets, but they do not get a very high price there. Japan would be the second highest price market.

Senator BOSWELL—I would have thought you would get a higher price in Japan than in America.

Mr Webster—Yes. America is the best market at the moment.

Senator BOSWELL—I have another couple of questions, but someone else can have a go.

Senator HARRIS—In your submission, under item 3, 'Overall view', you say that immediate free trade is achieved for current fresh produce horticultural exports to the US. Further on, you say that certain horticultural industries which are facing loss of import tariff into Australia are expected to experience downsides. Which particular sectors of our primary produce were you referring to there?

Mr Webster—The nut industries in particular are the ones that have brought it to our attention. From memory, they have a five per cent tariff at the moment. There is a list in the

submission. Certainly the almond and pistachio industries are the ones that brought the impact to our attention.

Senator HARRIS—The impact it would have on them?

Mr Webster—Yes.

Senator HARRIS—In earlier questioning, you were answering Senator O'Brien and you indicated that there are two periods where the levels of exports vary. In year one from 1 February to 15 September, we can export 1,500 tonnes; then from 16 September through to 31 January we can export 2,500 tonnes.

Mr Webster—That is specifically avocados.

Senator HARRIS—Who would actually monitor the volumes during those periods?

Mr Webster—Any time there are quotas they have to be monitored.

Senator HARRIS—But who would do that monitoring.

Mr Webster—Historically Horticulture Australia has done that effectively on behalf of the government. We have had informal approaches to see whether we would manage that when sanitary and phytosanitary access is there. It would probably be Horticulture Australia.

Senator HARRIS—If we were to move towards the ceiling during those periods, if that monitoring was given to your company, how would you approach that situation?

Mr Webster—The issue of allocation of scarce resources like quotas, particularly if it is a high price, is very contentious. The policy has not been set yet. It would no doubt be set in full consultation with the industry and also with Canberra. There is no policy as yet. If you look at the experience across other industries, it is usually highly related to historical performance. That is one major criterion. At the moment in the discussions, the industry believes that there is a quota there which is adequate. But you are right: if it looks as though shipments will exceed it, there will have to be rules established for allocation of that quota.

Senator HARRIS—In relation to the ability to be able to continue with a tariff, would there be any difference in relation to the requirements that the USA have to follow in relation to what Australia would have to follow?

Mr Webster—They are not necessarily equivalent. Australia has provided zero tariffs on day one for all products, yet we are talking about tariff rate quotas here. There are different arrangements for product coming into Australia versus identical product going from Australia into the United States. It might be 18 years before they are equivalent all the way round.

Senator HARRIS—My question was more towards this. Under the WTO rules, there are rules in relation to tariff. To your knowledge, are there any differences between what the United States is required to comply with and what Australia is required to comply with?

Mr Webster—On tariffs?

Senator HARRIS—On placing of tariffs on imports.

Mr Webster—I am not quite capturing the essence of the question, I am sorry.

Senator HARRIS—I will give you an example—prawns. America has placed tariffs on Chinese prawns—approximately 300 to 400 per cent. What allows America to place that tariff, and would Australia have the same access to be able to apply a similar tariff?

Mr Webster—Under the WTO rules, there should be no difference. The only real difference is that, as a country, we have an absolute dependence on exports across many agricultural products, which is why most of our agriculture strongly supports a genuine level playing field, free trade approach. We as a community cannot afford the levels of subsidies and other things to support industries that there are in places like Europe, America and Japan. I cannot imagine why there would be any different bases by which Australia could apply tariffs versus the United States except for the general principles of government policy, which is relatively free trade, which is not necessarily reflected elsewhere around the world.

Senator HARRIS—The situation I am referring to concerns the prawns from China, where America has applied that 300 to 400 per cent tariff and we in Australia now face the probability of those prawns being dumped in Australia. I was seeking some clarification as to whether there were two different sets of requirements in relation to that. Thank you for your answer.

Mr Webster—Not to my understanding, although in this case the free trade agreement would specify zero tariff—not to do with China but between the two countries.

Senator HARRIS—With sanitary and phytosanitary conditions, is it your understanding that currently they are focused more on adverse impacts on the environment? Are you aware that sanitary and phytosanitary conditions can actually be applied in relation to adverse social and economic conditions?

Mr Webster—Social and economic conditions?

Senator HARRIS—The sanitary and phytosanitary sections cover three issues. There are adverse environmental impacts but they also raise the issue of adverse social impacts and adverse economic impacts. In your assessment of free trade, have you looked at those two other sectors of sanitary and phytosanitary conditions?

Mr Webster—No, we have not. I was not aware that the sanitary and phytosanitary arrangements related to economic issues, for example. My understanding was that it was fairly specifically outside the agenda of the sanitary and phytosanitary arrangements.

Senator HARRIS—Thank you.

CHAIR—I have a couple of questions. First, in your remarks, if I noted them correctly, you referred to the inferior terms or the not equal terms of the Australian agreement to the US-Chile agreement in terms of the phase-in dates. We have had other evidence—and it is a fact, of

course—that on 17 December last year the US signed a trade agreement with the Central American economies on sugar and then in January rejected the Australian sugar proposals. In the services section of this agreement—and it can be argued that perhaps the United States is more competitive than Australia in services in the broad—there is a provision requiring that, if we or they do an agreement with a third country or countries which is more favourable than the agreement they have done with us, the advantages of that agreement flow to the partners in this agreement. I put this question to the NFF: would you be in favour of negotiating, or getting a side letter to confirm, that, if in agriculture the US did a deal with a third country or countries more favourable than the deal they have done with Australia, then automatically the terms of the third-country deal would flow to Australia?

Mr Webster—Without giving it serious consideration, it sounds positive for obvious reasons. On the Chile one, it is interesting that, whilst the time periods were not so much to our advantage, with some of the trigger prices in the price ratio safeguards Australia actually has some lower ones. On sugar, they did sign an agreement. My understanding of the agreement is they send money, but no sugar comes back, so I do not think any sugar is due to come from that CAFTA north; money will flow south. It sounds like an excellent arrangement if you can manage one.

CHAIR—What it does is this: the American taxpayer subsidises Central American sugar producers—

Mr Webster—That is correct.

CHAIR—and therefore subsidises their international trading situation—their exports—when we have just put a \$444.4 million sugar package in play to help restructure our industry, including compensation for loss of market and so forth.

Mr Webster—There is no doubt that—and this is back on your third country point—we would obviously like to see that we get at least as favourable a set of conditions as any other country. As to whether it would be possible to change the substance of an agreement at this stage, I am not in a position to make any comment.

CHAIR—I am not talking about that. I am talking about whether it is possible to look at doing something on the side of the agreement, without altering the terms of the agreement, which enables a provision like this to be introduced. When we talked to the department, they said they had not put such a proposal, except for one agricultural commodity item in which they did put it and they were rejected on that. It may be that would be the overall US position. My concern is that, in rejecting that one commodity item and with us accepting that rejection, we have in effect provided approval for them to do that without us getting the advantage. If there is a special relationship here, it is a question of how you actually deal with that, and at the moment I am not sure what this committee will do. It might think that is a worthwhile thing to do; it might not think it is. If you have a view after further reflection on that matter I would appreciate it.

The only other question I have concerns this. We now have from the United States International Trade Commission their statement entitled ‘U.S.—Australia Free Trade Agreement: Potential Economywide and Selected Sectorial Effects’. On page 53 there is a chapter on citrus

fruit and that chapter starts, as do all the chapters, by giving an overview of the American citrus industry and an overview of the Australian citrus industry. Then, under a heading ‘Potential impact on U.S. trade flows’, they give what they think is the potential impact on US imports—that is, our exports—and what the potential impact is on US exports—that is, our imports. These are not long sections. They are just paragraphs. I will read them into the record of this hearing, if you do not mind, just so that they are before us. The statement says under ‘Potential impact on U.S. trade flows’ and then under ‘US imports’ it says:

The impact of the U.S.-Australia Free Trade Agreement on total U.S. citrus imports is likely to be minimal. U.S. tariff rates on fresh Australian citrus are generally less than 3 percent, ad valorem equivalent, so the immediate removal of ... these duties under the FTA would likely not lead to any appreciable increase in imports. U.S. citrus juice tariffs for Australia are currently relatively high, 30 to 40 percent ad valorem, and most would be phased out over 18 years in equal annual reductions. Australia, however, is not expected to significantly expand citrus juice production.

The implication there is that if we do not increase the acreage we will not be able to take advantage of the more cost effective competition that the reduction in tariffs provides. That is an interesting observation. I will get you to comment on that in a minute. Then it says:

U.S. Exports

The impact of the U.S.-Australia Free Trade Agreement on total U.S. citrus exports is expected to be minimal. Australian import duties are only 5 percent on frozen concentrated orange juice ... and less than that for fresh citrus. U.S. exports of citrus to Australia consist mainly of oranges, lemons and grapefruit. While Australian tariff rates are relatively low, U.S. exporters have stated that phytosanitary restrictions are the main barrier to entry. U.S. industry representative claim that these barriers include excessively strict inspections and rejections of fruit that are not necessarily based on science and which may violate Australia’s TO obligations. However, the U.S.-Australia FTA established a Committee on Sanitary and Phytosanitary Matters. (See text box 4-1.) If Australia’s phytosanitary restrictions on fresh citrus were to be resolved, U.S. exports to Australia of fresh citrus fruits would likely increase.

So they see that if these perceptual difficulties—if I could put it in those terms—about our quarantine are resolved then they have got a bigger market for their goods in Australia. On page 56 there is this box 4-1, which is about an explanation, for those who want to read it, of the US-Australia FTA sanitary and phytosanitary regulations. This is the American view of what the agreement sets out—and it conforms, I have to say, on almost all points, with what the Australian view is. So there is consistency on both sides. However, I just want to draw your attention to the last paragraph. It says:

Certain SPS issues regarding U.S. exports have been, or are currently being, resolved. In particular, Biosecurity Australia has issued a final import risk assessment that will permit the importation of processed pork and pork for processing. Further, imports of table grapes from the United States are now permitted, although the U.S. industry believes current risk mitigation requirements still limit trade. Import risk assessments on imports of citrus from Florida and stone fruit from California are expected.

So the Americans believe that our quarantine service will examine the issue of quarantine restrictions and, as a consequence—it would seem from that description—will relax any barriers to the importation of American citrus into Australia. I will get you to comment on that. There is one final thing. The statement goes on to ‘fresh fruit and processed fruit’. There is an overlap here between certain types of citrus fruit—this is a narrowly-drawn citrus definition, I think.

Fresh fruit and processed fruit is more widely drawn, and you referred to the difficulties we have got on processed fruit. Looking at the potential impact on US trade flows, and skipping the description of our industries, the opening sentence under 'US imports'—that is our exports—says that the FTA will likely result in a minimal increase in US imports of the subject fruit in the short term. So they expect us not to make a big impact on their market.

Looking at what they say about the impact that US exports will have on our market, the statement says, 'The US-Australia FTA likely will result in a nonmeasurable increase in U.S. exports of the subject fruit', indicating, according to their scale, a much bigger import of American fresh fruit and processed fruit into Australia than—it would seem, if you compare it—what they expect of Australian fruit exported into the United States. That may be accounted for by differences in scale of the market, but that is their description. I just put it to you baldly. Are you in a position to comment on whether that is your understanding as well of what this FTA is likely to produce.

Mr Webster—There was a multitude of questions, but if I could go back to the first one, which related to the impact of the FTA on the citrus—

CHAIR—Are we likely to expand our production to take advantage of the lower prices in the market.

Mr Webster—I agree with the comments there, and I think I stated that both countries are basically fairly low tariff, so once you get rid of the sanitary and phytosanitary issue between countries, those are the major issue. We can put product into the United States at the moment, and that restriction is not based on the tariff; it is based on the volume that we can provide or the quality that the market needs in that window of opportunity we have in the United States.

The citrus industry certainly sees some potential to expand, but I do not think anybody is suggesting that there be plantings of citrus trees to capture the increased opportunities within the free trade agreement. As I said, effectively the tariff has fallen by \$US500,000 in benefits but the biggest advantage for the United States is that it has a very high price. The price differential between the United States and alternative export markets is far greater than the tariff rate that sat there in the past. So, in the sense of lowering tariffs, the free trade agreement is not a huge change in competitive positions between the markets, because both countries are relatively low tariff countries.

CHAIR—That is the point I do not understand. We are well over time, so I will try and be as brief as possible. Maybe we can continue this discussion outside this hearing, because I really need to understand it. My understanding is that investment follows demand. The Americans are going to abolish a 30 to 40 per cent ad valorem tariff, which means the price will be lower by that degree for Australian exporters, but they are mollified by the fact that we are not going to expand our production.

Mr Webster—The tariff on fresh produce is nowhere near that—it is just for juice. Juice is a commodity trade that flows around the world, with very major players. The question is: are we a major juice trader around the world? The answer is: at the moment, we are not. The bottom line is that the product for juicing is not the sort of stuff that tends to sustain farmers on farms.

Juicing fruit does not sell at the same sort of price as eating fruit, particularly not the sort of quality going into the US. So nobody is going to plant trees for juice production; it is not viable.

Senator BOSWELL—What sort of orange is a juicing orange?

Mr Webster—Any orange that does not meet the specifications. It is not that there is something wrong with the product; it is just that consumers want product without blemishes and things like that. The internal quality can still be good, but the fruit does not pass the eye test of consumers.

CHAIR—I was hoping you would not give that answer, because juice is a value-added product from oranges, and we are obviously interested in seeing where there is additional ‘value add’ in this.

Mr Webster—The issue of value add is quite different, depending on whether you live on a farm or off a farm. On a farm, value add is something that adds more value to your farm. Much value-added activity adds value to a category, but it does not necessarily add value to a farm.

CHAIR—I understand that—and that is a very interesting issue, and one that I am interested in—but what I am most concerned about is the macroeconomic effects and where you add value to our primary products.

Mr Webster—Macadamias are certainly a product where there is a great opportunity for value adding of the type you are talking about.

CHAIR—I have not had the chance to go to discussion on macadamias. But, reading the SPS observations, they are expecting us to relax barriers—

Mr Webster—I do not think that is strictly correct. It is not a matter of relaxing barriers; it is a matter of showing that you can put in place protocols that will ensure that pests and diseases do not move when the product moves. Science changes continually over time, so there will always be changes in the processes. Processes that would not have been available last year will be available this year, and it will be the same next year. Relaxation implies that the quality level—

CHAIR—I understand the distinction you are making, and that is fine by me. However, the bottom line is that the Americans think they are going to have a bigger market in Australia. All I am asking is: do you understand that to be the case?

