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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia-United States Free Trade Agreement

(Committee Briefing)

FRIDAY, 2 APRIL 2004

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

JOINT COMMITTEE ON TREATIES

Friday, 2 April 2004

Members: Dr Southcott*(Chair)*,Mr Wilkie *(Deputy Chair)*, Senators Barnett, Bartlett, Kirk, Mason, Marshall, Santoro, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Evans, Mr Hunt, Mr Peter King and Mr Scott

Senators and members in attendance: Senators Bartlett, Kirk, Marshall and Tchen and Mr Adams, Mr Ciobo, Mr Evans, Dr Southcott and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

Australia-United States Free Trade Agreement

WITNESSES

Committee met at 9.07 a.m.

BALDWIN, Mr Victor Wayne, Assistant Director, Valuation and Origin, Australian Customs Service

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

BROWN, Mr Nic, Assistant Secretary, Trade and Economic Analysis Branch, Trade Development Division, Department of Foreign Affairs and Trade

BROWNING, Ms Michaela Rachel, Executive Officer, Australia-United States Free Trade Agreement Task Force, Office of Trade Negotiations, Department of Foreign Affairs and Trade

CHURCHE, Dr Milton Patrick, Services and Investments Negotiator—FTAs, Office of Trade Negotiations, Department of Foreign Affairs and Trade

CORDINA, Mr Simon Mark, Acting General Manager, Intellectual Property Branch, ICTI & Intellectual Property Division, Department of Communications, Information Technology and the Arts

DEADY, Mr Stephen Patrick, Special Negotiator, Office of Trade Negotiations, Department of Foreign Affairs and Trade

FFRENCH, Ms Jean Heather, Director, International (ILO) Section, Workplace Relations Policy Group, Department of Employment and Workplace Relations

FOX, Mr Stephen, Principal Legal Officer, Copyright Law Branch, Attorney-General's Department

GALLAGHER, Ms Ruth Mischele, Manager, Tariff and Trade Policy, Industry Policy Division, Department of Industry, Tourism and Resources

GREVILLE, Ms Virginia Jane, Special International Agriculture Adviser, Department of Agriculture, Fisheries and Forestry

HARMER, Ms Toni, Executive Officer, International Intellectual Property Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade

HARWOOD, Ms Mary, Executive Manager, Biosecurity Australia, Department of Agriculture, Fisheries and Forestry

HEWITT, Ms Joanna, Deputy Secretary, Department of Foreign Affairs and Trade

KEARNS, Mr Scean Liam, Manager, ICT Innovation Initiatives Section, Department of Communications, Information Technology and the Arts

LOPERT, Dr Ruth, Medical Adviser, Pharmaceutical Benefits Branch, Department of Health and Ageing

LOUDON, Mr Michael Richard, Branch Manager, Department of Finance and Administration

MARTIN, Mr Andrew, Executive Officer, Agricultural Branch, Department of Foreign Affairs and Trade

MORETTA, Mr Remo, Office of Trade Negotiations, Department of Foreign Affairs and Trade

MYLER, Mr Paul, Legal Adviser, United States Free Trade Agreement Task Force, Office of Trade Negotiations, Department of Foreign Affairs and Trade

NIXON, Mr Roy Stewart, Manager, International and Compliance Unit, Foreign Investment Policy Division, Department of the Treasury

PIGGOTT, Ms Rhonda, Office of Trade Negotiations, Department of Foreign Affairs and Trade

RICHARDSON, Mr David Jonathon, Director, World Trade Organisation Regional and Free Trade Agreements Section, Office of Trade Negotiation, Department of Foreign Affairs and Trade

ROMBOUTS, Mr Michael Gerard, Director, FTA Task Force, Department of Finance and Government Administration

SMITH, Ms Carolyn, Assistant Secretary, Health Liaison, AUSFTA, Department of Health and Ageing

SPARKES, Mr Phillip, Deputy Chief Negotiator, Office of Trade Negotiations, Department of Foreign Affairs and Trade

WARD, Mr Tim, Assistant Manager, Tariff and Trade Policy, International Trade Branch, Department of Industry, Tourism and Resources

YOUNG, Mr Peter Robert, General Manager, Film and Digital Content Branch, Department of Communications, Information Technology and the Arts

CHAIR—Good morning and welcome to this private meeting of the Joint Standing Committee on Treaties. I have received apologies from Senator Santoro and Senator Stephens, Mr Adams, Mr Hunt, Mr King, Mr Scott and Mr Bartlett. This meeting has been constituted as a private meeting of the committee. Departmental representatives have been advised that the committee may wish to make the transcript available for publication. This can be achieved by resolution of the committee at another time but the committee would wish to have the agreement of the departmental witnesses who are present and speaking with us today. I ask participants to

keep that in mind whilst speaking with us today. Should the committee seek to authorise the transcript, the secretariat will contact witnesses at a later date.

As you would be aware, the Joint Standing Committee on Treaties has the brief to report on the United States free trade agreement. This is the first time that the committee has met to consider the FTA and, as such, it is really an opportunity for the department to brief us on the agreement. We appreciate having the presence of many people who have been involved in those negotiations.

The committee has announced a program of public hearings to take place in each state and territory capital city and more hearings may be announced as the inquiry progresses. The purpose of this meeting is introductory briefing for the committee to cover some of the broad issues in the proposed agreement. The committee acknowledges that it has a short time frame in which to complete its inquiry and notes the cooperation of the department in providing such a range of people to speak with us today. We are sure that the outcome of this meeting will be positive and beneficial for the committee before it begins travelling around the nation to hear evidence from interested organisations and individuals.

Ms Hewitt—Thank you. I am here with a range of colleagues who have been involved in the negotiations. We have with us from our own department all the lead negotiators involved in the 23 chapters of the agreement that you are about to consider and we also have colleagues, as you are aware, from other line agencies who have had a very close involvement in the negotiations. We are very pleased and welcome the opportunity to have this informal session with you today as you begin your process.

As you know, we have already submitted some views to the committee through the national interest assessment and the regulatory impact statement that you already have. They set out the key features of the free trade agreement that we think are relevant for JSCOT's consideration. There is also a huge wealth of other material. In fact perhaps part of the challenge for the committee is working out which bits and how much of the materials available you want to deeply explore. The text of the agreement, as you know, is available. It is still subject to some final legal scrubbing. It is really just a question of making sure that the legal advisers on both sides agree that the text as it was negotiated fully reflects the intention of the final negotiation and translates properly into the legislative requirements of both parties, and we will have a final text before too long. There is also a detailed guide which is, we hope, written in clearer English—not necessarily such legal language—that is available to explain what is in the agreement and how to find various bits of it, because it is quite a complicated text. We have got a whole series of fact sheets by subject matters that are available on the web site and we are progressively producing more material as we carry on with the consultative process and come to understand which bits of it people find less than fully clear, and so on.

During the day we will get you the latest summary brochure, which I think is probably the best starting point as a first guide to what the agreement is and as a quick evaluation, from a DFAT perspective, of its main significance. In addition to all the written material we have been involved in a very active outreach consultative process. My colleague Steve Deady, who is lead negotiator and has been right through the process of this agreement, came back at the end of yesterday—in case he is looking tired—from a couple of weeks of doing something of what the committee will be doing later in its process—that is, getting out to all the capitals and to a very

large number of regional centres in Australia, talking to members of the public and business groups and so on and doing a lot of radio and print media activity.

We have also already had one Senate estimates hearing, at which a very large number of questions were posed and answered by us. We have set up a telephone hotline. We thought we might keep it running for only a brief period but we are still getting interested calls. That has been a vehicle through which we can also keep a little bit of a handle on what is interesting or less than clear to people, so we have continued the process and will do so for a little while longer.

In addition to all that, as we mentioned in our national interest assessment document, we have commissioned some economic analytical work from the Centre for International Economics; we think that will be with us by the middle of this month. As soon as we have that ready we will pass it through to the committee so that it can be a supplementary piece of information for your procedures. I thought I might say little bit about how the procedures now will flow for the steps towards entry into force, with a target date for 1 January 2005 if all the parliamentary procedures in Australia and the congressional procedures in the United States take us in that direction.

On the American side the US congressional process is such that the agreement as negotiated cannot be signed before 13 May. There is a waiting period required from the date the President sent his letter to the Congress. That would mean signatures at the political level between both parties. Then legislation needs to be voted on in the Congress. The target date that we understand the United States is intending to work for is in the second half of July. That would be through both the House and the Senate.

In Australia our tabling of the national interest analysis and RIS was 31 March—earlier this week. We would be interested to hear the committee's expectations but we understand that there is a target date of late June, which would fit nicely with the procedures on the other side. There is also the Senate select committee but we are not quite sure how that will work. We have not yet had a first session with that committee so we need to explore that. Their original advice was that they would spend three months on it, commencing from the date on which they launched the inquiry.

We then need to introduce into the parliament what we think will be an omnibus package of the legislation, because it covers quite a range of different acts—customs, intellectual property and investment. There is a whole raft of legislation. There will not necessarily be a need for major adjustments, but there are a number of pieces of legislation which we think it is possible to put together as a package. We are still working with the Office of Parliamentary Counsel and other agencies to see whether it might be possible to achieve the introduction of that package before the end of the current session of parliament—perhaps right at the very end. If that is not possible, then it would have to be at the very beginning of the spring session. That is something we are still trying to work through.

Once both the American and Australian legislatures have completed their procedures, if we do have agreement on both sides, we need to exchange letters 60 days before the agreement could come into force. If we think about a target date of 1 January next year, that would mean 2 November—which, coincidentally, is the date set for the presidential election. We presume it would need to be late October for all those things to work nicely.

We appreciate that this is quite a tight schedule for what we understand and appreciate is a complex piece of legislation. We very much want to work with the committee to provide it with the maximum background information, comment and advice on anything which is of interest to committee members, with a view to assisting the most efficient consideration of the agreement from their point of view.

CHAIR—Thank you, Ms Hewitt. From the committee's point of view we have commenced the inquiry but we have commenced it on a draft text using the same form of words used by the Department of Foreign Affairs and Trade. We received it as a ministerial reference. Normally we do not consider a draft text; we consider a signed text. We plan to do the inquiry on the draft text but, when the final text is available, that will be automatically referred to us. We anticipate that, if there are no substantial changes, that should be something we can deal with very quickly. Hopefully the two tracks will merge and we will be able to table our report as planned on 23 or 24 June.

Ms Hewitt—It is certainly our expectation that any adjustments would be of a very minor technical nature. We are a good way through the 'scrubbing' process. Obviously we appreciate your requirements too.

CHAIR—In terms of pursuing a bilateral agreement with the United States—and we have also pursued bilateral agreements with Singapore and Thailand—was there a judgment made that Doha was going too slowly and that bilaterals were perhaps a way of speeding up access for Australian exports into these markets?

Ms Hewitt—I will make a brief remark about that, which other colleagues may want to add to. It is very clear from the portfolio perspective that we see the WTO process, in a trade policy sense, as a first best option and indeed Australia's top priority. That has long been the case. We have been putting and continue to put a tremendous amount of effort into the Doha process. We have to take stock of the fact that last September in Cancun we had quite a serious setback in the WTO process. There was a standoff following that setback in Cancun that lasted for some months. Only last week I was in Geneva with colleagues for the first serious round of re-engagement in the negotiations. We had an agriculture session in Geneva.

There are some encouraging signs about the possibility of parties getting back together and being able to put together a framework text for the Doha negotiation. That would not be a full, detailed outline of what will be achieved in the end but rather a sort of skeleton agreement. We are hopeful that that will be possible, but I have to say to you that there are also still very big gaps and differences between the parties—between major developed economies and increasingly between developed and developing economies—in the WTO process.

WTO now has 148 members. The very process of reaching agreement is cumbersome and difficult, which does not make it any less important. We feel strongly that, from an Australian point of view and indeed from a global and development point of view, a process where you have liberalisation of markets on a coordinated basis, where everybody moves together, is obviously the way you are going to get the biggest and most lasting legally binding results. But it has become more and more difficult to move through those processes quickly. We recognise that it is going to take time, but it is still worth investing our major effort in trying to achieve that.

There are some things that can be done in the WTO—I am thinking particularly in the agriculture sector, which is so central for Australia. It is just not possible—as we have seen in our negotiations with the Americans and what we see of others—to negotiate down export subsidies, for example, or the whole raft of agricultural support unless that is done in a parallel way between the major subsidisers. The WTO is the only place where that can happen.

Mr ADAMS—Have the developing countries reached an agreement of their position to come back to the next round of TAs?

Ms Hewitt—Yes. All parties in the WTO have now said that they are prepared to give this framework agreement a shot. We had an extensive Cairns Group consultation last week in Geneva with the biggest developing country group—the G90—and with the G20, which has this new group of developing countries. It also has eight Cairns Group members in its membership. There was also a group of developing countries which, in agriculture, are concerned particularly about the fragility of some of their rural populations. This group has called itself the G33. I think all of the developing countries have been clear in saying that they are prepared to give this a go. It is another thing, though, to imagine that the gap is going to be bridged.

There is a bit of a sense in the developing country group that they want to see much more progress from the developed countries—much more being put on the table in bringing subsidies down—before they are going to be comfortable doing much liberalisation in their own markets. This is a bit of a standoff where, although people are now engaged again and talking to one another about the issues in a serious way, it is still going to be a pretty long, hard haul.

To complete the question, with all of that reality, and given what we see that others have done, the United States in particular has made it very clear that it is going to proceed with bilateral negotiations in parallel with what USTR Zoellick calls 'can do countries'. So there is a progressive process of bilateral and regional agreements being either negotiated or launched. More and more of them now are between developing countries. India and China announced the other day that they are going to have an attempt at reaching an agreement between themselves.

Progressively, one of the trade policy factors which Australia felt that it simply could not ignore given all those realities was that, as this proliferation of bilateral and regional agreements proceeded, our exporters were potentially being disadvantaged progressively in markets that were important to us by the preferential access being negotiated by others. It is a defensive interest that cannot be ignored. I am sure that that very same interest is driving a lot of other countries' decisions. There has been, if not an explosion, a very dramatic rise—and we can produce numbers for the committee if it is interested—in the number of WTO member countries who are also now pursuing, in parallel, these additional complementary strategies.

CHAIR—Has it ever been Australian practice to include labour and environment clauses in bilateral trade treaties?

Ms Hewitt—I will ask Stephen Deady to answer that question as he has had the longest involvement in that part of the work.

Mr Deady—No, it is not normal practice for Australia to include labour and environment chapters in trade agreements. This agreement with the United States would be the first.

Obviously there are no such provisions in the WTO agreements, or in our Singapore or Thai agreements. It is there because that was one of the positions that the United States brought to the table. It was an important element for the Bush administration Trade Promotion Authority to carry on these negotiations. In order to get that vote through Congress there needed to be agreement that labour and environment chapters would be a part of the free trade agreements that the United States were negotiating.

CHAIR—What are the implications of the labour and environment chapters for Australia?

Mr Deady—Mr Sparkes was the lead negotiator on both of those chapters so he can certainly elaborate more fully, but the basic obligation that Australia has taken in both the labour and environment chapters is that we will enforce our own labour and environment laws. That is the only obligation in those chapters, and it is the only obligation that is subject to any form of dispute settlement. There is no obligation in either of those chapters to impose particular standards on Australia. It is still the sovereign right of the Australian government to determine its own labour laws, and the only obligation on the government under those agreements is that it will enforce those laws.

Senator MARSHALL—Is someone going to take us through those chapters in detail?

CHAIR—It is coming at the end.

Mr Deady—There are detailed chapters on both of them. There are consultative processes in both, and there is recognition that both countries do have very high labour standards. Nonetheless, the obligation is nothing more than to enforce our own labour laws.

Senator KIRK—Is there a need to change any of the existing labour laws in the states or territories or the Commonwealth?

Mr Deady—No, there is no changes to the labour or environment laws as a result of the agreement.

Mr WILKIE—I want to check whether all of the officials will be here for the whole day to answer questions regarding different chapters.

Ms Hewitt—I believe we all can be, yes. We are at the committee's disposal.

Mr Deady—Yes, all the leads are available in Canberra. The committee has given us a rough schedule of the timing. If it is moving more quickly than anticipated, we are in close contact with people and can get them up here quickly. Certainly, people are prepared to stay all day.

Mr WILKIE—I have a few questions about the national interest analysis. I was interested to read a report in the *Australian Financial Review* on Tuesday that talked about the analysis supporting the FTA when, in fact, it had not been tabled. I was a bit miffed to see that someone had leaked it to the *Financial Review* before it had even been put before the parliament. I am not saying that is the department's fault, by the way—it is just a comment. Obviously, for the committee to assess the full impact of the FTA on the Australian economy, there needs to be a

comprehensive analysis of the FTA in the national interest analysis, but there does not appear to be one.

Ms Hewitt—Are you referring to the fact that that particular piece of economic analysis from the Centre for International Economics is not yet complete?

Mr WILKIE—Obviously we are going to have to consider this based on the economic benefits to the country. It is very hard to do any assessment and undertake any inquiries if we have no idea of where we are going to be at. The report itself appears to be a lot of past DFAT fact sheets and ministerial press releases. It does not really contain a lot of analysis as far as I can see.

Ms Hewitt—We have tried to follow the format that has generally been employed for NIA documents for treaties and have certainly foreshadowed the additional economic analytical work that will be coming forward. Perhaps I could say a very few words about that. We are doing this work and understand that there is perhaps a significant interest from the public more generally in seeing this kind of work done. I might ask my colleague Nic Brown to elaborate, if you would like to discuss this in more detail.

It is our judgment that, although that sort of work can be useful and interesting, it is ultimately in itself not going to be a particularly reliable guide to the real, tangible economic benefits that will flow from an agreement like this over time. There are some things which can be measured and analysed economically—and that can certainly be done. A good deal of that material is already available in the fact sheets and so on.

The bottom line with an agreement like this one is that the critical dynamic benefits that are going to flow from the opportunities that have been potentially opened up by the agreement come from that deeper integration and set of linkages, especially on the investment side, with the world's largest and most competitive economy. A lot of benefits are going to flow through in the form of that business to business linkage, through stimulus to productivity improvement and through competitive dynamics which will have an influence on cost structures. Modelling can really only handle that sort of benefit by making assumptions about how the Australian business sector will respond to the opportunities that are going to be open to it. The answer you are going to get from a model like that is really only going to be as good as the guess you make about the assumptions you feed into it.

Frankly, we think there is a huge amount to evaluate just in the tangible, actual openings and opportunities that have been negotiated and are there clearly for people to see. We commissioned a piece of work, again from the Centre for International Economics, before we embarked on the full negotiating process, just as a kind of rule of thumb as to whether there were serious potential benefits to be had from going through that very resource-intensive negotiating process. We satisfied ourselves, on the basis of that crosscheck, that there was potentially something very significant there for us. We are interested to see what this next piece of work will do. We would not necessarily see it as the definitive piece of analysis for the committee's work, or indeed for the community's judgment about the value of the agreement.

Senator MARSHALL—It seems like you are preparing us for a bad result.

Ms Hewitt—No, I am not. We do not know what the result will be. This is something that has not yet been done.

Senator MARSHALL—Then what should we rely on? You are saying it is a problem relying on that report because of the assumptions, and it is guesswork.

Ms Hewitt—Any modelling.

Senator MARSHALL—Then what guesses are we relying on now in this agreement?

Ms Hewitt—I think we need to work through, as the committee proposes to do today and subsequently, chapter by chapter of the agreement, what the additional opening benefits will be. In the end there will have to be a judgment about—and some of it is quite quantifiable—where there are new significant market openings. For example, even in the much debated agricultural part of the text you can measure up the millions of dollars that will flow almost automatically to Australian producers as a result of those adjustments.

In some other areas, it is going to depend on how effectively Australian businesses respond to these new opportunities. So, apart from those business and investment linkages—which I think are potentially enormously important—you also have, for example, the government procurement opportunities, which are new and a first for Australian businesses to compete in the United States government procurement market at the federal level as well as in some states. We expect that, progressively, it will be more at a state government level. But, again, it can only be an estimate. I am not saying that it is not worth taking a shot at estimating these things; I am really saying that they are not necessarily going to be definitive.

Mr ADAMS—Our brief as a committee to the House and Senate is that this has to be in the interests of Australia—our brief it to give it a tick or not. But we see that American consumers are paying three times as much for sugar as we pay in Australia, so we have a natural advantage in sugar. Why aren't we exporting Mars bars to America? That is what the public want to know. So we really do have to have some tangible way of measuring what we have or have not achieved.

Ms Hewitt—Yes, and I think there are very tangible ways. We can do that for you chapter by chapter, as I say. On the sugar point, perhaps we should say right up front that obviously for the negotiators, the absence of a result on sugar was a very clear disappointment. We knew it was going to be very tough. We knew how sensitive it was politically in the United States. We knew all the way through and up until the very last hours of the negotiations that this was going to be very difficult. The fact that we could not drag the Americans over the line on that subject was deeply disappointing.

But we believe that if you go through the rest of the text you will find a great deal of positive, important and new opportunities that the agreement offers. The best you can say about the result in sugar is that there was no win and there was no loss. I also suggest that we keep in mind that we went into the negotiations with quite a significant defensive brief. There were things that the United States wanted to achieve that were very clearly known and that presented some difficulties from the judgment of Australia's national interest and public policy preferences in areas like audiovisual and broadcasting services, quarantine protection—

Mr ADAMS—Pharmaceuticals.

Ms Hewitt—and, on the foreign investment side, the capacity to retain a screening process and single-desk operation of commodity markets. I know that, in the congressional process, our American counterparts are going to be saying to their approval processors that these things were disappointments from their point of view. At the end of the day, in an agreement like this, both sides have to get to a point where on balance there is enough positive in the agreement to make it worth taking this step and that there has been enough protection of defensive interests. The Americans obviously put the sugar sector right up the top of their defensive interests list. It was tested repeatedly and regularly at every level in the negotiating process, right to the very top. We are confident that it was not something that we were going to achieve in this negotiation.

Ultimately, you get to a judgment about whether on balance the two packages, which reflect a balance of interests between the two parties, are, overall, in the Australian national interest. Certainly, the government has judged that that is the case for Australia in this agreement. We are also very mindful of the fact that it is not a question of sitting back and waiting to see if you can get a better deal another time—in the sense of not any time soon—because the United States has this very extensive program of FTA negotiations with its trading partners, and there is a very long queue. It is clearly a balance of interest agreements outcome that the Americans have got themselves comfortable with.

Senator MARSHALL—Are you saying that, at the end of the day, we were really in the position of a take it or leave it situation?

Ms Hewitt—That is the way the American legislation works. The trade promotion authority legislation gives approval for the negotiators to go out with a mandate which includes a lot of themes that they are supposed to achieve in their FTAs. They bring it back to the Congress and there is no opportunity to amend. It is an agreement that has an up or down yes or no vote in the United States Congress. Because that is the way it works in the American legislature that means that we have the same opportunity. We have the opportunity to agree to the package or not agree. What I would convey to you is that it is our sense that, while this is not perfect—we would love to have had a better result on sugar and we would like to have had faster phasing on beef, for example—we think it is a very good agreement and the best agreement we could have negotiated in all the current circumstances.

Senator MARSHALL—The US obviously think it is a very good agreement, too.

Ms Hewitt—Both parties had things they were very pleased about with the agreement and both had disappointments. There is no question about that.

Mr WILKIE—To get back to the analysis itself, obviously we are going to be able to go through and see which different industry sectors are benefiting from this, or may be losing. What about the economic modelling? For example, Treasury has put in that it is going to cost about $1.5 billion in lost tariffs but we do not see anything back from Treasury about the impact on the macroeconomy. We can look at these different issues in isolation but in order to consider whether the agreement is beneficial you have to look at the total impact on the economy as a whole. Has anything been done there?

Ms Hewitt—That will be covered in the Centre for International Economics work and I will ask Nic to say a little more about that. On the lost revenue side, as you say, we need to look at the net result as it works through the economy. Obviously, what comes with lost tariff revenue is a reduction in costs in the sense that you have goods available to the Australian consumer at lower prices. Nic, would you like to elaborate?

Mr WILKIE—I might ask a few questions and you can consider them all together, if you like. Does the assessment we are looking at cover all the fiscal impacts on GDP growth? Why has Treasury not done it themselves? I would like to know why the Productivity Commission was not involved in providing modelling, given that they have done a lot of work on free trade agreements. They do not appear to have been involved here. Given their past record you would have thought that they could have responded to us quite quickly with some sort of analysis. Obviously we have CIE looking into it, but Stoeckel walked away from the outcomes of the first modelling, suggesting that the $4 billion is not relevant because it assumed the inclusion of sugar, free trade in beef and the abolition of the Foreign Investment Board. That did not happen. In the light of all that, can you comment?

Mr Brown—First of all, the modelling exercise does take into account all the key variables in the economy. You will be able to look at the implications that will flow through to product economy-wide, the implications for consumers and the major industries and so on. There will be modelling in the broad and there will be some modelling in the detail covering various key industries.

Senator MARSHALL—Will that include employment impacts?

