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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 19 April 2004

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

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

Terms of reference for the inquiry:

To inquire into and report on:

(a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;

(b) any question relating to a treaty or other international instrument whether or not negotiated to completion, referred to the committee by:

  (i) either House of Parliament; or

  (ii) a Minister

(c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

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Committee met at 9.31 a.m.

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. This is the first public hearing of the Joint Standing Committee on Treaties' review of the proposed Australia-United States free trade agreement. The inquiry was referred by the Minister for Trade, the Hon. Mark Vaile MP, on 9 March 2004. The inquiry was advertised on the committee's web site on 10 March and advertised in the *Australian* newspaper on 17 March. The committee wrote to some 200 organisations advising them of the inquiry and inviting submissions on issues of concern to them. Following usual practice, the committee also wrote to all state and territory premiers, chief ministers and parliaments, as well as to a list of people who have expressed an interest in being kept up to date with the committee's activities via an email bulletin.

To date, over 130 submissions have been received. While the committee asked that submissions be supplied before last Wednesday, 13 April, so that members had an opportunity to receive comments prior to commencing the public hearing schedule, many extensions have been requested and the committee expects that more submissions will be received in the coming days and weeks. The first task of this meeting will be to authorise submissions that have been received so far. It is hoped that most of these submissions will be available from the committee's webpage in the next days.

Mr ADAMS—I move that submissions 1 to 60 and 62 to 130 to the inquiry into the Australia-United States free trade agreement, as per the list circulated to members, be received as evidence and authorised for publication.

Mr WILKIE—I second that.

CHAIR—There being no opposition, that is so resolved. The committee has announced a program of public hearings, consisting of today's hearing in Sydney, tomorrow in Melbourne, then Hobart, Adelaide and Perth this week. In the week beginning 3 May, the committee will travel to Brisbane and Cairns, returning to Sydney on 6 May. It will then hold a further public hearing in Canberra on 14 May. More hearings may be announced as the inquiry progresses and more submissions are received. I would like to welcome all in attendance today. The committee is pleased that so many of you have been able to participate in this inquiry. I understand that some witnesses today have not yet lodged submissions but intend to do so before speaking to the committee.

[9.33 a.m.]

HIGGS, Mr Peter Lloyd, Director, Deputy Chair, Digital Content and Digital Rights Management Workgroup, Australian Interactive Media Industry Association

VAN ROOYEN DOWNEY, Ms Anna-Louise, Executive Director, Australian Interactive Media Industry Association

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. I understand you wish to make a presentation before we proceed to questions.

Ms Van Rooyen Downey—Thank you for the opportunity to present AIMIA's viewpoint to the Joint Standing Committee on Treaties. AIMIA, the Australian Interactive Media Industry Association, has been in existence for over 10 years now—11 years, in fact—representing the views and needs of interactive media industry creators and developers in Australia. We currently represent over 300 digital content production and software development companies. Our members span the very large companies, such as ABC, Foxtel, ninemsn and F2, but the lion's share of our members are in fact SMEs, what we would call interactive media studios. Our members include creative companies with anywhere from five to 25 employees, and also individuals and students.

We are working very closely at the moment with the Australian Coalition for Cultural Diversity, ACCD. I will be joining the ACCD this afternoon to express a collective viewpoint about the cultural industries. AIMIA have a lot of interaction with other industry associations because our member base is very broad. Interactive media industries now span electronic games, e-learning, web development, CD-ROM development, DVD development, and SMS and 3-G development for mobile phones. Our members are not only creating content for a lot of different purposes—whether it is e-commerce or entertainment—but also developing for a multitude of different delivery platforms. So while at the moment most of our members might be operating on the Web, in the future we think that wireless devices may represent a lot more of the delivery platform for where our members' work can be viewed.

We realise that the free trade agreement will apply to our members for a long period of time. Therefore we would like to present our viewpoints on the digital content industries into the future. It is my pleasure to introduce AIMIA board member Peter Higgs. Peter Higgs has been on AIMIA's board for over seven years now. He is also a senior research fellow for the Creative Industries Research and Applications Centre at the Queensland University of Technology. Peter is going to lead us through a presentation which creates a scenario of where the Australian interactive media industry and content creators are at the moment and where they could be into the future of this free trade agreement.

A PowerPoint presentation was then given—

Mr Higgs—Many of the points I am making in this short PowerPoint presentation are taken from research that AIMIA has done over its 10 years and from two research reports that I was involved in last year for the Department of Communications, Information Technology and the Arts. The title of the first report is *Economic benefits from cultural assets*. This report was about mining the assets in the museums, libraries and archives of Australia and how that can drive the development of the digital content industry—the reuse of existing analog material. The second report was *From cottages to corporations*. It focused on the export potential of the digital content industry: the need to build the industry and provide access to markets to generate exports. I commend both of those reports as worthwhile reading for background information.

No doubt we are all aware that we are on the road to digital. That road is actually forked. We have two scenarios: we can be passive or we can be active—this is talking in the context of Australia. Attached to the handouts that you have this morning are two scenarios. One is a default situation, what I call 'standing still is going backwards'. I will not read through them all; they are there in front of you. I want to mention some highlights of the two scenarios looking forward to the year 2010. In 2010 under scenario 1 'standing still', Australia has seen its best and brightest ideas, talents and companies snapped up by overseas companies—much as we saw with software and previous innovations in the past.

Teenagers are now more at home paying in US dollars because all of their transactions online are done in US dollars; they even buy Australian content from US or other overseas companies. The Australian dollar is three to the US dollar. The very occasional US production is brought to Fox Studios, but overseas productions are chasing the most cost-effective method, the biggest tax benefits or whatever and they have no particular loyalty to Australian talent and locations.

The big hope for the online digital economy was online interactive games. It showed early promise, with three companies establishing an overseas presence and reputation. But one has moved offshore, one has closed after five years of losses, and the last one has just moved its development office to Poona, India, with 500 jobs going. The balance of payments is substantially down, with Australia importing 50 times more film, digital and interactive content than it exports.

Even Australia's domestically targeted films are in the doldrums because Australian citizens are more used to seeing US extravaganzas. Australia is seen as a nice place to visit, to hire staff from and to use for the odd game, film or Internet development if you cannot get an A team closer to home, but 'You would not want to run a business from there because it's a backwater and so quaint.' That is the negative view.

The more positive view we see is this scenario: it is what we call the digital renaissance. We learn from the lessons of the past, the disruption cycles. The Australian government and Australian industry have worked hard together to turn it around. Eight Australian companies are now in the top 50 games producers. Two cross-media companies are world leaders in the Asian market, tapping into that area. The R&D tax rebate has launched substantial innovation in the development of new applications and software in digital content. Online and reusable education content is now a major export, with Australian universities, TAFEs and school systems earning revenue from educational content sales overseas in 27 different languages.

The film and interactive media industry has moved beyond quirky kangaroos and crocodile movies and now has a reputation for great involving stories with excellent creativity that they are marketing around the world. Connecting all of the creative areas, the technicians and the production centres around Australia on a 10-gigabit high-speed network has allowed Australia to build on its strengths wherever they are located and allowed our product to be delivered to new and innovative markets.

The scenario concludes: after the embarrassment of the eighties and nineties when Australia totally lost its opportunity to be a major exporter of software and, as a result, had a 10 times imbalance in IT trade, it is good to see that Australia is now exporting $1.4 billion more digital content than it imports. Consumers have seen a change too. They can still watch *CSI: LA* and *CSI: New York* and *CSI: Bombay* on their digital channels but they can also view Australian produced quality drama that is marketed around the world. Australian drama now earns three times more money overseas than it does domestically and the production costs are covered by exports. The cost to local broadcasters and distributors is competitive with overseas material. That is a potential future that is quite possible if industry works together with government in innovative ways to address the new opportunities.

To put it into context: the export-to-markets report charted the disparity in Australia's trade with the USA and the UK. If you look at the trend over the 10 years, you can see the little blue circle is Australia's exports to the UK of content—film, audiovisual and video. The red is our imports. It is sad to say that we have a 50 to one disadvantage against us. We make some of that up in other countries, but that is also the trend in other sectors. We cannot afford to have that happening with the revolution into digital. It has taken 30 or 40 years for that imbalance of trade to grow through the market dominance of the US over Australia, but we have a chance to establish new opportunities and new exports.

So we are on a road, as Louise said, to a digital content future where you have seen the rise of CDs and new technologies and new delivery platforms. We are now seeing new forms of interaction. I am controlling this presentation from a mobile phone using Bluetooth. We have integration between computers and mobile phones; digital content comes over mobile phones and goes out through a satellite or whatever. We do not know where it is going to lead. We just know it is going to involve content, applications and other things like that. It is the integration between all of these that is going to make life very interesting to us. Compelling content is what is going to be driving the digital revolution across all of the sectors.

We do not actually have a cogent definition of what a creative digital industry is. It is a mix of many things. It is the production and marketing of film and television in digital form. It is particularly the reuse of educational material. It is the mining of our archives and museums for material that can be turned into documentaries or educational material and delivered over any number of channels. It is the redevelopment and marketing of software interaction games. It is not a one-way flow of words out to the public where it is blindly consumed. This is very much about interaction. It is a combination of creativity, content, software and communication. The communication can be one way, one to many, many to many, one to two, one to one. It is unconstrained. The common theme through all of those—creativity, content, software and communication—is intellectual property rights, which is why the tone of our presentation this morning is to do with the impact of the FTA on IP. That is not necessarily the case with the other sectors of digital content, as in the ACCD submission.

I will not belabour this point. Australia with digital content is very much in a similar position to where we were 10 years ago with wine and 20 years ago with tourism—many small producers fighting against distribution channels that were locked up against them, a substantial imbalance in trade, a need for coordination between industry, a combination of all the cottage producers so that they become professional businesses, joint marketing, commercialisation, expertise, all of those factors. These took five or 10 years to turn around into major export industries.

This matrix was used in the report to help put some balance into the debate against the sectors. It charts an Australian audience versus overseas audience, Australian intellectual property versus overseas IP. IP is important because whoever owns the IP of a film or game gets to derive all the downstream revenues for its reuse over the years or the different platforms that it goes out in. It is only by owning the IP that you can generate more and more and more jobs over the years, because you decide the location of the production.

The top quadrant is Australian content produced in Australia with Australian IP. That is the traditional argument of Australian content for Australians. This module is where the Australian production is used for overseas TV commercials here. This sector is where *The Matrix* was filmed in Australia; it is for other people, for a global audience. The interesting one is this top right sector, where Australia produces content in Australia, maybe even overseas, but we own it and we market it for the world. That is the interesting sector. As I said, that top left quadrant is our stories.

The two quadrants at the bottom help fund the development of the talent and the infrastructure. Fox Studios and the postproduction studios that need big money and lots of money always going through them to keep them viable help fund that. Exports is really where the main game is. That is where we generate our balance of payments, our trade. That then adds back to all the other sectors. There is no good or bad sector in there; all of them are actually necessary. There is a very delicate balance between having our own industry focusing on our own stories, exporting, working for other people, fee-for-service arrangements, and also focusing on the main game. If we miss that top right corner, then we are a technology and a content taker of other people's material, not a global export powerhouse of content, and there is an opportunity there.