Mr Webster—Unbelievably, there seems to be a belief not only in the United States but in many other markets that, firstly, Australia is a big market—we are not; and, secondly, that Australia has a production level that is capable of flooding the rest of the world—it has not. Because of our geographical size, there is a significant lack of understanding that our capacity to purchase product and our capacity to produce product are in line with countries like the United States. There is a real lack of understanding of Australia, and often these things are reflected in these matters.

CHAIR—Are you saying that they have misjudged their likely gain from the free trade agreement?

Mr Webster—If we are talking about citrus, I cannot imagine any significant change in flow into Australia or into the United States based on the free trade agreement, because both have relatively low tariffs and it has not been the major issue that has been impacting on trade.

Senator BOSWELL—But you are selling into a market of 300 million people as against a market of 20 million people. Obviously your greater sales must be into the market of 300 million people. That is the biggest market; it must take the most fruit if all things are equal. Would you agree with that?

Mr Webster—Without doubt they are opening up a bigger market than we are in that context. But, as I have mentioned, the biggest drivers for citrus trade between the two countries are not the tariffs. It is good to have them reduced but they have not been large enough to be the drivers of the trade between the two countries.

CHAIR—I have other matters, but I will take them up with you directly if I may.

Mr Webster—Certainly.

CHAIR—If they are worth bringing back into this discussion I will find a way of doing so. Thank you very much, Mr Webster and Mr Prowse.

[5.11 p.m.]

GARNAUT, Professor Ross Gregory, (Private capacity)

CHAIR—Professor Garnaut, you are an old hand at this. I do not need to run you through the drill. You now have the call. We have your joint submission. Please proceed.

Prof. Garnaut—Thank you. My opening remarks address the joint submission made by Bill Carmichael and I. First, I would like to explain why my colleague Bill Carmichael is not present. He has recently undergone surgery and the after-effects are still with him. His absence is the result of poor timing on his part and not a lack of interest in the issues being examined by the committee. Second, I want to affirm that our submission and these introductory remarks reflect our joint views.

The letter introducing our submissions establishes that there are no time constraints in the agreement as negotiated, limiting the parliament's ability to ensure it has the analytical support it needs to assess the impact of the FTA on Australia. That process, therefore, need not be hurried. There is time for the parliament to put in place an appropriate process for it, and for interested members of the community to consider the consequences of the FTA for Australia. Our letter also argues that, because the agreement involves a wide range of sensitive domestic policy areas not hitherto affected by trade policy decisions in Australia, its impact warrants measured consideration by the parliament. It further argues why that consideration should begin with a public analysis and report by the Productivity Commission on the costs and benefits for Australia of the agreement as negotiated.

I will move now to our submission itself and the associated attachments. These describe the problems that flawed domestic decision making has introduced into the international trading system in recent years. These flaws and their consequences are manifest in the processes used so far in negotiating the agreement with the United States. The approach relies entirely on external processes and reasons for reducing trade barriers. Trade policy is treated as an extension of foreign policy. The consequences of this approach are described in attachment 2 of our submission.

The competing approach, the general thrust of which has been supported by the Prime Minister, recognises that trade barriers are the international manifestation of domestic decisions taken by national government to protect particular domestic industries from international competition. Contrary to the impression created by the present bargaining approach to trade negotiations, the gains available to participating countries depend on the decisions each takes at home about their own barriers. The gains they collectively take away from the negotiating table depend on what each takes to it. This is expanded upon in attachment 2 of our submission.

Domestic processes that raise domestic awareness of the economy wide benefits from lowering domestic barriers are thus the key to restoring progress in trade liberalisation, whether this is pursued unilaterally, bilaterally through FTAs or multilaterally through the WTO. The approach we and others advocate therefore includes a domestic transparency process to underpin trade negotiations by focusing advice and decision making within participating countries on the

economy wide gains available from liberalising domestic markets. The role of this process is to inform, not to manage or control, public understanding and discussion of what is at issue for national economic welfare.

When responding to this approach in May last year, the Prime Minister emphasised that a wide domestic understanding of the economic benefits at issue in liberalising through trade negotiations is essential for good outcomes. Our correspondence with the Prime Minister is attached to our submission. The Prime Minister reasons in his response:

Trade liberalisation will only succeed if communities in each country believe that it is in their interests to liberalise.

It is therefore important to establish if the Australian community has the information needed to assess whether the trade agreement with the United States as negotiated is in our interests.

In assessing the benefits for Australia both before negotiations began and after the agreement was finalised, the body relied on by successive governments to inform them and us about the effects of our economic welfare was sidelined. Instead of seeking an assessment from the Productivity Commission in accordance with the approach endorsed by the Prime Minister, a private consulting firm was engaged on both occasions to assess the benefits for Australia. That firm's first assessment, made before negotiations began, was used to suggest annual gains of \$4 billion. These were in fact potential gains based on highly restrictive assumptions. They could eventuate only if negotiations provided comprehensive access to United States markets, most importantly in the highly protected sugar, dairy and beef markets. They also depended on such a large liberalisation of services that productivity would rise significantly across all service industries in Australia and they would have involved eliminating all our remaining barriers against United States competition. Given the influence of the American farm lobby over US trade policy and the US procedures in place for providing relief from import competition, together with practical constraints that mean the Australia-US free trade agreement will provide little new liberalisation in services, our gains from the agreement were greatly overstated by the assessment on which the government relied, yet those estimates were still being quoted to provide support for the agreement after it was finalised as though they reflected the actual outcome for Australia.

The Department of Foreign Affairs and Trade has now released the results of the consulting firm's assessment of the agreement as negotiated. While the main sources of gain in the original estimate resulting from access to highly protected US agricultural markets have disappeared or shrunk dramatically, somehow the total benefits have greatly increased to \$5.6 billion. That somehow turns out to be mainly through what are described as back of the envelope calculations of gains, hitherto overlooked from easing FIRB restrictions. There is an air of unreality about this revised estimate. The magnitude of the contribution now attributed to changes in FIRB rules and the basis used to assess it heighten the need for an independent analysis conducted at arm's length from those whose job it is to sell the agreement to the Australian community.

The confusion and contradictions in the information presently available hinders rather than helps public understanding of what has been achieved for Australia in the agreement. For these reasons, we believe that an appropriate basis should be put in place to assess the implications of the agreement for Australia before the parliament considers enabling legislation. In our view, an appropriate basis starts with a public inquiry and report by the Productivity Commission,

conducted at arm's length from the mystique and spin that has been placed on the agreement to date. The alternative is to pass enabling legislation without knowing whether the outcome is likely to produce worthwhile or, indeed, any gains for Australia. If the agreement is ratified on the basis of the information presently available that will be a triumph for trade diplomacy over the community's need for a proper assessment of whether the outcome is in our national interest.

Finally, during this committee's deliberations, the principal of the consulting firm hired by DFAT, in his evidence in the afternoon—which I received as part of the transcript of the roundtable discussion—gave the impression that some of those criticising his modelling may have been motivated by personal opposition to the FTA. In view of the spin placed by DFAT on his assessments supporting the agreement, that observation has special significance. The impression created that contributions to the inquiry may reflect prior views or commitments about the FTA provides the strongest possible grounds for the parliament to seek a comprehensive assessment from the Productivity Commission—the disinterested source established for just that purpose. What is at issue is not the outcome of a debate between modellers but concern to establish an appropriate process for the Australian parliament and community to find an answer to the only relevant question: whether the FTA as negotiated is likely to provide worthwhile gains in our national wealth.

CHAIR—Thank you. We have got in our file in front of us a copy of your and Mr Carmichael's letter to us. You have referred to an appendix and some attachments in the form of letters but we do not have that before us. We are just trying to find out why that is. That may inhibit some of our examination; I do not know.

Senator BRANDIS—I have to leave for another function in 10 minutes time so please do not think me rude if I depart temporarily. Your criticisms both today and in your previous evidence, as I understand them, are essentially criticisms about process, aren't they?

Prof. Garnaut—The points I have made with Bill Carmichael in this submission are about process. In the roundtable discussion and in the rather lengthy cross-examination of me by the JSCOT committee, substantive issues arose.

Senator BRANDIS—I also understand that you have strong views, which you have expressed, about the desirability of multilateral, as opposed to bilateral, trade treaties. That is perfectly clear. Do you actually say that the free trade agreement in substance, as opposed to the process whereby we have arrived at this point, is a bad thing for Australia, or do you say it is too early in the debate to make that judgment because of the way in which the process has been, as you would have it, accelerated?

Prof. Garnaut—I do have a personal and professional view based on reading all of the professional materials that have been produced in relation to this process. I do hold the view that the process and negotiations so far and the agreement as negotiated have damaged Australia's trade policy interests and that moving forward to enactment of enabling legislation so that the agreement would come into effect would further damage Australian trade policy interests, but I would not expect this committee to form a view based on my own assessments. So the prime weight in Bill Carmichael's and my presentation is not on our own views about this particular agreement but on a process that is likely to lead to wise decision making and, in the end, broader community support for whatever the decisions of the Australian parliament turn out to be.

Senator BRANDIS—Could you just define for me what you mean by the expression ‘Australia’s trade policy interests’? That sounds to me to be focusing on a narrower set of considerations than the broader question of whether the agreement itself is in the Australian national interest.

Prof. Garnaut—In an agreement of this kind, when I use the term ‘trade policy interests’ I suppose I am covering the range of economic effects of the agreement. If the import of your question is that there are broader strategic and political—

Senator BRANDIS—No, I was not, honestly. I thought the expression that you were using was one that might have a particular meaning to you so I was inviting you to define it more narrowly.

Prof. Garnaut—I would be quite happy to use the term ‘economic policy interests’.

Senator BRANDIS—You have not done a modelling study yourself, although you have, of course, read the various modelling studies that have been done and you have come to different conclusions about the worthwhileness, if I can use that word, of the agreement.

Prof. Garnaut—Yes, I have read the modelling. As came out in that roundtable discussion, I do not think the modelling is the only thing that matters. I do have a view, but my strongest view is about process.

Senator BRANDIS—Sure.

Prof. Garnaut—Because I think that will have very big implications for what is left behind after this agreement for the integrity of Australian policy making processes and also for fundamentally important political matters like attitudes to the relationship with the United States.

Senator BRANDIS—The preferred process that you recommend is an inquiry by the Productivity Commission.

Prof. Garnaut—Yes.

Senator BRANDIS—Do you have a rough idea how long such an inquiry would take?

Prof. Garnaut—The inquiries have taken various lengths of time. This is a complex matter.

Senator BRANDIS—Of course.

Prof. Garnaut—The Productivity Commission can put more or fewer resources into it. If it was thoroughly resourced, I would guess it might take six months to do well, allowing time for the public consultation which is part of their processes. Normally they take in public submissions, put out a draft, get comments on that, revise the draft and then make a recommendation.

Senator BRANDIS—Say six months. What strikes me is that the express preference for what you say is the optimal mode of inquiry into this agreement rather disregards the political

consideration that, as we are advised by the Foreign Affairs people and the embassy in Washington, there is a political window of opportunity here which does not dovetail with the time span that would be necessary for the Productivity Commission inquiry of the kind you have described—the political window of opportunity being, as we are advised, the existence of a majority in congress to pass this agreement, which cannot be guaranteed after the American elections at the beginning of November.

Prof. Garnaut—I do not think there is anything in the agreement itself that places timetables on the process.

Senator BRANDIS—No, there is not.

Prof. Garnaut—Chapter 23 says—

Senator BRANDIS—No, I am not saying there is. What I am saying is that I challenge you on this proposition that process is king. If there is a political window of opportunity which is a short and narrow window, perhaps that suggests that to engage in the more leisured Productivity Commission inquiry that you recommend is a luxury we just cannot afford.

Prof. Garnaut—I am recommending a thorough process, not a leisured one.

Senator BRANDIS—A six-month process.

Prof. Garnaut—I disagree with that assessment about the political processes, and I have discussed this with US officials. Even if there was a unanimous recommendation by this committee that the agreement should be put into effect, and even if all parties represented in the parliament accepted that recommendation, it is by no means certain that this agreement can come into effect by the beginning of the year, which has been suggested as one starting date.

Senator BRANDIS—But it is never going to be certain, is it?

Prof. Garnaut—That is right. It is uncertain either way.

Senator BRANDIS—That is right.

Prof. Garnaut—If, for example, there is an election in August or September—

Senator BRANDIS—I am not concerned about an Australian election; I am concerned about the American election and what effect that might have on disturbing what appears to be the majority in congress that currently exists that would pass the agreement.

Prof. Garnaut—If the US Congress is inclined to pass the agreement, they will have made that decision and will pass the agreement before this committee has completed its deliberations. Therefore, I would suggest that your decision to put this through a thorough process would not affect the outcome of that decision in the US Congress. I have discussed this with people in Washington who follow these matters very closely, and the advice I have received over a period of time is that the US executive will, essentially, make a political decision on the electoral impact of putting it to the congress this year or later. They will only put it to the congress this

year if it is likely to be passed strongly. If they do that, it will pass through both houses of the US Congress in July. The agreement would then come into effect if and when the Australian Senate passed the enabling legislation. The US Congress's ratification of the agreement would not in any way be cancelled or withdrawn by any of the possible outcomes of a presidential or congressional election in November.

Senator BRANDIS—You accept, though—surely—that the decision whether to enact the enabling legislation should be based on the best information. Accepting that different economists and modellers will have different views, there will always be room for argument about what the right decision is. At the end of the day it is a political decision, which is ultimately in the hands of the opposition and minor parties which control the Senate. Why is it such a bad thing that that ultimately political decision should be yielded by the parliamentary processes, which will see this agreement exposed to scrutiny by two parliamentary committees, including this select committee, which have informed themselves in a variety of ways, including from hearing evidence by people such as you? Isn't that enough? There is no limitation on the information that is available to us.

Prof. Garnaut—The process does matter. Bill Carmichael and I hold strong views on that as a result of our participation in Australian discussion of trade policy over many decades. For about 35 years I have been rather deeply involved in what one might call the intellectual struggle to have free trade accepted as Australian policy. In the 1970s it was a very lonely job. Some members of your party were amongst my closest friends—people like John Hyde, Jim Carlton and a lot of others. There is no doubt—and there was no doubt then—that trade liberalisation was in Australia's national interest. The further we went with that, the better off Australia would be. Between 1983 and 2000 we got rid of most Australian protection, and now there is very wide acceptance that that has had all the effects that people who wanted trade liberalisation claimed for it.