Mr Brown—Yes, employment impacts will be covered, and also incomes. To elaborate a little on what Ms Hewitt was saying earlier on, the modelling exercise helps us to articulate the story about what is happening in the economy. It provides a way of helping us to understand and articulate all the linkages that are involved and also to identify the various opportunities that are going to arise. For example, it could well show that the results are quite sensitive to what happens to rates of return, which flows through to investment. We cannot say that this increase in investment is going to happen but we can say that various opportunities are going to arise as a result of implementing the agreement.

As far as the other aspects you were asking about—in particular, the Productivity Commission—the time constraints were very severe. As you say, the Productivity Commission is an organisation which has undertaken a lot of very highly commendable modelling work over the years. But, in this particular case, the constraints of time, the fact that we did not negotiate the agreement until February and the fact that we had the JSCOT process starting—this process and also the process in the United States—meant that we had very limited options if you were going to analyse the results. The Productivity Commission in that sort of time frame could not realistically be expected to do the sorts of things that we were required to do to complete this exercise.

Mr WILKIE—But they have full-time people working on these sorts of issues, don't they? Why would it take so long for them to report, given their past experience and the fact that they are actually involved in that work?

Mr Brown—The Productivity Commission has a particular process that it has to go through in terms of consultations and so on. In this particular case we wanted to find somebody who could do the results as quickly as possible, taking into account the fact that we had to assemble data very quickly and put it together. It may well be that, further down the track, consultations will be needed to work out how we can make the most of the agreement, for example. In this particular case we wanted a very quick and professional view of how the implications of the agreement might flow through to the economy, so that people could get the debate rolling and we could talk about it in a very informed way.

Mr WILKIE—I would hope that the Productivity Commission were a professional body—

Mr Brown—Of course they are.

Senator MARSHALL—You indicated that they would not have had time to do it. Is that what their view was? Did you actually ask them to do it?

Mr Brown—There is material on the web site which indicates that normally the Productivity Commission requires three to nine months to undertake an inquiry, including special references to the Productivity Commissioner through the Treasurer.

Mr ADAMS—Can a letter from the Productivity Commission be produced saying, 'We haven't got a timeline that we can meet'?

Mr WILKIE—Were they even considered?

Mr Deady—There were some discussions with the Productivity Commission through the course of last year, as we were at that stage thinking about the work that would need to be done once the negotiations were concluded. They wrote back to us indicating, as Mr Brown has said, that there were some constraints on the Productivity Commission's ability to do this in a very timely fashion. They have to have public hearings if they have reviews. They have a process that would need to be gone through. So it would have taken a lengthier period of time than the time in which we were able to get this work out with the Centre for International Economics.

The Centre for International Economics did this work for us before the negotiations. Again, with respect, I do not think that we have walked away from that piece of work at all. I think that it was a very useful piece of work. It demonstrated the overall gains if you assume complete free trade—and they were assuming free trade from day one. They assumed free trade in sugar; that is very true. They also did so in the case of beef. I think you have to look at this thing on balance. In the case of beef they looked at the outcome and they basically assumed that we already had free trade in beef, and so they did not think that there would be much of a positive impact to Australia from further liberalisation of the beef market. I know that that is not a view that is shared by the beef industry. We do have gains under this agreement—very significant gains.

Senator MARSHALL—We are probably moving away from the point I was trying to get at, which was really about whether the Productivity Commission was asked if they could do it and whether it was their view that they could not. I want to know the answer to that, rather than a

general view—formed by looking at a web site—that they probably would not be able to do it, so you did not pursue it.

Mr Deady—On the basis of the discussion we had with them last year and the indications of how long it would take, the decision was taken that we would go to a tender process to have this work done by an independent analyst.

Mr WILKIE—Who made that decision?

Mr Deady—The decision to go to a tender was taken by the department—to have some modelling work done in a timely fashion to inform the public debate and, obviously, the debate of the committee and the Senate.

Mr WILKIE—So the department made the decision not to go to the Productivity Commission?

Mr Deady—The decision was taken by the department to go to tender for an independent review, and it was based on some communication we had had with the Productivity Commission and the time it would have taken the Productivity Commission to do it, yes.

Mr WILKIE—Part of the question I asked earlier was about Treasury's analysis. Have Treasury done any work or were they asked to do any work?

Mr Deady—We have not asked Treasury to do any particular work. The numbers you talked about refer to the revenue forgone under the tariff reductions, as Ms Hewitt said. I think the number you were quoting is the accumulated—

Mr WILKIE—Over four years.

Mr Deady—Yes, over four years. The department asked for this analysis to be done. I would say again that the modelling work is an important input to the analysis of the overall impact of this agreement, but it is one of many inputs into that analysis. These modelling works have to be viewed in that way.

Mr WILKIE—Given the importance to agriculture of the agreement, was the Department of Agriculture, Fisheries and Forestry included in any modelling or asked to look at where it might benefit or lose out from the agreement?

Mr Deady—The modelling that CIE will be doing will have some sectoral breakdown. We certainly specified in our tender request that we look at some regional impacts, industry impacts—

Mr WILKIE—I suppose I am looking at the department itself in the negotiations. Was the department of agriculture consulted through the process of negotiating the agreement?

Mr Deady—Absolutely—right through the process. The department of agriculture was an integral part of the team right throughout the negotiations.

Ms Hewitt—Present here today is Virginia Greville, who is the department of agriculture representative.

Mr WILKIE—I have some questions on agriculture, which we will get to later. I am curious about an article by Christine Wallace that I saw in the *Australian* on 25 February. I am sure many of you would have seen this. Christine Wallace reports that some of the negotiators considered resigning over the government's agreeing to the deal. I am wondering which negotiators considered resigning over the way the deal was going.

Ms Hewitt—This issue has come up in the past and there has been further press on it, not just in the *Australian* but elsewhere. I might ask Steve Deady to comment on that, because that seemed to be the implication behind that particular story in the *Australian*. I think it is probably sensible to deal with that one quickly and put it to rest.

Mr Deady—I would certainly like to put it to rest. I have been mentioned as the officer who supposedly considered resignation. I have told Christine and I have said publicly that that is not the case and that was never the case. No-one in the team was considering that. The process of negotiations is always very tough and it was very tough in those three weeks in Washington. There were very vigorous discussions in the Australian team and there were vigorous discussions with the United States, and that is part of the process. But that article is wrong. No-one considered resigning—

Mr WILKIE—Nothing was said in the heat of the moment?

Mr Deady—No. I will be very frank here. There were days when you came back from the negotiating sessions and you said, 'That didn't go very well. We're disappointed.' People were under a lot of stress. Yes, people were working very hard, under stress, and people were disappointed as the day went on. The next day, suddenly you were on a high—things went well and we made some real progress in a particular area. That is the nature of negotiations. I will be very clear: every member of that team that was there was continually pressing their American colleagues, for hours on end, advancing Australia's interests in these negotiations. That is the attitude that people carried forward.

CHAIR—Just before we continue, I draw to the committee's attention that we are now going into the time that we have allocated for agriculture. It is really in the hands of the committee as to how they want to proceed.

Mr WILKIE—We could keep going. That is why I asked earlier if the team would be here for the day. Did any DFAT officials advise the minister's office not to accept the deal as it was not adequate for agriculture?

Ms Hewitt—It is not a question of wanting to avoid answering a question like that in substance; it is simply that we would enter into the territory of departmental advice to ministers. In my experience, a tradition very long established in the parliament is that that is not something that we would normally do. That is certainly the broad guideline under which Public Service witnesses appear before Senate estimates hearings and so on. I can say to you that there is a very strong departmental sense that this is a good agreement and that it has a very large number of features that strongly serve the Australian interest.

Mr WILKIE—But at the moment we do not actually have the financial modelling to support that view?

Ms Hewitt—We judge that to be an important but not fundamental piece of the material that you would want to look at to make a judgment about this agreement overall, and it will be with you shortly.

Senator MARSHALL—But the original modelling indicated that it was going to be of economic benefit. Was that not used as a justification to launch the negotiations? I see that there is some inconsistency in saying that we can rely on it for one purpose but we cannot rely on it for another.

Ms Hewitt—Again, I do not think we relied on that as the single piece of evidence that would, in our judgment, then lead us to conclude that it was worth proceeding with the negotiation. It was one of the factors that we looked at. There were many others.

Senator MARSHALL—It was certainly the very public aspect of it.

Mr ADAMS—Yes; it was $4.3 billion.

Ms Hewitt—Yes, but it was simply one of the pieces of information that the government weighed in judging that it was a good idea to proceed with the negotiations. It was a sort of cross-check against what we thought were our objectives in the negotiation, which have been spelt out for you in the NIA. It was also against what we understood the negotiating climate to be—what we thought we might be able to achieve in a negotiation of this kind. It was a sort of quantitative cross-check. I would say again that, although it was useful, we did not then and do not now regard a single figure like that as being the definitive piece of evidence on which you would make a judgment.

Mr Deady—There were actually two studies done by the department back before negotiations started. One was a more qualitative assessment—if that is the best way to describe it—by the APEC Study Centre. That again informed the decisions. But in isolation none of those was the determining factor in the government proceeding to negotiate a trade agreement with the United States. They were certainly part of the process. The other point I would make is that the consultations that we went through throughout the negotiations also very much informed the decisions at the end as to the value of the agreement. We were in touch with Australian industry right through the process, then right at the very end with people who were actually involved—from agriculture in particular. All of those things informed it. Those pieces of work also informed that public debate throughout the negotiation process. They informed industry and other stakeholders about what was at stake here in the negotiations with the United States. I think that is where those things are important and valuable, but they are not the determinant of proceeding or not proceeding with negotiations.

Mr ADAMS—I want to go to the point that Ms Hewitt made about ministerial advice et cetera. At what stage did the political process kick in, as to the negotiators finishing? Then there is always the—

Senator TCHEN—Mr Chairman, can I say something here?

CHAIR—Yes, sure.

Senator TCHEN—I am a little bit concerned that this inquiry so far has gone into the process of political decision making rather than the treaty itself. We are here to investigate the treaty, the content thereof and its implications for Australia, not how the department or the government undertook negotiations. Policy determination or direction is really a political issue, which departmental officers should not be asked to answer.

Mr ADAMS—I reject that, Chair.

Senator MARSHALL—With respect, that is nonsense.

CHAIR—In response to that, it is important that we understand what today is about. It is a private meeting of the committee and it is a briefing by the department on the FTA. That is what we are considering. I would like the committee to keep our discussions focused on the subject of the FTA. We will be having public hearings later where departmental witnesses will appear in the normal process of things, but the purpose of today is to go through the FTA. It is our departmental briefing on the FTA.

Mr ADAMS—I also thought it was about process and how we have reached the position we are at.

Senator MARSHALL—Which is crucial.

CHAIR—You are asking questions now about political decision making, departmental advice to ministers and so on. This is not what the briefing is about today; it is a departmental briefing, a private meeting of the committee, to consider the subject of the FTA.

Mr ADAMS—I think the committee makes those decisions, Chair. My question is not about any of the issues you have raised; I would like to know from negotiators when the negotiations finished and when the political process cut in. That is a reality that happens, and I think we all accept that that is a process.

CHAIR—Okay. Ask the question.

Ms Hewitt—I will ask Stephen Deady, as chief negotiator, to respond to that. It is perhaps helpful for the committee to have a sense of how the negotiation unfolded and how it worked because, in a sense, it was a rather unusual negotiation. You had the very active involvement of both political-level and official-level negotiators. I think just understanding the dynamic there might be quite helpful. We would have no difficulty providing advice on how all of that worked.

Mr Deady—I know the purpose of the senator's question is to find out about those final three weeks in Washington, and I think that is fine, but I would like to point out that we did have five full negotiating rounds through the course of last year involving 50 officials on both sides and various negotiating groups. In terms of the way these negotiations were done, as Ms Hewitt said earlier, there are 23 chapters in this agreement and essentially there were roughly 20-odd separate negotiating groups which met and advanced those negotiations right through that period.

When we went back in January for the final session on these negotiations, for the first week we were there—the final week in January—the negotiation was done again by the teams of officials. We advanced things as far as we could in terms of the drafting of the text and moving these issues forward. Certainly by that stage we were beginning to talk very seriously about agriculture and some of the key market access concerns we had there. Mr Vaile arrived then at the end of January, around the Australia Day weekend, and we moved into another process of negotiations.

Just to be clear there, right through that two weeks the various official negotiating groups continued to meet in parallel as well. So right up to that very last night, the lead negotiator on services and investment was continuing to negotiate with the US lead negotiator on services and investment. You had a separate process where Mr Vaile met daily, and often more than once during the course of a day, with Ambassador Zoellick. Again, that involved a team on both sides, which varied depending on the issue.

Mr ADAMS—I think that is the point I am trying to draw out. Is it Dr Zoellick?

Mr Deady—No, it is Ambassador Zoellick. His title is the US Trade Representative but it is an ambassador level position.

Mr ADAMS—So he is on a different level from you. You were our chief negotiator?

Mr Deady—Yes.

Mr ADAMS—What I am trying to find out is whether we had a position of equal level to his.

Mr Deady—That is a good question. Just so that we are clear, Ambassador Zoellick is effectively the trade minister of the United States. His equivalent, of course, is Mark Vaile.

Mr ADAMS—So he can negotiate with our minister, and I have no problem with that. These things happen. The WTO is about government to government negotiation, really. So you have a minister negotiating with a minister. But who were you negotiating with? Who was your counterpart?

Mr Deady—My counterpart was a US government official from the Office of the United States Trade Representative, called Ralph Ives. He was roughly my equivalent in the US system from their trade department. He was a US trade representative. He led a team of officials from various agencies, just as I did. We had roughly the same number of people. For example, 50 to 55 US officials used to come to Canberra and we would have the same number of people going to the United States when we had our negotiations there. Under him would be a deputy, the equivalent of Mr Sparks.

There was a very similar structure, with lead negotiators from the Office of the United States Trade Representative and lead negotiators from DFAT. They were supported very strongly by other agencies as part of that process. That process went right to the end. Those official negotiations continued right to that last night in Washington. Then on top of that, in that last two weeks, was this additional layer where the ministers became very much involved in the negotiation process—that was Mark Vaile and Ambassador Zoellick.

Mr ADAMS—And that was the last two weeks?

Mr Deady—That was basically the last two weeks. Just to be clear, Mark Vaile and Ambassador Bob Zoellick met several times through the course of the year to take stock of where we were with the negotiations. Ralph Ives and myself were involved in many of those meetings as well. They were giving us instructions and pushing the process along. That is the negotiating process that we went through. In those final two weeks when the ministers were there, there were sessions where the ministers were meeting daily, for several hours each day, going through these issues.

Before the ministers arrived Ralph Ives and I sat down and went through a checklist of the outstanding issues. We put them roughly in three categories: category 1, where we thought we were very close; category 2, where we thought there was certainly more work needed but we believed and told the ministers that these things did not need to be considered by ministers, that they were still being worked through at the official negotiators' level and we were as confident as we could be that we could move those processes forward and perhaps even reach agreement; and category 3, which were the issues that we believed would need to go to that higher level discussion. That is really how it panned out over that period. We gradually knocked things off that list. Effectively, that is how the process worked.

Mr ADAMS—Is it on the record that the Prime Minister rang the President about sugar in the last day or so? Is that official?

Mr Deady—It is on the record that there was a contact at the end of the process between the Prime Minister and the President.

Mr ADAMS—But we do not know what that was about?

Mr Deady—No.

CHAIR—If there are no further questions on the introduction and overview we will move to the agricultural overview including sanitary and phytosanitary issues.

Ms Hewitt—Could I make a brief comment for clarification? I mentioned that we had all our lead negotiators here. As inevitably happens in a department like DFAT, things do not stay absolutely stable all the time. I need to mention that Allan McKinnon and Alison Burrows, who were very active at various points along the way and had the lead roles in the agriculture negotiation from DFAT's perspective, have both moved on to other positions. We have Virginia Greville from the agriculture department, who was involved in the process right through to the end, here with us today. If there is any need to call others back at a later time, we could do that, but we think between us we have sufficient capacity to probably answer most of the questions.

CHAIR—Thank you. Do the new officials addressing the committee have any comments to make on the capacity in which they appear?

Ms Greville—As Joanna said, I was the agriculture department's representative across the whole agreement but particularly in the agriculture and SPS negotiations. I was present at all of

the negotiating sessions for agriculture. I suspect I was the only person who was actually at all of those, because of the movement.

Mr Martin—I was involved in the negotiations on agriculture from the beginning.

Ms Piggott—I am currently working on services in intellectual property but for last year and until March I was in the agriculture area of DFAT and was involved in all of the negotiating sessions on agriculture and quarantine.

CHAIR—The committee has found it often works best to have interaction between the committee and the people appearing so we would ask that questions and answers be brief. Would anyone like to make a brief opening statement?

Mr Deady—If I could say a couple of things very quickly. As Ms Hewitt has already said, the agriculture outcome has certainly been much discussed. I think the big ticket item that is not part of the deal is well known, and we have talked about that before—sugar. The only other commodity though where again we do not get to full free trade in agriculture is dairy. Apart from that, it is a fully comprehensive agreement covering the agricultural sector. Dairy is different from sugar, in that dairy is certainly covered by the agreement. There is an immediate increase in access for dairy—more than a doubling of our current access—and an expansion of the coverage of the tariff quotas on dairy products and then an ongoing growth of an average of five per cent on the tariff quota on dairy into perpetuity.

On beef—and I am sure there will be lots of questions about this—we currently have access of roughly 378,000 tonnes into the United States under the WTO. We pay a 4.4c a kilogram tariff on that beef. That tariff is eliminated on date of entry into force, which is certainly of immediate benefit to the Australian industry. We have a phase-out of the above quota tariff on beef, which is currently 26.4 per cent, and that tariff is phased out over 18 years. It is backloaded. There is no reduction in that tariff in the first six years, and then after that it begins to decline and declines to zero by year 18. In that 18 years, there is also an increase in that tariff rate quota beginning, at the latest, in the third year, and possibly in the second year depending on whether US exports get back to their 2003 level. That delay is because of the discovery of the cow with BSE just before Christmas in the United States. Some concession was made to the United States there. That quota then increases roughly every second year, up to 70,000 additional tonnes by year 18.

The other element of the beef deal is this ongoing safeguard permanence—a price-triggered safeguard—on beef, which I am sure there will be some interest from members about. We worked very closely with the industry in Washington on that safeguard. It is my view, and I think it is increasingly shared by the industry, that there are aspects of that safeguard which means it will have a minimal, if any, effect on Australia's trade—that we talk about effectively free trade after the 18 years. Again, being very frank, it would be nice if we did not have an adverb in front of it, but that is the outcome—we get effectively free trade, virtually free trade, in beef as a result of that. Because of the way that price trigger is structured, the nature of the trade, it will have a minimal impact on our exports after that period. In any event, that trigger only applies above the 378,000 tonnes, plus the 70,000 additional tonnes, plus some ongoing growth in that quota. If it did apply, it would still provide a preference to Australian beef access into the United States, and the trigger reverts to 65 per cent of the MFN tariff at that time.

As for other areas of agriculture, from some of the discussions I have been having as I have gone around the country, I think it is clear that there are very substantial gains for Australian agriculture in horticulture. For lamb meat, there will be an elimination of tariffs from day one for virtually all the tariff lines bar one. It is the same situation with wool. All the tariff lines were eliminated on day one bar one, and both of those tariff lines—on lamb meat and sheep meat and wool—are eliminated in four years. So there are gains there.

There are significant access gains for the Australian horticultural industry. Overall, as I think we have said in the sheet, 66 per cent of the US agricultural tariff lines will be zero for Australia from day one. After four years, there will be a further nine per cent. So three-quarters of US agricultural tariff lines will be zero for Australia after four years. So it is, overall, a substantial outcome for agriculture, despite those aspects which are disappointing.

As for some of the time lines, the 18 years is a long phase-out on beef. The phase-out on wine, again, is 11 years and it is disappointing. It would be nicer if that were shorter but, again, I can say to you after some of our discussions—and it is up to the industry, and obviously you will be talking to them as well—that the wine industry certainly indicated to me in Adelaide and WA this week that they are broadly satisfied, happy, with that outcome. They have restored their competitive position relative to Chile, which they do see as important. We do export nearly a billion dollars worth of wine to the United States now. The tariff on bottled wine that we are exporting is very low. It is 2½ per cent. It is a long time to phase out a 2½ per cent tariff and that is the disappointing aspect—that the impact on the industry of that tariff is not great. But, overall, the certainty that comes from the agreement I think is welcomed and, as I say, restoring that competitive position relative to Chile is something that they do see as valuable.

That is the broad outcome on agriculture. There are safeguards. As I mentioned, there is the permanent safeguard on beef. There are transitional safeguards in other areas on beef. There is also a transitional safeguard, which we can talk about in detail—that is a quantity triggered one rather than a price triggered one—which basically protects that tariff quota to some extent during that transition period. There are then some price safeguards on some horticultural products. But, again, the impact of that particular safeguard on the Australian horticultural industry will be very modest indeed, and the industry has publicly said that.

CHAIR—Are the only safeguards the ones that you mentioned on beef and on some horticultural products?

Mr Deady—They are there, and they are there for the transition period only. So they end at the end of the 18 years in the case of beef, and they apply only while the transition period is in place for the horticultural industry. The only permanent safeguard is the price triggered safeguard on beef.

CHAIR—Are they the only safeguards in the whole agreement?

Mr Deady—No. There is a general transitional safeguard which applies to all products under the agreement. That is different in the sense that it is much more like the safeguard provisions of the WTO in that there also has to be an injury test. These other safeguards are triggered when various reference prices trigger them in the case of horticultural products shifting in prices, or, when quantities grow beyond the tariff quota and there is a little bit of fat there, they are

automatically triggered. There is no test of whether they are causing injury to the US industry, whereas the overall safeguard has an injury test. So it is very similar to the existing safeguards that both Australia and the United States have under the WTO agreements.

Then there is the general safeguard which is brought down from the WTO. Again, it applies to both countries. We did get some concessions from the United States in relation to that general WTO safeguard. That is the safeguard measure that the United States took in the past on lamb meat and sheep meat, and on steel in the last several years, that have impacted on Australia. We did get some concessions from the United States on what is called section 201 of the trade act. Those concessions are valuable to Australian industry in relation to that general safeguard provision.

CHAIR—Do we as a country now have a status of not being subject to section 201?

Mr Deady—It is complicated there. The situation we have is that Australia would be given special treatment under section 201. That would require a change in US legislation to include Australia as one of those countries where the President will have discretion not to apply that general safeguard action against Australia if Australia is found to be not a substantial cause of injury. The process of that would mean that a separate report would have to be done on Australia by the International Trade Commission in the United States. If the US were doing a general safeguard, say, on steel, then a separate report would be done on Australia and a finding would be made by the ITC as to whether Australia was a substantial cause of the injury in the United States. If the finding from the ITC was that Australia was not a substantial cause of injury in that product then the President has the discretion to exclude Australia from a general safeguard action.

Mr ADAMS—But if it does?

Mr Deady—If it does find that Australia is a substantial cause, then again the President—

Mr ADAMS—They are very harsh, aren't they?

Mr Deady—The safeguard measures? Of course we certainly suffered on the sheep meat safeguard. We took that case to the WTO, as I am sure you know, and won that case. A large part of Australian steel was exempted from the safeguard action because of the representations made by the Australian government to the United States administration on that safeguard. That is now more automatic.

CHAIR—How many countries have this status under section 201?

Mr Deady—Canada and Mexico have status under NAFTA, which is stronger than what we have. There is a legal obligation on the part of the President. Again, the test is the same: if Canada is found to be a substantial cause, then it is in, it is covered; if it is found to be not a substantial cause, then it is exempted from the action. With Australia there is still some discretion there; it is not black-letter law for Australia. The only other countries—and my colleagues can correct me if I am wrong—that they have this with in their FTAs are Jordan, Israel and Singapore.

CHAIR—Not with Chile?

Mr Deady—They did not give this treatment to Chile.

CHAIR—We will obviously be talking to the industry, but given that over the last 12 years we have only once reached our quota on beef in the United States, has the department done any work in terms of projected exports on whether the quota will be enough, whether we are likely to exceed the quota or whether we will come in under it?

Mr Deady—We have certainly looked at the historical trends and talked to industry about this. It is true that since 1994 when the WTO quota came into place, we have only hit that quota once. I think in 2003—I just heard this last week—we got it twice, so there are two occasions now. The point is that Australian industry does exit the market as prices fall in the United States. As I said, we have only traded up to that quota twice.

CHAIR—Thanks.

Mr WILKIE—In relation to beef, is it not true that Australia has argued vociferously against such mechanisms as these safeguards, particularly when we looked at the US, the Europeans and Japan? Didn't the Australian government oppose the trigger mechanism in the snap back that the Japanese government imposed on beef imports last year?