We posit that there is an opportunity to develop innovative digital content, particularly aimed at Asia and developing countries where entertainment content will be necessary. This requires the mining and the reworking of material that is held in Australia and overseas, and it requires R&D content funding and industry development. It is a work in progress. Our concern is that the free trade agreement, as currently scheduled, could severely impact on our ability to develop industrial policies and IP reuse of this material. I will go into that now.

Within the FTA's intellectual property clauses, the 20-year extension is thoroughly grounded in the US media channels—not the creators but the distribution channels—wanting to continue to mine those. That means, effectively, that the US benefits from that but we do not, necessarily. We do not have a Disney, as such. What is of concern is that it substantially increases the friction for the reuse of existing content that might have been around for quite some time. Every time you change the period of these laws or make it harder, it dramatically increases the cost and reduces the likelihood of material being reused, which will be so highly important for digital content in the future.

Process patents are anticompetitive. They are anti-innovative and they are extremely contentious within the US. In personal experiences, we have been up against companies with patent portfolios. It is extremely hard to compete, and the US has batteries of lawyers who will quite gladly fund patent cases, even if they are spurious, against people whom they see they can get money from. So they are seen as a block for competition. Even if the patents are not worthy, the US patent office are effectively blindly issuing process patents for very obvious things that should never be patented, because it makes good commercial sense for them, even if it is bad for everyone else. We should not buy into that at all or support it. It is highly toxic to competition and highly toxic to innovation, both in Australia and in the US.

The DMCA, the Digital Millennium Copyright Act, is also highly toxic. That is about the only word I could use for it. How you can make sense and grow your markets and customer loyalty by suing all of your potential customers, including 12-year-old boys, I do not know. And I actually speak as a content owner.

CHAIR—For clarification, is the Digital Millennium Copyright Act a United States act?

Mr Higgs—Yes. The last point is that, on the FTA watch list, we have some concerns that the public bodies clause has potential to be death by a thousand cuts. Also, on industry assistance, Australian government law-makers need to be free, and know that they are free, to be innovative in how they work with industry and support it. We do not have the depth of financial markets in Australia that the US has, so we need to be able to work innovatively with those.

CHAIR—I want to ask about annex II-7, which is part of our reservation. At section (f) under the heading 'Interactive audio and/or video services' it says:

Measures to ensure that, upon a finding by the Government of Australia that Australian audiovisual content or genres thereof is not readily available to Australian consumers, access to such programming on interactive audio and/or video services is not unreasonably denied to Australian consumers.

Did your organisation want to make any comment on the quota section?

Ms Van Rooyen Downey—In particular I wanted to comment that interactive audio and/or video services is not further defined in that clause. I believe that it is such a broad statement. Later on in the agreement—I believe it is section 12—reference is made to e-commerce and digital products. I believe that interactive audio and/or video could be just about anything. It could be explained away as something which is not what we refer to as the powerful future of digital content industries, which might be a broadband movie which is paid for through an e-commerce channel. To me that is not an interactive audio or video; it is an e-commerce digital product. I would like to see much clearer definition of what actually constitutes interactive audio and/or video.

CHAIR—There is a note in the agreement that nothing in the agreement affects the ability of either party to provide public services, and subsidies and grants are explicitly excluded from the scope of the chapter. Having said that, I was not sure about your point—you had some concerns about the ABC and the SBS.

Mr Higgs—It is a small point, because there are also the public services that could potentially compete with commercial organisations, which is why it is on a watch list. The way it is at the moment it would seem to be clear, but you would not want that to be confused or moved back from. The ABC and the SBS are absolutely essential for the nurturing of the channels for digital content and as an innovator themselves, totally separate from the broadcasting side of that.

CHAIR—Thank you.

Mr WILKIE—Would you say that the terminology used in the agreement does not match the rapidly growing pace of technology and, therefore, we are left open to gaps in the future?

Ms Van Rooyen Downey—Yes; absolutely. I believe that the definition of interactive audio and/or video needs to be much more succinct and clear, as per the definition of digital content—which is what I would see Australia's future falling under—which receives no protection under the agreement.

Mr WILKIE—Do you see us being open to a lot of legal attacks?

Ms Van Rooyen Downey—Yes, and I can see a lot of debate going forward into the future as to what constitutes interactive audio and/or video. I think it would not be well supported, because the definition of digital products really is much more succinct. I think that the reference to interactive audio and/or video needs to be clear.

Mr WILKIE—Have you done any costings on the potential downside to Australia if we could not do anything about that terminology, given that this committee really can only recommend whether we should go down the path of ratification or not?

Ms Van Rooyen Downey—I believe that is where the scenarios which Mr Higgs referred to—

Mr Higgs—We did fairly involved projections involving the two scenarios. Under scenario 1, if you have inaction on our part and other things happening to make life more difficult, such as the FTA with some toxic clauses, we end up with a substantial worsening in our balance of payments. From memory, I think there was a doubling of our imbalance.

CHAIR—You are obviously only referring to creative industries when you say that.

Mr Higgs—Creative industries, correct. However, on the positive side, if we are proactive we are talking about $1.4 billion in exports a year. Interestingly, that is not saying that we are reducing our imports. So we still consume the movies, the videos, whatever, that we like. It is the additional exports that we do. Most of those exports, we posit, would be to countries other than the US, which is well served. It would be to emerging markets.

Ms Van Rooyen Downey—Can I point out that our reference to the creative industries also has a strong connection to what may be coined the hard-core ICT software development industries. Sometimes people do not include those in the creative industries. We certainly would, because we see that the future of our industries is not just creative; it is also highly technical. With regard to the software development which sits behind the creative front end, we also

believe that the free trade agreement has onerous implications for software developers. So they go hand in hand, as far as we are concerned.

Mr WILKIE—Are you aware that some of the agreement has been negotiated by lawyers, or people of that sort of persuasion, as opposed to people who have a technical expertise in IT? Where do you think that may be going?

Mr Higgs—Yes, AIMIA were consulted on some of these areas, but I do not think that at the negotiation table all of these potential future paths are able to be thought through. We do not want to see that being sold out or given over to another country. AIMIA believe in free, open trade; we just do not particularly want to have to go begging for permission to do something from someone else in another country, who has different national interests from us.

Mr CIOBO—Would it be fair to say that one of the principal pillars of a successful export industry in this area is the intellectual property rights that you were discussing, or retention of IP?

Mr Higgs—It is about having a balanced regime that involves customers but is also able to be cost effectively reworked or transformed into new forms and, obviously, paying the creators if the creators are due for that. The challenge with the DMCA is that it creates great deal of fiction and a lot of ill will, and it entrenches the status quo distribution channels without giving any support for new innovation.

Mr CIOBO—Sure, but that is a domestic act in the United States. But when we are talking about the long-term sustainability of an Australian industry, intellectual property would be the single pillar that it is built upon.

Mr Higgs—Correct, but you get the most reward out of intellectual property by utilising it, by marketing it and by making it available innovatively.

Mr CIOBO—Sure; absolutely.

Mr Higgs—Piracy is a response to inefficient marketing and distribution or inappropriate pricing.

Mr CIOBO—What would you say is one of the principal concerns that prevents intellectual property rights from staying in Australia? If you look at *Chrome*, for example: I know the Game Developers Association of Australia and a number of other industry associations lament the fact that often intellectual property rights are assigned overseas. What would you say is the primary driver of that?

Mr Higgs—Market power. Australia does not have a world-class global publisher of games that can drive distribution channels out to the world. The four or five major publishers can effectively call the tune on their contracts.

Mr CIOBO—Venture capital?

Mr Higgs—A lot of this is when the actual stuff is being produced; they can assign and get the intellectual property rights. Venture capital is also best found at the moment overseas. Therefore you lose the IP rights overseas as well.

Mr CIOBO—I am not sure whether you are aware of this—I think, Ms Van Rooyen Downey, you presented a submission—but the House of Representatives Standing Committee on Communications, IT and the Arts has recently done an inquiry on this issue. Most industry stakeholders indicated to us that venture capital was the single biggest problem that they face in retaining IP, and that is often why IP had to be signed overseas. Most of the evidence that the committee took in that particular hearing indicated that we are unable to get venture capital because we could not get globally competitive products that had broadscale appeal which meant that Australian investors were unwilling to invest in those products. Why, then, would we be looking to create, under rejection of certain elements of this free trade agreement, protection for Australian industries if they do not offer globally competitive, globally attractive products?

Ms Van Rooyen Downey—My observation is that it is difficult for Australian creators to produce globally competitive products if there is not a source of support and funding available to nurture that industry. I think that at the moment the reason why we are not seeing enough international successes is that the level of production is not to the scale of a global, international success.

Mr CIOBO—But would we ever achieve that with such a small country? Wouldn't we be better off focusing on niche markets?

Mr Higgs—We have substantial talent in Australia that is producing great stuff, but the average game now costs $3 million to $5 million or more to develop. If you cannot get that, you cannot produce it. Once you have built it, you need $3 million to $5 million to market it. Australia has traditionally not been able to supply those dollars, and therefore we are losing the IP through the production or the distribution.

Mr CIOBO—But we really have a choice, though, don't we, between sourcing that funding from the private market or sourcing it from government? Government is a separate question, and we can talk about the levels of funding that government should put into creative industries, but clearly what we are hearing from the marketplace is that there are not private funds flowing into these kinds of activities because we are not producing enough globally competitive, globally relevant articles—films, games and those kinds of things. We have had some outstanding successes—the *Stargate* series which it was recently announced that they are developing for the Xbox and for the PlayStation 2—which come about because they are globally attractive. Surely if we want to attract private investment we have got to make sure that we have globally attractive films, games, software and those kinds of things. How will we achieve that by trying to protect an Australian cultural industry? Aren't we just shooting ourselves in the foot by doing that?

Mr Higgs—Our submission would be that the games industry is born global. If the games developers in Australia—and there is a Games Developers Association, who are no doubt doing their own submission—do not, as companies, focus on the global market from day one, they are dead meat very quickly. It is a very competitive world out there, and anything in your infrastructure that makes it harder to build a business—difficulty raising capital, difficulty

finding a publisher—irrespective of your level of creativity, makes life harder. There are a couple of extremely successful companies, such as Auran games, that have cracked the overseas market, but it is a continual battle. They could go much faster, higher, better, more globally, with better access to capital. That is not talking about protection; that is talking about having access to resources that your competitors from overseas—Japanese and US companies—have.