We would not have made that progress if we had not broken the old style political economy. The old style political economy was trade policy decisions being made case by case, often through nontransparent processes, without adequate information in the community. That is the old style. There was political bipartisanship about this. The protected interests were the main funders of the political campaigns of all political parties. We broke that process through having a strong institution, now called the Productivity Commission, that played a role in independent analysis. It did not make decisions. It made recommendations. But we had an informed community, and that made all the difference. I would like to conclude this part of my answer by making a few points that I have written down here:

I am utterly opposed to anything which will alter the Free Trade character of this country; and I consider such an issue superior in importance to any other now before us. Preferential Tariffs ... are dangerous and objectionable. ... I am persuaded that once the policy is begun it must lead to the establishment of a complete Protective system, involving commercial disaster, and the Americanization of [our] politics.

That is not me; that is Winston Churchill in 1903 in a letter to his Prime Minister Balfour—

Senator BRANDIS—With all due respect, that is a great debating point, but truly! Can I say—and I do have to go in a moment—that nobody doubts your eminence or your distinguished career in this field but here we are engaged in the process that in fact is operative. You are

putting these points directly to the senators who will have to make the ultimately political decision whether to pass the agreement—in particular to Senator Conroy, the Labor Party shadow Trade Minister and to Independents, who dominate the cross-benches. Here you are making these very points to the very decision makers. That does not seem to me to be an unsatisfactory process, with respect.

Prof. Garnaut—I think a more thorough process through the established process of the Productivity Commission would do two things. Firstly, we would have an authoritative basis of information that all parties to the debate would accept as being independent. I do not think that that is the view that people have about the work that has been commissioned commercially by DFAT. Given the politicisation of the debate, people who put a different view—

Senator BRANDIS—But the issue has been engaged because we have had contending models and we have had criticisms of models by other modellers. So whether or not it is an independent process, it is certainly, if you like, a Socratic sort of process in which the weaknesses of each proposition are being exposed before us. Again, I ask, rhetorically perhaps: what is wrong with that from the point of view of process?

Prof. Garnaut—What have been the successful established processes of Australia in the past several decades since Rattigan have been shown to produce a better informed community, less negative argument—debating, if you like—about technical matters that are difficult to make assessments about. But if views from both sides of the debate are seen by some people as being the result of preconceived instructions or views, you do not have as good a community discussion. This Senate committee would benefit from having the sort of thorough investigation the Productivity Commission generates.

I think the precedent is very important too. I worry that we are losing in Australia the broad base of support for liberal trade because of the corrosion of the processes. This is a fear in my bones—if you like, a judgment—based on fruitless discussion of the issues in partnership with people like Hyde and Carlton in the seventies, and a much more productive eighties and nineties. I fear we are losing that base, because we are getting back to the discussion where one argument is as good as another because it is an argument, where vested interests are not pressed hard about their vested interests. We will get back to a cleaner political economy that will preserve the gains of the liberalising period if we reinforce the processes that gave us those gains.

Senator HARRIS—In your opening statement you referred to your written submission. I would like to go to the first page of that where you make the statement:

The Agreement breaks new ground not only in conventional areas of Australian trade and protection policy, but also in a wide range of sensitive policy areas that have hitherto not been affected by trade policy decisions in Australia.

What areas are you concerned about that we are actually bringing into this process?

Prof. Garnaut—Those areas include the Pharmaceutical Benefits Scheme, a number of matters related to intellectual property protection and some matters related to foreign investment review which have not been part of trade agreements before. It is at least that range of matters.

Senator HARRIS—At least those three. Particularly in relation to patents and intellectual property rights what would you see as the detriment to our current position in relation to what is proposed in the free trade agreement?

Prof. Garnaut—The point that Carmichael and I are making in this submission is not so much that there is a problem with the agreement, although I think there are some negatives in the agreement, but rather that these are matters of great consequence to our community. There are very large implications and they have just been—

Senator HARRIS—Glossed over?

Prof. Garnaut—They have just been incorporated into an agreement without the very thorough discussion we would normally expect if an issue like this were addressed in its own right. For example, the extension of the life of patents has been the subject of quite serious debate within this parliament, informed by a report of the Productivity Commission some years ago, and this parliament came to the view that the sort of lengthening of periods of patent protection that become part of this agreement was not in the Australian national interest. Here we are in a pressure cooker of decision making, addressing a very important issue. There are some clear negatives associated with the proposed changes in intellectual property law but my stronger point is that this is such an important matter that it warrants very thorough consideration in its own right.

Senator HARRIS—Is one of your concerns the additional cost to researchers should intellectual property rights be extended further and, in doing that, place an increased fiscal burden on our universities and research areas?

Prof. Garnaut—There will be some additional costs—perhaps in the extension of copyright protection under this agreement—on universities and research institutions. But the extra costs of extending patent life will mainly be borne by the users of patents. Australians are big users of overseas patents. There is not a commensurate gain to Australia to match against that significant increase in costs.

Senator HARRIS—You also highlighted a possible detriment to our pharmaceutical scheme. Could you expand on what you see as the possible effects on our pharmaceutical scheme?

Prof. Garnaut—I referred to the pharmaceutical scheme in response to your question, and my point there was that this is an important policy question that needs thorough analysis on its merits. It would not be wisely brushed over and considered by the Senate as just a small part of a much larger agreement. I think that it is actually an important issue in itself. If issues like this one came up for debate as issues in themselves they would be big issues—the pharmaceutical scheme, intellectual property—including copyright—and so on. So again the main point I would make is that there needs to be thorough analysis.

One thing that worries me in particular about the PBS is that there is clearly a very big divergence in expectations between American and Australian political interests about the effects of what has been negotiated on the PBS. We have not yet seen all the details about how this will be implemented, but I know that there is an expectation in industry and relevant parts of the US polity that there will be change as a result of these provisions. Now we have received assurances

from the Australian trade minister that there will be no changes in Australia. If you just looked at the words that we have seen so far in the agreement, you would reasonably conclude that a strong and determined Australian health minister, supported by his government, could resist change, but the new processes are likely to generate pressure for change, backed by the US government in some cases. Not every Australian trade minister or Australian government is able to or sees benefit in resisting great pressures from the United States. So the political process of consideration over pharmaceutical questions will be affected. That does not mean that there will be change with certainty, but some American expectations will be disappointed if there is not change, and that disappointment will have consequences.

Senator HARRIS—Would one of those consequences be the ability to go before the proposed panel, where there is a grievance between a company and Australia's position with the PBS?

Prof. Garnaut—I do not hold myself up as an authority on the processes, but I would think that the consequences would include expressions of disappointment from senior government figures in the United States, if the changes that follow this agreement do not produce the effects which are expected by the US polity.

Senator HARRIS—You mention broadcasting and media. I take your point—that your concern is that they need to very openly and in a consultative way look at those issues. Are there any personal areas where you see a detriment to our broadcasting and media as it stands today in relation to what is proposed to be agreed in the FTA?

Prof. Garnaut—I did not actually mention that, although you would be right to say that you could include that with those other—

Senator HARRIS—I just bring your attention back to the same paragraph in your submission. You have broadcasting and media mentioned in that.

Prof. Garnaut—Yes, we do. As you have indicated, our main concern is to have these very important questions thoroughly considered. If they are not, there will be resentments in the Australian community and, because the changes in policy will have come about as the result of US-Australian negotiations, there could be unfortunate resentments affecting the political relationship between Australia and the United States. I would think that a great pity. So I would prefer to confine my remarks to that more general point.

Senator HARRIS—Finally, in questions from Senator Brandis to you, the words 'political window of opportunity' were used. What are the dangers and the precedents? In your answers, you referred to establishing precedents. What would be the dangers to and the precedents for a democracy, if the necessity to follow a political decision overrode an open and consultative process, such as the one you have suggested—by the Productivity Commission?

Prof. Garnaut—In the end there will be a political decision, and everyone knows there should be. Under our Constitution, that decision will be made by the House of Representatives and the Senate. So I am not challenging the need for a political decision in the end, but I think that if the political decision does not follow a thorough process that carries the Australian community, in the sense that the community at large feels that the issues that concern them—and different issues concern different people—have been given fair and thorough consideration, if

we do not have that, there will be resentments that are damaging to policy processes in general and to the US-Australia relationship.

But I am especially concerned about the precedent for trade policy. As I indicated in my exchange with Senator Brandis, I think that having the right process has been the key to building political support—and, for a considerable period, bipartisan political support—in Australia for trade liberalisation, which I think has been strongly in Australia's national interest. That has been a big change in Australia from the way we went about trade policy making in the first two-thirds or three-quarters of our life as a federation. In that first two-thirds or three-quarters, trade policy decision making tended to be dominated by vested interests, with people exercising influence on government through all the means that vested interests have to influence government, without thorough analysis and transparent public discussion.

Senator HARRIS—So would that actually be one of the dangers—if we reverted back to that?

Prof. Garnaut—I think that would be a big danger. I think there is quite a serious danger that we would lose the political economy base, if you like, in Australia for maintaining open trade policies, and I think there is a serious danger that we would revert to old style Australian trade policy making, which was very damaging to Australian living standards.

CHAIR—I have a few questions. First of all, in a previous incarnation chairing the Senate Foreign Affairs, Defence and Trade Committee I had the privilege of presiding over a Senate inquiry into the free trade agreement we are now talking about, in the lead-up to the completion of these negotiations. You were kind enough to make submissions to us then, which went to criticisms you made of the modelling by the outside agency, the CIE. You put five clear, concise criticisms down. You made a substantial submission to us in that inquiry, including a major article that went, I think, into an Australian economics journal. You have made submissions to the other committee—the treaties committee—and you have participated in roundtable discussions. I just want to establish that all the evidence you have presented in those different formats and in different ways, as well as your notable participation in the public debate, are matters you would like us to take into account—not just the submission you have before us tonight?

Prof. Garnaut—I am certainly happy for you to take all that into account, yes.

CHAIR—Right. I think we should, because I think it all goes to the point. Is there anything in any of that that you would like to revise or change, or are you happy to stand by those expressions that you put of your views?

Prof. Garnaut—The additional point I would make is that, regrettably, I think the early comments I made, beginning in December 2000, have turned out to be prescient. I foreshadowed problems for the base of political support for open trade in Australia and a deterioration of the trade policy making process. I think we have seen a lot of that, and I think it is not going to be all that easy to get back to a strong base for open trade and productivity-raising reform.

Secondly, I foreshadowed that the US-Australia discussions would be quite influential in our region in moving others in the direction of preferential arrangements. I saw this as being a

potentially very damaging development for Australian interests. Unfortunately, that has happened—rather faster than I feared. I foreshadowed a diversion of effort in what became the Doha Round and foreshadowed some difficulties there. I am afraid that those views turned out to be prescient. So the additional point I would make is that, unfortunately—regrettably—those points have already been substantially borne out in practice.

CHAIR—I thought it was a very interesting discussion that you had with Senator Brandis. Correct me if I am wrong, but my understanding of your position is that in effect in Australia there is an institutional structure—in this case, the Productivity Commission—that is independent of government and robust enough and objective enough that its contribution to this public debate, if it were given the responsibility of presenting a report on this agreement, would be to try to establish an objective body of fact. Then we, as decision makers or legislators, would not be able to say, ‘There is this report that happens to favour my predilections,’ while someone else said, ‘But there is that report that favours mine,’ and people debated past the issues. Instead, we would have to debate the issues set out in the independent report. Is that the key element?

Prof. Garnaut—You have put very well the key element of the proposal by me and Bill Carmichael.

CHAIR—I should say that this committee has commissioned its own report. We have not officially released it, but it seems to have escaped custody and is notable everywhere. We have not released it, because we have not finalised it. We have on our slate tonight the approval of the final report, and I hope we are going to invite Dr Dee on her return to hold a press conference to explain it. She is the author of this report, and I think there ought to be an opportunity not only for us to question her but for the media to question her, so that at least our work is out there and clearly understood. A division has been called in the Senate. We will have to break for 10 minutes.

Proceedings suspended from 5.58 p.m. to 6.09 p.m.

CHAIR—I call the committee to order. I will not keep you much longer, Professor Garnaut. When we left off, as I recall, we had just been in agreement about the role of the Productivity Commission as an institution to help structure the public debate and, in an objective way, to try to analyse the benefits so that we do not have political parties having analyses of choice to wave around to justify whatever political decision they want to make. There is a rigour about economic policy making which maintains true reform of the Australian economy rather than what is called reform. That institutional structure is quite important not only for the politicians but for the community. That is your point.

Prof. Garnaut—Yes, that is our point.

CHAIR—Having confirmed all your economic submissions and so forth *carte blanche* at the beginning of my questioning, there are a couple of other points I want to make. As I have said, we are releasing our report and when Dr Dee comes back from the United States we will invite her to hold a press conference on it. We will, I think, have her before the committee to explain it to us. An article in the *Canberra Times*—and I do not necessarily rely on this article to be dependable because it refers to me in a way for which there is no justification, but that is another matter—says:

A spokesman for Trade Minister Mark Vaile, who is in Brazil, dismissed the findings, saying the Government would not expect endorsement from the Productivity Commission or the ANU, which supported multilateral agreements over bilateral ones.

That is the remark; it is not in quotes. The article goes on:

He had not seen Dr Dee's report, but said the free-trade agreement would not affect the price of drugs or the time it took for generic drugs to become available.

Then it goes on with quotes. It may be that you do not wish to comment on this but if you do want to comment on it I invite you to do so.

Prof. Garnaut—This is another example of why we need thorough process. Professor Dee is a thoroughly credentialed person of high professional standing and I would have thought free of any criticism of drawing conclusions from preconceived positions rather than analysis. Clearly the minister has sought to discredit her without seeing the report on the basis of discomfort with her conclusions. That is what has been going on all along in this process. It is why the process is the wrong one and why we should all step back a pace or two and go back to the tried and tested processes for trade policy making in Australia: get that report from the Productivity Commission and allow the Productivity Commission to hear public evidence where everyone can see everything that they receive, produce a draft report, have everyone comment on it, produce a final report and then have the political discussion without all of the messengers having been shot because their messages are thought by some to be inconvenient.