Mr Deady—We did opposes the snap back in Japan. The safeguard arrangement in the snap back arrangements under the agriculture agreement with the WTO was agreed to at the end of the Uruguay Round. When you say we opposed them, safeguards of that kind are actually a feature of trade agreements, and Australia has traditionally been prepared to accept them as part of an overall, balanced outcome. They do provide some comfort very clearly as you are pushing for more liberalising outcomes. The fact is that if you can get a bigger outcome on, say, beef because you are willing to provide some sort of safeguard, then I think that is something that Australian governments have always been prepared to consider as part of negotiations. The difference between the transitional safeguards we have—and I think this is a distinction that has to be drawn under the FTA with the United States—and the situation in Japan is that that snap back in Japan affects all Australian beef to Japan, whereas these safeguards under the preferential agreements under the FTA preserve the access gains that we have. The preferential access gain is absolutely guaranteed and it would only then apply above those quota levels—that is an important distinction, I think.

Mr WILKIE—In this case, we actually agreed with the safeguards?

Mr Deady—We have accepted the safeguards as part of the overall deal, yes.

Mr ADAMS—But that is only up to what our old quota was?

Mr Deady—Plus the additional quota.

Mr ADAMS—So it applies to all of it?

Mr Deady—It will apply to all of the Australian quota. Again, there is a growth above that on the transitional safeguard.

Ms Greville—What will be exempted from any additional duty during the transitional period, even if the safeguard triggers, is all of our existing quota—that is, the 378,214 tonnes that we currently have, any additional FTA quota that we have accrued by that point, which is from year 3, 20 or 25, and then an additional 10 per cent. It is a volume based safeguard in the transitional period, and it does not trigger until we have exceeded our FTA and WTO quotas by 10 per cent of the FTA component.

Mr Deady—It is very different from the Japan case.

Ms Greville—And the other difference that I think Mr Deady alluded to was that the tariff penalty that is imposed as the snap back does not ever take you back to the MFN tariff. There will always be a preference for Australian beef, even that beef which is subject to the safeguard duty.

Mr ADAMS—It really does relate to the domestic price of American beef, does it not? It is locked into what their price is.

Ms Greville—The post-transitional safeguard is price based. The transitional safeguard, which is the one that we are talking about, is only volume based—so price plays no part in the trigger.

Mr ADAMS—Their price is just based on the volume that we put in there, up to a point?

Ms Greville—Yes, the transitional safeguard is volume based so, once we put in more than 10 per cent above our allocation of FTA quota plus our WTO quota, it will trigger. Any additional exports after that point will be subject to a safeguard duty, which is still less than the MFN duty. The post-transitional safeguard is price based. We could put in unlimited amounts and, if the price did not ever drop, there would be no safeguard duty payable. It would only be imposed if the reference price dropped by the amount stipulated in the agreement.

Mr ADAMS—The wholesale blocks out cut value section 13 of the central US 600 and 750 pounds, as reported in the USA Agricultural Marketing Service *Market News*.

Ms Greville—Yes, if that price drops by 6.5 per cent two months in a quarter, compared to the rolling average of 24 previous months—

Mr ADAMS—It is a very poor thing that, when we negotiate trade deals, the domestic price is so protected and that they are protecting the domestic position to such an extent that it kicks in this way.

Mr Deady—We would clearly prefer it was not there. It is disappointing that it is an aspect of the outcome.

Mr WILKIE—But we did not oppose it.

Mr Deady—Believe me, we did oppose it—for hours and hours.

Mr WILKIE—That is what I was asking before about the agreement.

Mr Deady—I apologise; I misunderstood. We did not say, ' This sounds all right.' We opposed it right to the end. At the same time though, we also worked with Australian industry that were there to ask them, 'If we do have to move this way, how can we do it in a way that minimises the impact?' The difference is that the gains that we made from the negotiations are locked in, and it should be open-ended after that. It is not completely open-ended, but the gains are locked in. We have 378,000 tonnes plus 70,000 tonnes protected, so it would only apply on tonnages above that, so we are talking about the last month or two, if at all.

Mr WILKIE—I suppose the Beef Council would argue that, although it is not as bad a safeguard as the Japanese one, it would come in a lot more often than the Japanese safeguard. Would that be your view?

Mr Deady —I think they did some analysis over there and identified that it would trigger six out of 10 years—I cannot remember. But the point there is that it would not have affected Australian trade in any of those years. They see it as a very different mechanism than the Japan one. They certainly recognise that it is very different, but it still does not have that dramatic impact on Australian trade as Japan's snap back certainly could in a situation where all of our trade suddenly snaps back to a tariff at a high level. They certainly do not see it in the same way as they see the Japan snap back.

Mr WILKIE—How would you respond to the Beef Council if they were saying: 'This is a lousy deal for beef. It is a very marginal improvement.' They are saying that production will increase by about 350,000 tonnes over the next five years, but their access to the American market is 70,000 tonnes over 18 years. I believe they have done some modelling that suggests that they may be $1 a beast better off over the course of the entire agreement. How would you respond to those sorts of statements?

Mr Deady—I have had some discussions in Toowoomba and Rockhampton as part of this travel directly to the beef industry. That is not a view that is shared. It certainly was not shared by the beef industry in those meetings—and, admittedly, I was talking to 50-odd people in those rooms. They do see real gains to the industry as a result of this agreement with the United States. As we said, it has only triggered twice in the last 11 years but, when it does trigger, there is certainly pressure on the industry. It certainly relieves that pressure. In some senses, there was not a full understanding. There was some sort of expectation or misunderstanding that we had to wait 18 years before we got any benefits for the Australian beef industry. I think they certainly recognise that that is not the case.

The elimination of the in-quota tariff from day one is a real advance for the industry that is not there if there is no FTA. As I say, we have to wait for three years maximum before we get some additional tonnage, but again there is the rebuilding of a herd in the drought and all those factors that we talked to the industry about and that was repeated to me up in Queensland a week ago. For all those reasons, no-one has said to me that they are worried about the fact that we have to wait three years for tonnage. They see that growth over time as being really advantageous.

Mr WILKIE—The PM asked for an additional 30,000 kilograms. Have you any idea over what period of time he was asking that for?

Mr Deady—I cannot speculate on what the Prime Minister's discussions with the President were and what sort of detail they got to.

Senator MARSHALL—In terms of the additional duty-free amount in beef, it excludes carcasses, half-carcasses and processed beef made ready for particular uses by the retail customer. What in real terms does that actually limit us to? There was some suggestion that the limit was hamburger beef. I am seeking some explanation about what the real benefit is. Is it the value added side of the industry or is it another form of protectionism built into the agreement?

Ms Greville—It was built into the agreement at the request of the US beef industry. The vast bulk of our current trade with the US is in manufacturing beef—ground beef which is reprocessed for hamburgers or whatever. That is about 94 or 95 per cent of what we currently export. It is our beef industry's projection that that will continue to be a very substantial proportion of our trade into the future. The US beef industry understands that and also understands the complementarity of our ground beef and the way that their market works. It is to their advantage that they import ground beef from Australia because that frees up some of their trimmings to do other more profitable things. That was a large part of our argument with the US about needing more access and, in fact, wanting more access than we ultimately got. The beef industry is much more nervous about the likelihood that Australia may increase our high-value chilled product into the US. Their negotiating mandate was, for whatever additional access they gave us, to limit it to the manufacturing beef which forms the vast bulk of our current trade. We would have much preferred to have no additional limitations on our trade; but, in the end, it makes very little difference because our beef industry does anticipate that the vast majority of our trade will continue to be in manufacturing beef. The limitation is that the additional 70,000 tonnes over 18 years and then the additional amount that grows on top of that after the transitional period must be ground beef or manufacturing beef. It cannot be carcasses or half-carcasses. It cannot be that highly processed product which we currently do not trade in anyway, which is sausages and retail ready patties for supermarket sales.

Senator MARSHALL—What part of the existing 378,000-odd quota is processed beef now?

Ms Greville—About 93 per cent. The additional point I probably should make is that, in the course of this agreement, they have imposed the requirement on us that the 70,000-plus can only be manufacturing beef. They cannot and have not imposed any such requirement on us for the 378,214 that we already have. If we did want to substantially increase our trade with them in the high-value chilled product, we could still ship it in the WTO quota. We are only required to limit the FTA quota to manufacturing beef.

Senator MARSHALL—What happens after 19 years and beyond—at that time are we limited in any way to the type of beef we can export?

Ms Greville—We will continue to certify in the post-transitional period the amount of beef, the amount of quota, that has accrued to us as a result of this agreement in order to demonstrate that we have fulfilled these obligations to limit that to manufacturing beef.

Senator MARSHALL—So even after year 19 it is not actually free trade; we are still limited in the type of beef we can export?

Ms Greville—Within the amount that we ship to them, which will be 378,000 tonnes where we can do whatever we like, presuming the safeguard does not trigger—

Senator MARSHALL—But am I right to assume that, by year 18, we can do anything we like with the 448,000 tonnes—or is it the 378,000 tonnes?

Mr Deady—That is a good question. The answer is that the 70,000 tonnes plus the little bit of growth that we continue to have will still be limited to manufacturing beef. That is my understanding; Virginia can correct me.

Ms Greville—That is right.

Mr Deady—The 378,000 tonne WTO quota will continue to be free. Additional access will be for Australia to determine. So the access we are getting on the free trade part can be either; there is no limitation on what that will be.

Ms Hewitt—In a sense there is an obligation to ship 70,000 tonnes of ground beef and we determine the rest.

Mr Deady—That is right.

Senator MARSHALL—Yes, but it has been stated clearly that after 18 years we will have free trade in beef. I am trying to make the point that that is not the case.

Mr Deady—I think it effectively is the case.

Senator MARSHALL—Except that we are limited in the type of beef we can export.

Mr Deady—Only on 70,000 tonnes of it. If we are shipping under the FTA quota, if the government designates that this shipment to the United States is FTA quota, then it has to be manufacturing beef. If the government designates that this is WTO quota it can be anything. If the product just flows under free trade, it can be whatever it likes; there is no certification from the government.

Mr ADAMS—The trend would be to have packaged product going chilled from Australia straight into a supermarket in the country you are exporting to. Would that be possible after 18 years?

Mr Deady—Yes.

Mr ADAMS—Do you believe that is the position?

Mr Deady—It is certainly possible. Again, there is a price-triggered safeguard that comes in, but that is possible. The quota will continue to be administered by the government of Australia. That quota will be in two parts, FTA and WTO, and we will be certifying—

Mr ADAMS—But what we put into the market now is ground beef for making hamburgers, meatloaf and whatever.

Mr Deady—That is right.

Mr ADAMS—What I am talking about is shifting to high quality and value adding. That is where food production has to go. That is where you get your extra dollars and gain your jobs and your skills. Does this decision fit in with that trend?

Mr Deady—I believe it does. I do not think there is anything that limits that growth after 19 years, except the price-triggered safeguard.

Mr ADAMS—Except the price mechanism in the United States that says, 'Beef has got to this on the domestic level; therefore, we are going to support our domestic position and we are going to chop you off.'

Mr Deady—Not chop us off; they will revert to 65 per cent of the MFN tariff, and if it is high-quality product it might still trade over that. Again, how often that will trigger and what impact it will actually have are still very valid questions. The US market is a low-priced market—Japan and North Asia are the high-priced markets—and it is the US beef market that underpins so much of the industry but, as I say, when the US prices fall they exit the industry.

Mr ADAMS—But that is the market at the moment.

Mr Deady—Yes.

Mr ADAMS—I am sure the negotiators that were up against you would have been reading their own market. They would have been asking: where is the trend going and where are we going to go? The United States also has a big meat market. I am sure you would pay a considerable amount for good beef in the United States. If Australia were trying to enter that market, we would have to ask: where are we going to be in 18 years time?

Mr Deady—I think we will be very well placed under this agreement. If that is the way the market shifts then under this agreement we will be very well placed to take advantage of those market shifts. I really do believe that.

Mr ADAMS—Thank you. We are setting up a committee on sanitary and phytosanitary measures to have officials together. Can I get some idea of what we are going to do that for and what that is all about?

Ms Harwood—It is a committee on SPS—sanitary and phytosanitary—matters. It is for information exchange and for enhancing mutual understanding of each other's SPS systems. It is essentially a high-level committee for consultation and engagement on SPS issues.

Mr ADAMS—It is not to find ways around things?

Ms Harwood—No.

Mr ADAMS—If there were a dispute over importing American salmon into Australia, we would still say: 'You have whirling disease. We don't want it. We're not going to accept that salmon.'

Ms Harwood—Nothing in this agreement affects our right to apply quarantine the way we wish to the standard that we wish or our right to use Australian processes for risk assessment and policy determination.

Mr ADAMS—But what is new is that we are going to have a committee that will have a chat about it. That is now the position, isn't it?

Ms Harwood—Yes. It is essentially a consultative mechanism created.

Mr ADAMS—If we say no, there is now going to be a committee to look at it?

Ms Harwood—There has always been consultation between us because—

Mr ADAMS—Yes, of course

Ms Harwood—there is significant trade both ways and quarantine issues arise.

Mr ADAMS—And our scientific people go over there and their people come over here to conferences, I guess. But this is a new committee.

Ms Harwood—Yes, it is.

Mr ADAMS—That is going to enhance what we have done in the past, is it?

Ms Harwood—Yes.

Mr MARTYN EVANS—I want to ask about that kind of thing, but perhaps from a slightly different angle, while we are in this session. We quite properly have a number of quarantine restrictions on what comes into Australia from all across the world, including from the United States. Now that we are contemplating this greater integration with the United States economy, are we looking at reviewing the way those restrictions apply in the United States? Are we looking at accepting in some cases what the United States does? For example, we require licences to import for consumption into Australia products that are certified by the United States Department of Agriculture as being safe, clean and free from disease et cetera. The United States has quite high standards in this regard.

For example, if you want to import into Australia dried blueberries—which are not available in this country—you require a licence from the US Department of Agriculture. The licence says that you can import dried blueberries which have already been certified by the US Department of Agriculture; they pass all the tests in the United States. Then, because you hold a permit, Quarantine here lets them through. The same product could come through without the permit and probably would be just as safe, but because you hold the permit it is okay. Are we looking at these kinds of issues so that we would improve our integration if we were to accept the treaty, as the other perspective to the coin? Are we looking at integrating some of our processes with the

United States? In other words, from looking at their processes with your committee, do we trust the US Department of Agriculture enough to accept some of their measures? If the USDA say their dried blueberries, or anything else, are safe are we going to consider some of their approvals?

Ms Harwood—The system you are describing is normal quarantine practice—that is, Australia will set import conditions for, say, a horticultural commodity, and a requirement of those import conditions may be that the trading partner issue a phytosanitary certificate attesting that the product meets the import conditions set by Australia. Nothing in this agreement alters that, and that is a normal way of ensuring that the product entering Australia meets our quarantine requirements as set by us. Often that will involve certification by the relevant authorities in the trading country that the product meets our conditions. For the product to enter Australia, it is a requirement that that certification is provided. In general, Australia and America may have conversations about how we each move to assist or facilitate the process of trade in both directions and certification and so on, but that is not a specific matter that—

Mr MARTYN EVANS—You may have misunderstood me. Earlier, in the overview, Ms Hewitt was saying that one of the great benefits of this agreement is not the specifically calculated economic gains that we look to from modelling but the integration of Australia with the enormous economy of the United States—the intangible gains that we get from trading with the United States, the overall dynamic impact of the integration of our economies. I am saying that part of that has to be that we improve the flow over time—that the integration of our economies becomes better.

For over 20 years we have looked to improve the flow back and forth. Over time, the only way we are going to do this kind of thing is if the bureaucracy that impacts on the trade between our two countries is gradually removed. The only way we are going to do that is if the enormous bureaucracy that stands between me and my dried blueberries from the United States is removed. And, believe me, there is an incredible amount of bureaucracy between me and my dried blueberries from the United States—I have tried it! I raise this as an example because I am aware of it personally—not because I want anything specifically done about my dried blueberries. It is a personal example which I am aware of and can attest to, and to which the dynamic benefits of an agreement between us and the United States might hypothetically flow. It is not specifically raised in the agreement, but it did occur to me earlier, when we were being told about the dynamic benefits which might flow were we to approve the agreement, that it could happen. I raise it because I can see that you are not coming across with an understanding of how that works.

It will only happen if agencies like Agriculture and Quarantine look at how, through committees like this, we might gradually remove that bureaucracy. It took me two months to get agreement to import five kilos of dried blueberries. They are not available in Australia; they are not produced in Australia—otherwise I would have bought domestic ones. You have to import them from the United States. They are certified by the United States Department of Agriculture as being disease-free et cetera. The only benefit of a permit—for which you pay the department $60—is that you hold a piece of paper; nothing occurs to the dried blueberries as a result.

Ms Harwood—We have quarantine measures in place to ensure that we maintain Australia's favourable plant and animal health status. We are not proposing to integrate the quarantine

systems of Australia and the US. We run our quarantine system to our standards to reflect our phytosanitary status just as we respect their right to do the same. That is not going to change in terms of us applying the quarantine that we consider is necessary to address the risks as Australia sees them. What we can work on together technically is—

Mr MARTYN EVANS—Breaking down the barriers.

Ms Harwood—looking at whether there are less trade-restrictive ways of trading a product that still deal with the quarantine risk, or if systems can be streamlined. But nothing in that alters the fact that the basic right to apply quarantine measures to address the risk as we see it stands and will not change.

Mr MARTYN EVANS—All I am saying is that, at the end of the day, I got the same dried blueberries that I would have got without the permit.

Ms Harwood—But you got blueberries that were certified by the American authorities as having met our phytosanitary standards. That is the important thing.

Mr MARTYN EVANS—Yes, and they were there regardless of the permit; that is my point.

Ms Harwood—The permit system is ours, though. That is Australia's import system at the barrier to ensure that products entering Australia—

Mr MARTYN EVANS—I can see those dynamic benefits fading before my eyes.

Mr Deady—I would like to make one point, Mr Evans. Ms Harwood is absolutely right about quarantine. Part of the question you are asking—which I think is a valid one that we are certainly trying to address in this agreement because this is where I believe there are dynamic benefits in the original chapter on standards and technical barriers to trade—and putting aside quarantine because of course our quarantine standards will continue to be met and have to be met, and there is nothing in the agreement that undermines those—

Mr MARTYN EVANS—Of course, I agree with that totally.

Mr Deady—But we do have in the standards and technical barriers to trade outcomes a process established under the agreement to encourage that where there are these sorts of barriers, where it can be easier to facilitate trade and where we can streamline mutually recognised standards—not adopt US standards but recognise US standards—if they do meet ours and vice versa. We certainly see this as very much more an offensive interest of ours in the United States. It is much simpler really. Our standards-setting bodies are much more transparent and there are not nearly as many as there are in the United States, so we do see that as a very substantial outcome to the agreement. It is one that does and will and can only evolve over time.

Mr MARTYN EVANS—My concern is not with the quarantine. I am fully supportive of maintaining quarantine standards. That is not my concern. My concern is the bureaucracy that is sometimes associated with them to gain the dynamic benefit of that trade. That is my only point. I am not undermining quarantine standards.

Mr Deady—I think you are very right, and that is precisely why this chapter is there and why we have established contact points in both countries in the standards chapter: because as we deepen the trading relationship as a result of this FTA, we certainly hope and expect that there will be more trade and there will be more issues. So the need for the trade facilitation aspects become even more important, and the comprehensive nature of these agreements allows you to address all of those aspects of trade.

Mr MARTYN EVANS—Thank you.

Mr WILKIE—I would like to turn to the issue of sugar. Ambassador Zoellick, when he was addressing a hearing of the Senate finance committee regarding the agreement, seemed to be gloating at one point about how sugar was not included in the agreement. In fact it was suggested by a senator that they might have to assess his grade based on the fact that sugar was not included. At what stage in the negotiations was it very clear to Australia that sugar was not going to be part of the agreement?

Mr Deady—Sugar was always very difficult, and perhaps that is stating the obvious. It was never surprising to me that the United States were saying how difficult sugar was going to be throughout the negotiations. That is exactly what we expected them to say. When I was up in North Queensland last week, I said publicly in answer to a similar sort of question that, at least from my perspective when we were there in December, as hard as it was—and we knew it was going to be hard and we knew it was probably going to be pretty modest—I still felt we could get something on sugar. That was a judgment call of mine. We came back and saw that the US had done a deal with the CAFTA countries which included sugar. Roughly, it was about 100,000 tonnes when they had finally done all the CAFTA countries.

You can argue about the value of that deal because, as part of it, they said that sugar may never actually flow from CAFTA to the United States, that there is a provision for them to actually buy out that quota. Nonetheless, they did include quota in that agreement. That was just before Christmas. On that basis, if that had translated directly proportionately to our existing quota, we may have picked up an additional 50,000 or 60,000 tonnes of sugar. When we went back in January it had become much harder, partly because they had done the deal with CAFTA and the sugar industry in the United States had reacted very negatively to that. I do not know why that was a surprise to the USTR, because it was certainly predictable. Nonetheless, it did get harder.

We continued to push right to the very end of the negotiations. The sugar industry was there. I think senior representation from the sugar industry came midway through the first week when officials were still there and stayed right until certainly the middle of the final week or just before the last weekend, I suspect—but I may have the dates wrong. I am advised that they left on the Friday, so they were there with us. Again, we were not giving them good news at all during that period, but it was there and we were pressing right to the end. When did we think it was going to be very difficult? Well, I think certainly at the end of that first week we knew it would be harder than we had thought in December that it might have been—and we knew it was hard then. But it went right to the end, and we continued to push to the end.

Mr WILKIE—I am sure we would have pushed it right to the end—I do not doubt that. I suppose the question is not about how hard we pushed it and at what point we stopped but it is about at what point did we realise we were just not going to get it?

Mr Deady—In my experience with these sorts of trade negotiations, you do not assume you are not going to get it; you do press right to the end. This was the most sensitive issue for the United States, and so you are in there continually trying to build that package, to build the balance and to continue to press for it, and that is what we did. Whilst, as I said, it became increasingly clear during that period that it was getting harder and harder, I did not and the minister did not give up. We continued to press as hard as we could to get there. In the end, it was clear it was not part of the deal.

Mr WILKIE—If we come down to beef and sugar, what would we have been pushing as the better outcome? If it came down to it and we were talking about having a better deal for beef or something for sugar but that it was likely that sugar was not going to happen anyway, were we negotiating harder for beef in the end than we were for sugar?

Mr Deady—Again, all I can say there is that, in the nature of negotiations, you are pressing on all of your priorities. You are pressing to defend your defensive interest right through that process as well. You are building as big a deal—I cannot express any differently from this—across all of your priorities, defending your interests and still maintaining that balance in the outcome. You do not sit there and make that sort of trade-off.

Mr WILKIE—So at no point did you think, 'Forget about sugar, we might as well concentrate on beef'?

Mr Deady—No. Honestly, that is not how we did it and that is not how you do it, in my experience, in trade negotiations. You do keep pressing. It is then that you do have to look at the overall balance of the deal in the package that you finally get to, because taking the pressure off one does not deliver the other.

Mr ADAMS—Isn't it a leverage thing? Isn't that how it works?

Mr Deady—It is such a big comprehensive package and, because there are offensive and defensive interests that play right through, it is not that sort of negotiation. You do not say, 'If we drop our demands on sugar, will you double our quota on beef?' That is not how it works, honestly.

Ms Hewitt—I would like to add to that, Mr Adams. The Americans knew right from the outset that, from their point of view, Australia's big offensive interests were in that agricultural sector and, in particular, in what is actually a rather small number of temperate products that we specialise in producing and exporting, which would be our big offensive push issues right to the end. So they did stay there right to the end. I think Steve is absolutely right on that. There was not a question of trading one of those for one of the others. They had to be there right at the top and right to the end, and that is how was.

In the end, there was disappointment to some extent on beef, although we think—and I think you have heard it elaborated—that there are some very important gains for us there, and

similarly for dairy. Sugar obviously fell the other way. But all three of those issues, at every level in the negotiations and right to the end, were held right there as our last minute, big-ticket items.

Mr CIOBO—In the areas where there have been gains that you have spoken about, and taking you back to comments about it being a two-pronged approach, with your role, Mr Deady, as chief negotiator and that of the minister, were there instances where something that you thought was perhaps reaching an impasse would then turn out to have been resolved in what I would colloquially term 'ministerial level discussions', which then allowed—especially with respect to agriculture—further gains to be made in subsequent negotiations?

Mr Deady—Certainly at the officials level we push these issues as far as we can. I am not sure whether you were in the room when I described the sort of process that my people and I went through before Mr Vaile arrived, identifying three categories: things that we thought we could still do at the officials level, things we were very confident about; things we thought needed more work; and things that clearly we believed would need ministerial involvement. Frankly, I think we got that list pretty well right. There were some things which, at the officials level, you take to a point and you cannot take them beyond that, and they do go to those ministerial discussions and they are thrashed out in those. That is the process we went through and the nature of it in a number of areas. Again, they are both offensive and defensive. This is the US, this is Bob Zoellick sitting on the other side of the table pressing us on a number of issues where the United States wanted much more than we were prepared to give. Equally, we were there pressing very hard on sugar and beef and the various things we have talked about. That certainly was the nature of those discussions at the ministerial briefing.