Ms Van Rooyen Downey—With regard to the games development sector—and, again, GDAA will be making a submission—the content there is not specifically Australian. They are producing international quality content. The problem there is that the intellectual property does not reside in Australia. The reason for that is that they are basically being hired on a fee-for-service basis by a US production company who has the distribution and the funding to be able to dictate those terms. If the scenario were changed so that that game could be produced using Australian venture capital and Australian marketing budgets, we could see the significant multimillion-dollar profits being retained in Australia versus what the current scenario is, which is really just the small margin on the production budget. We have obviously demonstrated that Australian producers have the capabilities to be producing world-class content. It is just that we do not have the correct funding scenarios in place for that intellectual property to reside in Australia and for the profits then to be brought back to Australia.

Mr MARTYN EVANS—I very much appreciated your scenario paper—one would expect, from people representing the creative industries, that it would be well worth reading. You have directed our attention to scenario 2 as being the more favoured scenario, and I think everyone here would like to see that scenario come into play. The things that you highlight as being the obvious drivers of that scenario, though, do not seem to relate that directly to the FTA. They relate to things like high-speed digital infrastructure in the country, for example. That is clearly something which government or private industry, or whoever is the driver of that—perhaps a combination of both—would look to.

There is Internet 2—the high-speed infrastructure—and tax breaks on the provision of creative content, and a variety of those kinds of things. There is even a satellite distribution network for cinema content, which the film industry is looking at now and even delivering in the United States. There are all of those digital content issues, but none relate directly to the FTA. We could have scenario 2 with or without the FTA.

Your earlier commentary placed great emphasis on the importance of the IP strength, which I have strongly supported in the parliament. If we can say anything about digital content and the move to digital it is that it relies heavily on IP, because digital is perfect in every copy. Every time you reproduce digital content it is perfect, so IP is the only protection. If the FTA talks about anything in this area, it talks about the protection of IP. If we have your scenario 2 and the government or private industry, or both, provide scenario 2 with the mechanisms that you have delineated, and we look at your comments on the FTA and the importance of IP, I am not quite sure how it would work. You almost seem to make the case for the FTA with the protection of IP and scenario 2. I would like a little clarification of why that is not true and why, for example, it would make it harder to reuse Australian material if we improve IP protection.

Mr Higgs—That is a very good question. Australia has an extremely well thought-through digital copyright act, and that is subject to a current review. It has a very well thought-out balance between the rights of consumers and the rights of creators and technological neutrality,

building on our heritage of fair dealing and access to education. The US has the DMCA, which has countervailing fair usage conditions as well. The free trade agreement mandates that we pick up the DMCA but not the more liberal countervailing fair usage conditions which help to reduce some of its impact. So you would have the negatives without the positives. It is a bit like having cane toads without the cane toad viruses and natural enemies—sorry about that analogy. The other side of it is that the revenue that is being made from venture capitalists and creators is made primarily in the first five years. Extending it out to 70 years does not really encourage a creator to get more creative or do things. You want people to do things now, do it well and do it in many different forms.

The DMCA creates an environment of fear where, if I get it wrong, I can lose my business and my house and I can be whacked in jail. If I am doing content, one of my competitors can put out a take-down notice to bring my business down. Even though it is a spurious one, I can be living in an environment of fear. Fear, unlike excitement, actually reduces innovation. There are many potential side effects from the DMCA which are unpleasant for business. I have spent the last eight years working in the intellectual property and rights management area, and the best approach is to bring your product to the marketplace quickly, at the right place, at the right time and in the way the customers want it. That is why the record companies have been fighting so hard for the DMCA. They have waited for 10 years, so they have been fighting a rearguard action.

Senator BARTLETT—We have a couple of people from the Information Industry Association and the Interactive Entertainment Association appearing later on today and they seem to cover, in part, some of the same areas as you. Both organisations—at least on my initial reading of their submissions—are broadly positive on the FTA, particularly in terms of IP. Do you have a response to their more positive take on it all and why you are more negative about what is being proposed?

Mr ADAMS—You would not have seen those. We authorised them only—

Mr Higgs—We have not seen those.

Senator BARTLETT—You would know of these associations—

Ms Van Rooyen Downey—I know those associations.

Senator BARTLETT—and the debate. The IP part seems, to me anyway, like a particularly big—

Ms Van Rooyen Downey—Could you summarise the premise on which they are positive?

Senator BARTLETT—Sorry, I just thought you might be aware broadly of the approach that those associations had taken.

Ms Van Rooyen Downey—No, we have not seen them.

Senator BARTLETT—That may be something you could read and get back to us on at a later stage, because we will be dealing with it for a while.

CHAIR—That would be something you could take on notice, because the submissions have not yet been published.

Ms Van Rooyen Downey—Sure.

CHAIR—Thank you for your attendance before the committee today. I think we will be seeing you this afternoon as well, Ms Van Rooyen Downey.

Ms Van Rooyen Downey—Yes. Thank you very much.

[10.15 a.m.]

MARTYN, Mr Stephen John, National Director, Processing, Australian Meat Industry Council

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Martyn—Yes.

CHAIR—Please proceed.

Mr Martyn—I apologise. I have a slightly croaky voice, but hopefully it will hold up well. The Australian Meat Industry Council was formed through the merger of the members of the Australian Meat Council, AMC, and the National Meat Association of Australia in August of last year. AMIC is now the peak council representing all sectors of the post farm gate meat industry. Sectors include: abattoirs, boning rooms, non-packer exporters, smallgoods operators, manufacturers and independent retail butchers. As a peak council, AMIC holds two seats on the Red Meat Advisory Council, otherwise known as RMAC, which is the body commissioned to provide advice on the meat industry to the government of the day.

From the outset, AMIC took a supportive position on the free trade agreement with the United States on red meat, establishing as its number one priority increased beef access to the United States. I should just clarify that red meat is beef meat, sheepmeat and goat meat. The US market plays a crucial role in the industry's overall export market strategy. Increased market access through either removal of the current tariff rate quota constraints or, if not, substantial liberalisation through increased tonnage was a key objective. Similarly, with lamb we have sought the security of access to what is already Australia's number one export lamb market, which is crucial to a long-term investment in building this trade over the next two decades.

AMIC actively engaged with industry and government to build a realistic position based upon members' commercial experience in the market and their expertise. Together with other sectors of the red meat industry, AMIC was instrumental in providing a clear position to the Australian negotiators and we were present in Washington to support that position during the final negotiations. While our commercial expectations with beef were tempered by the political landscape at the time, we welcomed the increased access for beef negotiated as part of the agreement, appreciating that the access generated would not have been achieved through any other forum. In contrast, the outcome on lamb was more favourable, with import duties on all tariff lines, other than bone-in mutton carcasses, moving to zero from day one. The only safeguards in place will be those consistent with the WTO, an outcome that provides the security of access the industry was looking for.

I would also like to put on record our appreciation of the efforts of the government negotiating team throughout the consultative process leading up to the final negotiations. AMIC had access to all key members of the negotiating team on a regular basis and we can only congratulate them on their commitment to that consultative process and their desire to act to the best of their abilities in understanding and then delivering on our objectives. The Australian Meat Industry Council supports the FTA going forward.

CHAIR—Thank you very much for that. Could I just clarify that when the agreement enters into force, beef aside, there will be full access for all other products within the meat area.

Mr Martyn—When the agreement comes into force—I will call it day one—the import duties on all lamb or sheepmeat products would be removed accept for one tariff line for carcass mutton, and that disappears after four years. Goat meat will also have free access. The North American market, the US and Canada together, is by far Australia's largest export goat meat market as well. For beef, from day one there would be an import quota. There is an in-quota tariff, which disappears on day one. There is a series of incremental increases in our quota access over 18 years. I can go into detail, although I believe there is a submission from Meat and Livestock Australia which sets out in detail the actual agreement. But the out-of-quota tariff declines to zero over 18 years, beginning in year nine.

CHAIR—On the issue of the quota, as I understand it Australia has only been over the quota to the United States twice in the last decade. Is that true?

Mr Martyn—It is true; but, to give you a better perspective, this is a trade that has been in place since the late 1950s. Australia has really had quite a strong complementary relationship with the US market, beginning with the strong growth in the convenience food sector—especially the major hamburger manufacturers. We provided a product for that business, mixing our lean beef with their fatty trimmings. This was a perfect mix for what the industry has come to see as the perfect hamburger, which is 78 per cent lean muscle tissue and about 22 per cent fat. We provide the lean muscle tissue and the American industry provides the fat; it is a very symbiotic relationship.

By the early 60s, the US had become Australia's number one beef export market, so they introduced the meat import law in 1964. That had a formula that tended to move around depending upon production and cow slaughter in the US. It in no way really reflected market conditions at the time. We fought for many years to try to have that meat import law removed because it affected the economics of the processing business in the United States as well as Australian exporters. During that period, our quota changed every year but was around the high 280,000s through to the low 300,000s level in tonnes.

As a result of the Uruguay Round and strong lobbying by the industry, we were about to have the meat import law removed. It was replaced by a tariff-rate quota of 378,214 tonnes. That was in 1994. The US cattle herd at that time was increasing and the demand for imported meat had started to fall. Australia is a global trader and as such we were developing other markets as well as maintaining our market access on a purely commercial basis in the United States. But there was a growth in overall demand in the United States and their herd size started to decrease. We have seen the US cattle cycle has started to level out and the first thing that is affected is that US cattlemen start to retain their cows. Cows are a major source of grinding meat for their market

so, consequently, the demand for imported grinding meat or lean meat continued to grow. So our exports continued to grow through the late 1990s and by 2001, from the TRQ that had implemented from 1994, we then met that quota for the first time. There have been various debates on the quota management arrangements, as I am sure you are all aware. In the last couple of years it has gone very close and has, essentially, commercially been filled.

CHAIR—Thank you for that historical analysis. I was really asking whether you are anticipating that you are going to be over the quota in the future. In summary, you said that the industry would have liked more but that they understand the politics. Is that a fair summary of what you said?

Mr Martyn—Indeed. Obviously we would like more. What is important to also understand is that, from the processing sector's perspective, irrespective of whether you are producing for the Japanese market, the Korean market, Asia or Europe, a proportion of the carcass when processed is grinding meat. Essentially the United States sets the floor price for the grinding meat market, so consequently you will always need some access to the US, even if you are processing for the Japanese market. Consequently, access to the US market is important to every processor in Australia. Therefore, we were very keen to ensure that we had increased access into the US market.

Mr ADAMS—We sell them lean meat to turn into mince. We have occasionally sold them kangaroo, I think, which is even leaner than chopper cows. But it is the bottom of the market that you are talking about. You do have cuts. Is there going to be any cut in from their domestic levels after 18 years, or will the tariffs be gone totally so that we will have total free trade in meat products into the US after 18 years?

Mr Martyn—Firstly, I should suggest that there is no such thing as low-quality beef, only beef that has a specific end use. Certainly, the grinding meat that we sell into the United States is a very high quality product and, as such, from a world price perspective receives a premium. You should also understand—

Mr ADAMS—Just a minute. It is still at the bottom end of the market in the USA. You get a bit more for a T-bone steak or a scotch fillet if you sell it into the US market than you get for grinding beef. Would that be correct?

Mr Martyn—That is true.