CHAIR—Let me conclude with this question. There is at the moment a swirling, buffeting political debate about the Australia-US alliance. I do not wish to go to the nature of that debate, the participants in it or the issues related to it but just to note the fact of it as a political

phenomenon. Should we have regard to that debate when we look at a trade agreement with the United States? Does it mean that because big issues are being debated somehow our ability to look objectively at a trade agreement is compromised? Do you have any comment on that?

Prof. Garnaut—I think the high importance of the political relationship with the US increases the importance of proper process in Australia in the consideration of trade policy matters. The ANZUS alliance is now about 50 years old—53, I think. Successive governments, certainly the Menzies government and the Hawke government, found from time to time pressures to use the alliance for trade policy leverage. Because governments valued the alliance and the political relationship with the United States they resisted that pressure.

There was a famous occasion in the late fifties when the Menzies government was under pressure from farm interests to use the alliance as a lever to reduce wool protection—the US wool tariff at the time. That was resisted, with Menzies and McEwen saying, ‘The political relationship is too important for us to get it mixed up with the trade policy relationship. Let’s keep them separate.’ In the mid-eighties, when the Reagan administration enacted the export enhancement scheme, the US farm product subsidies arrangements, these were hugely damaging to Australia. It cut the heart out of broadacre farming in Australia for quite a long time—it reduced prices for a wide range of farm products and gave us a period of rural recession. The Hawke government was under pressure to use the bases as a lever in the trade policy debate. Because the Hawke government attached high importance to the political relationship with the United States and the alliance, the government resisted that pressure and said, ‘No, we’re keeping the trade issue separate from the political issues.’

I think the same questions arise today. If, as I do, you believe it is important for Australia to have good political relations with the United States and if you think there is high value in the alliance, as I do, you recognise that the trade relationship is always going to be a difficult one between the United States and Australia. It was not by accident that we got nothing on sugar and next to nothing on the other highly protected American industries. It was not because the US administration did not like Australia; rather to the contrary. It is just that these are really hard issues. With the best will in the world, a US President is not going to take electoral risks to be nice to Australia on trade policy matters. That is the case now, it has been the case in the past, it will be the case in the future.

There will always be tensions and disappointments in the trade policy area, rather more than in Australia’s relations with a lot of other countries, because Australia and the United States in many rural commodity markets are fierce competitors. That is just a fact of life. So if you want to preserve the alliance, not just through this government but into the long-term future, if you want to preserve a good political relationship, you will take care to separate the strategic and political relationship from the trade relationship. If ever you get them mixed up over this issue, they will be mixed up in future. In the end that is going to be corrosive of the political relationship.

CHAIR—There being no further questions, thank you very much.

[6.18 p.m.]

SMITH, Mr Bradley, Executive Director, Federation of Australian Scientific and Technological Societies

CHAIR—Welcome, Mr Smith. I invite you to address us on your submission, for which we thank you, and we will then you ask some questions.

Mr Smith—Good evening, senators. The Federation of Australian Scientific and Technological Societies is the peak national representative organisation for 60,000 scientists and technologists. I am sure many of you have had dealings with FASTS in the past. FASTS is well known as the organiser of Science Meets Parliament. The sixth one is being held this year.

FASTS do not have a formal position on whether we should sign or not sign the FTA. We recognise that there are benefits and threats and that the committee will need to look at a whole range of those. We would like to advise you of some concerns we have in the science and technology area. The key one goes to investment and there are also issues to do with biosecurity and patents.

I would particularly like to talk about the investment side now. The FASTS is particularly concerned that the provisions of the free trade agreement which liberalise investment create a possibility of seeing US firms cherry picking the most promising Australian R&D intensive small and medium enterprises. This threat is not at all consistent with the government's own policy of Backing Australia's Ability, which is to enhance the commercialisation of Australian ideas and develop Australian firms to get product to market. This issue has been discussed extensively in PIMSEC with a major report in 2001 and there is a current project on it with PIMSEC at the moment, which is looking at commercialisation and Australian firms.

The Australian government currently invests about \$5.4 billion into research and development across a whole suite of programs. Thousands of firms access funding of various sorts, whether it is direct grants through R&D Start, through the tax concession or through COMET, and a lot grow out of publicly funded research, the Australian Research Council, NHMRC, CSIRO and universities. One of the two key measures which we believe represents a threat is the constraints on the terms and conditions of grants. Chapter 11, the investment chapter, states that government subsidies and grants, which includes R&D grants, are not permitted to exclude the performance requirements, which is section 11.9. In particular, it refers to technology transfer and domestic content requirements. That will have an impact on the existing national benefits test, which the IRDB—the Industry Research and Development Board—already applied to R&D Start and COMET grants. It also means that, if this government or a future government have concerns about cherry picking and decide to try and enhance terms and conditions of grants in ARC, NHMRC, CSIRO and universities, it will be severely constrained in what terms and conditions it could apply.

The second area of major concern in terms of allowing for the cherry picking is the change in the threshold for FIRB, lifting its report threshold from \$50 million \$800 million means that all R&D-intensive science and technology SMEs would fall under that \$800 million threshold and

there will be no examination. As you are aware, because of the ratchet mechanism, if a future government decided it was concerned about an emerging trend of US firms purchasing Australian R&D companies and taking them offshore, it would not have the capacity to use FIRB as the instrument to address that policy problem.

Currently, there are constraints on takeovers of Australian firms. As I mentioned before, this is with the IRDB national benefits test. That explicitly goes to issues of technology transfer and domestic content. That does not mean that the national benefits test prohibits foreign investment or takeovers by foreign firms—often, you will need to have that foreign investment. We are not being prescriptive about what the problem is there. There may well be benefits for strategic alliances and mergers with small R&D-intensive SMEs and multinational firms in getting capital and market distribution.

It is worth looking at the current laxity, if you will, of constraints over Australian firms which come out of publicly funded R&D and compare that to the situation in the US. There is quite a famous act, which was introduced in 1980, called the Bayh-Dole Act. It amended 35 USC, the US code. The policy intent of that American act is to ensure that American taxpayers get the benefits of US publicly funded research by maximising technology transfer from the public to the private sector. It does that through arrangements affecting patents and licences. A couple of the key points that need to be made here is that, as part of that Bayh-Dole Act, if a licence is given to a US firm or a foreign firm to commercialise the intellectual property derived from federally funded research grants, they must give priority to US manufacturers. In other words, there is a domestic content consideration as a term of conditions for the grants and of the act.

Another point is that, if a foreign firm wished to take over an existing US firm and take the operations offshore, it would require US government permission and they would need to make a strong case that it was not feasible to manufacture in the US or that they had been unable to find a manufacturer in the US before permission would be granted. In other words, it is not an unfettered regime in the US. In fact, the Australian circumstance is far more liberal in terms of takeovers than that which exists in the US.

Our real concern is that if we just have US firms cherry picking the R&D start-up firms in Australia, that represents a potential loss of jobs, export opportunities and R&D capacity in those Australian firms, which is entirely counter to the bipartisan agreement on the necessity of commercialising Australian ideas, through Backing Australia's Ability and previous ALP statements.

We have recommended that the provisions that go to the performance requirements should not be accepted. We have also suggested that the government examine very carefully and in great detail the terms and conditions of grants which go to issues of oversight of commercialisation of R&D from publicly funded research. This is a highly complex area. We are not suggesting any quick fixes and we do not have a prescriptive program there. It would take a couple of years of dialogue, negotiation and work with universities, with CSIRO, with the ARC, to develop a set of constraints that were appropriate so that there could be some oversight of and control over intellectual property.

I will touch briefly on a couple of other areas. I am aware that the sanitary and phytosanitary measures have been discussed at length by this committee and by the JSCOT. The major concern

we have is that the arrangements with the two committees on SPS are entirely dependent on how robust Biosecurity Australia is, as the lead agency. Scientists have concerns that there has been a cultural shift within Biosecurity Australia in the past few years towards facilitating trade, including directing the IRA committees on trade obligations, concerns about the processes, whether an IRA has consensus or not, and so forth. Our view is that if the SPS measures are not to be a threat, that requires Biosecurity Australia to be absolutely robust, with science as its main objective. We are concerned that that poacher-gamekeeper problematic with Biosecurity Australia threatens to undermine the SPS arrangements in this country.

Another point that I want to make relates to patents. It is not actually clear what the implications of the patent changes are. The language refers to 'greater harmonisation'. The real concern there is on patenting genetic material and genetic sequences. No regime in the world allows patents of human genes and gene sequences per se; it is the issue of the extension and extrapolation of those genes and gene sequences. The issue seems to be more one of how the US patent office is interpreting the law rather than that of black-letter law per se. There is tremendous conflict around the world on these issues. The Europeans in particular have a strong argument that the US has been far too liberal and the problem with patenting genes and gene sequences is that it places an enormous constraint on research and researchers. The Australian Law Reform Commission is currently investigating these issues. Its report is due out at the end of June. FASTS has a very high view of the capacity of ALRC on this matter and we would not want a trade agreement to pre-empt Australia's own decisions on what it might do about genes and gene patenting.

CHAIR—One of the advantages or disadvantages of being the chairman of a committee like this is that you get to ask the hard questions, and I am going to ask some hard questions of you. Through your submission and in your oral evidence, FASTS say that you do not take a position on whether or not we should adopt this free trade agreement. Quite comprehensively—and I commend FASTS for the comprehensiveness and detail in their submission, because I think it is quite a good one—you set out areas of, if I can put it in these terms, misgivings, a lack of clarity or areas where you have significant concern. All different gradations of concern are expressed in your submission across a range of topics—not just one or two but a whole suite of topics. Do I understand, therefore, that the view of FASTS is to say, 'We're not in a situation to make any judgment as to whether to accept or reject this, but these areas where we've raised concerns are areas where we require more and better particulars or for the issues to be clarified more effectively so we can take a position'? Is that what you are saying?

Mr Smith—First, on whether or not to sign, we are simply saying that there are so many other areas about which we do not have the expertise to speak. On issues like Biosecurity Australia, we believe the SPS arrangements are a threat. There are possibly potential benefits to it, but there is potential threat. We are saying that, if the practices and the objectives of Biosecurity Australia are addressed and this committee recommends that they be addressed, that will ameliorate the potential threat.

CHAIR—I understand.

Mr Smith—It has been more problematic with the R&D stuff, because it is difficult to see how you can address it without affecting the agreement.

CHAIR—Let us accept that this is a very complex document. We have to look at it step by step and then, at the end of the day, take an overall balancing effect to make a broader judgment. We have, for example, said to the department with respect to the pharmaceutical benefits provisions that there is a provision there, but what has to be negotiated is the independent review, that mechanism to which pharmaceutical claims would be sent should a drug company want them to be. What is not explicit in the agreement is how that operates. So we have asked the department whether that will be available by the time the legislation comes to the Senate so we can see how it will operate. That will put an end one way or another to the speculative argument: ‘It will operate adversely, it will operate positively or we do not know.’ The department’s answer, as I recall it, is that they cannot guarantee that we will have that before us but they will do the very best they possibly can to see that we do.

In the quarantine area there is a similar provision yet to be negotiated and thoroughly defined. I know that there is a high interest in quarantine around here, and I would hope that the department would similarly provide us with that detail. But they are in a waltz with another party, namely the US side, and things do not always work to our timetable. What are you putting to us? Are you putting to us that you want to see those things settled as a condition of proceeding, or are you putting to us that it would be a good thing if these things were settled before we proceed?

Mr Smith—I think we are well aware of the delay between fine detail and the broad brushstroke. It would be nice to see the matter settled prior, but we are aware that it will not be. With the Biosecurity Australia stuff, we are saying that if you do not independently fix the emerging problem with their approach, the FTA leaves open risk to Australia because of a decline in how we would see the robustness of the science in forming the trade negotiation. I suppose what we are saying there is that we would like to see a really strong commitment from the government that this be addressed now.

CHAIR—I said I am going to be hard on you, and I am, because we have to pick up our bodies and move them from one side of the chamber to the other side of the chamber to vote yes or no. According to government announcements, this is coming at us at a fairly rapid clip so we may have to make these decisions soon. Do you have any advice to offer us as to what we could do?

Mr Smith—If it is not accepted that there is an issue with Biosecurity Australia then I think the Senate needs to be concerned, and that should inform its decision.

CHAIR—That is fine. We will take that on board. Are there any other areas in your submission about which you hold a similar level of concern?

Mr Smith—Yes—the investment side. It does not make policy sense to, on one hand, be trying to enhance commercialisation of Australian inventions by Australian firms so that we can build up Australian firms to go into the global export market if, on the other hand, we allow those Australian firms to be bought by US investors and then have the operations, the R&D, the jobs and the export opportunities taken offshore with no constraint, no oversight and no control. There is a massive disjuncture between the public policy intent of those two movements. We would regard that as a serious concern. It is not clear how it can be fixed independently of the FTA. The Biosecurity Australia stuff can be addressed independently of the FTA, but the

industry investment—the R&D side of it—is absolutely in there. FIRB gets lifted from \$50 million to \$800 million, and there are the constraints on the scope of grants and subsidies for goods—not services, goods. I do not know whether this issue with the R&D intensive firms is an oversight, an unintended consequence. Advice from DFAT is that the issue was not even raised.

This agreement contradicts US law quite explicitly. US law states that, if you get a licence of publicly funded IP, you have to give preferential treatment to US manufacturers. That is a domestic content requirement. This agreement rules out using domestic content as a condition of a grant which would apply to an investor. So there is a contradiction there, and it is not clear what the US are going to do. I do not believe that they are going to unravel their own highly successful Bayh-Dole law to satisfy the Australian FTA. So perhaps the only opportunity there is for the committee to think seriously about Australia introducing comparable requirements. It is hard to see how the Americans could object if we are using similar laws on those constraints.

CHAIR—Taking what you have said at face value—and what it does to American law is probably an issue for the Americans rather than for us—this is where it gets really hard. My government colleagues are not with us at the moment but, if they were, they would no doubt put this question to you. If you take the view that deferral to establish more clearly in some of these sensitive areas what the rules will be is the preferable option, what would you say if that option were not available—not available on the basis that there is a limited window of opportunity for this to be dealt with on the American side and if that window is not accessed nothing will happen, the agreement will not be supported and any effort to refine the agreement in the way in which you have suggested would be nice but not realistic—and a decision had to be made to go or not to go with this agreement? They would put that question to you. Do you have an answer?