Mr CIOBO—Sure, but were there agricultural instances, aside from those areas that are quarantined, so to speak—no pun intended—for ministerial discussions, where you reached an impasse and those were subsequently up for grabs again and up for discussion again?

Mr Deady—If I am interpreting the question correctly, yes, that is the process, and the leads would come back and report to the minister and to myself as to where they got in the various processes. Often that would involve further consultation with the industry on the ground in Washington and consultation with ministerial colleagues and other agencies back here to move that process to the next stage. That certainly was the nature of the negotiations.

Mr ADAMS—On dairy, we did get something at the higher end of the market. Can you run us through dairy? This is high end manufactured cheese.

Ms Greville—We export currently a range of dairy products to the US. A lot of the higher value dairy products are significantly constrained by tariff rate quotas into the US. So the bulk of the negotiations was about trying to get more access for those products which are currently limited by TRQs.

Mr ADAMS—Which is quotas.

Ms Greville—Yes. The negotiations were conducted over a range of categories and there are quotas that exist now some of which we have access under and some of which we do not. In each of the categories we negotiated a new amount of quota. I think Mr Deady said at the

beginning that essentially we have doubled our access for those dairy products that are currently constrained by quota. I can go through them one by one—

Mr ADAMS—I have not brought my list with me, unfortunately. Just give me a couple of different products so that I can get a differentiation.

Ms Greville—Certainly. There is a category called whole milk powder and feeds; there is a category for cheddar, American Swiss and European type cheeses; and there is another category called NSPF, which stands for 'not specifically provided for' elsewhere, which is actually quite a big and important category. There is also a category of milk cream, ice cream and another one for condensed milk. So there are a range of those. Some we currently have no quota for and for all we have a new quota, except for the category of low-fat NSPF, which we specifically did not want.

Mr ADAMS—There is a debate now going on in Australia about whether we treat our milk. Are there any circumstances there where we discussed nonpasteurised milk cheeses?

Ms Greville—No, there was not any discussion along those lines. I think the issue you are referring to is our unwillingness to import unpasteurised cheeses from France.

Mr ADAMS—That is right.

Ms Greville—We pasteurise our cheeses. The Americans pasteurise their cheeses but they do import unpasteurised cheeses. But that was not an issue that was ever discussed.

CHAIR—In the same Senate hearing Ambassador Zoellick was rather ironic about the concessions on dairy, describing them as 'huge' in an ironic way. Do you have any comments? Is this less than we hoped for?

Ms Greville—We hoped for immediate access on all categories without limit. That was our starting point. The dairy industry are disappointed that they have not got more access and they are disappointed that the out of quota tariffs will not come down, but they also recognise that this is a very significant increase in access. It has significant value to producers and processors in Australia and they are very supportive of it on that basis.

Mr WILKIE—I want to go back to the national interest analysis and some modelling in the area of agriculture. Annex 9 on page 3 refers to an analysis by ACIL Economics which casts a lot of doubt on the potential gains for the agreement. The analysis states:

... it never received endorsement as an official RIRDC report ...

Isn't that because it was critical of the government's views?

Mr Deady—No, that was not the reason. It is for RIRDC to answer that question. It certainly was not because the outcome was critical. As we have said, the modelling results from the study itself were far from robust. There are aspects of that modelling outcome that I still have very serious doubts about. That modelling found that unilateral trade liberalisation would be a

negative for the Australian economy, and that is certainly at odds with most, if not all, economic modelling and thinking in those sorts of areas.

Mr WILKIE—I am interested in your views about a number of articles that have been written about what we have managed to achieve for agriculture. On 14 February in the *Sydney Morning Herald*, Ross Gittins wrote:

> And various observers have remarked that the relatively modest gains we accepted on agriculture in this week's deal ... have damaged our credibility as leader of the Cairns Group and weakened the bargaining position of developing-country agricultural exporters.

Is he correct?

Ms Hewitt—Absolutely not. In the last few weeks I have been present at a ministerial level meeting which we had in the Cairns Group. That took place only days after the conclusion of the agreement with the United States. A very large number of the Cairns Group countries—I think it is 14 out of 17 but I will get that checked for you—either have themselves negotiated, or are currently negotiating, free trade agreements with the United States. If you compare the broad provisions of this agreement as negotiated with most others, it stacks up very well indeed. I do not believe there is an issue in the Cairns Group. We had a very successful meeting in Costa Rica in February and we have just come through a week in Geneva where the Cairns Group was enormously active in negotiating with other groups and within the informal sessions at the agriculture group negotiations. I think Australia's leadership and standing in the group remain very strong and very high. It is just a reality that all participants in the WTO bar two—I think I saw this in a WTO study recently—have made the judgment that this business of going into bilateral or regional agreements as a supplement to what is happening multilaterally is a rational way of handling the challenges of the current trade policy environment globally. It just seems to me that that is not a factor.

Mr WILKIE—There was another relevant article in the *Age* on 10 February. Tim Colebatch made the comment:

> And on the world stage, the two chief advocates of free trade in agriculture have now done a free trade deal that leaves out agriculture. They will be chuckling in Brussels.

What do you think he was talking about when he said, 'They will be chuckling in Brussels'?

Ms Hewitt—My guess is that it is a reference to the fact that sugar was not included at all. Everything you have heard from colleagues at the table today makes it pretty clear that we did not think that was a good outcome. We did not think it was a good look. We think it is enormously disappointing that the Americans could not drag themselves over the line with a result of some sort on sugar. We wanted a result of a substantial kind. It simply was not available to us because of the American political environment.

I do not know that we can say much more about it than that. I do not think there is any prospect in the near future that Europeans are likely to come forward with generous offers on sugar, beef or dairy. We are struggling very hard in the multilateral environment to make sure we do get some further market opening through the multilateral process with the Europeans. We also

have litigation under way in the WTO on sugar, tackling the European Union's export subsidies on sugar—which is one step worse than the American program, because at least the Americans do not export their subsidised sugar and nor do the Japanese. It is hard to know precisely what Tim Colebatch had in mind.

Mr WILKIE—I just note that it was not just Australian newspapers that were making comments of that nature. The *Wall Street Journal* commented on sugar—in terms of the Doha round, I think. It said:

The US hopes to revive those talks but the Australia deal will only cheer the protectionists.

If the Bush administration won't face down the sugar lobby even for a free-trade friend like Australia then what chance does the rest of the world have?

Would you agree with the *Wall Street Journal* suggestion that the trade deal has done great damage to the Doha round's ambitions to liberalise agriculture?

Ms Hewitt—No, I certainly would not, Mr Wilkie. I do not believe that at all. We all want to see more and we want to see liberalisation happen faster, but I think it is a misreading of the global negotiating environment to imagine that the balance of the package in this deal was in some way remarkable in that sense.

Mr ADAMS—Can you tell us where we are going to go now? When is the next round?

Ms Hewitt—In the multilateral process, Mr Adams?

Mr ADAMS—Yes.

Ms Hewitt—The target is a middle of the year deadline for getting a skeleton outline, a framework agreement, for the Doha process. I think everybody recognises the reality that, with the United States already embarked on a presidential election campaign, the middle of the year is about the latest you could expect any serious, tough decisions to be made in this area. Similarly, the European Union have the process of electing a new parliament in June. At about that time, they go into the appointment of a new President of the European Commission and the whole commission itself turns over in November. So in Brussels between June and November they will more or less be in caretaker mode and nothing new legislatively can really be done. The US and the European Union are not the only two participants in the 148-member process but they are the huge economies that, between them, take well over half of the world's global GDP.

Mr ADAMS—Plus 10 new members.

Ms Hewitt—Plus the 10 new members coming in at the beginning of May this year. In a sense that is not such a big adjustment for the trade side, because the new members are already participating as observers and processors and, in effect, beginning to be integrated into the way the union will negotiate on behalf of all 25 members. It just means that, from the middle of the year onwards, it is going to be a pretty sterile environment for putting numbers in boxes. The idea is to get the outline of the agreement so that the broad modalities, to use WTO speak, are established and to do some further technical work through the later period of the year. Although

nobody has actually yet taken the decision to declare the Doha deadline at the end of the year unachievable, I think the expectation of all informed observers is that it is likely to flow into the new year at least.

Mr WILKIE—Under the objectives for the FTA in the regulation impact statement, it says:

The Government also sought an Agreement that would complement and reinforce Australia's objectives in the Doha Round of World Trade Organization (WTO) negotiations and in Asia Pacific Economic Cooperation forums, and set a high standard for other FTAs in the region and within the WTO.

Where is the analysis to back that statement? The statement has been made but there is nothing there to support it.

Ms Hewitt—I am sorry. Could you read the last part of that quote again?

Mr WILKIE—It says:

... complement and reinforce Australia's objectives in the Doha Round of World Trade Organizations (WTO) negotiations and in Asia Pacific Economic Cooperation forums, and set a high standard for other FTAs in the region and within the WTO.

This is just a statement that was made in the regulation impact statement. It is fine to make the statement, and it is a bold claim, but where is the evidence to support that?

Ms Hewitt—We would stand by what we said before. If you look at the comprehensiveness of the agreement, the range of subject matters it covers and the depth to which it covers those; it is a deeply integrating, very broadly based agreement covering all fields of trade—with the exception of one industry in one sector, the sugar sector. Leaving that aside, it is a very highly liberalising, top-quality agreement as we see it. To compare it, I think there is one free trade agreement on the record which is more deeply liberalising, and that is our agreement with New Zealand, the closer economic relations agreement. If you look beyond that, there are very many agreements which are so-called free trade agreements which do not have either the spread of coverage or the depth of liberalisation that compare with the one we bring to the table now. There are rules about what constitutes a properly WTO-consistent free trade agreement. The rules are softer for agreements with or between developing countries. So many of the agreements which are on the record already or which are in the process of being negotiated are not likely to meet anything like the standard of this agreement. We think that the net liberalising impact, potentially, of this agreement stands very well as an important benchmark for what we would like to see in agreements being negotiated either by others, in the case of Australia, or between others, in the cases of those that we observe happening on the parts of other parties.

Mr WILKIE—This is not a criticism of the department. I would like to state the fact that we cannot get information relating to what the department provided to the Prime Minister for his negotiations with Bush on the night before, particularly the topics that were canvassed and the sorts of issues that were raised. The department is saying, 'These are issues that are confidential between us and the Prime Minister.' However this week the government has seen fit to table documents from government officials outlining the sorts of things that were discussed in private briefings between those departments and the Leader of the Opposition. I think what is good for

the goose is good for the gander—we should be able to at least get information about advice from the department given to the PM on such an important matter.

CHAIR—Thank you very much for that evidence on agriculture. Now we will move on to cultural impacts.

Proceedings suspended from 11.17 a.m. to 11.26 a.m.

CHAIR—Would one of you like to make a brief statement on the cultural impacts of the FTA?

Mr Deady—I will say a couple of words and then Dr Churche and colleagues can fill in. This again was an area of particular public interest, I think it is fair to say, right through last year. There was a high level of interest in what, if any, specific commitments we were going to undertake in the audiovisual area. It is an area where in the past Australia has not taken on commitments either in the General Agreement on Trade in Services in Geneva or in our previous bilateral FTA with Singapore. Of course it is always an area where the United States have a high level of ambition. I think the outcome does provide significant flexibility for future Australian governments in the area of audiovisual culture. It was very hard-won with the United States.

Effectively we have preserved the current arrangements for free-to-air television in Australia. There is currently a 55 per cent local content requirement on analog free-to-air television and an 80 per cent requirement for advertising on the three commercial stations. Both of those measures have been fully preserved. Equally, as we move to digital television those limits will also be fully protected. As analog TV disappears and we move to digital, the 55 per cent local content rule, the 80 per cent advertising rule and the various quotas that currently exist for free-to-air television will also be fully protected under the commitments we have entered into with the United States. If we move to multichannelling, then at a minimum we could double the amount of local content on free-to-air television. If we have a large number of channels—15 or above—there could be three times as much local content required.

On pay television the current arrangement is a 10 per cent expenditure quota on the drama channels. We have flexibility there: future governments could increase that drama quota to 20 per cent. We have also negotiated four additional categories where future governments could require 10 per cent of expenditure: children's television, educational television, arts and documentaries. Again there is a capacity for future governments to introduce regulations to ensure further content on pay television.

The third area is interactive media. That new platform is perhaps yet to emerge. Again there is flexibility there for future governments to make a finding. If a future Australian government made a finding that there was insufficient Australian local content on these new media and that it was being unreasonably denied to Australians, then again it could introduce measures to ensure Australian content was provided on those new platforms. There are also some commitments for radio broadcasting which again basically preserve fully the current radio broadcasting arrangements. Another area relevant to this is the various subsidies provided to the film industry. They are not affected by anything under the agreement. Nor is anything in relation to the public broadcasters—ABC or SBS—covered by any commitments under the agreement. I think that is

again very broadly the outcome. I ask Dr Churche, who is much more expert than I, to fill in any gaps there.

Dr Churche—I think that essentially covers it. Just as a general comment on what we tried to do with the audiovisual reservations: obviously firstly we tried to make sure that everything which the government does at the moment is protected, and, as Mr Deady said, there is nothing here which in any way requires us to change any of our current programs. We had very intensive discussions with the audiovisual industry. We were trying to look into the future, particularly to cater for situations of technological change and changes in the whole audiovisual market in the future, and we think we have done that, particularly in the fact that most of the things we have in our reservation are in annex 2—and we can explain that a bit more; it very much caters for technological change and developments in the media environment into the future.

CHAIR—We will be hoping to hear from them, but what has been the response of groups like the Australian Film Commission and the Australian Writers Guild to the agreement?

Mr Deady—We did have a stakeholder meeting, I think it was two weeks ago yesterday. That was the first full session we had with them. There were a number of questions raised by the industry in that meeting and, as Dr Churche said, some clarifications were made in relation to some of the misunderstandings—certainly in relation to the technicalities of what we call reservations, under annex 1 and annex 2. One lot of questioning, which I think came up first of all in the Senate estimates hearings on the FTA, was to do with the so-called ratchet mechanism in the services and investment area of the agreement. That covers what happens if Australia or the United States liberalise any one of these reservations. The clearest example would be: if a future Australian government reduced the local content requirement on analog television to 45 per cent, then under the commitments in this agreement a future government could not increase it back to 55 per cent. The 45 per cent would then become the binding commitment that future Australian governments would have to adhere to. That would also apply to the move to digital television—that is an annex 1 reservation, which is effectively a standstill reservation, so it is a binding at a current level.

The rest of the reservations that we have taken out in this area are annex 2 reservations. They do not have this ratchet mechanism. So in areas like the other things I mentioned, in relation to multichannelling and those sorts of areas, there is still flexibility for future governments to do something and then still revert, within those overall limits. The industry at that meeting, as I said, was largely asking questions. I think it was a good discussion. I am happy for Dr Churche and other colleagues to comment further, because I did have leave a little bit early, but I think it was a constructive meeting and they raised some questions, some of which we are still looking at. But there was no significant angst or hostility at all in that meeting, I think it is fair to say.

Dr Churche—That is certainly true. You know as well as we do the position of many players in the audiovisual industry in terms of what they would have seen as the most desirable object: some sort of broad cultural carve-out. Obviously a lot of them would still say that that would be their ideal outcome, but in terms of the impact on this, both in existing programs and policy flexibility into the future, they have not identified any areas where they feel there are—certainly in the short to medium term—any particular constraints. But it is obviously a very detailed area. They are still going through that. I think we did help clarify some points at our meeting and they are continuing to reflect on that. We certainly expect to have further discussions with them—and

we do, I have to say. Almost on a daily basis, some sort of player in the industry comes back with an additional question and we try to clarify the points to them. So they are certainly continuing to go through it with a fine-tooth comb. And that is very helpful for us. It is very useful, particularly during this sort of legal scrubbing process, to have their input on particular points to make sure that the actual legal language and everything has actually covered all our programs and things.

Senator KIRK—Was it the stakeholders or the department who initiated the meeting that you have just been outlining to us?

Dr Churche—We have actually had a regular consultation process. It is just part of our continuum. Right through the negotiations, and even before the negotiations started, we were in active dialogue. We have met with a broad range of industry players probably at least every second month for the last 14 months or so.

Mr Deady—I think we initiated that.

Dr Churche—Yes, I think that meeting was something which we organised.

Mr CIOBO—With television commercials, the 80-20 rule that used to apply was that all advertisements had to be 80 per cent local content. Recently we changed it to make it that 80 per cent of commercials had to have Australian content and 20 per cent did not. If we were looking at reverting back to something like that, would that be possible under this agreement?

Dr Churche—No, we have given a binding commitment here to 80 per cent. In terms of the single channel free-to-air environment we have made a binding commitment that that will not be increased above 80 per cent. We have also given a binding commitment that if we move to a multichannelling environment the transmission quota on advertising will not go above 80 per cent. But under this annex 2 reservation on multichannelling we could impose that 80 per cent transmission quota on advertising on up to three channels on each network. That would be considerably more hours than we have at the moment.

Mr CIOBO—Are there any impacts from the FTA on the extension of the film tax offset incentives, division 10BA, or anything like that?

Mr Young—Not at all. The government retains full flexibility, for instance, to extend the tax offset to other audio visual formats if it chooses.

Mr CIOBO—What about with respect to the development of computer games? Are there any expected impacts on our creative industries that are developing the next generation platforms for computer games or anything like that?

Dr Churche—It depends. Part of the answer to that is to understand what we have done on the audiovisual side. That is why it is very important to emphasise that except for our existing single channel free to air, the 55 per cent and 80 per cent quotas are the only things which are in annex 1. And annex 1 is all about making binding commitments on existing programs. The whole point of annex 2 is to give flexibility to respond to changing situations. In a sense we have flexibility to do things on interactive audio and video services but it is not prescriptive. So we

would have to look at how that games environment develops in the future and what future government consideration might be to policy measures and then see what scope there was under the agreement. The whole point is that there is flexibility to do things if there is not adequate Australian content. Also, in relation to the tax concession and subsidies area, if government wanted to do something in this area such as extend the existing taxation concessions to the computer games area there would be scope within the annex 2 reservation for government to do that.

Senator MARSHALL—On that flexibility arrangement, could you explain to me whether there are any limitations on that flexibility? As I understand it we need to seek agreement from the US to apply flexibility we might want to apply.

Dr Churche—To take the second point first, none of the points of flexibility which we have in annex 2 imposes any veto power on the United States or requires United States consent before we can exercise that flexibility. I think that is a very important point to emphasise. In relation to pay TV if we wanted to increase the current 10 per cent expenditure requirement up to, say, 20 per cent we would have to go through a transparent public consultation process. That would include consultation with the United States. And if we wanted to do something in relation to the interactive audio and video services we would also have to do that through a transparent consultation process, which is essentially what we do at the moment. If you look at how we change the Australian content standard, for example, you will see that the Australian Broadcasting Authority always has a public inquiry process and submissions are made. These are things we already do at the moment. We would not see this as being fundamentally different from the sorts of things we do as a matter of public policy at the moment but obviously we have a binding commitment here which says that we will follow the same approach in the future.

Senator MARSHALL—Are you saying that as long as we go through a consultative process that includes the US, we are not limited in any way from doing what we want within the scope of the limitations as set out?

Dr Churche—I think it important to emphasise that this is in no way unique to this agreement or to trade agreements. It is a known common feature in trade agreements, if you are going to bring in new domestic regulations which are relevant to trade, to include provisions through some sort of transparent process. You should publish draft regulations in advance and provide opportunities for interested parties—whether they are domestic groups or overseas groups—to comment on those draft regulations and what impact they might have on trade. And those matters should be taken into consideration.

There is no limitation there. It is still the Australian government which is making the decision. It obviously has an obligation to allow those views to be expressed and to give some consideration to those views, but the Australian government is still the one which has the sovereignty to make that decision. There is nothing in here which in any way constrains the fact that it will be the Australian government which will be making the decision as to whether, for example, we would move the 10 per cent expenditure requirement to 20 per cent rather than 10 per cent.

It is also important to emphasise that, when you actually look at the language, it talks about allowing consultation with affected parties. Those affected parties are not just US interests.

Going back to our meeting of industry groups, we made the point to them that this is a binding commitment by the Australian government that, if in fact it were going to change the pay TV expenditure requirement, it would have to allow consultation with affected parties in Australia, as well as with affected parties overseas. It just says 'affected parties' and that would clearly include industry groups and consumer groups in Australia who wanted to make submissions to the Australian government about such a change. The government would have to provide that opportunity for them, and I think it is very important to emphasise that. Even though the legal right is simply to the United States government under the trade agreement, our obligation here is to have an open consultation process with any affected party, whoever they are—whether they are an Australian industry group, an Australian consumer group or a US group.

Mr MARTYN EVANS—I have a question on access to the broadcasting market. Does the agreement provide anything with respect to new technologies that are already available? Say, for example, a US based company wanted to take advantage of direct-to-homes satellite broadcasting. It is possible now—and very common in the US—to have satellite-to-home direct broadcasts. You put your small receiver on the roof, and you have satellite-to-home direct broadcast of pay TV signals. It would be quite practical for a US company to broadcast, at marginal cost, their whole pay TV repertoire into Australian homes. It is conceivable under a free trade agreement that one might include such an arrangement. Is there anything in the broadcasting section of the agreement that would extend that kind of access to our market?

Mr Young—The spectrum management is undertaken by the Australian Communications Authority and the Australian Broadcasting Authority, the latter in relation to spectrum within the broadcasting services band. The agreement includes a reservation in relation to measures inconsistent with the market access obligations of the agreement with respect to spectrum management. That retains the capacity of spectrum regulators to continue or introduce requirements in relation to how the spectrum is allocated and managed.

Mr MARTYN EVANS—Does that mean there is no capacity for them to require any available spectrum—for example, even if that spectrum were freely available? They have no right to request that, even though it is freely available?

Mr Young—Spectrum-licensing procedures can continue as they do at present and can be extended to whichever parts of the spectrum regulators see as useful.

Mr MARTYN EVANS—So there is no variation to that at all?

Mr Young—No.

Mr CIOBO—I have one final question. Were there any impediments to the production and distribution of Australian made content to the US that have been liberalised as a consequence of this, or was it always basically a free market?

Dr Churche—Essentially, in terms of government restrictions, the US has taken no reservations on access to its audiovisual market. What we have here is a strong binding commitment in terms of the access of the Australian industry to that US market.

Mr WILKIE—I am curious about the possible impacts of the ratchet clause on local content. If we legislate to have it go down, it cannot just be restored. Is that true?

Dr Churche—This obviously applies only to single channel free to air. It does not apply to any other parts of our local content requirements. As soon as we move to a multichannel digital environment, we are on a whole new ballgame. There is no ratchet mechanism applying to that multichannel digital environment. The ratchet mechanism applies only while we continue to have single channel, free-to-air TV. There is nothing in the agreement which in any way requires us to actually change the 55 per cent programming quota or the 80 per cent advertising quota. That would be purely up to any future Australian government. If a future Australian government made that decision and actually cut it, the ratchet mechanism would come in. If it, say, went down to 45 per cent instead of 55 per cent, then that would be an upper limit, an upper cap, on what we have. We actually see the ratchet mechanism in annex 1; it is quite a strong part of the agreement. You do not have anything similar in the WTO. It is one of the strong parts in terms of locking in liberalisation over time between us as bilateral partners.

Mr Young—I will add one further point to that. If a regulator or government were to consider the appropriateness of the current levels, it would clearly bring into that consideration the fact that once the 55 per cent goes down it could not be raised again.

Mr WILKIE—You might have covered this, but there are no provisions for new media. What are we talking about when we talk about 'new media'?

Dr Churche—We have not used that term in the agreement, because we have tried to cover a range of media services in our annex 2 reservation—essentially free-to-air, multichannel television, pay TV television, radio broadcasting—and we have used a fourth category. We have used the term 'interactive audio and/or video services' deliberately to cater for the fact that we do not know what those technologies of the future might be. We have used the term 'interactive' because we are trying to cover media platforms which are not covered by other things such as free-to-air television or subscription TV. It is certainly something about which we have had discussions—about the industry. I think there are mixed views there. In our dialogue last year with the industry, one of the points that constantly came to us about the new media is that we do not know what some of that technology or media platforms might be in the future. We have a problem here; we need a way to cater for uncertainty about technological change. That is one of the things we have tried to address there. There is no fixed definition there. In a sense, that is going to have to be interpreted in a very broad sense, we think. Interactive audio and/or video services is, in our view, quite a broad category.

Some of the industry players have said, 'Because we don't know what it is, do we have confidence in that; shall we be tying down a definition?' The danger is that, if we try to define what that is, do we just do it on the basis of our current knowledge about what technologies are available now or do we look into our crystal ball to see what we think is going to appear in the next 10 or 20 years? We think we have a very broad catch-all category which can bring in a whole range of new media platforms.

Senator KIRK—I understand that the US report of the Advisory Committee for Trade Policy and Negotiations stated:

A major accomplishment was obtaining important provisions for market access for U.S. films and television programs over multiple media.

Could you elaborate for us on what those provisions were?