Mr ADAMS—How much access do we have for high-quality cuts, as opposed to the low-quality cuts?

Mr Martyn—At this point in time, the 378,214 tonne WTA quota has no specification requirement to it. It is essentially a case of supply and demand with regard to where the industry uses the access it has to the US market.

Mr ADAMS—So it can put in any cuts under the present quota system.

Mr Martyn—In the lead-up to last year, Australia shipped about 26,000 or 27,000 tonnes of chilled beef into the US market, which in the context of our global performance is probably the second largest chilled market we have.

Mr ADAMS—What about prepackaged beef, ready for the shelf when it hits the United States, to go straight out of the box and onto the supermarket shelf?

Mr Martyn—The US domestic industry has essentially been managed over many years using its own internal grading system. In a simplistic sense, that has three or four grading levels, known as USDA prime, USDA choice and USDA select. Essentially, that grading is applied to the product at the time of slaughter. If you walk into most US supermarkets, you will see the product marked accordingly. Since we are not there at the point of slaughter, Australian beef is not in a position to be graded against the US system. So, in the sense that US beef has been marketed that way for probably 50 years, that has always been a limitation. What we have seen over the last decade, and the last five years in particular, is that the American retail market has certainly started to broaden its horizons. A lot more brands are appearing in US supermarkets and, as such, that has provided the opportunity for Australian processors to position their product in another way—that is, as a 'natural' brand or as some other company or in-house brand.

Mr ADAMS—And that is acceptable—

Mr Martyn—Yes.

Mr ADAMS—for us to set up pre-packaged Australian natural beef in the corner of the cabinet?

Mr Martyn—This is packaged in the United States, so the product is shipped across in a carton and then is reprocessed—

Mr ADAMS—But the future of high quality product will be packed where it is processed and sold straight into supermarkets. Is that the direction you reckon the meat industry will go in?

Mr Martyn—Yes and no. From a retailing point of view, absolutely, but you have to remember that Australia is a global supplier that is, from Japan, at least 22 days sailing. From the United States, it can be anything from 25 to 35 days, depending on shipment times. Once you start processing product into that form, your shelf life is going to become very limited. So, if you are going to present it in a fresh form, then certainly current technology would limit you to only doing it at the point of retail, or close to it, which would be either in Japan or the United States.

Mr ADAMS—I thought I read in the agreement that you were not allowed to pre-package—that that was one of the conditions that they have put on it.

Mr Martyn—I think what you are reading is in this area of the definition of manufacturing meat, which was a term that was used to identify any of the increased access. In looking at that definition, commercial industry has been fairly comfortable because it allows the current trade to utilise the increased access, essentially unencumbered. To develop something like retail ready packs, you would only be able to do that with current technology in a frozen form, which would not be the way to access the US retail market.

Mr ADAMS—By the time we get to 18 years, there might be changed technology. The whole world trade of meat might be going in another direction, mightn't it?

Mr Martyn—I am certain that in 18 years time there will be substantial changes, because in the last 18 years there have been substantial changes. If I understand where you are coming from, it is that this agreement may be restricting us from producing retail ready packs here in Australia and sending them to the US. Certainly, current refrigeration technology would seem to be a major limiting factor to achieving that.

Australia's whole comparative advantage in the international chilled beef business is its health and hygiene standards in its abattoirs, which allows Australian chilled beef to get somewhere between 80 and 90 days shelf life. So, when the product is processed it is then put in a container and that container is sent off. If we are talking about Japan, it takes 25 days to get there, giving you 50 days to market the product. The United States has a shelf life that is much less than that, only because there is not the commercial incentive for them to achieve those standards. It is from the commitment you make to health and hygiene at the abattoir level that you can achieve those shelf lives. Once you start breaking that up—cutting it into chops; any sort of handling by human beings—you substantially reduce the shelf life of the product. I would think that it would be some time before we can develop retail ready chill packs in Australia for export, especially to the United States.

Senator MARSHALL—You indicated that you were broadly happy with the outcome on the access for meat products, but surely you must be somewhat disappointed with the long lead-in time for beef.

Mr Martyn—Sure. Commercially, the abattoir processes work on a shorter lead time, so 18 years is a long lead time. We certainly entered into this discussion with expectations that would have delivered shorter lead times and increased tonnage. But at the end of the day we believe the access that we have achieved would not have been achieved through any other forum than this. As I indicated before, given the importance of the US market to our global strategy—because every processor in this country is producing some grinding meat for the US market—the increased access that we have achieved is certainly welcome.

Senator MARSHALL—Do you have any concerns about what I call the snapback provisions—the price fluctuations?

Mr Martyn—By 'snapback' I presume you mean the price safeguard that operates after 18 years.

Senator MARSHALL—Doesn't it operate within the 18 years?

Mr Martyn—From the out-of-quota perspective?

Senator MARSHALL—Yes.

Mr Martyn—Any constraint on free trade is something less than we would have desired. I have not heard it termed the 'snapback provision'. Are you talking about the provision on reduction in the out-of-quota tariff?

Senator MARSHALL—Yes, if there is a price reduction in the US over it.

CHAIR—It is really the price based beef safeguard.

Senator MARSHALL—What do we call it?

CHAIR—The price based beef safeguard.

Mr ADAMS—It is the worst possible free trade thing you can have.

Mr Martyn—Is this one that operates after 18 years?

Senator MARSHALL—No, there is one that operates throughout the whole—

CHAIR—There are two safeguards.

Mr Martyn—Yes.

CHAIR—Perhaps you could give us your view on both safeguards.

Mr Martyn—There is actually a third safeguard. There is a price safeguard—

Senator MARSHALL—The point I am making is that you indicated that you had had very good consultation throughout the process and right at the death knock of the agreement too, and I was trying to ascertain your objectives in the agreement and make a comparison with the outcome. I thought those price safeguards were quite significant. Other people have said they were very disappointed in that process, but I was wondering what your view is.

Mr Martyn—Our priority from day one was access. Looking at it from a processor's perspective, he has to get up every Monday morning and start processing. He is processing a product and he needs access for that product in global markets. Therefore our No. 1 priority for the FTA was increased access—especially for beef, given the quota.

Senator MARSHALL—The chair indicated that we have only reached the quota twice in the last decade. Is it the reality that we are going to export more beef to the US as a result of the free trade agreement?

Mr Martyn—Yes, it would be. Certainly the indications are that the demand for beef in the US has grown and also the population is increasing. Secondly, the domestic cattle herd in the United States is at its lowest level for a couple of decades. All this would indicate that the US market is going to be quite strong over the next decade or so. Also—and I think it was raised before—while the market started out as essentially one for grinding meat in the fast food sector, it has expanded a lot. Probably 70 per cent of our exports are grinding meat, another 25 per cent are primal cuts that are used for further processing in the United States for such things as corned beef and pastrami—quite high-quality further processed items—and the final 5 per cent is the growing chilled beef business. These are all segments that are continuing to expand. Consequently, with Australia's growing cattle herd—and the current forecasts suggest that, if drought conditions do not return, our cattle herd is likely to increase by a couple of million head

over the next three, four or five years—the impending increased beef production that will come from that will need markets to go to, and the United States will be one of those major markets.

Senator MARSHALL—Has the council looked at any trade diversionary aspects for the beef industry?

Mr Martyn—Processors and exporters are out there every day looking for the best possible return for the carcasses they process. Australia exports to over 110 international markets. It is very much about how you maximise the return on the product you are processing at the time, so we are always actively looking for the best possible returns.

Senator MARSHALL—So if there is an increased return because of the free trade agreement with the US market, there will be a trade diversion if we cannot actually fill that gap?

Mr Martyn—I think it is important to understand that, while the US market sets the floor price for what we are calling grinding or manufacturing meat, it is not the only market for that product. In fact, there are convenience and fast food sectors in Japan, Korea, the Philippines, throughout South-East Asia—even in the Middle East. As I said to you before, the US sets the floor price. So what is happening is essentially a processor looking to sell his processing beef at the US market price plus a slight premium to another market. So as long as the US market is strong, it will dictate that the prices for our grinding meat are strong in other markets as well.

Senator MARSHALL—What impact will that have on the domestic price?

Mr Martyn—The domestic sector is still our No. 1 market, our single largest market, if you look at it in that context. In the beef sense—we have talked about beef rather than sheepmeat—probably 35 per cent of our production is going into the domestic market. So you find that there is always a levelling effect between our domestic market and our export markets. The domestic market remains a very important market for the Australian industry.

Senator MARSHALL—If there are improved returns in the US and we have still got other markets where we can actually get that return plus a premium, given what you have just said it seems to me to follow that the domestic market will also be set by that price regime.

Mr Martyn—Sure. Certainly the processing sector has essentially moved to a single Australian standard now. Years ago you used to have a domestic standard and in fact a whole domestic inspection system and an export inspection system. Now there is a single Australian standard known as the Australian standard that domestic or export works meet as a minimum. An export works will make a decision as to whether in fact there is a need to achieve higher standards, depending upon the import requirements. In a market like the European Union, in which we do have a quota, there are also other constraints on a processor as to what he has to do in order to meet their standards. So you will find that out of the 50 processing plants—that is a rough estimate—that are USDA approved in Australia, probably 10 or 11 are actually also approved for the European Union. It is an extra cost to achieve that standard that is required by the European Union, but that allows those plants to then access that market and access the quota access that exists there.

Senator MARSHALL—Has the council actually done any work looking at that price structure? What can we expect out of this agreement once the beef industry takes it up after the agreement is in force? Is the price of beef domestically likely to rise?

Mr Martyn—In beef terms, after 18 years we are talking about 70,000 tonnes of beef since Australia—

Senator MARSHALL—But there is immediate in-quota tariff reduction.

Mr Martyn—There is. In quantitative terms, that is around $A20-22 million. The question of course is just how much of that returns to Australia in the sense that that would be part of the normal commercial pricing arrangement that would occur on a daily basis. But 70,000 tonnes in the context of the Australian beef industry, in which we are producing somewhere between 1.2 and 1.3 billion tonnes of beef a year, is certainly not huge.

Senator MARSHALL—So the immediate in-quota tariff reduction is insignificant: is that what you are saying?

Mr Martyn—I am not saying it is insignificant. It is important. But let us remember that Australia is a major global exporter. We are at this point in time the largest beef exporter in the world. I suspect that is about to be overtaken by Brazil, but at this point in time we are the largest beef exporter in the world. So any access to our No. 1 export market, which at this stage is the United States, is important, but it must be seen in the context of the total industry.

Mr ADAMS—The quota system is divided up, isn't it? There is a new arrangement that the minister put in place. The quota is divided among each player that plays in the US market. So when we say that they have not quite made the quota, if one producer had quota that he could not fill, would he sell that to another player in the market?

Mr Martyn—Each year the assessment is made about whether we will be likely to fill the quota or not. Once that decision is taken the government of the day then sits down and puts in place an agreed quota management scheme. The one that was implemented two years ago allocates quotas to individual exporters based on their previous performance against the set of criteria.