Mr Smith—If the net benefits of a rushed decision will irrevocably outweigh the potential net losses, it is problematic. You may decide that you will just go for it. Our concern was that, without having these matters of R&D investment attended to—the chapter that goes to investment, particularly the constraints on commercialisation of R&D—you are allowing a rod for decades. The long-term damage of loss of Australian R&D could be terribly significant. It is very hard to model what that would be. We would have very grave concerns if that issue were not addressed because of a desire to rush the FTA.

CHAIR—Is that how you would put it to us: that you would have grave concerns?

Mr Smith—Yes.

Senator RIDGEWAY—I am interested in your comments about the funding support for research and development and some of the figures that you provide. Can you provide information about the list of recipients over whatever period of time and what percentage of these grants would have been made to companies, for example, that have a parent company in the United States? The reason I ask that is that, having looked at the report prepared by the United States International Trade Commission to the US Congress, they say that one of the areas where there is likely to be some improvement is in US cross-border exports of services and more particularly they talk about the fact that at the moment it is \$5.2 billion and quite a significant amount involves US parent corporations and their Australian affiliates. In the figures you have provided, are they exclusively Australian research projects or are they open to investment from Australian companies that have a parent corporation elsewhere?

Mr Smith—The tax concession only applies to Australian registered firms, and I understand that the R&D Start must be to Australian registered firms. They could well be subsidiaries but I cannot give you a breakdown of how many Australian subsidiaries of US or any other multinational firms are in receipt of those grants. They could if it is an Australian registered firm.

Senator RIDGEWAY—Of the organisations or individuals that make up FASTS, I am presuming that a significant number of those would be from educational institutions as well as research and development companies.

Mr Smith—FASTS is an association of associations. There are about 65 member societies, most around disciplinary clusters such as physics, biophysics, metallurgy and so on. All those societies will include academic, postgraduate, industry and government members and it is a variable of that range. I suppose what I am getting at is that we do not have university based groups and industry based groups. They bleed across, depending on the mixture of the societies themselves.

Senator RIDGEWAY—I guess what I am trying to find out is two things. One is whether or not your members currently tender abroad for the provision of certain services. Would the existence of the free trade agreement improve the capacity of your member associations to be able to access the United States market, particularly for the procurement of services? If not, if there are going to be obstacles in the way, what sort of obstacles would you see as being a deterrent that does not give, if you like, a level playing field approach between what Australia is offering and what the United States may or may not be offering?

Mr Smith—Strictly speaking, none of our member societies would be going for government procurement, because they are not commercial organisations; they are societies. But certainly members of those societies would be involved in that sort of exercise. The major constraint on access to government procurement is that it is a very costly business. In effect, there is an automatic appeal mechanism. Also US state governments and other instruments will frequently give support to local firms and so on, so you are not talking about a level playing field. There are going to be areas where Australia has niches of expertise. In some of the defence computer modelling et cetera there are already government procurement programs through DSTO products, I understand. In some areas of IT there are opportunities. What the free trade agreement is suggesting is an advance on what currently exists; there is no doubt about that. But the barriers through the expense and the support American domestic firms will receive from local government, state government and so on will not make it a completely level playing field in all circumstances.

Senator RIDGEWAY—Has your organisation in that case looked at it from a domestic perspective? If there are domestic associations currently tendering for work perhaps through local government, anything from environmental projects through to computer or IT, as you mentioned, will the free trade agreement have an impact upon them, given that the free trade agreement talks about computer services being open to US firms being able to tender? I guess what I am looking at here is really whether you have done any qualitative assessment of what that impact would be and whether your members would be at a competitive disadvantage or would be able to compete in comparison.

Mr Smith—The short answer is no, we have not done any modelling on what the likely success rate is. We are sceptical that this is going to be the big boon for Australian firms. We will have to see how it works out in actuality. This provides certain opportunities. How Australian firms maximise or engage in opportunity remains to be determined. Because of the costs and those other barriers, we are sceptical that it is going to be a great boon, but we do make the obvious point that this is an improvement on existing arrangements.

Senator RIDGEWAY—We have probably already touched on the question of intellectual property and some of the changes being proposed in copyright law. One of the comments that is made in the US national interest report is that this is the first Australian trade commitment in the audiovisual services sector, it is a major improvement for US service providers and it is an important precedent for future agreements. Do you have concerns about what it is that the government have agreed to, given that, according to the US analysis, it is the first time that anything of this sort has been included in any trade agreement that they have entered into?

Mr Smith—To be honest, that is not something we have addressed, because it is not something that FASTS specifically has expertise in. I could only provide personal speculation; it is not something I can give you an authoritative argument from FASTS on. It is not an area under our purview.

Senator RIDGEWAY—Okay.

CHAIR—Thank you, Mr Smith. Once again I say thank you for the submission, which is very worth while, and thank you for the opportunity to hear from the Australian scientific community about the agreement. That concludes this part of our hearing for this evening. We will resume after dinner with the Minerals Council.

Proceedings suspended from 6.47 p.m. to 7.39 p.m.

HOOKE, Mr Mitchell, Chief Executive, Minerals Council of Australia**RAWSON, Mr Robert Norman, Director, Safety, Health and Trade, Minerals Council of Australia**

CHAIR—I regret that we do not have a full complement to hear you, but I am sure all senators will express due diligence and read the *Hansard* of your remarks, Mr Hooke and Mr Rawson. In any case, I will take special steps to draw it to their attention. I invite you now to speak to your submission.

Mr Hooke—Thank you, Chair. As usual, it is always an absolute delight to appear before you. With your concurrence, I will make a few opening remarks and hit the highlights of our submission. First of all we welcome the opportunity to put on the record where we see the importance of this free trade agreement within the context of the economic and social significance of the Australian minerals industry to all Australians. I do not think I need to go through all of the statistics of our economic and social significance, but there are a few that are quite impressive. We are around 8½ per cent of GDP in 2002-03, we are well over one-third of this country's total exports and we employ directly and indirectly some one-third of a million Australians. But what is really quite exciting is that the prospects for growth are likely to emulate the past. We were well positioned in the immediate post-war period to meet the commodity demands of an industrialising economy in Japan in particular and we are well placed to do the same for China and other Asian industrialising economies.

We are well placed in Australia to export commodities and import manufactures. If you stop and think about it, we are about \$30 billion a year better off in our terms of trade than we would have been a decade ago had we not had quite the liberalising policies of successive governments in this country, particularly in trade. Accordingly, we are fundamentally focused on what is necessary for our growth to continue. We need access to global markets in both selling our products and buying inputs. We want access to global capital, which is very important for an industry that requires a substantial amount of global capital but finds itself in a country where the capital markets simply do not have the liquidity to support those investments. We need access to professional people, skills and expertise which are not always found at home, so we need free movement of people as best we can. We are looking for access to technology, notwithstanding that we are a substantial contributor to improvements in technology across the globe. In fact, much is often made about the exports of the wine industry and yet the exports of mining and technology services out of this country exceed the growth of wine exports. They are estimated to climb from \$2½ billion or \$3 billion to about \$6 billion by the end of this decade. Sixty per cent of the world's mining software comes from Australia. This is an industry that is high-tech and extremely progressive in terms of its social and environmental stewardship responsibilities, which is a paradigm shift from where it was a decade or a decade and a half ago. This underpins and underscores its foundation of sustainable growth and its contribution to sustainable development.

To realise those ambitions we need trade and investment to be continually liberalised. Therefore, we support a comprehensive approach to reducing tariff and non-tariff barriers and reducing subsidised competition. We are fundamentally opposed to an intersection of

environment and labour policies that would seek, through trade coercion, to impose extraterritorially the standards and conditions of one country upon another, violating many of the WTO principles and, of course, the sovereignty of the nation-state.

There are a few things that come into our focus on the back of this US free trade agreement. The first is that we are keen to see continued reduction in industrial tariffs, notwithstanding that the global industrial trade weighted tariff is around 3½ per cent. That is probably the ballpark figure for most of the tariffs affecting our products going into the United States—between three per cent and five per cent. Non-tariff barriers loom large globally in terms of trade facilitation and trade efficiency but equally that applies going into the United States. I have addressed the issue of trade coercion for non-trade objectives. Of course, trade and foreign investment policy are really important for us. As I said, most of the projects go beyond the capital liquidity of Australian markets. Market capitalisation in Australia is about \$46 billion. Global market capitalisation in the minerals industry is about \$300 billion. That is probably equivalent to something like the market capitalisation of Microsoft or the GE corporation, which puts things in perspective.

In 2002-03, 91 per cent of the number of all global equity financings and about a third of the world equity capital raisings were run through the Toronto Stock Exchange. It gives you an idea of how important it is to figure on the radar of the foreign global capital markets, particularly in the Americas. We advocated specific provisions in relation to investment. We were looking for the legal right of national treatment for foreign investors—that is, treatment no less favourable than what would apply within the country, within the United States. We were looking to maintain the Foreign Investment Review Board provisions—in other words, the sovereignty of the nation-state to have the ultimate right to veto foreign investments in the national interest—but we wanted to increase the threshold. We pitched for \$500 million and ended up with \$800 million. We wanted to make sure there were no prescribed conditions attached to investment, such as trade balancing, local content or other non-trade objectives like environment conditions and so on.

In relation to environment and labour policies, we think the objectives of either are best served alone. We support adherence to core labour standards, defined to include freedom of association, the right to organise, bargain collectively and so on. It is up to sovereign governments to implement those national regulations. The Workplace Relations Act caters adequately for that in Australia. We do not see any basis for trade coercion to force other countries to adopt those standards. Similarly, we do not see importing countries having a capacity to externalise their environmental or social standards to other countries, the countries of origin; rather, the WTO already provides a capability to address and restrict imports to the extent that they are going to import environmental problems. Trade restrictions beyond general obligations can be applied, provided they are founded in sound science.

In summary, we consider the general benefits of the FTA to be founded in the broadening and strengthening of our bilateral relationship. We see a real opportunity for deeper integration of the two economies. Many people look at me blankly when I say that, but just getting on the radar of the investment community and businessmen in the United States is a really important part of the equation, as is removing restrictions on goods, services and capital, both imports and exports. The business relationship in terms of investment has changed markedly and it is not defined in

the way that you might expect that the conventional distinction between trade and investment was defined. It does not reflect the business circumstances of today.

Both the trade and investment decisions are inexorably linked as to how business decisions are made. While we have a pretty comprehensive and uniform body of multilateral trade rules, the same cannot be said of the patchwork of rules contained in bilateral investment treaties. We see there being greater opportunity for deeper reform in a bilateral sense, particularly between two developed economies, than might otherwise be available in trying to pursue trade and investment as one of the Singapore issues in a multilateral framework where the vast majority of countries in that multilateral capability are developing economies, with all sorts of different and complex agendas.

We are looking to enhance Australia's position in terms of its attractiveness to investment. We have to be very careful that we do not get lost in the logic of our own arguments or in the excitement of our own natural comparative advantage in minerals endowment. There are no free kicks in these markets; we are just part of a strategic position in a global market where there is converging global supply. It is not a bad idea to have a look at Latin America, China and the former Comecon countries in Africa to see where a lot of the supply competition is going to come from in meeting the burgeoning demands of industrialising Asian economies.

We think a lot of the objectives and purposes I talked about—eliminating tariffs, enhanced potential for improving our exports of mining technology and services and no restrictions for trade coercion—have been met. We think the trade and investment chapter is pretty good. The obligations in terms of trade and environment and trade and labour, to the extent that you need anything in a deal between two developed economies, are appropriate. The elimination of industrial tariffs almost immediately on agreement is also a good thing, both for exports and for imports. So the minerals industry considers that Australia would be unambiguously better off under this agreement and we exhort you to support its ratification.

CHAIR—Mr Hooke, you and I go back a long way.

Mr Hooke—We do, and with pleasure.

CHAIR—Indeed, and we go back a long way on this issue as well. I suspect that if I were to indulge myself I could be here all night and we would have a very interesting discussion, but I propose to discipline myself so that at least we keep to the point. On the last page of your submission you say:

... the total value of current Australian minerals exports to the US (including iron and steel) is estimated at \$480m or around 1% of Australia's total minerals exports ...

Leaving aside any quibbling about steel not being a mineral, it is a value added product that goes to increase the value of the total sample. What does the Minerals Council believe will be the outlook for mineral exports to the United States as a consequence of this agreement? Do you consider that you will win more markets there?

Mr Hooke—Probably not.

CHAIR—That is what I would have thought too.

Mr Hooke—We certainly see technology services. There is no question that the major gains for us in this are registering on the capital markets. It is the investment portfolio that is the important one. As I was saying in my opening remarks, the other aspect was to make sure that we did not find the prospective externalisation of trade and environment intersection such as you have in the Jordon, the Chilean and the NAFTA free trade agreements. The Singapore one is not too bad.

CHAIR—Do you mean the America-Singapore, the America-Jordon et cetera agreements?

Mr Hooke—Yes, the United States free trade bilaterals. In other words, there was a risk that they would do things under a bilateral agreement that you could not possibly get through in a multilateral agreement, which were in fact to our detriment rather than our gain. That was the first area we focused on, but we did not come to the table. As I said in my earlier remarks, we did not see any rainbow in terms of the reduction in industrial tariffs.

CHAIR—On the capital investment side of it, does the Minerals Council cover the hydrocarbons industry as well as minerals?

Mr Hooke—No. Do you put coal in the hydrocarbons? I would not have put coal in hydrocarbons.

CHAIR—No, but it is probably a mineral as well.

Mr Hooke—We do not cover oil, petroleum or gas.

CHAIR—So there is no point in me asking you what, for example, Woodside Petroleum's view might be on the liberalisation in the FIRB requirements?

Mr Hooke—No.

CHAIR—At the time the potential takeover of Woodside was mooted, did the Minerals Council have a policy position on how the Treasurer's hand should be guided when assessing any FIRB report on that takeover?

Mr Hooke—That was before my time, so I cannot answer that specifically, but I can say to you that the whole concept of global companies, land banking, warehousing and rendering Australia as a resource park is not something that we are attracted to. We have a natural endowment. We know the name of the game in global competitive terms to realise those resources, but there is no sympathy in the Minerals Council of Australia for companies who want to park their resources under retention leases, tenement licences or what have you and realise the development of assets somewhere else.