Dr Churche—Essentially what they are talking about here is the annex 2 reservation. The whole point here is what it gives to the US: some certainty about the regulatory environment which US service providers are going to face in the Australian market in the future. It is not annex 2 reservation. It gives us a range of flexibility but it does say 'within certain limits', such as the fact that there is multichannel TV. It says, 'Yes, you can apply local content quotas of 55 per cent, but only on X number of channels. On pay TV you can apply expenditure requirements but there are certain limits on that.' That has given some sort of certainty to US service providers that Australia is not going to become a closed market. We would not be expecting that to happen, anyway. But what this does, essentially, through these bindings, is to continue to allow Australian governments into the future not only to maintain existing local content requirements but to respond to changes in the market and changes in technology. But there are certain limits. We do not have a totally free hand. We cannot go to a situation in which we ban all the US content. Those sorts of commitments do give some certainty of service providers in the United States.

Senator KIRK—So the major accomplishment that they speak of is the certainty, in your view—

Dr Churche—Yes.

Senator KIRK—rather than increased access or increased content?

Mr Young—There is nothing at all in the agreement that provides greater market access to the US than they currently enjoy. The issue they are discussing is perhaps the extent to which there could be future potential restrictions on market access.

Senator KIRK—When you had discussions with the industry players as stakeholders that you spoke of, did they raise this matter at all? Was that of any concern to them?

Mr Churche—They have seen the sort of material coming out of the United States and, for the very same reason, asked what the American perspective is on this. They are trying to understand it themselves. That is what our consultations have been about—it is an information exchange process at the moment.

Senator KIRK—So you provided them with a similar answer to what you have provided to us here today?

Mr Churche—Yes.

Senator BARTLETT—With respect to the exchange of letters specifically dealing with secondary uses of phonograms, which I assume comes under cultural impacts—

Mr Deady—It is actually an IP issue.

Senator BARTLETT—I can probably wait until intellectual property issues are discussed. Flowing on from that delineation, given that there has not been a specific carve-out and there is no chapter called 'culture', which aspects of the agreement impact on culture beyond IP?

Mr Churche—There is no simple answer to that. There is a range of aspects of the agreement, particularly with services and investment, which would have some relevance to a range of cultural activities. We are very conscious of this sort of debate in the community. Most of the cultural activities—for example, libraries, museums, art galleries and so on—would be a form of service. The simple answer would be that the service and investment chapters would have the most relevance to cultural activities, but we see nothing in those chapters which have any implications. For key obligations like national treatment, there is the carve-out for subsidies and grants. So there is nothing in the agreement which will in any way affect the Australian government's ability to continue to provide grants and subsidies to cultural activities, for example.

Senator BARTLETT—In terms of the process, given that there is no particular chapter on culture—and I am not necessarily saying that there should be; I think a lot of it potentially comes as much into IP as it does into services—how was it incorporated into negotiations? Was there someone at the table acting as a culture representative saying, 'Don't forget about the culture,' or did you have separate negotiations?

Mr Churche—Whether it was on the audiovisual side or other parts of the negotiations, we might say, 'We need to have a look at what this might mean for cultural activities'. In a broader sense, what do you actually mean by culture? There are things like educational activities which could come within that concept as well. In the service and investment negotiations—and this is true of other areas—we had quite a strong interdepartmental consultation process. All agencies that might have some sort of interest in any of these areas were strongly engaged throughout the negotiating process, both in looking at issues and seeing whether there were any sorts of dimensions that we needed to factor into our negotiations—for example, in culture, education, health or any these sorts of broader policy issues.

Mr Young—I might add that DCITA was represented both in the services and investment negotiations and in the intellectual property negotiations. They had coverage wherever cultural agencies would be affected elsewhere, including, for instance, in government procurement.

Senator BARTLETT—The other question I thought of in relation to this area, which probably applies to the whole lot, was in regard of the exchange of letters about there being no component of this agreement that deals with immigration measures. Each country can still do whatever it wants with immigration. Using the cultural example, does that come down to putting conditions on visas for visiting artists so that they can only do certain activities and not others? There is no scope under this agreement to prevent those sorts of restrictions.

Mr Churche—That is right. We have arrangements in that area, and there is nothing in the agreement which would in any way affect our ability to apply those arrangements.

Senator BARTLETT—Or for the US to apply restrictions to us?

Dr Churche—Yes.

CHAIR—We are not having a brief on the telcos today.

Mr Deady—We have the lead negotiator on the telcos here, so if there is a question we can address it.

CHAIR—Okay. We have been asked by the department if we can do pharmaceuticals and PBS next. Would anyone like to make a brief statement in relation to pharmaceuticals and the PBS?

Mr Deady—Briefly, before handing over to Dr Lopert and Ms Smith, this was an area of very high public interest right through last year, and of course it continues to be so. The government made very clear to the whole negotiating team what we could and could not do in relation to the PBS. Certainly it was made very clear right through that process to the American side also what we could and could not do. The fundamentals of the PBS—the pricing and listing arrangements—were something that we were not prepared to negotiate on, but there were aspects of transparency and process that we were prepared to talk about.

For the record—and this might be of interest to members—this was an issue that was always high on the Americans' agenda, even as far back as the first negotiating round in March last year. There is a big debate on this in the United States, as I am sure all members know. It took up a large part of the first three or four months. Even right up to the December round, a lot of those discussions were about explaining and clarifying the Australian system to the US side. While they had an understanding of it, it was certainly not complete and in many areas it was a misunderstanding. In the end we negotiated an annex to the goods chapter which addresses the issues of transparency and process. The way the agreement is structured in this area, under the annex, the commitments apply to both Australia and the United States. Then there is a side letter which contains some additional specific undertakings and commitments by Australia in relation to transparency and process. That is the way it has been structured.

The commitments that we made to the United States in this are certainly meaningful—and I think they are seen as that by the pharmaceutical industry in Australia—but they do not get to the fundamentals of the scheme: the pricing and listing. Claims were made throughout the course of last year that the agreement was going to lead to significant pricing increases under the PBS arrangements, but there is nothing in this agreement that sustains those sorts of claims.

CHAIR—As I see it, there are a lot more opportunities for the sponsors of listings to consult beforehand and have their decision reviewed and, hopefully, for drugs to be listed in a more timely fashion. Did the US negotiators give any examples of where they thought drugs had not been listed in a timely fashion?

Dr Lopert—There were a couple of examples given of drugs that they perceived not to have been listed in a timely fashion. These were examples that we were well aware of and they were isolated examples. In fact, there were a number of statements made about the general time to listing on the PBS which tended to significantly exaggerate the actual times. We had presented some data from our own statistics as actual times to listing, which the US found quite surprising. There are always going to be individual examples that stand out but, if you look at the mean, we have already significantly reduced times to listing over the last few years. We are endeavouring

to find opportunities for further reducing those times, specifically in the post PBAC rather than the pre PBAC process.

CHAIR—Are you able to tell the committee what the specific examples were?

Dr Lopert—A couple of specific examples pointed to were the glitazones, which is not surprising.

CHAIR—Not surprising?

Dr Lopert—No.

CHAIR—That is what I would have thought. On the intellectual property side, there has been an issue in the United States where pharmaceutical companies have been able to tweak patents and continue the in-patent life of a therapeutic product. Is there anything in the FTA which has any implications for Australia in terms of that practice?

Mr ADAMS—Did you put any pressure on the US to stop that?

Mr Deady—The answer to the second question is no, we did not put any pressure on them. There is a debate in the United States over what is called the notification and linkage area where they had this 30-month stay. Previously I think that was a rolling stay—they could continue that 30 months indefinitely—but that has been rolled back to one 30-month stay in the United States system. We certainly were very conscious in the IP negotiations to ensure that, regarding any commitments we entered into in the patents area in relation to the marketing approval processes for generic drugs, this would not in any way damage the generics industry in Australia and feed into delays that could impact on the Pharmaceutical Benefits Scheme. That was certainly an issue that we had very much in the forefront of our minds as we went into the negotiations.

There are three or four—certainly three—areas in the agreement that deal with aspects of marketing approval for generics, and the status quo prevails in two of those areas. One was the conditions in relation to export for marketing approval. The Americans pressed us there for changes; we did not agree to changes. They pressed us in the area of new uses and formulations to extend the protection of data there for an additional number of years. There is no change to the Australian system in that area. The third area, where there are some changes, is in relation to this question of this linkage and notification area. That is something that we are continuing to work through in consultation with the domestic industry as to how we go about implementing those changes. Again, in the way we have crafted that particular aspect of the agreement, the language there deals with ensuring that in the marketing approval process there are some means to ensure that drugs under patent do not break that patent.

That is the area we are working through with Australian industry, but the generic industry at the moment certainly looks at this. Through the marketing approval process they do not break these sorts of patents now. That is the position they took forward—that, under the patents act, there are already disciplines and requirements there. We are confident that they are working through that particular commitment to ensure that the processes continue to operate in such a way that the legitimate rights of the generic industry are protected and that there are not delays in entry into the market or the marketing approval processes of these generic drugs.

CHAIR—There has been a sort of pattern whereby United States residents have been buying pharmaceuticals from Canada because the prices are significantly cheaper. When the Productivity Commission looked at our pharmaceutical prices, they found that in generics—ones in patent and so on—prices were 30 or 40 per cent of the United States price—and that is not the subsidised price, that is just the listed price. Is there an opportunity here for United States residents to purchase pharmaceuticals in Australia?

Dr Lopert—The purchasing and export of PBS-subsidised pharmaceuticals is prohibited. It is subject to quite significant sanctions, I think: a $5,000 fine and up to two years in jail.

Mr MARTYN EVANS—That is for PBS drugs—

Dr Lopert—That is PBS drugs, yes.

Mr MARTYN EVANS—not what the chair is talking about.

Dr Lopert—For non-PBS drugs there is, in theory, nothing that would prevent that. Equally, the government does not contribute to the cost or control the price of non-PBS drugs.

CHAIR—Okay. But, if you have a drug that is on the PBS and, say, a British resident wants to get it, they pay a different price. Is that right?

Dr Lopert—If they do not have a Medicare card then they cannot get access to it under the PBS. They can only purchase it at the private prescription price, whatever that is, which is set by the company.

CHAIR—But it would still be much cheaper than the United States.

Dr Lopert—It may be cheaper; it may not.

Mr ADAMS—So why are we not exporting enormous amounts of drugs? We are talking about trade here. If we have a natural advantage here, if we are producing drugs at a cheaper rate, why are we not exporting them?

Dr Lopert—Not all drugs sold in Australia are in fact cheaper than in the US. There are some significant examples of drugs recently listed on the PBS which can in fact be purchased in the US at cheaper prices via the Internet or which are significantly more expensive than the price the US government purchases them at through the Federal Supply Schedule. So it is not quite as significant. Certainly, the Productivity Commission report, in looking at those price comparisons, did say that we certainly had significantly lower prices of generic pharmaceuticals and so-called 'me-toos'—drugs which belong to the same therapeutic class as existing drugs—but for so-called innovative drugs our prices are actually much closer to those of the US.

Mr ADAMS—Sorry, what sort of drugs did you mention last?

Dr Lopert—The last group was the new drugs, the more innovative drugs, drugs for which there were not several members of the therapeutic class—the so-called breakthrough drugs.

Mr MARTYN EVANS—Is there any change to the springboarding practice in relation to generics? In Australia you can produce your generic drug and have it ready—you can do the research, have the product formulated and even have it in capsules, in boxes, sitting in the warehouse—waiting for the patent to expire. That is called springboarding and waiting for it to happen. Is there any change to this practice in relation to generics under the agreement?

Ms Smith—There is no change required to our springboarding provisions that flows on from the agreement.

Mr MARTYN EVANS—So that is entirely acceptable. Once that patent expires, we could export those drugs to the US?

Ms Smith—Yes. They can be exported for the purposes of seeking marketing approval overseas, either to the US or to other markets which are valuable for the industry.

Mr MARTYN EVANS—So there is no change anyway to that provision. What about the situation in relation to the length of patents on drugs? Did we come under any pressure in relation to the changes to that? The US has a fairly lengthy period on the patent of drugs. We recently extended our patent life on drugs. Has that brought us into harmony with the US? We took it to 25 years, I think, didn't we? It was recently—a couple of years ago.

Ms Smith—Yes, there were some changes to the Patents Act.

Mr MARTYN EVANS—Because of the long period of discovery and research on drugs, we extended the patent period.

Ms Smith—Yes. And there are no changes required to our patent term extension regime as a result of this agreement. In fact, it was not an area where we were being pressed to make changes.

Mr MARTYN EVANS—Fauldings, for example, in my electorate have a very good generic and patented opiate release drug which they manufacture in the United States because the US will not let them import that opiate product into the United States from here. So they have had to establish a factory in the US because of issues about importation of narcotic drugs into the US. Was that the subject of any discussion on allowing Australian controls to be satisfactory in terms of importing those kinds of things so that the work could actually be done here rather than having Australian jobs exported to the United States because they cannot import the narcotic tablets into the United States? They actually have to manufacture the Australian generic drug in the United States because it is an opiate.

Ms Smith—There is nothing in this agreement which overrides the ability of each government to put those sorts of regulatory requirements in place to protect public health or safety or other legitimate policy objectives. It was not a subject for discussion and each government retains that right to regulate.

Mr MARTYN EVANS—Okay. In relation to the extension of patents, a lot of that discussion in the United States has centred around intellectual property. As one of my colleagues said, patents are being continually extended by companies by reformulating their products. Did we

enter into any discussions with them in terms of preventing some of this activity? We are establishing a number of discussion committees with them on these subjects. Is this the kind of discussion we will have with them? Ultimately, with some of these newer drugs, the blockbuster type drugs, the effort is to continuously extend the patents on these newer and more expensive drugs in order, obviously, to extend the profit cycle of them. The objective of a patent is quite properly to reward the company for the massive cost of developing a drug and it is entirely appropriate that they should reap the reward of that patent for a substantial period. But the idea is that it ultimately expires and then the price drops. The current trend seems to be to then find some mechanism to extend the patent life on that massively. Is it intended that one of these committees discuss these kinds of issues? Most of these things originate in the United States in terms of new formulations and new drugs. Australia does produce some but the overwhelming preponderance is in the United States. Was there any discussion of how we might secure some benefit for Australia?

Ms Smith—The medicines working group, which is to be established under the pharmaceuticals annex of the agreement, does provide a forum for that sort of discussion. It talks about principles relating to innovation and intellectual property. So there is a forum to raise it down the track. Of itself, the agreement does not change the existing practices that each country has in the patents area.

Mr Deady—I think it is correct that this is an area where the US are pushing us to move to their system, to make commitments that would effectively extend the patent terms, and that is what we have pushed back on and resisted as part of the negotiations.

Mr MARTYN EVANS—So it is more a defensive—

Mr Deady—I think it is fair to say it was defensive. This is an area where we were under considerable pressure from the United States to change things and we resisted those pressures.

Mr MARTYN EVANS—What is your take on the result of the appeals process here? We have been led to some assurances publicly that the appeals process which is intended as part of this establishment will not actually result in any ultimate increase in the price of drugs in Australia. But I wonder what the nature of the final appeals process will be. Will it actually have authority over the listing process? Will it have authority over the price? What is to be the structure of this?

Dr Lopert—What you are referring to is in fact the independent review mechanism. It is not entirely appropriate to characterise this as an appeal mechanism. Calling it an appeal mechanism suggests that it has the capacity to overturn a decision or recommendation, which the review mechanism cannot do. There is no capacity under the act for any entity other than the PBAC to recommend a drug for listing on the PBS. The minister cannot list a drug on the PBS unless it has received a positive recommendation from the PBAC. It would only be possible for a review mechanism to overturn a recommendation of the PBAC with a change to the act, and there is no intention to change the National Health Act in this respect.

The purpose of the review mechanism is, if you like, to create a second look—to take another view where PBAC has made a decision not to recommend the listing of a drug on the PBS. It will not look specifically at prices, so it will not have the capacity to recommend an increase in

price. It has the capacity for the applicant to seek to have the review mechanism review an application where PBAC has not recommended that the drug be listed. It is anticipated that the outcome of that review would be a referral back to the PBAC to review certain aspects of the application or to take into consideration some perspectives that the reviewers felt had not been adequately considered or given due weight in the original assessment of the application. But it will still be necessary for the PBAC to conclude that the drug should be recommended on the PBS before a listing can take place.

Mr ADAMS—Why did we agree to that?

Mr MARTYN EVANS—Will it be statutory?

Dr Lopert—There are no proposed changes to the National Health Act, so presumably it will be done by regulation. Mr Adams, you asked why we agreed to it. It was an issue on which the US pressed very strongly that it was important to improving the transparency of a process that they argued very strongly was not as transparent as they felt it should be. We have also agreed that improvements in the transparency and accountability of the process were to be welcomed. So I guess the view is that we have nothing to fear from a review. The chair of the PBAC himself has welcomed this development as an instrument providing greater transparency and accountability that puts more information about how the PBAC works into the public domain. In that sense he agrees that it is a step forward.

Mr ADAMS—It gives a drug company three grabs—three goes—now, doesn't it?

Dr Lopert—Drug companies can resubmit to the PBAC any number of times if they do not get the outcome that they are seeking. They always have the opportunity to resubmit. That already exists, but the requirement for resubmission is that they present some new data or argument. This is merely a review where, despite the presentation of those data and those arguments, they disagree strongly with the outcome and they feel that they have exhausted all their avenues of resubmission.

Mr MARTYN EVANS—Can they do that again? How many times will the cycle continue?

Dr Lopert—The procedural rules of the review mechanism have not yet been developed. Because we have only recently initiated the process of stakeholder consultation in relation to developing options for how the review mechanism will work, it is difficult to be precise about what procedural rules will apply. A number of stakeholders have already been consulted. We have met with Medicines Australia and PBAC. We have held stakeholder briefings in which representatives of other organisations have put forward very strong and carefully thought through views on how they see the review mechanism should be implemented and we are continuing to canvass those opinions with a view to arriving at an implementation of the review mechanism which reflects the interests of the key stakeholders.

Mr MARTYN EVANS—What sort of people will sit on the review? Will this have the same kind of membership you would get on the PBAC?

Dr Lopert—That is another issue that will be developed in consultation with the stakeholders—that is, what the composition of the review panel or the mechanism of review should be. I do not think I can pre-empt that.

CHAIR—Annex 8 of the national interest analysis has a summary of the necessary legislative and regulatory changes. My reading of this is that there is nothing in this which relates to pharmaceutical review mechanisms. Is that advice correct?

Dr Lopert—There is no anticipated change in the legislation to accommodate the review mechanism. It will be procedural.

CHAIR—Isn't that a regulation?

Ms Smith—Basically, the review mechanism will be implemented within the existing legislative framework.

CHAIR—But that would presumably be by regulation, wouldn't it?

Ms Smith—That is not the advice that we have had.

CHAIR—Okay. I am talking here about annex 8 of the national interest analysis, which is about the legislative and regulatory changes. You are saying it can be done within the existing law without legislative change or regulatory change. This is very interesting. What sort of status does it have? How can it be law if it is not legislative or regulatory change? I am happy to take advice from another departmental official if you like.

Ms Smith—That is the clear legal advice that we have had.

CHAIR—Thank you.

Mr WILKIE—Who will pay for the review process? Obviously a drug company would pay for their component; which department would actually fund our part of the review?

Ms Smith—The PBS is administered by the Department of Health and Ageing, so any—

Mr WILKIE—Have you got any idea about how much it is going to cost to establish and monitor?

Dr Lopert—I do not think it is possible to establish the costs of the process until the mechanism has been more clearly articulated. It will depend on how frequently the mechanism is triggered, how many people are involved, what the process is and what the outcomes of the review are. It will be part of the development of the implementation options to determine what any options that are identified actually cost.

Mr WILKIE—I am quite concerned. We do not really have all the details about how that review mechanism is going to work and we do not know how much it is going to cost and how it is going to be funded. Is it going to be an additional impost on the PBS system and will that therefore mean that we will possibly be charging more for drugs? What analysis have we done to

determine that it is not going to put prices up? I know Mr Deady is saying that we are very mindful of the fact that we do not want prices to go up, and I take that on board, but how did we ensure that going down this sort of review process was not going to increase prices?

Ms Smith—The commitment to having a review is a commitment to having a review of decisions not to list.

Mr WILKIE—Yes, but obviously there is no legislative framework for them to then overturn a decision that has already been made. I can just see drug companies going down this path ad nauseam, time and time again, to try and get things listed which they have not been successful in having listed in the past and then using the result of that, if it is positive for them, as a lever—publicly or whatever—in order to demand that their product be listed. If they are listed, that will then increase the cost in the long term to the PBS system.

Dr Lopert—Under the National Health Act the PBAC is precluded from recommending the listing on the PBS of a drug that is substantially more costly than a drug already listed, unless it represents a significant improvement in health outcomes. That remains unchanged. So, if the PBAC concluded that the drug should be listed, then it is assumed that it has found it to be acceptably cost-effective and that it is appropriate that it be recommended to be listed on the PBS. In terms of the actual mechanism of the review, as I said, the actual costs of running that review process are essentially administrative costs and those cannot be anticipated until we have a clear idea of what the mechanism will in fact look like.

Mr WILKIE—That is a fair call. I would like to see more details on that down the track.

Mr ADAMS—Can we get a time line on that?

Ms Smith—That is something that is being considered by the minister at the moment, but there will be stakeholder consultation as part of the implementation of the review mechanism.

Mr ADAMS—But there will be a cost in running that review mechanism. There will be a cost of people coming to sit on it. As the deputy chair asked: is it open-ended; how many times does it go? There is going to be a cost factor in that process.

Ms Smith—There will be costs of some sort, I would imagine. But, until the shape of the review mechanism is settled, we cannot anticipate what those costs will be.

Mr ADAMS—So at the moment the minister is looking at a time line.

Ms Smith—That is correct. We have also got a process of dialogue with stakeholders to get views on how it should be implemented.

Mr ADAMS—Is the side letter a public document?

Dr Lopert—Yes, it is part of the agreement.

Mr ADAMS—We have that in the folder. So we set up the process of having the review panel have another look at it because the argument against us was that there had been a considerable amount of time taken before people got listed.

Dr Lopert—Not specifically. That was really a separate issue. There were some concerns raised about the time taken to list drugs on the PBS. In fact, the example I gave to Dr Southcott reflected two drugs which had been recommended but had not been listed for some time, not that they had not been recommended.

Mr ADAMS—But our budgetary process would have something to do with that too, wouldn't it? If we are going to list something that is going to cost a hell of a lot it is going to be in the budget process, and I would think that cabinet would have to give some consideration to those things.

Dr Lopert—Cabinet is required to consider any drug where the net cost to the PBS is expected to exceed $10 million per annum—that is, the net cost after reduction in the use of other drugs.

Mr ADAMS—Could you say that to me again.

Dr Lopert—Cabinet reviews the recommendations for listing of any drugs where it is anticipated that the net cost to the Pharmaceutical Benefits Scheme will exceed $10 million per annum, but it is the net cost not the actual cost of the drug that is taken into consideration in determining whether the drug exceeds that threshold.

Mr ADAMS—Sometimes they go to a lot more than that.

Dr Lopert—Certainly, but that is the threshold for consideration.

Mr ADAMS—That might affect the actual timing. Would that be true?

Dr Lopert—That will certainly affect the timing for those drugs which require it. But that was not specifically the issue in the case of the two examples that were given.

Mr ADAMS—That was not the issue?

Dr Lopert—That was not the only issue.

Mr ADAMS—Did we satisfy the issue?

Dr Lopert—Yes, those drugs have been listed on the PBS as of November last year.

Mr ADAMS—So they won that panel, but we did not get anything on sugar, did we, Mr Deady? We did not get a committee to look at sugar for the next two years or to put pressure back on.

Mr Deady—When you say 'they won that panel,' I am not sure what you mean.

Mr ADAMS—These were the negotiations that you were in. There is a push and pull in the negotiations that I am in. I am a politician and I am always in negotiations. They put pressure on us to get into our system and we have given them another chance of getting into our system, or a quicker way. I am just asking: what did we get in return for that?

Mr Deady—You are asking about the overall balance of the agreement and the overall outcome. This is one element. This is an area where, frankly, the United States wanted a hell of a lot more than they got from Australia.

Mr ADAMS—We are back to pie in the sky, though, aren't we?

Mr Deady—With respect, I do not think it is pie in the sky. I think some very concrete benefits accrue under the agreement. It is an overall package. I think that goes back to what we were saying this morning: it is the overall deal that the government looks at and takes into account.

Mr ADAMS—That we cannot measure.

Ms Hewitt—I want to come back to that. Certainly there are things that we can measure and have measured, and we have a lot of information about that does measure. I think what we are saying is that it is really just the judgment that you cannot with great definition and great confidence come up with a single overall figure.

Mr ADAMS—Okay. Thank you.

Senator MARSHALL—It was widely reported that Ambassador Zoellick stated that the free trade agreement changes in respect of the PBS will change the price of pharmaceuticals in Australia. Could you confirm that?

Mr Deady—With respect, I do not think I have ever seen that comment from Ambassador Zoellick.