It is very important—and certainly economic theory strongly supports it—that any quota management scheme be tradeable between quota holders to ensure that in fact you maximise the return on that quota and that quota finds its way to places where it is needed. Australia is a big country. There are major differences in climatic and production trends. Certainly we as the commercial sector industry would not want quota held in one sector of the country while it was needed somewhere else. So it is important that it is traded.

Mr WILKIE—I understand that the industry has got some gains in lamb and a little bit in beef, but if the primary area that you guys wanted negotiated was a decent increase in red meat, in beef, how do you respond to the Cattle Council, which says, 'Over the next five years, production is going to be increased by some 350,000 kilos, yet over the 18-year life of the agreement we have got an extra 70,000 tonnes. It is nothing, really.' They are suggesting they may be $1 a beast better off over the next 18 years. How have they got a good deal out of that?

Mr Martyn—As we stated at the outset, we certainly agree that our expectations were higher than what the outcome was. There is no doubt that we were keen to get greater access and no doubt that we were keen that that access should be more up-front in the transition phase than it currently is. Also, in fact, that transition phase is certainly longer than we would have otherwise liked. But it is access that we would not have gained through any other process.

Mr WILKIE—What about the WTO?

Mr Martyn—No, because the current proposal before the WTO up until this point has been for expansion of what they call the MFN component, not our specific country quota. So our 378,214 tonne WTO quota would not have changed. Essentially, what would have expanded would have been that component of the US global quota that would allow Brazil, Argentina, Uruguay and everyone else to have access to it. So in our context the specific value of the FTA was an increase in our country specific quota. There was and still is no other forum in which that increase would have been achieved.

Mr WILKIE—You touched on this before, but they would not even come to the party on an additional 30,000 kilos. You must have been pretty disappointed about that.

Mr Martyn—Timing is everything. If we had negotiated this FTA three years ago it would have been with a 201 action on lamb, Senate inquiries in the United States on lamb and the US industry opposing lamb imports at every stage. With that process having been gone through, the US lamb industry has changed enormously in its political focus. Certainly in my experience it has decided after almost 25 years that it can no longer exist trying to oppose imports and that what it really needs to do is sit down with the major importers and develop the market for lamb against its competition at the retail counter. In that context, there was no opposition to the FTA on lamb and now you have unencumbered access to Australia's No.1 lamb export market for however long the agreement it is in place and no duties.

Mr WILKIE—You said at the start that the key indicator was beef.

Mr Martyn—Yes, and I was coming back to that. The other point is that timing wise having a BSE case in the US a month before this was negotiated was the worst possible timing we could have asked for. And you can imagine the sorts of tremors that it sent through the US cattle industry, especially one that thought that something like this would never happen. I personally think that also very important was the fact that an international review panel sat down and went through the BSE case in the US. It had previously done the same thing in Canada. It had come out with a fairly positive outcome for Canada's future return to the global marketplace and there was a real expectation within the US industry that the same international review committee would in fact endorse all of the activities that had taken place in the US and that the same positive framework would be established and they would be able to say, 'Japan and Korea, this is the basis for our return.'

But in fact—and I believe the timing was 4 February—it did not come out with that positive response at all. In fact, it was quite negative. It suggested that BSE had now become a part of the North American cattle industry. It was quite a negative to their return to the Japanese and Korean markets, which was a major part of their industry. That was—and I think I have the timing right—about three days before the final negotiations. This was not the environment to be

negotiating an FTA in. Unfortunately, the timing, while it was fantastic for the lamb industry, was probably not the best for the beef industry.

Mr WILKIE—I agree with you there. The further question is: given that we basically signed off on this to fit in with an election timetable, both for the United States and for Australia, had we had more time would we have got a better agreement on beef, particularly given the decision made three days before?

Mr Martyn—I can say how we as an industry approach this. I am only representing the views of AMIC and the processors and exporters, but from the outset we wanted to sit down with all of industry and build a consistent and cogent argument for government. We also talked about this factor. Yes, we could have delayed. But once you delay there are so many unknowns, not only in the beef industry or the lamb industry but in the context of the whole political environment. So from AMIC's perspective—I do not want to speak on behalf of other sectors of industry—we agreed that in fact the environment had been established, the opportunity was there and we should go for it. Yes, unfortunately the timing of the BSE case—the mad cow disease case—in the US, followed by the less than positive international veterinary report, certainly did not help our outcome.

Mr KING—The staged introduction of the tariff reductions and the increase in quotas: can you remind me what it is you perceive that to be?

Mr Martyn—It is a 70,000 tonne increase over 18 years.

Mr KING—Yes, but what are the years?

Mr Martyn—It depends which year year 1 becomes.

Mr KING—Take it that the introduction of the agreement is 2005.

Mr Martyn—The way that the agreement has been written, the first allocation is in year 2 but there is a qualification against that based upon US beef exports reaching the same levels as they did in 2003. Given that 2003 was a record year and given America's BSE problems, you would suspect that achieving that goal is highly unlikely, so therefore the first allocation will in fact occur in year 3.

Mr KING—Leaving aside the tariff reductions, at the end of the 18-year period do we have completely free trade in relation to beef and lamb?

Mr Martyn—Certainly apart from the WTO safeguards it would appear that you would have free trade in lamb. As far as beef is concerned, obviously there will be the price safeguards operating. Just how they will operate in 18 years time is an unknown.

Mr KING—What mechanisms has your body got in place to exploit the opportunities that are presented by the FTA?

Mr Martyn—As I touched on earlier, Australian exporters are out there every day. In fact, one of the great comparative advantages of our industry—

Mr KING—Sorry: just your organisation. What negotiations have you had with government on that question?

Mr Martyn—On maximising return?

Mr KING—Yes, during the staged introduction of the tariff reductions and the increasing quotas.

Mr Martyn—I would think that it would be more a question of the commercial industry identifying what the opportunities there are.

Mr KING—So there is nothing, really, that your organisation has in place at this stage with any government body, such as Austrade or anything like that?

Mr Martyn—No. You would find most commercial exporters have significant commercial relationships in various markets that extend far above what government would have anyway. We are a specialist beef and sheepmeat exporter. When it comes to marketing internationally, our members are usually the ones that government would come to to get an experienced understanding of what is actually happening in the market.

Mr KING—Has your organisation given consideration to the concern expressed that, with the staged introduction proceeding, we will get higher standards of packaging and quality? Is that a benefit to the Australian community? Does that have an impact on price?

Mr Martyn—Again—and I assume we are talking here mainly about beef—as the incremental increases in access continue to roll out, it would really be up to commercial industry to identify just how they will take advantage of it. In the context of the manufacturing beef definition that has been placed on the additional access, certainly our interpretation of that specification is that it will not restrict the current trade in Australia from anything that it is currently doing.

Mr KING—Finally, you said you did not have a policy on the other issue, but does your organisation have any specific policy or program that will directly concern itself with the issues of standards and prices within Australia?

Mr Martyn—As a trade council, we do not get involved in price. Price is in fact something for commercial industry to decide on the day. As far as individual marketing initiatives are concerned, the industry itself—and this is all of industry—has agreed that, in fact, the development of brand based programs in international markets is by far the best way to generate commercial momentum and investment in building markets into the future. Certainly, we work very closely with Meat and Livestock Australia and their programs in a market like Japan. You should be aware that there are what we call industry collaborative agreements, where MLA sit down with individual exporters and develop programs directly supporting their brands, because that is seen as the best way to drive that commercial initiative behind developing individual opportunities.

Mr KING—So the short answer to my question is, no, you have not developed any specific program to address those questions?

Mr Martyn—I am not sure what you are aiming to get from me. What I am saying is that, as a trade council, we do not tell our members how they should develop marketing opportunities. They are, by far, in the best position to know how to market their product in individual export markets.

CHAIR—Thank you very much for your attendance before the committee. I ask you to consider providing a written submission to the committee as well, if you have not already thought of that. We thank you for your evidence today.

[10.59 a.m.]

DURIE, Mr Robert George, Chief Executive Officer, Australian Information Industry Association

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Durie—I do, thank you. AIIA is the national body representing suppliers of information technology and communications goods and services. We welcome this opportunity to appear before the committee. The association is generally pleased with the outcomes of the Australia-US free trade agreement. The United States is the leading economy in our industry by some considerable margin, accounting for over one-third of all spending on information technology and communications. It also accounts for 40 per cent of global e-commerce at the business-to-business level and 56 per cent at the consumer level. The US is also a major trading partner in our industry, providing about 22 per cent of our imports and receiving 17 per cent of our exports.

The association has been an active participant in the FTA process, consulting regularly with our members on the issues, having numerous meetings with officials, and providing a number of formal and informal submissions, including one to this committee. We have also leveraged our relationship with our US counterpart, the Information Technology Association of America, and with the global body, the World IT and Services Alliance, to ensure the best possible outcome for our industry.

As I said earlier, the association is generally pleased with the outcome of negotiations. The agreement provides the Australian industry with access to the US federal government market and a number of state government markets, which exceed in value a total of $52 billion, a significant win for our members, we believe. Importantly, the agreement allows us to preserve the arrangements we have for SMEs in our government markets. Of course, the FTA will not of itself deliver export outcomes. We will need to have a proactive strategy involving government and industry to realise the promise of the FTA on government procurement.

AIIA is also supportive of the outcomes on intellectual property, e-commerce and services. Overall we believe the FTA provides increased opportunities for businesses in our industry. Finally I want to record our appreciation for the way in which negotiations have been conducted by officials. We have had every opportunity to provide input, both at the outset, in terms of framing what our issues were, and right through the process, including in the final negotiations, having direct contact with our officials. We are very appreciative of the way they have conducted the negotiations. Thank you.

Mr MARTYN EVANS—Obviously this is an area of some considerable interest, given the nature of our transition to a digital economy, with e-commerce and the whole creative area as well. Your industry touches on a wide variety of areas in a number of aspects, and one of the areas that you will probably be familiar with is the extension of copyright and the way in which this impacts on the extension of patents. A number of people have raised with us issues like the process patent area in the United States. The United States has also touched on software patents. There is a great propensity in the US to patent everything that clicks and moves, and some have indicated that this can raise a litigious framework and can have a tendency to slow down progress in these areas. Do you see the same thing impacting on the software development industry and on your ability to innovate in these areas, given the way that the US requires us to harmonise a number of our laws in these areas?

Mr Durie—Certainly the feedback we have had from our members—and our members are technology companies, so they are software development companies and a whole range of suppliers—has been positive about those aspects, on the basis that they strengthen protection of their intellectual property. I am aware that other interests across our industry, including the customer base, have different views, but the views of the vendors, if I can put it in that way, are positive at this point about the proposed changes.

We do have a concern about Australia catching the US bug for litigation. For example, one of our concerns about the procurement arrangements is that we have to institutionalise appeals against decisions. We understand that, in the United States federal government, virtually every major contract is appealed by the losing vendor, adding some three to six months to the procurement process. If there is something we are disappointed about in the procurement aspects of the agreement, it is that we have agreed to take on the provisions formalising the appeals process. I suppose we have a general concern in that area but not one that is specific to intellectual property or software patents.