There was an international company very unfairly done by in Western Australia recently, but I think there would be very few people who would argue with the first round of considerations in terms of the Arakun bauxite leases. The second round is a different issue, but the concept of there being a very clear set of commercial determinations and parameters is very important.

To go back to the specifics of your question—even though I am looking at it from the perspective of a different industry at the time; in other words, I was not in the minerals sector—the point is that what guided the hand of the Treasurer more than anything was the concern that this was about parking those resources to realise resources elsewhere and therefore it was an exercise in inventory control or supply control. That is something we are cognisant of. In just about any mineral commodity—and I am happy to stand corrected, but I will make a generalisation—the top five global companies are doing somewhere between 40 and 80 per cent of the supply. Of course, iron ore is at the top of that trade. That is a reasonable, commercial, rational and strategic position to put yourself in as a global company.

We in Australia do not want to become a resource park as part of that converging global supply and therefore we will do everything we can to make our industry as competitive as possible. Our focus on FIRB was not to do away with it; our focus on FIRB was to improve the transparency and the accountability processes and to make sure that we did not have companies going through the rather tedious process of compliance costs. I had one of our major companies say to me that this was one of the most important pieces of legislation they had to deal with, and mainly for rather tedious processes—for example, the head of a major corporate trying to buy a house had to go through FIRB processes. That is the kind of stuff we wanted to get rid of. We wanted to make sure that we could provide investment certainty. That was really the aim of that.

CHAIR—My next question may be something that you wish to take on notice. What has happened in this agreement is that the amount of allowable investment before you go through the FIRB filter has been increased to \$850 million. If there were a general view that the purpose of a takeover was to warehouse Australian minerals from exploitation for the purposes that you have referred to, increasing inventories, trying to restructure world pricing or whatever—that is, to eliminate the Australian company from competition for the time being—then would the Mineral Council's position be to favour a more competitive market, not a less competitive market, and to raise that as a matter of public interest with the government? Is my understanding of that correct?

Mr Hooke—There are a stack of hypotheticals in there.

CHAIR—It flows from—

Mr Hooke—It does, and it is a fair question.

CHAIR—You can take it on notice if you want.

Mr Hooke—I am happy to take it on notice and come back to you with a more detailed reply. Firstly, we are not about supporting warehousing. Secondly, governments need to make very clear the extent of sovereign risk—they need to be very clear on what the guidelines are, what the definitions are and what the terms are. There is much being made of the 'use it or lose it' policy at the moment. We do not have a problem with that in principle, but what we need to do is have it defined.

CHAIR—What Treasurer Costello said at the time—and I think Treasurer Keating or whoever was Treasurer at the time would probably have said the same thing—was that, in the case of the FIRB, you have to make a case by case decision.

Mr Hooke—That is correct.

CHAIR—I am asking you to enunciate a general proposition. You make case by case decisions as to how those circumstances stack up against some sense of what the national interest is. I guess the hypothetical nature of this is reduced a little if what I am asking you is: do you see, as part of national interest criteria, that a Treasurer might wish to exercise in a particular case, if that case arises, that warehousing restructuring, all that sort of stuff—

Mr Hooke—In principle, yes.

CHAIR—There are some residual powers here. It is not as if it is an open—

Mr Hooke—That is the point I made. Our position was not to remove that sovereign right of veto. It was just to make sure that the system was a lot smarter, a lot smoother, a lot more transparent and a lot more respectful of what a realistic threshold was, but \$50 million was not.

CHAIR—Let me now turn the question around a bit. One of the arguments put to us has some attraction on the face of it but, despite what you might read in the paper, I have not made a decision about it yet. One of the newspapers is verballing me about what I am about to do and I do not know where they got that, but leave that aside; that is the media. One of the propositions put to us was that if most of the benefit of this FTA is on the investment side—and, according to the CIE modelling it is, and I think that is unexceptional—why don't we take the FIRB provisions and turn them into MFN investment provisions?

Mr Hooke—Yes.

CHAIR—Would the Minerals Council have a view about whether that should be a recommendation of this committee?

Mr Hooke—Yes, we do. In fact our submission says that.

CHAIR—I did not pick it up.

Mr Hooke—It says that we see very good grounds for moving that. As I recall, there have already been overtures by Japan and a few other countries that are looking to see whether or not these investment provisions would in fact be extended on an MFN basis. Isn't there something in our agreement with the Japanese that goes back a fair way?

CHAIR—There is the Nara treaty.

Mr Hooke—That is the one.

CHAIR—Article 11 of the Nara treaty says in, I think, quite convoluted prose that you cannot extend a benefit to a third party without extending it to your other partner. Japan cannot do a deal more favourable than it has done with Australia without extending it to Australia, and we cannot do a more favourable deal without extending it to Japan.

Mr Hooke—We have picked that up in our submission as saying that that is our predisposition—that is where we would like to go. But, again, that needs to be put within the context of the sovereign right of the Australian government to determine the national interest. But, back to our point, in principle we are not about having Australia end up a resource park.

CHAIR—Yes, but you are putting weight on the fact that this agreement has the possibility of being able to shore up more investment for Australian industry because we are—the usual words—'on the radar' in the United States. Unless you are on the radar, people do not notice you. If they notice you, they might invest in you.

Mr Hooke—Both ways. We will be able to invest over there too.

CHAIR—Yes. If that is true of the US, since our biggest investment source is the EU, if you extend it to the EU and, in mining, to Japan and Korea—China is a special case because there are government-owned enterprises, which offends one of the basic tenets of the FIRB—are you saying that doing it MFN is a better deal? Is that right?

Mr Hooke—In principle. I am not sure I am sophisticated enough in the art of trade negotiations to be aware of the traps and pitfalls, but that would be our desire, qualified by what may be some of the traps and pitfalls. There is the one you just mentioned—China, for example.

CHAIR—There is a special safeguard against government-owned enterprises and foreign powers.

Mr Hooke—That is correct—state-owned enterprises and degrees of intervention in the market.

CHAIR—Should I also assume that you are entering a mild objection—perhaps not so mild—on the inclusion in this agreement of provisions on labour standards and environmental standards although, as you present it, while you are having that objection registered you are still strongly in support of the agreement?

Mr Hooke—The trade and environment and trade and labour part is okay. We think it is okay, if you have to have it.

CHAIR—That is the point. I understood you to say that you do not have to have it but, if you are going to have it, you might as well have it like this.

Mr Hooke—Correct. It was a condition of the Trade Promotion Authority. Therefore, if you are going to play the game you have to play it under those terms and conditions and those stipulations. My exact words on this—and I want to get them on the record—have been that we consider:

... these are quite appropriate provisions in rendering determination of the nature and enforcement of environment laws, the responsibility of the nation state.

We see that as okay. In other words, there are a couple of things. As I have said, firstly:

The primary obligation on both parties is not to fail to enforce national environment law through sustained action in a manner affecting trade between the parties. It does not allow for either party to challenge the domestic environmental laws of the other ...

So it preserves the sovereignty of the nation-state. It is, secondly:

... silent on the nature of environmental law, quite properly leaving that for the determination of the sovereign state—except for what I consider to be an aspirational clause—that each party shall strive to ensure that its laws and policies provide for, and encourage, high levels of environmental protection with regard to continuous improvement.

You could not object to that.

CHAIR—It is motherhood, isn't it?

Mr Hooke—Yes, it is okay. It does not attempt—

Senator BRANDIS—It is not really motherhood; it is a kind of best endeavours clause.

CHAIR—It is a best endeavours clause but—

Mr Hooke—But what it does not do is line up an intersection between trade and environment policy to the extent that trade coercion becomes the vehicle for imposing one country's environment standards on another. That was the real danger.

CHAIR—That is the concern of the Minerals Council—you do not want that to occur.

Mr Hooke—It should be a concern for all Australians. Could we possibly imagine an importing country telling us that they do not want our wheat because we salinised the Murray-Darling Basin, do not want our pet food because we shoot kangaroos or do not want our minerals products because they do not like the way we reclaim and rehabilitate our mine sites? Those are the risks, and they are quite real. You asked me about trade and labour. It is the same thing. We do not have a problem with the ILO dealing with core labour standards. Again, we do not want to see bilateral trade agreements—because you would never get it through in a multilateral one—taking advantage of the fact that you can use trade sanctions to mitigate the comparative advantage, particularly of developing countries, of low labour costs. That is their natural comparative advantage, much the same as ours is a benign climate with endowments of natural resources and so on. That is part of the realisation of comparative advantage in developing competitive strengths. To mitigate that by, again, the West or developed economies imposing their standards is a different issue. I come back to the point I made that we see the sovereign state giving effect to those ILO conventions in our own legislation and we think the Australian Workplace Relations Act does that.

CHAIR—I understand your point of view. This is a much traversed discussion. In fact we have had it between ourselves a number of times.

Mr Hooke—We have had this discussion many times.

CHAIR—But in saying that part of a nation’s comparative advantage is labour costs the Minerals Council is not saying—and I am asking this question as much for your protection as anything—that it countenances slave labour, prison labour or forced labour of any sort, is it? That would be an unfair labour cost advantage, wouldn’t it?

Mr Hooke—Of course it would, but who bears the responsibility for correcting those kinds of behaviours? The sovereignty of the nation-state does. We do not see trade sanctions, trade coercion, as part of the normal processes put in place to enforce that. It is kind of cute that the Americans would be the demanders for a trade and labour intersection and yet their performance on—

CHAIR—I think that is true; I think it is really kind of cute if we go and look at some prison labour examples from the United States.

Mr Hooke—Our performance in ratifying ILO declarations leaves them for dead.

CHAIR—Yes, but they argue—and rightly I think—that they have a special problem about ratifying them because of the nature of the American Constitution vis-a-vis our Constitution. The key question for them is do they observe those same standards? That is arguable.

Mr Hooke—Which is the one we have not ratified? It is the one on child labour.

CHAIR—Yes, but we have ratified the one on the worst forms of child labour. That is one that the ACCI, the ACTU and the government all agree is the centre of the core labour standard argument.

Mr Hooke—The commercial market also clicks in. I saw that when I was in another industry with the issue of Brazilian orange juice—whether or not there was child labour or slave labour being used in the production of frozen orange concentrate. The markets responded accordingly.

CHAIR—We could develop a whole discussion about whether international standards will outlaw these practices or whether it is exclusively up to the nation-state to decide for itself. For the record, my view is that there are international norms of behaviour that ought to be enforceable. Whether they should be enforceable in a trade agreement is another matter.

Mr Hooke—For the record, we see the objectives of both being better dealt with separately.

CHAIR—I have one last question. My understanding of the Minerals Council’s position historically has been that they are basically in favour of free and liberalised trade in the world and that they see the WTO as the best way of achieving that. They have argued consistently along those lines in domestic political debate in my state. They have argued against high tariff protection because it distorts the structure of the economy and have lobbied for the removal of tariff protection. It would be fair to say that Professor Ross Garnaut has argued strongly for all those things over the years too. Would you accept Professor Garnaut as being one of the leaders of this debate intellectually in Australia?

Mr Hooke—Historically.

CHAIR—Yes.

Mr Hooke—I do historically, yes.

CHAIR—Does that mean he is no longer or will not be in the future?

Mr Hooke—I think where you are going is whether or not his historical performance gives him some extraordinary standing in the context of the consideration of future policy.

CHAIR—Yes, you have guessed the direction I am going.

Mr Hooke—I think you need to judge each declaration of a man of his standing on its merits at the time. I do not agree with Professor Garnaut's approach to this bilateral agreement. I think it is fanciful to suggest that it can be opened up and renegotiated and I think it is fanciful to suggest that it ought to be put to the side so we have another opportunity to negotiate something better. I fundamentally disagree with Professor Garnaut's assessment of the trade politics and trade negotiations. And, since you ask me, on the basis of his historical contribution to trade liberalisation in this country—which you quite rightly identify as being exemplary and something noteworthy—I am really quite surprised at his judgment. I say that on a professional basis not a personal one.

CHAIR—I look forward to the debate between you and Professor Garnaut.

Senator BRANDIS—One of the striking features of these hearings is that the professors, as is no doubt their wont, have been encouraging us to scrutinise and analyse the agreement more carefully whereas the businessmen, who are people who are actually going to be doing the trading under the free trade agreement, have, by and large, been enthusiastic to get on with business and have been warm enthusiasts for the agreement. I have a question which arises from Professor Garnaut's evidence. He propounds very strongly the case for multilateral trade agreements. A lot of what Professor Garnaut had to say was about process, but we need not trouble you with that. In relation to the policy substance, he says—and I might say that he is not alone in expressing this point of view—that Australia would in the end do better if we had more multilateral agreements. And correspondingly he says that Australia's capacity optimally to participate in multilateral agreements is going to be damaged by our devotion to this one very large bilateral agreement. From the point of view of your industry, on the issue of whether a bilateral agreement of this character is potentially prejudicial to our future freedom to move in relation to multilateral agreement, what do you say?

Mr Hooke—I am not sure what the industry would say, because it is a very technical question. Those in my companies who are well versed in the subtleties and complexities of trade negotiations have reached much the same conclusion as I have myself. My own experience covers many years. Apart from Peter Grey, who is now an ambassador in Brussels, I am now the only one who has been on every single official delegation to the WTO since it was established; furthermore, for some time I sat on the international policy council with Donald McGauchie. I have now changed industries and am an emeritus member of that august body. My experience is that it is never an either/or case. This is a complementary game; it is not a substitution racket. In terms of capability and opportunity in multilateral fora, the ground has shifted markedly since I first went to the Singapore meeting in 1996 and since I was involved in the Uruguay Round

negotiations from about 1989 on. There is one thing I remember clearly about the Uruguay Round negotiations. You will not find anybody who will be able to tell you what the figures from the modelling were at the end of that conclusion but you will find that just about anybody who is involved in trade negotiations can tell you what the quantifiable benefits were and are. We have had 200 bilateral trade agreements—

CHAIR—I told you what the benefits of the Uruguay Round were at the end of the process.

Mr Hooke—You did. Trade reform is not an event; it is a process. You are quite right; I remember that very well. I have offered a bottle of rum to anybody who can tell me what the modelling figures were at the end of the Uruguay Round and what was going to benefit. Nobody has taken it up.

CHAIR—There was no modelling.

Mr Hooke—I beg your pardon.

CHAIR—There was no modelling.