Senator MARSHALL—The information I have is that it was in an article entitled 'Drug costs will rise with deal: US official', in the *Sydney Morning Herald* on 11 March 2004.

Mr Deady—I can provide you with a transcript of what Ambassador Zoellick actually said, and that article did not reflect what he said.

Senator MARSHALL—Can you do that, because I think that is an important point.

Mr Deady—Yes, we would be happy to do that.

Senator MARSHALL—What are they saying in the US about pharmaceuticals?

Mr Deady—Maybe other colleagues can help me out here, but I must confess that as yet in my travels I have not seen all the reports that have come from the various committees and advisory groups there. But I think that if you look at the outcome for the United States they do see it as meaningful that, in the pharmaceuticals area, we have made some specific, binding

commitments to the United States in relation to transparency and process, and they are important.

Senator MARSHALL—Are they saying the changes will not increase costs in Australia?

Mr Deady—I have not seen a US official claiming that the outcome will lead to what is suggested in that article. That is not what they said. They did not say that the FTA would lead to increased prices of drugs. If you look at the commitments you will see that they are about transparency and process. There is an additional review there, and we have tried to explain what that will mean. But they are the outcomes and they do not impact on the pricing and listing—the fundamentals of the PBS. The commitments in the agreement do not impact on the fundamentals of the PBS. I think if you look at the text and the exchange of letters, that is the conclusion that you draw. That is not to say that they are not important commitments, because they are; they are binding commitments that we have now made. To return to Mr Adams's point: yes, we did make commitments to the United States in the pharmaceuticals area as a result of the overall deal, the balanced deal. Those commitments are what they are, but they will not lead to undermining the fundamentals.

Senator MARSHALL—No doubt we will have a lot of discussion on this issue. If you could provide that transcript that would certainly clear things up.

Mr Deady—I think that is important, Senator, because, with respect to the author of that article, that is not what Ambassador Zoellick said.

Senator MARSHALL—Okay. Thank you.

Proceedings suspended from 12.33 p.m. to 12.47 p.m.

CHAIR—I call the committee to order. We are now looking at the section on services and investment. Do any of the officials for this section have any comments to make on the capacity in which they appear?

Mr Nixon—I dealt with the foreign investment screening aspects of the negotiations.

Mr Richardson—I was the lead negotiator on telecommunications services and competition related matters.

CHAIR—Would anyone like to make a brief opening statement on services and investment?

Mr Deady—This is a very substantial part of the agreement. Picking up on some of Ms Hewitt's comments earlier this morning, I think it is, very clearly, in the services and investment area that free trade agreement negotiations allow you the capacity to do lots of things that go beyond what is possible in multilateral negotiations at this stage. Australia already exports $6 billion worth of services exports to the United States. This is a very substantial outcome on services and investment. There is a negative list, which we spoke about earlier, so all services are covered except for those specific exceptions where you take out reservations in annex 1 or annex 2. We do get full national treatment under the agreement. There are ratchet clauses which build in ongoing future liberalisation which will automatically flow to Australia. So I think it is a very substantial part of the deal. I think it is probably best to get into the specifics and answer the members' questions.

CHAIR—Thank you. In the NIA it says:

In recognition of the robust domestic legal systems in both countries, there is no provision for investors to use international arbitration to pursue concerns about government actions …

Were the United States pushing for investor state dispute mechanisms in this FTA?

Mr Deady—Yes. The US position was in the end that they were pursuing an investor state provision in the agreement. There was a genuine debate I think in the United States, as there was in this country, as to whether both would pursue investor state. They are a feature of Australia's bilateral investment agreements. They are also a feature of our bilateral agreement with Singapore. We do have an investor state dispute settlement in that agreement. There were certainly some healthy consultations with Australian industry. In the end, we did take the position that we did not believe it was necessary in an FTA between two developed countries. We had a lot of discussions with the state and territory governments and, again, there were mixed views amongst the states and territories. Some were probably indifferent, but a couple of states certainly believed that they would prefer not to see it as part of the deal. In the end, the government took the view that we did not want to see it in the agreement and did not think it was necessary really. The United States did press it to the end and they came up with a balanced view, largely, I think, because they did see it breaking the precedent. They do have it in their other FTAs. They certainly would want to see it go forward with many of the future FTAs they would be doing with developing countries and they did not really want to break the mould.

Again they did see, I think it is fair to say, a purpose to our argument that we really did not need it. In the end, it was an area that we did not include in the agreement.

CHAIR—With New Zealand, there is no investor state dispute settlement in the CER Trade Agreement.

Mr Deady—No.

CHAIR—With Singapore, yes.

Mr Deady—Yes.

CHAIR—For the proposed Australia-Thailand free trade agreement?

Mr Deady—My understanding is that, yes, there is investor state.

Mr ADAMS—How do investor state dispute mechanisms work?

Mr Deady—Essentially, what they do give is a procedural right to the foreign investor that they can seek independent arbitration if there is a breach of an obligation under that investment chapter. In the case of Singapore, if a Singapore investor in Australia believes that an Australian government was in breach of one of those commitments in relation to national discriminatory treatment, then they could seek recourse to an independent arbitrator rather than domestic courts to resolve those issues.

Mr ADAMS—But they already have access to—

Mr Deady—Again, if a US investor believed that an action had reduced the value of their investment in this country by a government, then they could take that under domestic law, just as an Australian investor could.

Mr ADAMS—How do you describe it—capital trying to have no risks?

Mr Deady—I do not think it is no risk—perhaps the experts might help me out. As I say, if there is an action by a government that has an impact effectively expropriating the value of an asset of an investor and that can be taken before the domestic courts, then it can be taken before the domestic courts, so it is consistent with the domestic law.

Mr ADAMS—That is right; the domestic law is not the problem. They have access to a domestic law and we would have access to a domestic law.

Mr Deady—Exactly. It is a good question and that is why we do have them in these various agreements that we have. They are traditionally between a developed country and a developing country. The developing countries agree to this commitment normally because it encourages foreign investment and it gives greater certainty to that foreign investor. I think that is why we do feel that, where the rule of law is such as it is between Australia and the US, you do not need that additional mechanism.

Mr ADAMS—It also gives enormous power to corporations that invest in developing countries. It is a very powerful thing for a corporation to have.

Mr Deady—It is important but, as I say, it is really an additional procedural right. It does not add any great additional rights as such; it is a procedure where they can go to an independent arbitrator rather than to the domestic court.

Mr ADAMS—I find that a bit objectionable for developing countries to have to sign up to. Anyway—we have not got one. Thank you for that.

Mr WILKIE—In relation to services, the government is saying that you are going to be opening up the US market to lawyers, architects et cetera, but don't they already have access there now? About the only service area that we are prohibited from participating in is doctors' professional services.

Mr Deady—I think it is fair to say that both Australia and the United States are open markets in the services area. There is a not huge amount of access constraint. There certainly are a number of issues in relation to the recognition of professional qualifications and various things that are still an additional burden to Australian professional service providers operating in United States. That is something that we built that into the agreement: to try and address those over time. Greater recognition of Australian education qualifications will also provide potentially significant gains for education services in the United States.

The other aspect of the market access side of services is the nondiscrimination and the national treatment. Under this agreement, once you are operating in the US the US federal and state governments cannot introduce measures which would be biased or discriminate against a US service provider compared to an Australian service provider. That is the national treatment commitment, and it is fair to say that it is very significant in this agreement. It is an extensive commitment. Laws cannot be introduced to discriminate against the service provider, and I think that is significant.

Mr WILKIE—You mentioned the recognition of qualifications. Other than in the medical area, what fields are you talking about?

Dr Churche—What we have in this FTA is something that goes beyond what the United States has done in any other FTA. We have a framework to allow for and encourage mutual recognition of each other's professional qualifications and experience, and we also have a working group. That is quite a novel thing, which has not been in any of the other FTAs the United States has done. It covers the whole waterfront—any professional service which requires some sort of registration or licensing procedure. One of the points I would emphasise is: the regulation of services in the United States, particularly for professional services, is done at a state level. Each of the 50 state governments has their own licensing bodies and so on; each of them actually has their own procedures, often with different paperwork and different requirements.

When you look at these areas in Australia—particularly in the last decade—we have moved towards national markets and mutual recognition. There has been much less of that type of movement in the United States. There really is an imbalance at the moment. If a US professional

wants to be recognised in Australia, they get recognition in one jurisdiction and then they will probably be able to follow through and practice, whatever the particular area is—teaching, engineering, accountancy, law—and be able to move throughout the country. That is not the case for Australian professionals wanting to go into the US. If they get recognition in one state, but they want to move to another state, then they have to go through the paperwork and the procedures again to get recognition again.

This working group provides both an opportunity to take up particular concerns and issues for whatever those professions are and to look at this whole issue of licensing procedures. It aims to try and improve not only recognition of qualifications and experience but also the whole way in which those licensing procedures work—perhaps even to simplify it. So, even though you might still have 50 licensing bodies, hopefully they will have the same paperwork requirements. They are actually quite important things, particularly if you are talking about a small accountancy firm or a small to medium sized legal firm; going through all that paperwork for each of those 50 states can be quite an important transaction cost for them.

Moving this agenda forward can be quite important, because these are the real barriers. As has already been discussed, both the United States and Australia have fairly liberal markets in relation to services trade. The big obstacles in those domestic regulations—which are not necessarily designed to keep foreigners out—are in the bureaucracy, especially in the United States, where you have 50 states and they are the ones who are regulating most of these services. You have regulatory barriers just from the nature of the 50 different states with 50 different requirements. The whole waterfront of our professions could benefit from this type of working group.

Mr ADAMS—Can a barrister go from one state to another in the United States?

Dr Churche—If it is a profession which requires some sort of licensing certification procedure, there really is very little in the way of mutual recognition. You really have to go through a separate procedure; there is very little talking. To us this is quite an exciting opportunity, and that is why I emphasise that this has been in no other FTA the United States has done. In our preparatory work on the FTA, professions told us that this was a key issue for them. We looked at the history in terms of NAFTA, the North America Free Trade Agreement. You have a framework there to encourage mutual recognition but the history is that it has actually been very mixed—and, frankly, probably very disappointing for the Canadians and also for US service providers. It really has not produced much movement.

That is why we came up with this idea. We are very happy with the outcome. We actually have something here which we think can actually give some sort of high level focus and move this agenda forward. One of the things which we have been saying to professional bodies and industry bodies is that they need to be getting out there to talk to their US counterparts. If this is really going to happen we need some movement on the US side. It is actually quite a unique opportunity for US industry, which recognises this. But it is a real problem—particularly when you have 50 states, all often rather jealous of their own particular responsibilities—trying to actually move forward with reform. We think there is a real opportunity here and that is the whole point of having the working group: to give that a focus.

CHAIR—Would an Australian medical graduate still be required to do the United States national medical licensing examination?

Dr Churche—That is the whole point of mutual recognition in all these areas—and in theory it is no different in a medical area, in a legal area, in accountancy or in whatever. There are a number of different elements. It differs a bit from profession to profession and perhaps from state to state. Obviously, there are going to be educational requirements. There may be some additional examinations which have to be done. There may be some experience requirements which you have to meet. You may have to go through some period of experience before you get full professional recognition. That varies a bit from state to state.

At one level, it might be educational qualifications or experience. So you might still have to go through some local examinations or get some experience. In some cases, that may not be the case and you may actually be able to get full recognition and someone who has been admitted as a doctor or a lawyer or whatever in Australia might be able to expect to be fully recognised in the US. But they are the sorts of the things I can talk about. You are not necessarily going to have the same outcome for every profession, because every profession has its particular unique characteristics.

CHAIR—So we do not really know. A law graduate will still have to do the bar exam in the United States.

Mr ADAMS—Of course.

CHAIR—Which is what they have to do now.

Dr Churche—There are a number of different aspects in regard to law. In terms of Australian lawyers wanting to go to the US or American lawyers wanting to come here, they are going to tend to be more interested in practising their home country law rather than the host country law or practising international law. That is where you can actually have much more streamlined processes. Law is a bit of a different thing in that you do not tend to have the same movement in terms of people wanting to go in and practise host country law.

Mr ADAMS—We did something with Singapore, didn't we?

Dr Churche—Singapore has a very restrictive approach to the whole thing and actually has quantitative limits on who can practise law. It also has restrictions on how legal firms can operate in terms of going into joint ventures. We did get some important movement there in terms of easing the access for Australian law firms into the Singapore market and also recognition of a number of Australian law degrees.

Mr ADAMS—So we broke that a bit, didn't we, in the Singapore agreement?

Dr Churche—It was certainly positive movement, and the US also made some positive movement in their parallel FTA with Singapore. It certainly did not go as far as we would have liked and they are issues which will tend to be pursued—

Mr ADAMS—But this issue is really about these professions tying themselves up and keeping others out, isn't it? That is going on here. It goes on in medicine in Australia; it goes on in law. In the United States, I understand the law stuff is pretty—

Dr Churche—To be fair here, and to emphasise, these are areas in which decades ago you did not have international trade. Even in Australia you really did not have that movement between New South Wales and Queensland and wherever. Each jurisdiction developed its own particular views on things, and not necessarily from a protectionist point of view: they just locally developed their own particular perspectives. The requirements are not necessarily right or wrong; they are just a fact. That is what the whole idea of mutual recognition is about: it is not saying we have to necessarily harmonise the requirements but saying that we recognise that a New South Wales lawyer can be just as good as a Queensland lawyer, even though they may have gone through some rather different requirements.

Mr ADAMS—But he has to get the bar tick.

Dr Churche—Yes.

Senator MARSHALL—I want to come back to the investor-state provisions. Are they different to the existing NAFTA arrangements?

Mr Deady—There are no investor-state provisions in the Australia-US free trade agreement.

Senator MARSHALL—I am sorry; I thought—

Mr Deady—No. I thought it might have confused everybody.

Senator MARSHALL—It did confuse me.

Mr Deady—We were having perhaps more a philosophical debate about the value or otherwise of these. But the bottom line is there is not an investor-state dispute mechanism in the Australia-US free trade agreement.

Senator MARSHALL—But there is a process?

Mr Deady—No. There is a government to government dispute settlement process. There is an article in the investment chapter. The reason it is not there is because both sides agreed that we do have a rule of law that operates effectively and that this additional investor-state dispute mechanism was not necessary between two highly developed countries with these legal systems.

What this language says is that if somehow those circumstances change—if in the future that is no longer the reality and somehow there has been a breakdown of the rule of law in either country—then the other party could come back and ask for the establishment of such a procedure. That is what we have agreed to. Obviously it is very difficult to foresee how those circumstances would change in the United States or Australia to such an extent that you would come back and want to institute such an investor state mechanism. It would require the agreement of both parties. The language certainly allows for the establishment of it if those conditions are met. Then you would have to agree on the procedures and you would be back to

exactly what the procedures are. I think that is an accurate reflection of what we have done in relation to investor state in this agreement, which is unique and reflecting that developed status of the agreement between the two countries.

Senator MARSHALL—I am glad I asked that so I did not go away thinking otherwise.

Mr Deady—It is part of Singapore and it is part of other agreements but it is not part of this.

Senator MARSHALL—Thank you.

Mr WILKIE—Dr Churche, with the existing arrangements in the US, if someone has a qualification in one state, would they have to apply for that recognition in another state?

Dr Churche—I would not like to generalise. It differs a bit from profession to profession—that is part of the reality that we are talking about. As I understand the case, some of the professional bodies have tried to move towards some sort of general standard which most of the states would adopt. My understanding is that the progress on that has been very limited. For most professions each state regulatory body or licensing body tends to have its own particular requirements. In practice when you look at each of those, there probably are a lot of commonalities, one would imagine—but they really have not spoken enough to each other and developed commonalities. That is the general situation. That is as much of a problem to US professionals who want to practice in more than one state as it is for foreigners.

CHAIR—About 10 years ago, before we had national competition policy, we had Hilmer, and that is what really led to the mutual recognition around the states. Is there any similar process going on in the United States?

Dr Churche—No. This is why we see this working party that we have here as being so important. That is really going to be the first process which, hopefully, will drive that. Certainly it has never been done before with the United States either through internal reform or through any of its trade agreements with other countries. That is one of the reasons we are very pleased with the outcome. It was a very hard fought battle to get it at the end of the day. Obviously we are going to have to see how the process works and what may come out of the process, but it is so important precisely to give some sort of focal point, some sort of catalyst, to engage that sort of debate.

Mr CIOBO—What will the interaction be with, for example, the new FSR licensing regime and how will that apply in terms of those mutual recognition aspects? Will there still be the requirement for FSR licensing to be met or will it simply be the case that if there is an equivalent US set that is complied with already that will be good enough?

Dr Churche—Financial services is rather different from the professional services working group, and it is another area which we see as one of the big outcomes from the negotiations. There will be a financial services committee set up under the financial services chapter of the agreement. We also have an agreement with the United States that that committee, as part of its mandate, will look at ways to further integrate the financial services sectors of the two countries. That has not happened in any of the other FTAs, even though all the other FTAs the United States has done provide for the establishment for a financial services committee. We have a

broader mandate for the work of our committee than any of those other FTAs. We also have an agreement with the United States that that committee will undertake a work program, particularly looking at the whole issue of cross-border trade and securities and ways to reduce unnecessary regulatory duplication. The committee has to report within two years on its progress in advancing that work program. The FTAs in no way are prescriptive on what recognition or initiatives might come out of that process to try to reduce unnecessary regulatory duplication. But the very fact is that we have got that on the agenda.

We have also identified two key issues which are a priority to us. One is about access for financial markets, particularly, say, the Australian Stock Exchange, to be able to put screens in the US; and the other is for mutual funds to be able to offer interest in each other's country without going through all the regulatory requirements. The financial services sector is clearly an area which is heavily regulated. That is the reality. Even though both Australia and the US do have quite liberal arrangements in terms of access to the financial services markets, there is a lot of regulation there, particularly for prudential reasons. This working group will provide an opportunity to have a look at some of that and say that, because we are both countries which have very strong regulatory arrangements in this area, there is some unnecessary regulatory duplication and we should not require a financial services provider which is fully regulated in Australia as its home market to then have to go through all these regulatory hoops in the US which are different just because it is a different jurisdiction. It is not saying that their requirements are necessarily any better or any worse but just different because for historical reasons that is how they have grown up in their market. We are looking for a situation where there is essentially some sort of regulatory relief. It might not be full mutual recognition in which you say that, because a particular Australian service provider is fully regulated here, they can operate without meeting any of the US regulatory requirements, but it might relieve them of some of those regulatory requirements.

Mr CIOBO—The status quo applies until such time as that committee makes recommendations.

Dr Churche—Yes. There is nothing in the agreement which in any way would undermine our prudential and other regulatory requirements.

Mr CIOBO—What about the opportunity for financial planners, accountants or whatever to provide product advice? Would it continue the same as it is now with, for example, a financial planner providing investment advice on US investments et cetera?

Dr Churche—There is nothing there at the moment which should require any changes to any of those situations and our requirements. Some of those issues are partly in the general services area and things like the professional services working group, some of them fall into the financial services area and its particular work program of regulatory cooperation.

CHAIR—As there are no further questions on services and investment, I thank you very much for the information. We will move on to intellectual property. Would someone like to make a brief statement on intellectual property before we commence questions on this section?

Mr Deady—This is a very complex chapter on intellectual property—reflected probably by the large number of the team here. Again, there were very tough negotiations with the United

States—negotiations that reflected very much that both Australia and the United States have very strong intellectual property regimes to begin with, and that is reflected in the agreement. Many of the commitments that we have entered into here restate the significant agreements that we have already agreed to multilaterally. There are some additional commitments that Australia has entered into here as part of the negotiations. In this area, it is very important to strike a balance between the legitimate rights of IP holders, consumers and others. That is something that we were very mindful of through the negotiations. It does reflect that we do have a very vigorous regime in IP protection now and much of that is reflected in the outcome.

It also reflects that, while both regimes are very strong, there are nonetheless some significant differences in the detail. The outcomes here provide Australia, where there are some changes necessary, with some commitments that we have made, particularly in relation to the extension of copyright term. That is the most obvious one where there are clearly changes. Also, there is built-in flexibility in some of the other areas. There is an ability for Australia, perhaps over some transition periods in some cases, to provide exceptions and to reflect that balance that we believe needs to be maintained in this area. Here, certainly, the experts are the ones that should deal with your questions.

CHAIR—We are pleased to have Geoffrey Binns who has joined the committee as a consultant from the department as well. Both Mr Adams and I have to catch a plane. I will leave the committee in the very capable hands of the Acting Chair. Mr Adams will ask the first questions.

Mr ADAMS—What is the amendment to the Agricultural and Veterinary Chemicals Act for? Is it to do with the test data and maintaining records?

Ms Harmer—It relates to the protection of test data that is submitted when an application for approval of a new agricultural chemical product is made. The obligation requires us to provide at least 10 years of protection where an application is made for both a new agricultural product and certain new uses. The change is consistent with the scheme that the department of agriculture has been working on for some time which is the eight plus one plus one plus one scheme, which you may be familiar with.

Mr ADAMS—Roughly. What does the amendment mean—from where we are now to where we are going?

Ms Harmer—Currently we have five years of protection. The scheme that the department of agriculture is looking at is a base period of eight years and then possible additional exceptions of one year from that depending on certain new uses being associated with the chemical product.

Mr ADAMS—My other question was about the Wine and Brandy Corporation's geographical indicators and trademarks. What is that change?

Ms Harmer—That change is to codify the geographical indications committee's current practice which is to take account of pre-existing trademark rights when they make determinations about the protection of a geographical indication. It is basically to protect those pre-existing trademarks where they exist.

Mr ADAMS—The pre-existing trademarks of the geographic areas of Australia?

Ms Harmer—Yes.

Mr MARTYN EVANS—It would be helpful if you were to give us a brief overview of exactly what has occurred or what is proposed in harmonising our broad IP law with that of the United States because I think that is the fundamental outcome here. If you were to do that first then we could proceed.

Ms Harmer—As Mr Deady said at the beginning, a large number of the obligations in the agreement reflect Australia's current regime particularly with respect to things like trademarks, patents, domain names and, to some extent, enforcement as well. The areas where we are expecting to make legislative change, which would bring us more into line with the US, are the two areas that we have just discussed: ag vet chemicals and geographical indications in some minor respects.

Also a pharmaceutical issue was discussed in the PBS discussion about notification in relation to patents and marketing approval. There is a minor change we are expecting to make to the Patents Act relating to the grounds for revocation. The bulk of the changes we expect we will need to make relate to copyright—some to enforcement—and largely to digital agenda and related copyright issues. We have agreed to implement the WIPO Internet treaties by the entering into force of the agreement. We made a commitment to do that within four years in the Singapore FTA, in any event. That is one legislative change that will need to be made. We have agreed to put in place an expeditious process for dealing with allegations of infringing online material on the Internet to do with the issue of ISP liability.

We have agreed to place some tighter controls on people who attempt to circumvent or bypass security measures on copyright materials, so-called technological protection measures or anti-circumvention. We have agreed to increase the term of copyright protection to be more in line with that of the United States—up to 70 years—and we have also agreed to widen the offence provisions in the Copyright Act. So it is strengthening enforcement. One area is where people are decoding satellite signals and the other one relates to significant and wilful copyright infringement. That gives you a broad overview, but certainly the bulk of those changes are in the copyright area.

Mr MARTYN EVANS—The most significant one, apart from changes regarding those who seek to defeat anti-infringement measures, is really the extension to the 70 years, isn't it? That is the most significant change.

Mr Fox—It is possibly hard to characterise the changes. Certainly the implementation of term extension—and we will be undertaking an extension of 20 years over the existing terms that apply to works, films and sound recordings—does involve an increase in those which, to the extent that that extra 20 years has an economic value, will be of significance. The other changes in terms of digital amendments with regard to Internet liability and technological protection may also be quite important. It is perhaps hard to give a relative weighting to the changes but they certainly have some significance.

Mr MARTYN EVANS—I would like to take those in turn. The extension of the copyright period to 70 years does, I suppose, have some economic value in as much as the purpose of copyright is to protect something which someone invents, as for a patent, but the idea being that, once you have had a substantial period of economic rent, you are then expected to place your invention in the public domain. So, in exchange for your exclusive economic rent, you are then able to donate that to the public domain for free. In the past your ability to extract economic rent on an exclusive monopoly basis was relatively limited. In the last 30 to 50 years your ability to extract economic rent from copyrighted materials has grown exponentially. There are now television, radio, films, videos, DVDs, the cinema, the invention of the mass market and consumers with substantial disposable income, and it would have to be said that, for the first time in history, the ability for artists to extract economic rent from the public has grown absolutely massively. That we should now extend copyright at this point 20 years forward rather than taking 20 years off it is rather extraordinary. The argument really ought to be that we should take 20 years off the 50 years, not add 20 years onto it, because an artist's ability to extract economic rent has grown massively in recent years. Was any view put the United States to that effect?

Mr Fox—There was a considerable discussion on this issue and on the relative merits of term extension. There have been debates both within the negotiation and more generally about the virtues, or lack of virtues, of the current term and of the extension or reduction of the current term. I can only say that that seems to be quite a vigorous debate in academic circles and there does not appear to be any overwhelming view one way or the other.