Mr MARTYN EVANS—Regarding the Digital Millennium Copyright Act, we have agreed, as part of the terms of the treaty before us, to harmonise our laws in this area. As I understand it, this requires us not to pick up the act word for word but to harmonise our laws in this area. How does your industry regard this? Have you had a look at the impact of that? Obviously it would have a significant relationship to your area. Have you considered the impact of harmonisation versus clause-by-clause adoption? How do you see the issue of harmonisation? Obviously it carries some impact in bringing our laws into a relationship but not necessarily word for word. Have you examined what the word 'harmonisation' might mean, as distinct from a direct photocopying of the US act?

Mr Durie—We have only looked at it at a general level—at where we are comfortable that we can harmonise without causing any concern. Obviously there is going to be a much more detailed process as we move to legislation. As I understand it, everything in the intellectual property area would require legislation, so as a nation we have another opportunity to review the impacts, and at that point we would be looking at it in the sort of detail you are inferring. But, as a general proposition, we are comfortable with harmonisation.

Mr MARTYN EVANS—So you do not see that is being a particular problem at all?

Mr Durie—Not at this point.

Mr MARTYN EVANS—And yet you see some real gains out of the strengthening of intellectual property, which after all is the very basis of a digital society?

Mr Durie—Our focus has been that our members tend to own intellectual property and tend to want strong protection for their intellectual property.

Mr MARTYN EVANS—In conclusion, as you said, the agreement is lacking on the area of the movement of people, and I can understand why that might be an issue. Can you tell us what you wanted out of that, what you saw as the gap? We do have basically visa-free access and we have fair and reasonable access to the United States in terms of travelling there. Australians are rarely refused visas to the United States. There is the APEC visa scheme, where you can get a business visa on the basis that you regularly travel to APEC countries and so on. The United States will presumably join that this year.

Mr Durie—Will they? They are not a member at this point.

Mr MARTYN EVANS—They are not in it at the moment but there is some talk that the US will join that in the future. Obviously I am not in a position to speak for the US, and I am not intending to do that, but I understood there was some discussion about that occurring. Is that the kind of thing you are looking at?

Mr Durie—Yes, but it goes more to residency than to business travel. A software and services company is all about people, so you might want to move people to the US for a short time, or maybe for a longer time, and they get caught up in all the issues around business visas, green cards et cetera. It is more about their establishment than about business travel.

Mr MARTYN EVANS—So you are talking about two years or so?

Mr Durie—Yes.

Mr MARTYN EVANS—I was not sure what you meant.

Mr Durie—Obviously I did not make it clear. Our area of interest is that most Australian companies that want to operate in the US will set up a company over there and, at the moment, they have to jump through hoops which their US competitors obviously do not have to jump through, and we would like a level playing field.

Mr MARTYN EVANS—The APEC visa scheme would be irrelevant, because you are looking at extended stays?

Mr Durie—That is right.

Senator KIRK—The question I wanted to ask was in relation to the movement of business personnel, and that has been covered by Mr Evans.

Mr ADAMS—That area was where we failed a bit then.

Mr Durie—I gather from the US side that the movement of people and immigration issues are not considered to be negotiable as part of trade agreements. This came out in the negotiation of the Chile and Singapore agreements. So it was, if you like, excluded. I think it is similar for things like double taxation.

Mr ADAMS—The intellectual property issue is the big issue because that is where the long-term wealth generators are. If you lose that, you lose the long-term jobs, the long-term opportunities. I understand there have to be a lot of amendments; I wrote here after our last hearing when we spoke to the negotiators that there will have to be a lot of amendments to our present acts dealing with this issue. What is your organisation doing? Are you proactive there? Are you starting to look at what changes will be needed to protect that within our own context?

Mr Durie—Only at the very preliminary stage, but we will be, well before parliament moves on those bills.

Mr ADAMS—Do you think there are already banks of lawyers in the States dragging through this saying: 'How can we get a bit more out of the Australians? How can we nail a bit of this down so we get it here?' They are pretty proactive when it comes to these things.

Mr Durie—Sure.

Mr ADAMS—I always think we are lagging behind.

Mr Durie—Not in the piece that we are interested in—perhaps if you move more to the audiovisual content side of it, and you have had representatives from that sector here this morning. If I look back over the last 18 months at who from the US has come to talk to our association about these issues, it has not been the big software companies and their representatives; it has been the big content owners, AOL, the movie people and so on. So I suspect in that area you are right. But I think if you look at the groups you have already heard from this morning and the group you will hear from this afternoon, you will see there is a lot of movement on our side on that issue as well.

Mr ADAMS—Thanks.

Mr KING—Your organisation represents, as I understand it, ICT companies generally. Does that include hardware and software providers and also service industries?

Mr Durie—Yes. It covers information technology, communications, hardware, software and services. So we have carriers, PC companies, software companies, services companies.

Mr KING—As I understand it, there are about 22,000 businesses in that industry across the country. How many do you represent?

Mr Durie—We represent about 380, which covers about 80 per cent of the revenue.

Mr KING—So you are the big end of the market?

Mr Durie—If you look closely at that data, you will find that many of them are sole traders who have incorporated for alienation of income purposes. There are in fact fewer than 2,000 companies with revenues of more than a million dollars.

Mr KING—What mechanism, if any, has your association put in place with ICT companies—whether within your association membership or not—to advise them of the opportunities opened up by the FTA?

Mr Durie—On that particular issue, we are still in preparation because the agreement will not come into effect at least until 1 January. We have approached the government in the first instance because we believe we need a government industry initiative on the procurement front in order to address the opportunity in the US market. We have also approached our counterpart in the United States in order to set up a process where we could educate our members about the US government market and how best to take advantage of the opportunities. So we are still at the preliminary stages. By the end of this year, we hope to have in place a program which educated members about those opportunities and actually gave them practical assistance in the Washington market.

Mr KING—Good. Finally, have you addressed the question of trade the other way—that is, trade from the US to Australia—in the ICT industries? How do you propose that businesses in your sector will be able to meet that competition successfully and indeed prevail over it?

Mr Durie—There have not been barriers on trade with the US in goods and services in this sector since 1984, so it is hard to imagine how the US could get better access to our market than they have had for the last 20 years.

Mr KING—So the benefits are really flowing our way. Is that what you are saying?

Mr Durie—In our sector in terms of trade, yes. If you look around this room, I imagine you will find a lot of material, software et cetera which has its origins in North America. My view is very much that it is hard to imagine how they would get better access than they already have.

Mr KING—Thank you.

Mr WILKIE—Mr Durie, you commented in your submission that access to the US procurement market would suit your members. What did you base that statement on?

Mr Durie—There were a couple of considerations. Firstly, Australian governments are recognised around the world for their innovative use of IT and for the applications that have been developed for them. Even despite, if you like, the dominance in that market of foreign suppliers, we have hundreds of small Australian software and services companies which have successfully supplied Australian governments. We believe there is an opportunity for those products to be sold into the US government market. We have a small number of members who have already been successful in that market through using workarounds, where they set themselves up so they appear to be an American company or the product appears to be American. These are companies like Tower Software, SoftLaw and so on who have had success with the US market.

Generally, when our members have attempted to respond to tenders from the US government, the interest on the US agency side tends to subside because we are not on the list of countries which have signed up for the WTO government procurement agreement. We actually had a disagreement with our US counterpart—the ITAA—during the negotiation process because they told us our concerns were ill-founded, that there were not any barriers. We actually produced copies of tender documents from our members which clearly indicated that Australian suppliers would get a second-rate opportunity because we were not compliant with the WTO government procurement agreement. The bottom line is that we have some capability in that area, we have some very good companies in that area, and removing these barriers will provide an opportunity for those companies to be successful.

Mr WILKIE—How concerned are you that the barriers have not really been removed across the board? When you talk about US government procurement, how big a market did you think you were getting into in terms of the states? Was it all of the states?

Mr Durie—My understanding is that about 25 of the states have already signed up. The major market is the federal market, quite frankly. California will be another big one, but my sense of it is that most of the key markets have signed up or will sign up.

Mr WILKIE—I think it is 27 out of 50. Originally the deal was based on people getting access to the lot. That is why I am wondering, from your perspective, how big a market you thought you were having access to.

Mr Durie—We focused our analysis purely on the federal government market. We saw the states as a bonus, if you like, relative to the federal government opportunity.

Mr WILKIE—Then in light of the fact that you could not get access for the people who would need to be delivering some of those services—and you were talking earlier about the difficulty of getting people into the market—how realistic do you think it is that you would get access to those markets?

Mr Durie—People find workarounds. They go and live in the US, get a green card et cetera. They just go through the painful process. Sure, it is harder than it would otherwise be, but it is still possible.

Mr WILKIE—In other words, what we might see is the shift of some of our expertise—that is, Australians who have skills in those areas shifting to the US.

Mr Durie—We are already seeing that. The bottom line is if you want to be successful in the US you have to be there and, because of their proclivity to buy locally, you have to appear to be American. You would not go into the US market waving the Australian flag and carrying a toy kangaroo under your arm. You would go in there presenting a product on its merits.

Mr WILKIE—So some of our companies may benefit financially but we may lose in terms of brain drain.

Mr Durie—My experience is that those people tend to come back or they move backwards and forwards, ringing up frequent flyer points.

Mr WILKIE—Okay. Thank you.

CHAIR—I would like to thank you, Mr Durie, for your attendance before the committee today.

Mr Durie—Thank you for the opportunity.

Proceedings suspended from 11.21 a.m. to 11.33 a.m.

RANALD, Dr Patricia Marie, Convenor, Australian Fair Trade and Investment Network; Principal Policy Officer, Public Interest Advocacy Centre

CHAIR—On behalf of the committee I would like to thank you for appearing before the committee to give evidence today. The secretariat will forward you a copy of the proof transcript of today's hearing when it becomes available. Do you have any comment to make on the capacity in which you appear before the committee?

Dr Ranald—I am appearing on behalf of the Australian Fair Trade and Investment Network, which is a network of 85 community organisations. My organisation is a member of that network and I am the convenor of that network.

CHAIR—Thank you. Although the committee does not require you to give evidence under oath, I should advise you that the proceedings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Dr Ranald—Yes, I will make some brief introductory remarks. The Australian Fair Trade and Investment Network is a national network of 85 community organisations that support fair regulation of trade consistent with human rights and environmental protection. We are not opposed to trade. We support the idea of trade, but we want fair regulation of it. AFTINET welcomes this opportunity to make a submission to the Joint Standing Committee on Treaties.

There is extensive public interest in this agreement and it is important that this should be reflected in the committee's review process. We note that there has been fairly extensive public consultation by the government in the course of these negotiations, although I would note that it has been less extensive with the community sector than it has been with business. However, we remain concerned that given the great impact of the agreement on regulation in important areas of social policy the public consultation process, particularly with the broader community, has still been inadequate. On nearly every point of concern in the text, the public was not permitted to know what was proposed or had been agreed until after the text was actually published. This meant the process of consultation has had less meaning than it should have had.