Mr Hooke—I heard you but I am not sure that is right. There was quite an amount about what the benefits were going to be to the rural sector and what have you; yet the Uruguay Round delivered zip—absolutely zip—in terms of progress on market access, reduction in domestic subsidies and reduction in export subsidies. The Europeans admit—

CHAIR—To who?

Mr Hooke—To us. It delivered zip.

CHAIR—That is rubbish.

Senator BRANDIS—Can I suggest that you let me have the chair, Senator Cook, while you pursue this rather clubby debate.

Mr Hooke—For the record, the Europeans had met their reduction commitments before they walked out of the room. But what it did—and this is the great credit—is establish a rule based trading system. It established a dispute settlement mechanism. It established the means by which countries could unilaterally ‘disarm’. That is where the huge benefits have come from. It changed the culture from one of concessions to an understanding of commitments to liberalise. We have seen much more unilateral disarmament in those areas than we have seen forced by the commitments—the bound rates. As to the operative rates, you are right: there is tremendous credit to be delivered to the people who negotiated that outcome and what it did in terms of the culture and what have you. But if you actually had to sit down and look at the bound rates, the Europeans had met their commitments before they walked out of the room. You know that and I know that. I am looking at it from a grains industry perspective back then.

CHAIR—But the question is this: did they meet them because of the negotiations or would they have met them anyway?

Mr Hooke—They would have met them anyway.

CHAIR—Well, they met them in the course of the negotiations.

Mr Hooke—McSharry's proposals were already on the table. We are going back in history now, and I am probably not adding to the debate.

CHAIR—We are, and I would love to venture back there, but as I will be reminded by Senator Brandis, quite rightly, this is a debate between aficionados—

Senator BRANDIS—I think we all feel privileged to have sat in admiring awe of this exchange of reminiscences!

Mr Hooke—May I come back to your question, Senator. I am sorry, I digressed.

Senator BOSWELL—We are going on a sentimental journey.

Senator BRANDIS—We should start playing Perry Como music through the loudspeakers.

Mr Hooke—It is late; if I have digressed, forgive me. You are right about the analysis, the modelling and the academic exercises, and about business looking at this as being a means by which we are on the radar and there are opportunities and the means of getting on it. For multilateral trade agreements, as I said, the ground has shifted markedly from where it was. There are now so many more developing countries the capacity for getting consensus is much more difficult. It does not mean that you have got to walk away from a multilateral approach—I just frankly do not accept the argument. And those in my industry who are across trade negotiations are of the same mind: it is not a substitution racket. If you get an agreement in a bilateral sense that in fact reinforces the multilateral trade agenda and reinforces the principles of sovereignty and the principles of nondiscrimination and the principles of sound science and the concept of materiality—in other words, all the foundation principles of the WTO—then you have got to say you are better off. My view, having watched the trade in environment and watched the trade in labour, which is where we were most concerned that there may have been a compromising of the WTO principles, and having reached the conclusion that they do not do that, is that most else—I will not say everything else, because there will be something that I have missed—but most else is a bonus. So they can be mutually reinforcing.

Senator BRANDIS—Thank you for that. If I may say so, that is a very eloquent presentation of the case. But I want to test you further—I want to be the devil's advocate. Most of the witnesses we have had before this committee have claimed, whether genuinely or insincerely, that they believe that free trade is a good thing. With the exception of a couple of bedraggled lefties who got dredged up earlier in the hearings, almost everyone has said this. But then some people have said and Professor Garnaut, who is a very respectable and eminent commentator, says: 'It is all very well to say that free trade is a good thing. We agree with that; that is almost a motherhood statement. But that does not foreclose the argument.' Nor does it foreclose the argument to say, if this be true, that this free trade agreement enhances free trade between the two economies—as it seems to me plainly it does. You have then got to go on to ask yourself the next question: does the opportunity cost, if there be one, of forgone opportunities in relation to multilateral free trade agreements detract significantly from the attractiveness of this particular

bilateral agreement? So it is not enough to say it will enhance free trade between these two economies to produce the conclusion that this agreement will, overall, enhance Australia's position as a participant in free trade across the world. I am trying to summarise as fairly as I can what the counterargument is, and I invite you to respond to that.

Mr Hooke—I think I got the question, and that is: are we, by focusing on bilateral free trade agreements, undermining our capacity to progress the multilateral free trade—

Senator BRANDIS—Essentially, yes.

Mr Hooke—I just do not accept that.

Senator BRANDIS—Why?

Mr Hooke—Because, having been involved in these meetings and seen where they have been and where they are coming from, to me the Doha Round was stalling and it would not have mattered how much we were pedalling and treading water and jumping up and down and what have you, both the political and the trade reform imperative opportunities to progress that agenda were just not there. We could have sat back, but we did not. Australia took, in my personal view and in the view of my industry, a very strategic decision and that was that it is not a bad idea to get on the bilateral bandwagon. It may be coincidence, but I suspect it is more cause and effect, that China came up quickly behind this agreement and that the Thailand agreement was concluded as quickly as it was. Having been involved in the AFTA, the ASEAN free trade CER negotiations, and had my nose bloodied by your counterpart from Malaysia—

CHAIR—Rafidah Aziz.

Mr Hooke—Yes, the delightful Rafidah Aziz! I have been on the back end of the Malaysian trade minister's vitriol many times, as have my business counterparts. To see that turn around in a flash tells me that not only has the political scenery changed but so, too, have some of the trade reform imperatives. ASEAN does not want to be left out of the scene. We have had delegations come to visit with us from Asian economies saying: 'Where can we actually intersect with you to ensure supply of raw commodities and raw materials? We have been trading and we don't want to see our trade relationship suffer with Australia because you're entering into trade agreements with America, China and others.'

Senator BRANDIS—So you think it is a false antithesis—there is no zero sum gain?

Mr Hooke—There is no zero sum gain. It is not a substitution racket. You take the opportunities when they present themselves. Senator, you have been a minister. You know the game; you know the business. It does not always come down to a rationale of whether the resources go there or there. It is actually where you put the resources at the time you have got an opportunity to make a change. I do not want to put words into your mouth. That is where I saw this going. I came back from Cancun—and I am on the record—and gave a speech to the Australian Institute of International Affairs saying: 'Don't hold your breath for the Doha Round getting going. The death of the WTO is greatly exaggerated. Nothing's going to happen for a good 12 months or more. There needs to be a new sense of urgency in Europe particularly. In the meantime we've got stuff to do on a bilateral basis.'

Senator HARRIS—In your introductory remarks you made a comment about free access of people. Where do you see the free trade agreement either being of benefit or being of detriment to the Minerals Council of Australia?

Mr Hooke—That is a very good question. Senator, from your experiences in Queensland and the mining industry, you know that a decade ago the industry took quite a conscious decision that it had to do something about improving the capability for skilling people to work in the industry. We were seeing a marked decline in undergraduates taking up courses relevant to our industry. We were finding ourselves on the back end of low-volume, high-cost courses in tertiary education. We took a decision to fund the process of tertiary education specific to our industry. We are currently putting in \$3½ million to \$4½ million directly out of the Minerals Council of Australia budget. This is in tertiary; we have already got a primary and secondary program worth a couple of million dollars a year. That is just out of the Minerals Council; it is complemented by a lot of the state and territory organisations.

So we have actually taken a decision here in Australia to do what we can to rationalise the courses, streamline them and modernise them, and to put money into assisting the development and training of people. But we are operating in a global industry therefore involving the free movement of people, the recognition of professional qualifications offshore, and access to skilled people offshore and being able to bring them here to Australia. I think, off the top of my head, that the specific aspects of the agreement which would provide for the mutual recognition of special expertise is something that we are pretty keen on.

Senator HARRIS—Do you see that being facilitated through the FTA or as just being a process that will occur?

Mr Hooke—We are a bit disappointed that it did not make it.

Mr Rawson—I know the Minerals Council were disappointed that that particular aspect was not included. We can understand the reasons for taking that off the agenda with the present security concerns about the movement of people, but we understand that there are provisions there for working groups to revisit these things. The agreement is not a static sort of agreement. There are dynamic provisions there to enable those matters to be revisited. We would be encouraging the government—and we have done so—to put this on the agenda at the earliest opportunity.

Senator HARRIS—Before I move to the issue of reducing subsidised competition, are there any country of origin issues for the Minerals Council in the FTA? Are there any segments of it that would create any problems in relation to that?

Mr Hooke—Not that come to mind. Can I take that question on notice and check it out?

Senator HARRIS—Yes.

Mr Hooke—We are not an importing country in terms of mineral products; we are an exporter. I am trying to think of some we import. We do import chromium. There are some things that we do not produce here in Australia that we could import. I was aware of the country of origin debate and the United States proposal. Like everyone else, I baulked the moment I saw

the complexity and the tortuous nature of it. But when you drill down into it, you see that it actually does work.

Mr Rawson—It has not been raised by any of our members as a concern.

Mr Hooke—I will take that on notice and come back to you on that.

Senator HARRIS—My reason for asking that first is that on page 3 of your submission under the heading ‘International trade’ you say:

The MCA supports a comprehensive approach to trade and investment liberalisation, which involves reducing tariffs and non-tariff barriers in opening markets and reducing subsidised competition through:

... ..

- non-discrimination in like products and the concept of materiality, ie. any trade restrictions should be material, based on the physical characteristics of products, irrespective of the processes and production methods ...

For the benefit of the committee, could you expand on that?

Mr Hooke—That is a fair comment. I point out that that is not actually by example but rather ‘that is, any trade restrictions should be material’. This goes to the whole concept of whether or not a country can determine to restrict an import on the basis of the way the product is processed or produced. You have seen headline trade disputes on growth promotants in beef. Is the beef to be restricted because it has been produced with growth promotants or is the beef to be restricted because there is a sound scientific basis of threats to animal or plant quarantine, human health or what have you—in other words, the beef is the beef because the beef is the beef not because of the way the beef was produced.

You could extend that to the minerals industry and ask: are you denying us access to your market because our iron ore has a problem or is it the fact that you do not like the way we are reclaiming our mines, our coal, our tantalum, our mineral sands or whatever else it is? In other words it is the product and the physical characteristics of the product that the importing country ought to be looking at, not how we produced it back home.

Senator HARRIS—Earlier on you were speaking about raising the level at which the Foreign Investment Review Board becomes involved. I would like you to walk you through a scenario. Let us say that Battle Mountain Gold, which is an American company, held 51 per cent of New Guinea Mining and New Guinea Mining held 20 per cent of Lihir Gold—which produces about 1½ million ounces per annum. If we had a hostile takeover of Battle Mountain Gold to get control of that 20 per cent of that resource, with the lifting of that foreign review board threshold to \$850 million, are we in danger of seeing smaller versions of the Woodside scenario? If they did evolve, what would the Minerals Council’s process be to express those concerns? I am just giving the Lahir example, because that is factual; that is what happened. The company that took over Lahir then went around and shut down all the Australian mines, some of them with hundreds of millions of proven resources, and that was done substantially under the \$800 million threshold. It is a concern that I have, and I am wondering whether the Minerals Council has taken that type of process into consideration.

Mr Hooke—Yes, it has. The question I would ask you is whether or not you think the decision under the previous arrangements would have been any different from the decision under the new arrangements. In other words, one of the challenges that has been put to me quite regularly is: what do you think you have gained? How many decisions has the Treasurer actually made that would have stymied or prevented things? The answer is not many. The question that I ask in a very respectful way is whether or not you think the changes to the \$800 million threshold have actually added to or increased the exposure of the scenario that you paint, and I contend not. What I am saying to you, therefore, is that mostly the market is going to be sorting out that sort of stuff. Secondly, I do not know of any instances where that has been an issue under the existing regime. The lifting of the threshold, from our perspective, is not so much about those kinds of scenarios; it is more about the compliance, the radar, the nuances, the deterrent and the investment certainty.

Senator HARRIS—For the record, Chair, I do believe the lifting of that actual level in which the foreign review board becomes involved will allow even greater and larger resources to be captured and possibly warehoused and taken out of the market. That is the point I am making.

Mr Hooke—That point is fair enough but, again, it comes back to whether or not you think that is the only test or whether or not there will be other tests by virtue of state legislature—in other words, the conditions upon which those resources, those retention leases or those tenement licences are issued. Everybody knows the circumstances in Queensland, and they know there are specific conditions which just rolled on and on and on. It begs the question of why you had the conditions. The developments that followed that are a different set of circumstances, which we do not need to go into here. The point I am trying to make is that there are two hurdles.

Senator HARRIS—Finally, on page 8 under ‘Specific benefits to the mineral industry’, you list one of those as the ‘legal right of national treatment for foreign investors’. How would you see that as being of benefit to the Minerals Council for foreign investors to attain national treatment?

Mr Hooke—That is another good question. The whole concept of national treatment is that we essentially just want the terms and conditions of investment that would apply to a domestic investor in the United States to apply to us and vice versa. That is, for somebody investing in Australia the fact that it is in foreign dollars should make no difference to the terms and conditions of investment, so it is national treatment. The other point is that we do not want the governor of California setting up different terms and conditions than those the United States government has already enacted, so that when we go into that country we go under the national rules—the terms and conditions—for investment and we are not subject to particular prescribed conditions or circumstances of individual states. We would expect the same thing to apply here in Australia so that we could not have a state or territory government overriding the terms and conditions and the basis upon which a foreign investor was making an investment in Australia.

Senator HARRIS—So the important point there is that it is a two-way street—that is the benefit?

Mr Hooke—Correct.

CHAIR—Thank you, Mr Hooke and Mr Rawson. Since not all of the senators were present tonight there may be some who wish to put questions to you on notice. The difficulty of having a hearing when the parliament is sitting is that people do get called away. If they do choose to exercise that option, are you able to answer them?

Mr Hooke—Yes, I would be more than happy to do so. I already have one question on notice from Senator Harris. As usual, Chair, I very much enjoy appearing before committees under your chairmanship, and I thank you for the opportunity.

CHAIR—Thank you. I very much enjoy hearing from you. Next time I see you with a bottle of red in my hand and one in yours, we will continue this discussion.

[8.42 p.m.]

SCOULAR, Mr Russell Gray, Government Affairs Manager, Ford Motor Company of Australia Ltd

CHAIR—Welcome. We have your letter. You now have the opportunity to address us, and then we will ask you some questions.

Mr Scoular—Thank you for the opportunity to join you this evening. I also appreciate the opportunity to make some brief opening comments. It goes without saying that Ford Australia has a very strong and active interest in trade policy. This interest recognises the global nature of the automotive industry and its leadership role as one of the world's biggest traders of merchandisable goods. Furthermore, this interest in trade policy reflects the importance of greater global integration for the Australian automotive manufacturing industry.