Mr MARTYN EVANS—It probably was not an issue we really pursued that significantly.

Mr Deady—This was another issue that was debated right through the process and right to the end of the negotiations. The Americans made the point that they had the 70 years now but that so did the European Union. The majority of the developed economies have that length of time. Japan has that for films and audio but not so much for written works yet. There was that debate and there is a debate internally in Australia. The creative industry is talking about the audiovisual sector. From our meeting of the week before last, I think they do welcome this outcome; they do see this as an advantage for the creative industries in Australia. Those creative industries are growing more quickly than GDP is. We have looked at some of the numbers. Exports of the work of creative industries are growing more quickly than overall exports. On balance, I think there is a question here, but in the end we made that concession in this area of the negotiations as part of the overall package.

Mr MARTYN EVANS—Still, there are 300 million consumers in both countries.

Mr Deady—Yes.

Mr MARTYN EVANS—The United States could have harmonised on 50 years.

Mr Deady—IP was one area where the US were very much the demanders. As we have said, we both have very open regimes.

Mr MARTYN EVANS—Indeed.

Mr Deady—I think you are right—the issue is the balance between the rights holders and the consumers. We were mindful throughout the process of ensuring that balance was struck.

Mr MARTYN EVANS—I think intellectual property should be vigorously protected and infringers should be vigorously prosecuted. The issue is not the protection of intellectual property. I strongly agree with the United States about that. How long it should be protected from consumers is the issue, not the protection of it.

Mr Deady—I think it is a very good debate. Your points are well taken. The other side of the argument I have heard—and in a way this plays against the extension, as you say—is that, because technology is moving so quickly and invention is moving so quickly, the value of the extension is not very great. Again, you could argue that both ways.

Mr MARTYN EVANS—Can you slip us through the purpose and the impact of the Internet liability clauses thing?

Mr Fox—In essence, it is a scheme to provide a greater measure of certainty for Internet service providers in return for some assistance to rights owners in policing the potential for infringement on the Net. The scheme itself essentially tries to balance the respective interests of the Internet service provider industry and those of rights owners by reference to a set of immunities that an Internet service provider can take advantage of if they comply with certain conditions. Essentially, those comprise four areas of coverage. To summarise those four areas, they are routing, caching, storage and linking.

In respect of each of those, the Internet service provider has certain obligations to meet in order to take advantage of the limitations on the remedies that might be available to it, if it were guilty of some kind of involvement of copyright infringement. In Australia that possibility arises in terms of its indirect liability through a notion in the Copyright Act called 'authorisation'. In essence, that relies on an idea that a person may be guilty where they countenance, sanction or approve another person actually engaging in infringement and they have a sufficient relationship with that person or with the rights owner to have a responsibility to take some positive action to ensure either that the sanctioning or countenancing is somehow removed or that they take action to remove the possibility of that infringement occurring.

The remedies that they have limited against them in this scheme follow in a broad sense a scheme devised as a result of a negotiated outcome between ISPs and rights owners in the United States and then incorporated into legislation in the US in 1998. Those remedies where they are limited are damages from both copyright infringement and the subscriber whose material they may have removed or disabled access to, and a limitation on the other injunctive style of remedies that are available potentially against them.

The quid pro quo for this limitation of their liability or their potential liability is that, in the case of storage and linking, where they receive a notice from a rights owner or a person asserting a right in material, they are then required to expeditiously remove that material or disable its access. Should they do that and comply with the other conditions—which are probably too numerous to mention, unless you wish me to—they obtain this immunity. At the same time, they must notify the subscriber. Indeed, the scheme itself provides for expeditious removal and at the same time for the person whose material is the subject of that notice to have that claim of

infringement forwarded to them and for them to be able to counterclaim that they are in fact not infringing. Should that counterclaim be made, there is no obligation to remove the material. If it has been removed, then it can be restored to access on the Internet that the ISP is maintaining.

That is the essential structure of the scheme. The further aspect of that scheme provides for the government to provide that information about the subscriber who is alleged to have infringed should be expeditiously available to a person who claims an infringement via either a judicial or an administrative process. That provides for a situation where, for example, a rights owner wishes to take legal action against a person who is operating on the Internet but they cannot ascertain who they are in order to be able to take those legal proceedings. That is what that aspect of the scheme is intended to cover. That is the broad nature of the scheme. I will stop there but if you wish me to go on, I can.

Mr MARTYN EVANS—That is fine. It just seems incredibly detailed for the US to require all of that through a free trade agreement. While I do not dispute the reasonableness of them requiring a fair pursuit of copyright infringement—and Australia does that reasonably well anyway—this seems an extraordinary level of detail to go to in a free trade agreement.

Mr Cordina—I think one of the things which we were looking to get out of this was a certain level of clarity in those procedures, whilst at the same time having flexibility in the way we implement some of those elements so that we could include procedural fairness and balances. You can also take into account ISP concerns and any concerns of subscribers, to allow them to have the opportunity, if appropriate, to provide counter-notification.

Mr MARTYN EVANS—Many of those issues are still being litigated in the US Supreme Court. Many of those kinds of principles are still being debated in the US Supreme Court. For example, the requirement on ISPs to notify the name of a subscriber is still being debated in the US Supreme Court—and yet they are requiring us to put this in a free trade agreement.

Ms Harmer—It is important to emphasise that although the ISP liability text looks detailed—I know it runs to several pages in the agreement—it is not the US system word for word. It does provide a set of rules and a framework but, as Simon said, it also allows us flexibility. To some extent I think our implementation will be informed by some of the issues that the US have encountered domestically. We do not necessarily have to do it exactly the way that they do it.

ACTING CHAIR (Mr Wilkie)—What about penalties? If people are in breach, should we try to harmonise penalties as well?

Mr Fox—There is no specific obligation to have penalties at any particular level other than to provide deterrents. Certainly, if one looks at the penalties that we do have under the Copyright Act, they are substantial already. There was to my knowledge no complaint about the level of the penalties in the act. There have of course been various expressions of concern by industry about the extent to which those penalties are applied, but that is a separate question.

ACTING CHAIR—Is it true the US wants criminal prosecution for people downloading information illegally off the Net?

Mr Fox—The provisions for the criminal sanctions are for significant, wilful infringements done essentially for profit. I think the specific language is 'wilful infringements done for commercial advantage or financial gain'. There is some work for us to do, because that is not quite the language we use in our criminal sanctions presently. There is some work for us to do in translating that into the language which is more familiar to our criminal system. To the extent that somebody is engaging in significant infringements, they will be subject to potential criminal liability. To the extent that they are doing something for profit, they will also be subject to criminal sanctions.

Mr Cordina—I think the main thing to note is that the focus of the criminal elements of the agreement is on wilful and significant activity which has a commercial element.

Mr Deady—I stand to be corrected by the experts, but a lot of the objectives of the United States in this area certainly were to get an agreement from Australia to essentially what is a template that they see as being very important in terms of what that means for intellectual property around the world. So the task very much of Ms Harmer and colleagues here was to, within that template, negotiate an outcome that would still provide sufficient flexibility for Australia's regime to fit under. These exceptions, the flexibility and the importance of these words were toughly negotiated. We do have the flexibility to implement these things in a way that reflects our circumstances. That is very much what we have tried to craft in this. I think that is what we have achieved as part of this language. Even going to footnotes and various side letters in aspects of this chapter, there is this recognition that it is not the Australian regime that they were targeting as such; it was a matter of squeezing our very efficient and very effective regime into what they see as a very important template for other countries. I think that is what a lot of it was about.

ACTING CHAIR—There being no further questions on that topic, we will now turn to ROOs and manufacturing. Would anyone like to make an opening statement?

Mr Deady—The manufacturing outcome is a very large part of the deal. I think 97 per cent of tariff lines will be zero on entry into force of the agreement. It is an area again where we are talking about two developed countries with quite open trade regimes really—the average tariff for the United States is 2.8 per cent and the average tariff for Australia is 3.8 per cent. So there are tariff cuts there. The openness of the market I think was there before we started. There are some significant differences, though, in the structure of the tariff regime in the United States compared to Australia's. The maximum tariff in Australia effectively now is five per cent, apart from passenger motor vehicles and textile, clothing and footwear. The United States, though, still has a number of tariff peaks well above that five per cent level and well above its average of 2.8 per cent. Some of them are certainly in significant areas of trade importance to Australia. We have flagged a few—and I think they are well known now: the 25 per cent tariff on light commercial vehicles that impacts on exports of Australian utes, the 35 per cent tariffs on canned tuna and the eight, 10 and 12 per cent tariffs on various metals and minerals. Those sorts of tariff levels certainly do impact directly on Australian exports. Canada, for example, is a major competitor in metals and minerals, so again we are restoring our competitive position relative to Canada.

On the manufacturing side, we have basically gone to duty-free access on manufactures across the board. The only exceptions to that are passenger motor vehicles, where we have a five-year

phase-out of what will be a 10 per cent tariff from 1 January 2005. In the textiles and clothing area there is effectively a 10-year phase-out of most Australian tariffs on textiles, clothing and footwear. That reflects the other side of this little agenda item: the rules of origin. We were unable to get a satisfactory outcome on the rules of origin on textiles—the one area where the US rules of origin are very protectionist—and on that basis we were prepared only to negotiate away the tariffs on textiles and clothing over a 10-year period. It is a very big outcome on manufacturing for both countries. The United States certainly see this as one of the big gains that they got from the negotiations. They run a large manufacturing trade surplus with us, and they see this as a substantial outcome. But many of those tariffs are already zero in Australia, or no more than five per cent. Many of them are three or four per cent, basically revenue duties rather than protective tariffs. Often there is no manufacturing of those products in Australia.

The rules of origin under this agreement are very different to what Australian industry is used to in a preferential agreement and certainly different to those in our agreements with New Zealand and Singapore, where we have essentially a 50 per cent final stage of processing value added concept. The objectives of the rules are much the same, though: to ensure sufficient substantial transformation of the product in either Australia or the United States to qualify for the preference. The US does it a different way. The basic way is a change of tariff classification. If an imported product in one tariff classification gets exported in a different classification, then it passes the rules of origin. We spent a lot of time explaining that to Australian industry throughout last year, and I think there is strong support and acknowledgement within Australian industry that that is in fact an easier way to monitor the rules of origin and ensure that they are met. The complication there is that the US system is a bit of a hybrid. They still have some value added elements, some product lines which are still subject to value added elements and where bookkeeping is still required—but that bookkeeping is familiar to Australian industry through the processes of New Zealand and Singapore. This is broadly the picture. It is a very big deal on manufactured exports in both directions.

ACTING CHAIR—I notice that there is no detailed discussion on the yarn forward rule. That rule requires textiles and clothing to use Australian made yarn, which we produce very little of, so it is not very good for us. Surely that has to be an important issue with regard to textiles manufacturing?

Mr Deady—I think that is right. It certainly was an area where we pushed very hard in the negotiations. In our consultations with the Australian textiles industry last year, the textiles and clothing industry were prepared to do a big deal on tariffs. In fact, they were prepared to go to zero on entering into force if they could get a sufficiently good deal from the United States. They do not see the US as a huge competitor in textiles. I think that is reflected both in the level of existing trade and in the cost structures of the two industries. So Australian industry was prepared to move to zero and to do so very quickly if the Americans were prepared to address their concerns.

As you have said, those concerns were in the rules of origin area. It was not an access issue as such; it is just that the nature of the US rules of origin on textiles is the yarn forward or fibre forward rule whereby the yarn or fibre would have to originate from either the United States or Australia to qualify for the preference. The structure of our industry is different. We do not produce the yarn ourselves, or we import it from countries in the region, so we would never meet the rule of origin; therefore, we would never meet the standard to qualify for the preference. As a

result of that, despite many attempts to modify the rule of origin—to identify particular products and sectors where we could, even within a limited range of products, have that rule of origin adjusted—that was something the Americans could not agree to. At the end of the day, as a result of that, we phased out our tariffs over a 10-year period. So the impact on the industry will be very minimal either way as a result of the deal. Some Australian products certainly will benefit from the preferences, but it is a limited range of products.

ACTING CHAIR—What non-trade barriers still exist on non-agricultural goods?

Mr Deady—There are no specific non-trade barriers. There are some exceptions, and Mr Moretta can talk about the specific exceptions to the treatment there. Probably the Jones Act—the fast ferries—is one of them. There is still a prohibition on imports into the United States of boats and ships for intercoastal shipping. That has not changed, so I would have certainly a reservation in relation to the import of fast ferries, which would clearly impact on the industries in Tasmania and Western Australia. Despite our efforts there, there is no change to the arrangements that apply under the Jones Act. Mr Moretta might know if there are any other exceptions. There are a few specific exceptions, but I do not think they are terribly significant to Australia.

Mr Moretta—I think it is fair to say that the major problems in market access for Australian industry relate to standards, technical regulations and conformity assessment procedures and the requirement to meet all those in a very complex market like the United States. There was a separate chapter negotiated to specifically deal with those types of non-tariff barriers, which can impede market access.

ACTING CHAIR—Reading through the national interest analysis the other day, I was looking at 'trading goods' on page 5. It says that the US will remove tariffs on over 90 per cent of non-agricultural tariff lines. It talks about some of them. One of them was ball and roller bearings. Do we manufacture those in Australia any more?

Mr Moretta—There is some limited production in some of these lines. The reason the United States needed to phase on these particular lines is that they are very sensitive to domestic production in the United States. Australia is not necessarily the problem vis-a-vis importation. The problem is countries like China, where the cost of manufacturing is so low. The United States fear the threat of transshipment through countries like Australia or that we are going to import those sorts of products and consume them in products that we elaborate and manufacture and gain preference into the United States market. There is negligible trade in these items for Australia. These are sensitive, but mainly for countries like China—particularly china and glassware.

Mr Deady—On that point, there are a number of so-called sensitive imports into the United States which do have longer phasings. I think your point is that we do not even produce them in Australia. The answer is that it was not worth spending too much negotiating effort on those sorts of products which we know are sensitive in the congress and would have complicated the overall passage of the agreement with nothing for Australia. That is why some of those are phased out. The priorities identified by Australian industry for access into the United States were, I think, all addressed in the negotiations. Again, Mr Moretta could comment on the detail; but, very largely, most of those would have been achieved through immediate elimination or the

shorter time frames of the four-year baskets. Regarding the big-ticket items like fish products—I mentioned canned tuna—they told me in Darwin last week that they are now exporting some barramundi to Florida. No doubt those are small amounts, but they are all subject to quite substantial tariffs. All fish products go to zero on day one; all chemicals go to zero on day one, apart from the one tariff line that Mr Moretta mentioned. That, I think, is the deal on manufactures, but we did not spend too long complaining about some of the products that were sensitive to the United States but unimportant to us.

ACTING CHAIR—Isn't the 'yarn forward rule' a protectionist measure?

Mr Deady—I disagree with that. Agriculture—or at least parts of it—and textiles are the most protected sectors. With textiles, again there are sensitivities—not over Australia—but nonetheless they were very reluctant to change the rules of origin for Australia, and they stuck to that measure. It does make some sense with some of the FTAs that they have with countries in their own region, but it makes no sense for Australian industry right across the Pacific. That is why what we were prepared to do on textiles was scaled down to a significant extent as well—but not because of a protectionist concern of Australian industry.

Mr Moretta—I think it is also fair to say that there is even more of a protectionist sentiment running through the textile producers in the United States at the moment, not only in the context of FTAs—and certainly Australia does not pose very much of a threat—but also because of the looming 1 January 2005 deadline when all quantitative restrictions must be removed by the United States on imports from developing countries. So the producers in the United States are running a bit scared about the changing global complexion of textiles trade.

Mr CIOBO—Could you explain the interaction between the operation of the FTA and Australian standards? To elaborate on that I will use a grassroots example. A local furniture manufacturer of mine has to comply in terms of the foam it uses in its furniture; that foam has to comply with environmental standards that are imposed in Australia et cetera. How will that work under the FTA? Will those same safeguards continue to apply?

Mr Moretta—The United States has a very complicated standards regime. Certainly Australia has and Australia presents a much more uniform market such that a saleable good in one state is a saleable good in another state by virtue of the mutual recognition arrangements that are in place. The United States market is much more complicated because they have standards and technical regulations. Standards are normally voluntary but technical regulations that need to be met are mandatory—and they operate quite often at the federal and the subfederal level; sometimes they even go down to the city and the county level. Then there are those that are developed by private bodies as well as government bodies. So it is a very complex market to work in.

We have pursued with the United States an agreement that positive consideration will be given by both parties to regarding each other's technical regulations as equivalent if they meet the same objectives even though they are different. That was the most favourable way to proceed. We also pursued the concept of equivalence with respect to conformity assessment procedures, because a lot of our manufacturers were complaining that once they had a product tested for this market it was not entering into the US market unless it was tested all over again, and these duplicative testing procedures can inflate the costs associated with getting product to market. So

again we pursued with the United States the concept of regarding as equivalent conformity assessment procedures and avoiding those duplicative tests.

We also pursued very heavily with the United States the whole idea of mutual recognition arrangements. We did not necessarily specify to them that we had to have mutual recognition arrangements across all sectors of the economy, because they would never have agreed to that. The United States will only contemplate mutual recognition arrangements for nominated sectors or very narrowly described product ranges. They tried to do an MRA negotiation with the EU and that did not go terribly well. Our exporters have taken at least some comfort from the fact that the United States will agree to mutual recognition arrangements in a particular sector, as they have just agreed to one with the EU on maritime products. So if practitioners, such as foam mattress producers, desire a mutual recognition arrangement and they want to get a mutual recognition arrangement with similar counterparts in the United States, that is certainly a possibility under the agreement. But we have established a mechanism under this chapter which will facilitate both parties having an ability to draw market access problems to the attention of each other and to have those followed through hopefully with a viable solution enabling market access to go ahead as a result.

Mr CIOBO—How will that process work? Will a committee be established, or is that something that is ordinarily done departmentally?

Mr Moretta—No. This time we have established what we call a 'chapter coordinator' under this chapter. In the case of the United States it will be the US trade representative office, and in the case of Australia it will be the Department of Industry, Tourism and Resources. Basically, when stakeholders experience particular problems relating to standards and technical regulations et cetera in terms of market access, they can draw them to the attention of the chapter coordinator, whose role will be to facilitate—in conjunction with the US chapter coordinator—finding a viable solution to the problem. If that means putting practitioners in contact with practitioners or regulators in contact with regulators or standards developers in contact with standards developers, that is how it will work. We felt there was great utility in having such a mechanism, because it is very costly and very difficult for our industries to navigate their way through a very complex US market.

Mr CIOBO—But at the end of the day that is all driven on a reactive basis. So when someone has a problem they present themselves and it goes from there, rather than it being proactive: 'Let's deal with this sector then that sector and then that sector.'

Mr Moretta—There is nothing to stop Australia from using the chapter coordinator to try and facilitate in a proactive manner a sectoral solution. But in the first instance we know that will be problematic, and we want this mechanism to be viable and workable for industry.

Senator MARSHALL—The US have put a figure on increased manufactured goods exports into Australia of about $US2 billion dollars a year and they have specified some of the industries where they think that money will go. Do we have an understanding yet of the impact that will have on our manufacturing industry? Will it displace imports from other countries, or is it actually direct competition with our own manufacturing base?

Mr Deady—I think partly again that question will be answered in a macro sense through the modelling we talked about this morning, but part of the consultation process that we went through last year I think also informs that assessment of the impacts on Australian industry. You do have to look at, as I say, this various range of factors. Two-thirds of current imports from the United States are already duty-free and a further large proportion—I think we do have these numbers—would be subject to tariffs of three or four per cent, so they would be non-protective tariffs in Australia. The final category would be subject to the five per cent duty and then textiles impacts on that.

Senator MARSHALL—But it is an interesting point that the removal of such a small barrier can result in a $2 billion increase in exports.

Mr Deady—I have not seen the basis of those US numbers. I think Bob Zoellick used those numbers even at the first press conference on the Sunday morning in Washington immediately after the agreement. They do see it as a significant benefit to the US manufacturing industry because that is where, as I said, they do run a large trade surplus with us.

If however you are talking about trade diversion, again you have to reflect on what the MFN tariffs in Australia are. With the competitive pressures that much of Australian industry is facing, again in the conversations we had with much of Australian industry last year and in discussion that are continuing since negotiations have concluded, it is more China than, say, the United States. The example I can give is that, from day one of the agreement with the United States, the automotive parts or components sector have moved to zero in Australia, but they do not see the US as a huge competitive threat with components. Certainly a lot of that industry is shifting to China, and that is more an issue for the industry than the deal that has been done with the United States.

Colleagues here have been involved in the hotline. Many of the questions that come to the hotline are from importers, Australian industry, who use US capital equipment and US industrial supplies saying, 'Well, when do I get this lower tariff on my imports from the United States?' So Australian industry certainly sees some sectors of industry getting cost advantages from the negotiations or the reduction of tariffs in the United States.

Senator MARSHALL—Will the econometric study that is to be done look at the job impact in the manufacturing sector as well? Also, will it be done on a regional basis?

Mr Deady—Certainly we have asked that the study look at regional impacts, sectoral impacts and employment impacts. I think all three of those will be addressed.

Senator MARSHALL—Employment within regions and within sectors, or just overall?

Mr Deady—I think we complete the triangle. Mr Richardson has just said that perhaps on the sectoral level the detail on employment may not be that great, but we can take that on notice.

Senator MARSHALL—I think it is fairly important to have an understanding about that.

Mr Deady—We have certainly asked them to do the work. Again there is a limit and we ourselves are privy. Most of these models run on assumptions of full employment, and that is

something they just have to then reinject into the model to produce some numbers in these areas. Anyway, we have certainly asked them to do as much as they can on employment effects and impacts.

ACTING CHAIR—I understand that Toyota and Mitsubishi were very concerned about the outcomes and have even suggested that they may be forced offshore. Have you heard that?

Mr Deady—I have not heard that. We had a lot of conversations with all the companies in the car industry throughout last year. I think it is fair to say that the Japanese producers, Toyota and Mitsubishi, had some reservations about the pace at which Australian production should take place. Holden and Ford were much more ambitious in the outcomes that they were looking for from the negotiations, certainly with regard to tariffs in the United States and particularly the tariff on utes, which we spoke about. But in that area we did negotiate a five-year phase-out in the tariff for passenger motor vehicles, so that has certainly gone some way to accommodating the concerns of both Toyota and Mitsubishi. Again, I have not seen anything from them publicly since the negotiations concluded.

ACTING CHAIR—What about parts producers?

Mr Deady—I know Mr Moretta talked to a meeting of the Federation of Automotive Parts Manufacturers last week or the week before, so he could add to this. My conversations have been more with some of the individual manufacturers. That was certainly the response I got. They were prepared right through to do a big deal, a zero for zero deal. They did express a desire that they should be treated similarly to the overall manufacturers, the PMV producers themselves, but the reaction I have got since the outcome of the agreement is that they accept that they will go to zero on day one. As I said, they have not commented to me that this was seen as a huge negative. They do not see the US as the main competitor in that area. Component supply and other things are based on decisions from the headquarters in many cases, but there are also competitive pressures from China.

Mr Moretta—I had that meeting last week. There were no concerns expressed. As Mr Deady has said, I think that what they were looking for was at least parity treatment with the auto manufacturers. However the car manufacturers were going to be treated, they wanted to be treated the same way. I think that reflects in part the truly globally integrated nature of the auto and auto parts industry. They are already significant producers and exporters of parts to the United States market. Unlike some of the auto industries, they do not necessarily have to tool up for production to take advantage of a duty-free environment whereas some of the auto makers will.

Senator MARSHALL—It was one of our stated objectives to remove the barriers for Australian built fast ferries and other vessels. It appears we made no progress at all.

Mr Deady—No. We did not achieve any changes to the Jones act as a result of the negotiations. The one area of gain in the maritime area was repairs and maintenance. The Americans have a 50 per cent tariff which they impose on the repairs and maintenance of US boats repaired in overseas markets. That will be eliminated, so any repairs done to US boats in Australian facilities will not be subject to the 50 per cent tariff. That is certainly a gain. It is

linked but not directly related to the Jones act, but the key issue in the Jones act was access for fast ferries, particularly in Tasmania and Western Australia. Nothing has changed there.

We did have a lot of conversations with the industry last year also. They have set up joint ventures in the United States. They are now leasing some boats to the US military, so they have made some gains there. Whilst it would have been important and valuable to do something about the Jones act, we did press that. Dr Churche did that. The Jones act covers so many sectors, including both trade in goods and trade in services. We even pressed the Americans for some sort of ongoing consultative mechanism. We did think that would be valuable, at least in the area of the Jones act. We are the ones with good technology in this area. I must say that USTR did try. They went to Congress and to US industry to see if they could get some agreement in those areas, but in the end even that proved to be a bridge too far, so we have nothing there.

ACTING CHAIR—When did that position change? At one stage we were told that the Jones act was on the table and that the Americans were looking very favourably towards doing something with it.