The first part of our submission deals with our general concerns about the US free trade agreement, including the economic effects, the structure of the agreement and its general impacts on the ability of governments to make law and policy in the public interest. Many trade economists question whether the US free trade agreement will result in benefits to the Australian economy, as there are already few trade barriers between the two countries, the access to US agricultural markets is extremely limited and a preferential agreement may divert trade from other trading partners.

We would argue that, even if there are marginal economic benefits, the price paid would be too high in terms of public regulation. The Australian economy is only four per cent of the size of the US economy, so integration of our regulatory frameworks means the pressure will be for Australia to adopt US models of regulation, rather than vice versa. The disputes process in the

agreement means that one government can complain about the regulation of another government, on the grounds that it is too burdensome or a barrier to trade, without proper consideration of health or cultural impacts, as the complaints are heard by a trade law tribunal which does not take those other issues into account.

The US FTA—and this is one of our major concerns—sets up a series of reviews and committee processes on issues like medicines, quarantine, food labelling and media local content regulation that will be used by the US to pressure Australia into adopting US models of social regulations that are opposed by most Australians. Setting up these committees through the US free trade agreement gives the US government the power to complain to a trade tribunal about policies and to have them changed on the ground that they are a barrier to trade. This will mean continual pressure for us to adopt the US models.

Part B of our submission considers impacts on particular areas of policy. I just want to mention one in my introductory remarks: the pharmaceutical benefits system. The changes to the PBS give drug companies more power to influence decisions about which drugs are listed for subsidy under the PBS and to seek price rises after drugs are listed. The US Trade Representative has said in his evidence to a US Senate committee that he believes that drug prices will rise under this system, which is the objective sought by the US pharmaceutical companies.

There is also a joint US-Australian medicines working group. Its terms of reference refer mainly to recognising the intellectual property rights of drug companies and not to the Australian principle of access to affordable medicines for all. We believe this is completely unbalanced and, because it is institutionalised in a trade agreement, the US will be able to use the disputes process to challenge Australian regulation in this area. There are also joint US-Australian committees on quarantine and technical standards like food labelling. We know that the US government regards our affordable medicines, our quarantine standards and our labelling of genetically engineered food as barriers to trade, so we can expect that the pressure will be on for regulatory changes in those areas.

We also deal with a number of other areas in our submission. These include the impact of the restriction that the agreement imposes on regulation of essential services, particularly services like water, public transport and public utilities; restrictions on future regulation of Australian content in new media; restrictions on and increased US influence on quarantine, which I have already mentioned; tariff cuts and impacts on manufacturing jobs; and limits on flexibility in government procurement.

The last part of our submission analyses the national impact analysis and the regulatory impact statement on the US FTA, which were supplied by the committee. We were very surprised by these statements because they are at the best incomplete and at the worst misleading. Firstly, the statements omit some significant disadvantages of the agreement. For example, they do not mention that access to the US sugar market is totally excluded. They state that the PBS and Australian content rules will not be adversely affected but fail to detail the changes to these policies, which are actually in the agreement. They fail to mention the review and committee process I have just outlined for medicines, public health, quarantine and technical standards—including food labelling—which give the US direct input into Australian policy. I would have

thought that such an assessment would have to look at the potential regulatory impacts of these processes. In other words, the statements do not look at the devil in the detail of this agreement.

They also do not discuss the government-to-government disputes process which could have a significant effect on the ability of governments to regulate. They claim that there is no current investor stake complaint process but fail to mention that the agreement does have provision for a future investor stake complaint process to be developed if it is requested by an investor. I believe that these serious omissions mean that the statements are not a serious evaluation of the national interest or regulatory impacts. I urge the committee to pay attention to the devil in the detail of the agreement, which hopefully will be exposed by the public submissions.

CHAIR—The Australian Fair Trade and Investment Network is a national network of 85 organisations. Do you have a list of the organisations which make up your network?

Dr Ranald—Yes. It is on our web site. I can also provide a current one—the one on the web site is now slightly out of date.

CHAIR—Thank you.

Mr WILKIE—Dr Ranald, obviously we are getting a lot of submissions from individual groups who might be positively or negatively affected by the agreement. Has your organisation done any overall analysis of the agreement as it might affect Australia in general as opposed to specific areas?

Dr Ranald—We have concentrated on the public interest impacts of the agreement. As I said, we are very concerned in two major areas. The first one is that the agreement makes some immediate changes which we believe are not in the public interest. For example, the changes to copyright law—which I believe were outlined this morning—extend copyright law by 20 years and extend the period for payment of royalties on copyright by 20 years. This will increase costs substantially for Australia as a whole because we are a net importer of copyright. It will also impact on public organisations like libraries, schools, universities and other educational institutions.

If we look more generally at the impact on the ability of governments to regulate in the public interest, our major concern is the series of committees that have been set up in areas like medicines, quarantine, food labelling and media regulation. This will give the US government direct input into our policy making for those areas and also give them the ability—because it is in a trade agreement—to challenge policy decisions in those areas on the ground that they are a barrier to trade. Challenges would be heard by a trade tribunal, which would not necessarily pay attention to the social, health, cultural or other impacts.

We are also concerned about the ability of state and local government to regulate in the future. Although current levels of state and local government regulation have been reserved from the agreement, any new regulation will be subject to challenge by the US government on the grounds that it is too burdensome or a barrier to trade. We are particularly concerned that the reservations in the area of public services are ambiguous because of the definition of public services. But they have not reserved from the agreement electricity, water, public utilities

generally or public transport, so all those areas of regulation could be challenged in future as barriers to trade.

Senator MARSHALL—You made the point in your submission that public utilities and public transport were in the list of reservations for the Singapore free trade agreement. Have you had any explanation as to why they are not in the US free trade agreement and why they were in the Singapore free trade agreement? What is the rationale for that?

Dr Ranald—We have had no specific explanation. I can only guess that they are not included because the US objected to their inclusion. We do know that there are US companies in those areas that would like to get into Australian markets, so we assume that was an area that the US did not want to include in reservations.

Senator MARSHALL—So are you saying that, in terms of our right to regulate in the public interest, that would then be subject to an appeal from the US, and any regulation would have to be on the basis that it was not trade restrictive or a barrier to free trade?

Dr Ranald—That is right.

Senator MARSHALL—What impact might that have on water, for instance?

Dr Ranald—Australian governments are currently negotiating water regulations for the Murray-Darling Basin. It might be thought to be in the public interest to have some restrictions on foreign investment in the area of water rights. What is being negotiated is a system of tradeable water rights for the Murray-Darling Basin. Or it might be thought to be in the public interest to somehow connect water rights with local land ownership. If you did either of those things it would be inconsistent with the agreement because the agreement says that you have to give national treatment to US investors and in the area of services. That would mean that we would be restricted in the kind of regulation we could have about water rights in the future.

Senator MARSHALL—How would that restriction practically take effect? If a local government simply institutes its decision, or if a state parliament or the Commonwealth parliament legislates, and puts those things in place, what happens?

Dr Ranald—The US government could then take a case to the disputes process, which is a panel of three trade experts, on the ground that that particular law or regulation was a barrier to trade. That is assuming that the law or regulation gets passed in the first place. If you look at the system of water rights, for example—and in other areas of regulation too—what is very likely to happen is a kind of freezing effect. In other words, governments will get legal advice about whether projected regulation is consistent with the US free trade agreement and, if it is not, they may not put it up, even if it is in the public interest. It may be in the public interest to say that water rights should be mainly owned by Australians and not by foreigners, but we would not be able to have a law or policy which said that.

Mr CIOBO—I would like to ask you about all 10 of your queries but I do not have time, so I will confine it to a couple. In particular, in No. 10, you speak about tariffs on motor vehicle parts and textiles, clothing and footwear falling from between 15 and 25 per cent and between five

and 15 per cent. In dollar terms, do you know what those extra taxes that Australians pay amount to per annum?

Dr Ranald—No, I do not have that figure at hand.

Mr CIOBO—About how many people would you say are employed in those industries?

Dr Ranald—In terms of employment, I do have the figures. They are actually in our submission. I think you are reading from a summary that we have done for the public, but our submission actually has more information than the summary. Seventy-eight thousand people work in the textile, clothing and footwear industry, and the car industry employs about 54,000 people. Our point about that is that, in both cases, those people are employed in regional areas of high unemployment and that there have been no studies so far which look at the impact of tariff reductions in those regional areas of high unemployment. What we are arguing in our submission is that such studies should have been done before negotiations commenced and they should certainly be done and the results known before any decision is made about this trade agreement.

Mr CIOBO—Do I take that you have done one?

Dr Ranald—No, we have not. We do not have the resources to do one. But I understand that the Manufacturing Workers Union—representatives of which are appearing later—are doing one, so you might want to ask them more detailed questions.

Mr CIOBO—I will. Your assertion that there will be thousands of jobs lost is based on what?

Dr Ranald—We said that, because of the immediate reduction from 15 per cent to zero for car parts, there will be job losses in the car parts industry.

Mr CIOBO—What are you basing that on?

Dr Ranald—It is because there will be an immediate reduction from 15 per cent to zero in that particular part of the industry. It is not a staged reduction; it is an immediate reduction. There are very likely to be job losses in that part of the industry. But we have said that, to know the complete effects, you would need to do studies, as we have outlined.

Mr CIOBO—In your submission, you say:

Tariffs on motor vehicle parts will fall from 15% to zero when the USFTA comes into force, which will mean immediate job losses.

What are you basing that on?

Dr Ranald—We believe there will be immediate job losses in that part of the industry. But in our submission we have said that we believe proper studies should be done to show the extent of those job losses.

Mr CIOBO—So you do not actually know that; it is just your assertion? It is important. It was presented as a statement of fact. So I am interested to know whether it is a fact or an opinion.

Dr Ranald—I think it is very likely that there will be job losses in that part of the industry.

Mr CIOBO—I am interested because my contention is: what is the benefit of continuing to tax the Australian people to artificially sustain jobs in an industry?

Dr Ranald—We are arguing that, historically, both of those industries have had slightly higher tariff levels for a range of reasons. One of those reasons is that they provide employment in regional areas of high unemployment.

Mr CIOBO—So you see it as an employment program?

Dr Ranald—We are saying that studies should be done on the employment impact—

Mr CIOBO—I understand that.

Dr Ranald—and that should be known before a decision is made about this trade agreement.

Mr CIOBO—I would like to turn to point 9 in *Ten Devils in the Detail*, where you speak about the additional quotas that are made available on multichannel free-to-air commercial TV and, in particular, to where you speak about the 20 per cent local content rule that can apply on up to two additional channels. You imply that that is a concern because there is a maximum of only three out of five multichannels. What is your concern there?