Ford Australia looks towards trade liberalisation as a key component of enhancing the growth and international competitiveness of the Australian economy. It also acknowledges the importance of improved overseas market access as an enabler in assisting the automotive industry to grow its volume base. Quite clearly, Ford Australia is a strong supporter of the WTO multilateral trading system. However, the company also recognises that regional and bilateral initiatives such as APEC and the Australia-Thai and Australia-US free trade agreements can energise the broader WTO processes. In this context, Ford Australia is a strong supporter of the proposed free trade agreement with the US and looks forward to its early implementation.

We believe it is imperative that the automotive industry be an integral part of such an agreement. We also believe that the proposed phasing arrangements for the Australian automotive industry are extremely fair, particularly recognising the fact that the US has agreed that there will be no phasing arrangements for its automotive industry. We look forward to doing business under the auspices of the new free trade agreements with countries like Thailand and the United States and we also, as a matter of our interest in global trade policy, intend to be actively involved in the Australia-China economic framework study project. We recognise that under these arrangements there will be new opportunities and competitive challenges emerging and we look forward to doing business in that environment. I would be happy to take any questions you may have.

CHAIR—First of all, what is the current situation with Ford's commitment to future model motor vehicles being made in Australia? I think the current model is code named 'the Barra'.

Mr Scoular—Yes.

CHAIR—Beyond this model's natural life, what is the commitment on Ford to manufacturing?

Mr Scoular—Ford has a very solid and strong commitment to ongoing local manufacture in Australia. As you correctly point out, Mr Chairman, the current model Falcon is the BA, originally known as the Barra, and that will run through to approximately 2007-08. Beyond that,

we will obviously have a new model in place. I would also point out that we have just launched the new all-wheel drive Ford Territory, which is the outcome of a \$500 million investment in Ford in Australia.

CHAIR—As far as Ford's future participation in the Australian economy is concerned, have they announced that the model after the Barra is to be made here?

Mr Scoular—We have not announced that, but I can assure you it will be.

CHAIR—So have you just announced it?

Mr Scoular—It is certainly our intention that it will be built in Australia.

CHAIR—When one looks at the Centre for International Economics study on the FTA, I think table 7.1 of that study—I do not have it to hand—sets out what the employment effects of the agreement will be. This is an econometric study which is forecasting what the effects will be. It forecasts that in the motor vehicle components sector and in some parts of metal manufacturing there are likely to be job losses in Australia as more competitive, bigger economy of scale American component parts suppliers are able to compete in an open agreement between the two countries more efficiently than Australian producers can compete in supplying componentry to Australian-made motor vehicles.

Today we have received the United States International Trade Commission report on this agreement, and in this report they deal with motor componentry. Without tiresomely at this hour of the evening taking you through what they say—and I believe someone will correct me if I misstate this—they state clearly that there are bigger market opportunities for American exporters in the Australian car industry. One of the things we have to look at is the national impact of this agreement. We have to look at it sectorally and then overall and try to work out what we think is in the national interest compared to what we think the balance of this agreement confers on the economy. Does Ford have anything to say about those forecasts, as job losses in the components supply sector of the industry would seem to be verified by what the American trade commission's report says?

Mr Scoular—In our case, both the Ford Falcon and the Ford Territory have very high levels of local content, and it is certainly our intention that they will continue to have very high levels of local content. In the case of the Falcon, it is an average of about 80 to 85 per cent across the model range. In the case of the Territory, it will probably be 75 to 80 per cent local content across the model range. It is our intention going forward that those vehicles will continue to have high levels of local content. With regard to the studies you refer to, I have not seen the US study, so I cannot comment in detail on that.

CHAIR—It is on the Net.

Mr Scoular—I certainly will be reading it in the days ahead.

CHAIR—I do not expect you to have come here fully primed with the American study; we just got it this evening.

Mr Scoular—I would like to make an additional point with regard to my own company's products that we design and manufacture in Australia. There is an element of natural protection, if you like, with those products, because the fact is they are designed locally, engineered locally and manufactured locally. There is not in the main, if I can use the phrase, a global parts bin in Detroit where we can go and get exactly matching parts of components A, B, C, D and E. Generally speaking, most of the parts of those vehicles are unique to those vehicles.

CHAIR—I appreciate that. What is the Ford corporate practice in terms of component parts suppliers? Do you sign them up to a contract to supply for X number of years, or is it related to each new model as it comes along?

Mr Scoular—Generally speaking, it runs across the model life of the model in question. So I suppose that, given that a model cycle will run for a number of years, the answer to your question is really yes to both.

CHAIR—At the end of a contract, what is the corporate practice: do you call for expressions of interest in the next generation car and start again? How do you re-sign them?

Mr Scoular—Generally speaking, you have long-term relationships or partnerships with your key suppliers. The aspects to those relationships are technology driven, quality driven, supply delivery driven and price or economically driven. Those partnerships tend to roll forward over a long period of time. You do not see substantial chopping and changing, if you like, from model to model.

CHAIR—I have had several discussions about the motor industry with Jack Nasser, and obviously I do not expect that he talks on behalf of Ford now because he is no longer the International Managing Director of Ford. But, just recalling for a moment those discussions, one of the points he impressed on me is that Australian component parts suppliers—I think this was his view—are the best niche market suppliers available because they have to produce goods for niche markets that are to quality, to price and for short runs of production. Our component industry has perfected the ability to do that, whereas in Europe, Japan and the United States component parts suppliers are for long runs, huge runs by Australian standards, of production and the unit cost for that might be cheaper, and that is their area of expertise. So we are bringing together two markets with slightly different sets of expertise, according to my recollection of the Nasser view. His other comment was that more and more these days people are wanting to customise their car as much as they possibly can by designating what goes in and what is left out before it hits the production line. Why is there any belief anywhere that, if we are so good at niche market production, this agreement will make any difference to our ability to penetrate the United States production process?

Mr Scoular—In part obviously this agreement will remove the modest tariffs that exist in the US in terms of componentry going into the US looking forward. It brings two quite complementary industries, as you are alluding to, closer together, and I think out of that can come opportunities.

CHAIR—People have made submissions to me—these are not formal submissions to the committee but points put to me privately by people of some standing—that there is a question

mark about your engine manufacturing plant at Geelong if this agreement goes ahead. Do you have any comment to make about that assertion?

Mr Scoular—Our engine plant in Geelong has obviously been there for many years and it is our intention that it will be there for many years going forward. I am aware of some of the speculation that exists in some circles, but I would not necessarily say it is informed speculation.

CHAIR—As far as you are putting to me, Ford have got a commitment to the maintenance of the engine plant.

Mr Scoular—We have a strong commitment to Geelong and Broadmeadows.

CHAIR—Okay. Finally, your submission to us is on behalf of the Ford Motor Company of Australia. Does Dearbourne have a view about the FTA?

Mr Scoular—I think Dearbourne's view is very consistent with Ford Australia's. In the early days of this FTA being proposed and discussed, Ford Australia and Ford Motor Company in Dearbourne had a number of discussions on it as we determined what would be an appropriate stance to take, and I think the shared and considered view of both was that it was a project and an initiative worth supporting.

Senator BRANDIS—Are you able to offer the committee any estimate of the extent, expressed in percentage terms, by which Ford Australia's exports to the United States are likely to increase as a result of this agreement?

Mr Scoular—No. At the moment we have no vehicle exports to the US out of Australia. We have facilitated a number of component export initiatives and we are also involved in a number of services, engineering design work activities, that we export. But as regards a precise percentage on how that may track under this FTA, no, I cannot precisely answer that.

Senator BRANDIS—Dealing with the components and the other goods and services that you export, are you able to offer any idea as to the increase in the volume to be expected as a result of the agreement?

Mr Scoular—Only to say I believe that they will increase. I cannot put a precise percentage on it, because the automotive market is such a dynamic market. It is not something that stands still at a fixed point and then you overlay an FTA and say, 'It is up by Y per cent,' or something. The market itself is a fairly dynamic beast that moves around fairly regularly, so it is hard to put a precise percentage on it.

Senator BRANDIS—What about becoming the other way: do you have any view as to the extent, if at all, by which American exports to Australia will increase as a result of this?

Mr Scoular—In my own company's case, our main imports from the US—or exports from the US, if you like—the all-wheel drive or four-wheel drive Ford Explorer compete in a very competitive marketplace. We would not see a substantial increase in volume that may come out of the FTA; we may see some. As regards componentry, the main things that we import from the US are our V8 engines, our engine management computer module systems and some other

minor import componentry. I would make the point that with those components it is not a case of: do we source them locally or source them from the US? They are simply not available locally. I think what an FTA with the US does with regard to those components is that it just helps make products like the Falcon that much more competitive in a very, very competitive Australian marketplace.

Senator BRANDIS—By competitive you mean, in layman's terms, cheaper?

Mr Scoular—Yes—it reduces the input costs, if you like, to their manufacture.

Senator BRANDIS—So you are telling the committee that one of the consequences of the FTA, from the way you structure your business, is that, because some of the components which are imported from the United States will be able to be landed in Australia more cheaply, the vehicle at the point of sale to consumers will be correspondingly less expensive.

Mr Scoular—It could well be.

Senator BRANDIS—I am not asking you to quantify it, but is that what you would expect to happen?

Mr Scoular—We have been looking at it for some time to get a dimension on just what it may mean in that area. It is probably a bit premature to say it will mean cheaper sticker prices, but I think inevitably anything that helps business input costs reduce has got to lead in that direction.

Senator RIDGEWAY—I want to follow up one of the questions Senator Brandis asked about what you would expect in improved imports from the United States to Australia. I know you only occupy less than one per cent of the current market arrangements—

Mr Scoular—Sorry, one per cent of?

Senator RIDGEWAY—I think it is less than one per cent, or something like that, as compared to Mitsubishi and then GM Holden.

Mr Scoular—Ford Australia has a market share of 14 or 15 per cent in Australia.

Senator RIDGEWAY—In the United States?

Mr Scoular—Do you mean the Ford Motor Company in the US?

Senator RIDGEWAY—No, as in the Ford Motor Company exporting to the United States.

Mr Scoular—The Australian industry is approximately one per cent of the global industry, and Ford Australia is approximately one to two per cent of the Ford Motor Company globally.

Senator RIDGEWAY—You may not be able to answer this question, because it is in relation to Mitsubishi, given the significance of both their siting and investment in South Australia. No doubt you have heard their comments that they would regard the free trade agreement as meaning their demise. If it is the case that they are currently the largest Australian exporter—

CHAIR—We apologise, but we now have to attend a division.

Senator RIDGEWAY—Perhaps you could think about why Mitsubishi form that view.

Mr Scoular—Sure.

Proceedings suspended from 9.00 p.m. to 9.10 p.m.

CHAIR—I call the committee to order.

Senator RIDGEWAY—Let me rephrase the question. I think Senator Brandis was talking about what the benefits are to be gained through the free trade agreement, more particularly in terms of the production of vehicles here that may well be exported to the United States. I understood your answer was that it would probably be very limited because that is not part of your strategy at the moment—but that Mitsubishi and GM Holden do import a significant number of vehicles to the United States. Why do you think Mitsubishi formed the view that they regard the FTA as being their doom in terms of benefits for Australian production?

Mr Scouler—Personally I am not aware of any public comments along those lines from Mitsubishi.

Senator RIDGEWAY—They were reported in the press some time ago.

Mr Scouler—Sure, I am just saying that I personally have not seen them. I suppose that question would be better directed to Mitsubishi. I could only surmise as to why they may say something like that. As you I think correctly pointed out, they have been a significant exporter to the United States over a number of years. I would have thought that if the tariffs into the US are reduced then that could not harm their export programs in itself.

Senator RIDGEWAY—I will move to another question on the Automotive Competitiveness and Investment Scheme. No doubt you are familiar with that and the role that it plays in making the automotive industry more competitive internationally. Whilst it is not due to be dealt with again until 2015, there is some question about, firstly, whether it is WTO compliant. Secondly, in the context of the issue concerning investment rules—and given that this deals with research and development as well—is this an issue that Ford have thought about in domestic production, both in terms of investment being able to adjust to become competitive internationally as well as investment in research and development? You do not have to think about it now because it is some 11 years off, but would you have a particular view or has Ford thought about that particular scheme as being one that should continue beyond 2015?

Mr Scouler—To be honest, I have not thought that far ahead. Certainly I think it is acknowledged within the automotive industry that the ACIS program is a very good program and a very comprehensive program—a program that is making a real, significant contribution to the ongoing progress, evolution and development of the Australian industry. As regards the appropriate shape that that program may take in 10, 11 or 12 years time, I really have not thought that far ahead.

I would like to make a couple of additional comments. You alluded to possible WTO status. From our understanding and knowledge of WTO rules and guidelines, we think the ACIS program is very WTO compliant. As regards its relationship to this US free trade agreement, I welcome the letter attached to the 1,000-odd pages of the agreement with the US where the US effectively expressed that it had no specific interest in the ACIS program.

Senator RIDGEWAY—In relation to the investment rules, without having to wait until 2015, would you be concerned with the way that the investment rules are expressed at the moment—these are concerns that have been raised with this committee tonight and on other occasions—that any decision by the government to provide public moneys in the context of research and development may well be seen as a breach of the investment rules? Would that concern you? Whilst we are not dealing with that particular issue now, at some stage the United States might decide to raise that, if it was found that the impact of the free trade agreement was much more than they thought.

Mr Scoular—I think that it would be an issue that would be appropriately looked at at the time.

Senator HARRIS—Mr Scoular, you may be able to answer this question very briefly. In your submission you refer to \$3 billion in automotive trade. Is that in Australian or US dollars?

Mr Scoular—That is Australian dollars.

Senator HARRIS—You go on to speak about two issues. With respect to the second one you say:

... the new agreement has the potential to boost the Australian economy.

Can you take on notice and provide the committee with some of the examples of that potential? You then go on to say:

Ford Australia acknowledges the reduction of tariffs on US vehicles and components imported into Australia under the free trade agreement is likely to result in some additional competitive challenges.

Can you also take a question on notice as to what Ford believes those challenges may be?

Mr Scoular—I am happy to respond with answers to those questions in the next few days.

CHAIR—Thank you, Mr Scoular.

Committee adjourned at 9.21 p.m.