Mr Deady—Certainly it was on the table right to the end. I can only say that very honestly. It was on the table right to the last day, when we were still trying different angles to get something out of it. I do not think the Americans ever said anything to us—or unfortunately not in my hearing—that gave us a great deal of comfort that they were moving on the Jones act in any way. I am not sure where the second part of your comment may have been sourced from.

ACTING CHAIR—Minister Vaile got up in question time in response to a question last year—I think it was in November—and said that there were important concessions being achieved. He actually named the Jones act. I cannot remember his exact words but he was implying that that was one area that they were going to change.

Mr Deady—I would have to see the quote. I really cannot comment beyond that.

ACTING CHAIR—I suppose that is why the question was: is it your understanding that, although it was on the table, the Americans had never really given us—

Mr Deady—The situation is that the sensitivities over the Jones act are certainly very substantial in the United States still. It is an act that goes way back into US history. It is a very difficult thing to move them on. There were aspects of the Jones act that we were pushing. The one aspect that I mentioned was the repairs and maintenance aspect. I would really have to see the reference.

ACTING CHAIR—It holds special significance to me because I was warned at the time for yelling at him that I thought he was off with the fairies if he thought they were ever going to change it. Going back to the yarn forward rule, obviously we opposed that in the negotiations.

Mr Deady—We opposed it, yes; very much so. We opposed it right through. When we got into cases from the US where they could not remove it entirely for Australia, we then looked at alternatives. We went back to Australian industry and said, 'Can we identify some specific priorities where we might have a softer rule of origin'—if that is the way to put it—'to remove or limit the yarn forward in some way for a particular subsection of our textiles trade?' We went

back at least three or four times with various combinations of that. In the end none of that proved doable on the United States side.

ACTING CHAIR—We will move on to government procurement. Would someone like to make an opening statement?

Mr Deady—I will make some comments again. I apologise to the committee members that our lead negotiator on government procurement, Mr Richard Bush, is away today on leave travelling interstate, but other colleagues were involved right through the negotiating process. Procurement is an important area of gain for Australia in the outcome. Australia is currently not a designated supplier to the United States. We are not a member of the government procurement agreement negotiated in Geneva, so Australian industry is unable to tender for US government contracts. Under the FTA we have negotiated a government procurement chapter which will remove that discrimination against Australia. We will have access to the government procurement market in the United States at the federal level and, allowing for some of the exceptions that are carved out from that procurement—including the big defence items, which are carved out on both sides—that would open up a $200 billion government procurement market in the United States that Australian industry will be able to tender for.

State government coverage here is an ongoing discussion that the United States are having with their own state governments and that we are having with state and territory governments in Australia, to bring on board, in the United States case, as many states as possible. Traditionally these government procurements cover 37 of the 50 states. We are still pressing them at the moment. Twenty-seven of the 37 states have signed up to the Australia agreement. We also have in principle agreement from the Australian state and territory governments to be part of the deal. That in principle agreement was provided before we concluded the negotiations in Washington. We are continuing to talk with the state governments to finalise that full coverage.

As I said, we are a designated supplier to the United States. We will no longer be subject to any discrimination under the Buy America Act as a result of the FTA. There are still exceptions that both countries can enter into. There are thresholds applying to certain levels of government procurement both at the federal and state level. The FTA covers all goods and services, apart from exclusions in certain areas, and I think it represents a very significant new access opportunity for Australian industry to sell to the United States. In some of the discussions we had last year there was anecdotal evidence of Australian industry having to establish in the United States or in third countries to access the US procurement market, and of Australian industry losing out in negotiations with the US government as a result of our non-recognition as a designated supplier.

Our own procurement arrangements also require some adjustments under the agreement. We will need to make some changes to the tendering processes of the federal government. As I said, state governments that sign up will also be subject to those disciplines. A state government representative was part of the Australian delegation throughout the negotiating process—perhaps not in the first round, but certainly in subsequent rounds—and he was a very useful member of the team. Adjustments to procurement at the state level will probably vary from state to state, but they do not believe that that will have a significant impact on them.

At the state government level in Australia there is still some work being done on the impact that the obligations under the government procurement agreement will have on their industry development programs. The obligations under the agreement will ban offset type programs, and some of the states have programs that do include those sorts of features. Again, there are exceptions to that. Support arrangements for small and medium sized enterprises are exempt from that obligation and also, certainly in the case of the Northern Territory and other states, there would be a three-year transition period during which they could bring any measures that they thought were inconsistent with the industry development parts of the chapter into conformity, but those discussions are still going on with the state and territory governments.

ACTING CHAIR—You mentioned defence exceptions: could you give us an outline of what sort of things you are talking about there?

Mr Deady—The major difference between the defence departments in both countries is the large capital equipment defence items—aircraft carriers, tanks et cetera. They are not covered by the disciplines of the government procurement chapter. I think there is a separate memorandum of understanding between the Australian Department of Defence and the US Department of Defense . There is a reference to that, as I understand, in the text. That is broadly the exception. The general day-to-day purchasing by the departments in both countries is covered, but the big capital items are excluded from the procurement chapter of the agreement.

ACTING CHAIR—I thought you were going to say that we were looking at buying an aircraft carrier for a minute there. The government is trumping up this access to the US procurement market as being a really big issue, but in effect all it does is give Australian companies no preferential access. Doesn't it just mean that we can compete for tenders, along with about 30 other countries that have the same status?

Mr Deady—It removes the discrimination against Australia supplying to the US government—that is right. It covers all goods and services. The preference, certainly in the goods area, is what we gained through the tariffs. If we are talking about providing goods that are subject to tariffs, then they are subject to the tariff preferences. But non-discriminatory treatment in that procurement market in the United States is opened to Australia.

ACTING CHAIR—Going back to the national interests analysis again, it is a bit light on in that regard. It does not talk about us only being one of about 30. And, really, it gives this idea that we would have preferential treatment when in actual fact we do not, do we?

Mr Deady—We do not have preferential treatment in procurement. We certainly do not have preferential treatment at the moment with our exclusion from being able to even sell to that market. We do not have preferential treatment under the procurement chapter, but I think we have preferential tariff access into the United States as a result of the free trade agreement. So as far as those other countries are concerned, and many of that 30 are mentioned, whilst they have access to the government procurement market in the United States they do not have tariff preference—they could pay the MFN tariffs on those products. So the direct answer to your question is, no; the government procurement chapter is not about preferential access to the United States procurement market. In this case, it is about non-discriminatory treatment for Australian industry in tendering to the US market. They cannot be treated any less favourably than the United States' suppliers or any of these other 30 countries that you mentioned.

ACTING CHAIR—I know you touched on this before, but I might not have the figures right. How many US states have agreed to allow Australian companies to tender for their procurement now?

Mr Deady—How many have signed on?

ACTING CHAIR—Yes.

Mr Deady—As of today, 27.

ACTING CHAIR—So 27 out of the 50?

Mr Deady—Yes, out of 50; but they have only ever had 37 sign on to any of the government procurement agreements in the WTO, including Geneva.

Ms Hewitt—We are still actively engaged with the states on this matter. Through our embassy in Washington and other contacts, our contact directly with the sub-federal level authorities in the United States is continuing. So we are very much hopeful that that number will build.

ACTING CHAIR—That was going to be one of my next questions: what attempts are we are undertaking?

Ms Hewitt—We are quite active. There is quite a lot going on.

Mr Deady—There is a lot of discussion with the embassy and the various states. The biggest and most important state that is not there is California. A particular emphasis is being placed on getting California to sign on.

ACTING CHAIR—Are they one of the 37?

Mr Deady—Yes. They normally sign on. As Ms Hewitt indicated, it is not that these 10 that are missing have said, 'We don't want to do it with Australia,' they have just not answered a letter that USTR wrote to them about signing on.

ACTING CHAIR—Was that $200 billion you were talking about if all 37 sign on?

Mr Deady—No, that is only federal government. So that would not include any of the state government purchasing. That is the federal government purchasing opportunity that has opened to Australia.

ACTING CHAIR—The US federal government?

Mr Deady—Yes, excluding the big defence items we talked about.

Senator MARSHALL—If the 37 states sign on do we know what the figures would be?

Mr Deady—Again, I am not sure. I know we are trying to do some more work on what precisely those numbers mean. I have asked the team to look at that and, as I say, Mr Bush is away.

Senator MARSHALL—Does it double it?

Mr Deady—With the states, I do not think it quite doubles it but, again, a lot of government purchasing in the United States is done at county level also. County level is not covered by the agreement, and local government purchasing is not covered in Australia by the agreement. The difference there—and I think this is important and it has already been pointed out to us—is that just being on the list as a designated supplier in the United States is of value. Even though the county governments are not covered by the disciplines of the agreement, the fact that Australia appears on a federal list will assist Australian exporters in selling, including to county-level governments. At the moment, they look at this list and see that Australia is not there. There is certainly some anecdotal evidence and evidence I have heard from trying to sell protective clothing and those sorts of things to fire brigades that we have lost opportunities because they do not see us on this list of designated suppliers. The overall market—federal, state and county—would be well and truly more than $200 billion, but we are still doing some number-crunching there.

Senator MARSHALL—The NIA indicates, and I have heard the claim made elsewhere, that the original modelling that was done did not include this area, but I have heard that disputed by other sources too. I am just wondering whether you can clarify that absolutely.

Mr Deady—We have gone back, checked and double-checked the CIE, and the original modelling does not include any estimate for access to develop the government procurement market.

ACTING CHAIR—Back to the $200 billion, obviously it opens the market up for that but, realistically, how much would we be in a position to possibly achieve? How long is a piece of string, I suppose.

Mr Deady—That is a very difficult question to answer. I am sure the US market overall is a tough market to crack, and the government procurement market will be a tough market for Australian industry to crack. But it is undeniably an additional access opportunity that we now have, and there is certainly evidence of Australian companies now that have had to get around that barrier to be able to sell to the US government. I really think this one does open up a whole new opportunity for us. It is the sort of area where I think there will be a need over time to examine more closely the requirements to sell to the US government. In the FTA task force with Austrade that Mr Vaile has talked about, government procurement is certainly highlighted there as an area where work needs to be done to identify what are still the hurdles, what are the opportunities and how Australian industry can access it. That is a big part of the overall gains over time. It is up to Australian industry to first understand the opportunities that have opened up and how Australian industry can go about achieving them. It is a big prize that is not there now, and the restriction and discrimination that we face at the moment change with the FTA.

ACTING CHAIR—As there are no further questions, I think we have got that one covered. Thank you very much. We will move on to the last item, which is additional issues. Are there any summing-up comments that the department would like to make?

Ms Hewitt—We will have more opportunities to appear before the committee, Mr Wilkie.

ACTING CHAIR—That is right.

Ms Hewitt—We are very open to responding to any inquiries that you might have as you begin to go through your work. I do not think at this stage I have anything to add.

Mr Deady—I suppose there were those questions earlier on labour and environment. I do not know if there is anything more you wanted there. Mr Sparkes certainly was the lead on all of that and could give a clearer explanation than I could.

Mr MARTYN EVANS—With regard to labour and environment, it says 'enforce our laws', but we have signed up to a range of ILO treaties and so on, some of which we have not enacted into domestic law. Is there any implication that treaties that we have signed but not enacted into domestic law have any status in that context?

Mr Sparkes—No. As Mr Deady made clear at the beginning in his brief treatment on the labour chapter, it is a strange animal in trade agreements. Mr Deady also mentioned the fact that labour and environment are both covered in the US Trade Promotion Authority Act, which provides the administration with a mandate which the Congress gives to it to go away and negotiate free trade agreements. The fact that there are these two chapters there does reflect a political compromise. However, another part of that compromise is that the only discipline is not to fail to enforce whatever laws you happen to have on your books. So there is no implication or requirement to do anything other than to enforce your own legislation. In other words, it is not a standards-setting requirement in either labour or environment.

Mr MARTYN EVANS—So treaties we have signed do not constitute laws for that purpose? Even though the High Court says that we have to take treaties into account for domestic law purposes, they do not constitute laws for that purpose; only laws that we have enacted are laws for that purpose?

Mr Sparkes—I am certainly not a lawyer. I can give you a non-lawyer's view.

Mr MARTYN EVANS—That is my concern: how far one—

Mr Sparkes—Perhaps my colleague Steven Bouwhuis, from the Attorney-General's Department—who, in a timely way, has joined us at the table; obviously he was concerned that I would give the wrong answer here—can help us with an interpretation.

Mr Bouwhuis—It would only be domestic laws. Treaties would not be laws under that definition. So it is only an obligation to enforce your own domestic laws.

Senator MARSHALL—But what about article 18.1, where it clearly indicates that our laws have to be consistent with International Labour Organisation principles and rights?

Mr Sparkes—Certainly article 18.1 reaffirms each party's obligations as members of the ILO and their intention to strive to ensure that the internationally recognised rights and principles, as defined in the chapter, are recognised and protected by domestic law. But the core obligation and the only obligation to which dispute settlement provisions apply is article 18.2.1(a), which provides that neither party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade between the parties. That is the only provision in this chapter which is subject to dispute settlement that is made explicit in the agreement.

Senator MARSHALL—So it is not subject to dispute settlement: it is just words; it has no meaning. There is no obligation upon us to apply the principles indicated in 18.1?

Mr Sparkes—Not in this free trade agreement, as I understand it. I certainly would not pretend that either of these chapters makes a great deal of sense between two developed, sophisticated countries like the United States and Australia. Perhaps by way of explanation, I think it gets back to the point that Mr Deady mentioned in the context of the intellectual property rights discussion—that is, the United States negotiators have a template which they must run over each of the trade agreements that they negotiate. Labour and environment chapters and these sorts of provisions are in that template. That is why we have these two chapters.

Senator MARSHALL—You indicated that these provisions were imposed upon us. Was that by the letter of intent by the congress?

Mr Sparkes—It is the legislation which provides to the administration the mandate to negotiate free trade agreements. As you know, the actual constitutional power for negotiating treaties lies with the congress not with the administration. They do a deal between the two—the administration has to negotiate the treaties but then has to get them brought back. Part of the deal is that they have to observe a specified mandate. That mandate is reflected in the Trade Promotion Authority Act.

Mr MARTYN EVANS—Can it give rise to any Australian domestic legal obligation? Even though it does not give rise to an action with the United States in the dispute settlement proceeding, it becomes part of a binding treaty which Australia may sign. Let us assume it does sign. It then becomes part of binding international law in Australia. There have been cases in the past where the High Court has given some weight to these things. There is now a provision in an international treaty which says we will give due weight to ILO conventions. What significance will the High Court be expected to place on that?

Mr Bouwhuis—There is a strong separation in Australian law between international law and domestic law. The fact that something is in an international treaty means it has no effect for the purposes of domestic law unless implemented by parliament into domestic law. There are occasions where the High Court will look to a treaty to interpret a domestic law provision and take that into account. But the fact that we signed a treaty as international law does not bring it into domestic law unless there is already something in domestic law or unless a law is passed by parliament.

Mr MARTYN EVANS—Implementing it?

Mr Bouwhuis—Yes.

Mr MARTYN EVANS—It will have no impact beyond that?

Mr Bouwhuis—Yes; that is correct.

Senator MARSHALL—If congress asks whether our domestic industrial laws comply with ILO standards and principles, what would we tell them or what might the ILO tell them? Surely they have put this in for a reason. They must want to know the answer. It cannot simply be words to make everybody happy, can it?

Mr Deady—Under the agreement I am not sure what the ILO would say about US labour laws in relation to ILO standards. As far as the obligations—

Senator MARSHALL—We may not ask—we did not ask for it to be in the agreement. They insisted that it went in, didn't they?

Mr Deady—Yes.

Senator MARSHALL—Obviously someone in the congress may ask—the person who might have insisted in the first place.

Mr Deady—Mr Sparkes could comment on this. As part of TPA, I think they did a review of Australian labour laws early in piece.

Mr Sparkes—There is a process of reviewing our labour laws. I think the answer to your question is that the Australian government's view is that we do comply with our ILO obligations.

Senator MARSHALL—I understand that is the government's view. But what if they ask the ILO—do you know what their view is? Have we asked them? I think they do not hold the same view.

Mr Sparkes—A colleague from the Department of Employment and Workplace Relations is here who is certainly more qualified than I am to respond to questions of ILO conformity. Ms Ffrench might be able to respond to you on that particular point.

ACTING CHAIR—Ms Ffrench, I do not think you have given evidence today, have you?

Ms Ffrench—No. Could you repeat that question, Senator Marshall?

Senator MARSHALL—If the ILO were asked whether our domestic labour laws comply with recognised labour principles as set out under ILO conventions, standards or principles, what would they say?

Ms Ffrench—The ILO committee of experts has certainly made observations on Australia's implementation of several ratified conventions. The Australian government has entered into ongoing dialogue with the committee of experts in an attempt to give them a better

understanding of how Australian law and practice work to ensure that there is compliance with our ILO obligations.

Senator MARSHALL—When is that likely to be finalised?

Ms Ffrench—It is ongoing. We only have to report on some conventions every two years. There is inevitably a considerable delay between developments.

Senator MARSHALL—The point that was made earlier was, once the treaty is ratified and has come into force, whether we do or do not comply is irrelevant because there is no remedy in the agreement to do that. So one would think that we would want an answer from the ILO prior to supporting ratification of the treaty. Is that the intention?

Mr Deady—I do not see how that follows, because there is no requirement in this chapter of the agreement for Australia to do anything other than enforce its own laws. It does not mean we have to change any law to give effect to any of the ILO fundamental principles or rights. Our obligation is to enforce our own laws. I really believe that that is not relevant.

Senator MARSHALL—But you note in point 1 that we are reaffirming our obligations to ILO commitments.

Mr Deady—Yes. We are striving to ensure labour principles are recognised and protected. We recognise the right of each party to establish its own labour standards. Article 2 goes on to say that. So these are, as it says, statements of shared commitments, but they are not obligations or commitments by Australia that are subject to enforcement under the dispute settlement procedures of the agreement, as Mr Sparkes has said. It specifically says that it recognises the right of each party to establish its own labour laws. Then it says that, whatever those labour laws are, you have to enforce them. That is what we have agreed to.

Senator MARSHALL—I will give this matter more thought, Mr Deady. Our stated objectives are in annex 2. Is there going to be a summary of what objectives we did meet, what objectives we partially met and what objectives we did not meet? I am just wondering whether the department might consider doing some sort of review so we can understand, in terms of what we set out to achieve, how far we got.

Ms Hewitt—I think in the evidence you have heard today already there has been a fair treatment of those issues. Obviously a couple of areas of the agriculture chapter were disappointing and we clearly did not get as far as we had hoped. I think we have gone through that in a descriptive sense. I am not sure that we had in mind doing anything more elaborate than that, but we are ready to respond to questions.

Senator MARSHALL—For example, the NIA says we:

> Seek the elimination or reduction of United States agricultural subsidies that affect Australian exports to the United States or to third country markets, as well as agreement for the United States not to subsidise exports of agricultural products to Australia.

Did we meet that at all?

Ms Hewitt—Yes, there is a commitment related to the use of export subsidies on agricultural products in one another's markets. We have undertaken a sort of 'best endeavours' approach about working in the WTO as well.

Senator MARSHALL—How would you say that we have complied with that objective? Have we fully met it? Have we partially met it?

Ms Hewitt—Very much partially.

Senator MARSHALL—That is the sort of information that I would be interested in, so we can measure it against the stated objectives set at the beginning and we can make some comparison on how far we went. I understood we wanted the hamburger with the lot, and I want to know whether we got the cheeseburger or the bun or the pickle.

Ms Hewitt—We will take note of the request.

ACTING CHAIR—I suppose we can follow on from that: not the filet mignon. Industry sources have made comments to me that, given that protection measures such as the yarn forward rule are still in place, there are ongoing applications of a lot of tariffs, there is non-access to certain markets, the Jones Act is still in, there is the absence of sugar and there is a substandard deal on beef, although we managed to achieve a significant trade deal, we in fact did not really achieve a free trade deal. What are your thoughts on those comments?

Ms Hewitt—I have had the same comment put to me by a couple of industry sources. Indeed, one of the agriculture representatives at a recent consultation we held said that they acknowledged that the final outcome was all on the upside from Australia's point of view, and perhaps this is something worth emphasising in summary again: we feel we have done a pretty good job in meeting Australia's defensive objectives, given that we knew the preferred outcomes of the United States. So, in a very large number of areas where we wanted to preserve existing Australian public policy settings, we feel we have been pretty successful. Going back to the point about how far we have been able to make progress on the offensive side, the industry have said to us, 'If you hadn't called it a free trade deal, but had called it a closer economic relations deal, like we have with New Zealand'—which began as very much less than fully free trade. We had a long period of phasing under the CER to get to what is now completely open trade and quite deep integration between the economies. I suppose when we practitioners in the field see the words 'free trade agreement' we know from experience that almost no such agreements that are fully liberalising across all sectors exist, apart from the CER. So in working towards a free trade agreement, I think there is an expectation that you go for the fullest, best and most liberalising agreement you can get, but the test that is applied to such agreements through the WTO procedures really only requires you to meet liberalisation in substantially all trade, and that is the pattern that has evolved over the period of years.

As we said earlier in the evidence, we think this agreement stacks up very much at the top end of the spectrum in what has been negotiated anywhere by anyone. But if there were people out in the broader community who understood that 'free trade agreement' meant that you would achieve absolutely free trade in absolutely every product, certainly there would be disappointment.

ACTING CHAIR—I think the average person in the street would think that a free trade agreement would mean free trade.

Ms Hewitt—I think sometimes because we are very ambitious and we have always worked very hard in the trade environment to bring home what we have been able to for Australia, we set pretty high objectives. Senator Marshall talked about the hamburger with the lot: we went out looking for that and worked hard for that right through to the end of the process. I think it would have been extremely naïve on the part of the negotiators to imagine that we would achieve everything.

Senator MARSHALL—But that is what we did our modelling on in the beginning, on the basis that it would be a free trade agreement.

Ms Hewitt—Yes, but that was the upper end.

Senator MARSHALL—There must have been some expectation that we would get there if we based our modelling on it.

Ms Hewitt—Yes, indeed; as I said, we practically did in most areas. There really are a rather limited number of subjects, if you take account of some phasing, on which we have not got, ultimately, fully free and open trade. So it is a pretty good result judged by almost any benchmark. Perhaps part of what we are hearing is a different set of expectations.

ACTING CHAIR—Do you think the name 'free trade agreement' is a little bit misleading, given that we did not achieve the whole hamburger with the works, as Senator Marshall has put it?

Ms Hewitt—No, I do not think it is, because we operate in an environment where that terminology has been accepted in the binding international law of the WTO to mean, at the very least, liberalisation across substantially all trade.

Mr Deady—I think Ms Hewitt is right. The GATT article 24 talks about oil trade and this meets that test by any standard.

ACTING CHAIR—I suppose in an international sense—at the departmental level and on a government to government level—what you are saying may work, but I do not know if it works out there for the average Australian who has no understanding of what you are talking about when it comes to those sorts of terms. They would be of the view that if we had a 'free trade agreement' we would have a free trade agreement. In fact, that is not what they are getting.

Ms Hewitt—Against that, I go back to the point that it is very difficult to see any downside because what has been brought to the table as a result of the process of negotiation is on the upside. There have been very substantial gains in some areas and less in others where trade is already virtually fully open. But there is nothing which disadvantages any sector or industry in terms of liberalisation, the worst case of the lot being the sugar industry, which made no new progress.

Senator TCHEN—I suppose our task is to explain to the layman that there is no such thing as free trade. In fact, most people do not even know what free trade means. They just assume that free trade means that everything is free and they do not understand the implications. I suppose half a glass is always better than an empty glass.

Ms Hewitt—We think it is a bit higher than half. The other thing to say is that it is not a definitive endpoint. What we saw with New Zealand was what you see with a lot of free trade agreements between a lot of parties. You build a measure of comfort working bilaterally with another economy and as things go forward people develop greater comfort in going further. For example, in the dairy provisions there is a specific reference to a review to determine the next steps at the end of the phase-in period. We would hope that that would be with a view to taking further steps towards eliminating the barriers in that area. That was certainly our experience—arrived at in a different way, I suppose—in the early seventies when people were more cautious with the CER agreement. It did not begin by having that very ambitious endpoint goal, but we got there—and in spades. It is not something that you draw a definitive line around at the point of final negotiation. That said, I repeat my earlier comment: I do not think we will have the opportunity for a renegotiation any time soon.

Senator TCHEN—As someone who is always hopeful of a New York cut rather than a hamburger, I think this free trade agreement is not going to mean closure on any future negotiation. There is always a hopeful environment.

Ms Hewitt—That is right; and the committee, the working group and the chapter coordinator processes also give a dynamism to what might be possible under this agreement without requiring renegotiation.

ACTING CHAIR—On behalf of the committee, I thank not only the people at the table at the moment but all the members of the various departments that have been here today for attending and giving evidence. It has been very informative. We are going to go out now and hear from all sorts of interested parties who may have similar or different views to the ones that have been expressed today. We will be getting back to you at some point in the future. Thank you very much for your time.

Committee adjourned at 2.59 p.m.