Dr Ranald—Our concern is that, while multichannelling will mean a vast increase in the amount of material available to Australians—and that is positive—the Australian content rule will only apply to up to three channels. So the proportion of Australian content generally will be limited. Our concern is that that will mean an overall reduction in Australian content and the opportunity to hear Australian voices.

Mr CIOBO—Is there enough Australian content on three channels to satisfy that quota? Is there an oversupply of Australian content that would mean Australians are going without in respect of those additional channels?

Dr Ranald—I do not have that detailed information about the industry, but I do not think it is a matter of oversupply. This is a cultural issue. Australia does have a flourishing cultural industry, partly because we have Australian content rules and because we are a small market. Most countries have local content rules for cultural reasons—to ensure there is local content in the media. Local content does not just mean Australian content generally; it also ensures that Indigenous voices and voices from ethnic communities are heard—that the specific and varied cultures in Australia are reflected in the media. That is a cultural policy; it is not a trade policy. We believe, with most of the media industry, that those cultural policies should have been completely reserved from this agreement. Instead, strict limits have been placed on the ability of governments to regulate for local content in new media. We do not know exactly what the

situation will be, but it is pretty clear that there is going to be a vast array of new media and that Australian content will be limited by the agreement.

CHAIR—But the existing rules for free-to-air remain.

Dr Ranald—No. The existing rules for existing media will remain, but there are specific limitations for certain forms of new media. Also, if forms of media develop that are not nominated in this agreement, we will not be able to have any Australian content rules for them at all. That is the effect of this agreement. The way that these agreements work is that if you do not name everything that you want to have in a reservation you cannot then later reserve new forms of media that develop. That is why we wanted to have a complete reservation for cultural industries and, for that matter, for a whole lot of public services and essential services. Instead, we have qualified and limited reservations which mean that the ability of government to regulate in those areas will be severely restricted.

CHAIR—Dr Ranald, do you see any benefits for Australia in the free trade agreement? Do you see any benefits in, for example, the reduction of any manufacturing tariffs in the United States, the reduction of agricultural tariffs in the United States and the access for Australian companies to government procurement and so on? Do you see why there are companies that say, 'This is a good thing. This gives us access to a market of almost 300 million people'?

Dr Ranald—I do understand that certain industries and certain companies could benefit from this agreement, but I do believe that particularly for agriculture the benefits are much less than were promised. I would point out that normally with trade agreements you look at the benefits for the whole economy, not just the benefits for particular industries or particular companies. We believe that the benefits for the whole economy will be at best marginal. We detail in our submission several studies which show that there could be slight negatives in the overall economic impact. But we are saying that even if there are marginal economic benefits we do not believe it will be worth giving away the regulatory powers that are given away in this agreement. It is done through a series of processes which you really have to look very carefully at. As we said, the devil is in the detail, and we do not believe that this is a good agreement. We do not believe that we should be giving away the rights to regulate in the public interest. We are opposing the agreement on public interest grounds.

Mr ADAMS—The beef industry said in evidence this morning that because of the high level of inspection services in our abattoirs in Australia, which has been built up over many years, we can export chilled beef over a very long period of time because there is no contamination. You mentioned quarantine issues. I want to draw this out to make sure we get it on the record. Two committees have been set up. Their objective is to facilitate trade. What is your opinion of that in relation to the fact that this is the Australian process and every time the minister talks about this he says that we have a statutory, sovereign right to make our own decisions about quarantine, but we have set up two committees which deal with quarantine and their objective is to facilitate trade? What are your opinions on that? Where do you think that is going to lead?

Dr Ranald—We know that parts of the US agricultural industry regard our existing quarantine rules as barriers to trade and have continually tried to challenge aspects of them. We believe that this joint committee will be an avenue for those challenges to continue. Our worry is that because it is in a trade agreement the disputes process can then be used to challenge the

development of policy or particular aspects about quarantine. That means that a trade tribunal will be making decisions about quarantine which we believe should be made on a scientific basis in terms of health and environmental issues for Australia.

Mr ADAMS—That decision by the disputes process may or may not be made public.

Dr Ranald—If you read the details about the disputes process, they say that full decisions may or may not be made public and they may or may not hear from various parties and so on. Really, it is up to the tribunal to determine those issues.

Mr ADAMS—So regarding the public interest, in the future, if because of an environmental concern a local government were to set a standard and a regulation on water which was seen to be contrary to this agreement, there may be a case taken in the court?

Dr Ranald—Environmental issues are somewhat more restricted in terms of applications to the tribunal process. So, if it is strictly an environmental issue, it may not be able to go to this trade tribunal, because there are some restrictions on which environmental issues can go to that trade tribunal. But, if it were an issue about market access or perceived by the US to be about market access in relation to water in the way I described before, then it could be appealed to the tribunal.

Mr ADAMS—One thing that could apply is that several councils set up a regional authority to control the price and regulation of water in Australia. Would that become a restricted situation under this?

Dr Ranald—Again it would depend on whether the US perceives such an arrangement to be too burdensome or a restriction on market access. For example, if a group of local councils in a rural area said, 'We believe that water is most effectively supplied in this area by an amalgamation of several water authorities and we don't necessarily believe it would be in the public interest to have a competitive supply of water in this area,' then that could certainly be challenged under the terms of this agreement because that would be a restriction on market access.

Mr ADAMS—So under the competition policy rules—state, federal and local government—there is an opportunity to argue public interest but under this agreement we are probably excluding ourselves from doing that. Is that your view?

Dr Ranald—I think that the ability to argue the public interest is severely restricted because of the nature of this trade tribunal—its main concern is about whether the regulation is burdensome for business or whether it is a barrier to trade. So it does not have to look at public interest issues.

Mr ADAMS—I make the point that with the Australia-Thailand trade agreement there were 100 jobs lost at a windscreen manufacturer in Melbourne. A hundred jobs were gone.

Senator TCHEN—Dr Ranald, as you say, the devil is in the detail, but branding is of fundamental importance. Regarding the Australian Fair Trade and Investment Network, I think you would be talking about the Australian free trade and fair investment network, wouldn't you?

Dr Ranald—No, it is the Australian Fair Trade and Investment Network.

Senator TCHEN—Your network of organisations, as you mention at the beginning of your submission, is supporting fair regulation of trade consistent with human rights and environmental protection.

Dr Ranald—That is right.

Senator TCHEN—When you talk about fair trade you are talking about fair regulation of trade consistent with human rights and environment protection?

Dr Ranald—Any trade agreement is a regulation of trade.

Senator TCHEN—Yes, I understand that. The reason I ask is that other people have come and will come to us to say they support fair trade—not necessarily free trade, but fair trade. I want to make sure when you say 'fair trade' we understand where it is different from or the same as when someone else comes to us and says 'fair trade'. When you talk about fair trade you mean fair regulation of trade?

Dr Ranald—Yes.

Senator TCHEN—And consistent with human rights and environmental protection. When you say also that your association has concerns about the public interest impacts of this free trade agreement, is that public interest in terms of human rights and environmental protection?

Dr Ranald—Yes—human rights in a general sense, meaning, for instance, things like access to affordable medicines; access to essential services like water; cultural rights, which include the right to have access to Australian voices and images in media; and the ability of governments to be able to regulate democratically in the public interest and not be arbitrarily restricted from regulating by trade tribunals.

Senator TCHEN—So you are talking about human rights and environmental protection in the context of national self-determination?

Dr Ranald—Yes.

Senator TCHEN—You are not arguing this in terms of other nations' ability to self-determine?

Dr Ranald—Well, this particular trade agreement is a bilateral agreement, so—

Senator TCHEN—What interests me about your position is that you seem to be implying that your opposition to the free trade agreement with the United States is because the United States is not a country that has public policy that is consistent with human rights and environmental protection. If we had a free trade agreement with Myanmar, for example, which is a recognised dictatorship, I could understand your concern. If you have a concern about our free trade agreement with the United States, are you basing that on the assumption that the United States is

not a nation which has developed its public interests consistent with human rights and environmental protection?

Dr Ranald—We have given specific examples where we believe United States regulation would not be appropriate in Australia. For example, in the area of medicines, the United States does not have a price control system, as we have under the PBS, which means that in Australia medicines are affordable for everyone. The United States does not have that process. In the United States, medicines cost three to 10 times what they do in Australia, and a lot of people cannot afford to have access to them. We believe that that is an inferior system to our system. We do not want that regulatory system here. But that is a specific example.

CHAIR—But that is not in the free trade agreement.

Dr Ranald—We believe that the free trade agreement sets up a series of processes which enable US companies to get decisions of the PBS reviewed about whether to list certain medicines in the first place. It also enables them to ask for reviews of prices once they have been listed and sets up an ongoing medicines working group which gives the US an ongoing input into our policy in the future.

CHAIR—But that is very different from the United States system.

Dr Ranald—If you look at the position of the US pharmaceutical companies, they have consistently argued that the price of medicines is too low in Australia and that the prices should be higher. The US trade representative, Zoellick, gave evidence two weeks ago—we quoted the report of that in our submission—in which he said that he believed that US pharmaceutical companies will be able to get higher prices for their medicines in Australia under the free trade agreement and that this will be a benefit for those companies. Of course it will be a benefit for those companies, but we believe that it will be a great disadvantage for the Australian people.

Senator TCHEN—Dr Ranald's position seems to me to be a curious one. She seems to be arguing that the existing system in the United States is not consistent with human rights and environmental protection requirements—that if the United States system is introduced into Australia it will be seen as contrary to human rights and environmental protection consideration. Therefore, if it is practised in the United States, it must also be contrary to human rights and environmental protection requirements.

Dr Ranald—What we have done is given specific examples of where we believe that US regulation would not be appropriate in Australia and could lead to a reduction of human rights. They are specific examples.

Senator TCHEN—Yes, but the bottom line of your argument is that if it exists in the United States it must therefore be inconsistent with human rights requirements.

CHAIR—I think Dr Ranald has addressed your concern.

Mr WILKIE—I have two issues about the medicines review for the pharmaceutical industry, Dr Ranald. Do you have a concern that, even though the appeals process or the review process for some pharmaceuticals cannot overturn a decision made by the current system, that would

bring pressure to bear for products to be included on the PBS that are not currently and would give those drug companies an avenue to publicly pursue that course?

Dr Ranald—I think that it will exert pressure on the Pharmaceutical Benefits Advisory Committee, but I also think it is naive to think that, because this review process is in a trade agreement, the US companies will not pursue it very vigorously. They have done this in every other forum and, because it is in the agreement, it means that all of those processes will be subject to the disputes process. For instance, if the US are not happy with the process that is set up, they might complain about the process. We are particularly worried about this ongoing committee as well. I know that the government says that it will not really mean anything, but, if we are setting up a joint committee with the US about future medicines policy, there is no way that the US government and US drug companies will not have very definite ideas about input into that committee and, on their past record, they pursue any legal process in trade agreements very vigorously. So we believe that it will lead to challenges to and unreasonable restrictions on regulation in that area.

Mr WILKIE—I have a concern that, even though the committee appears to be a toothless tiger, it gives a public forum for continued ongoing pressure to be brought to bear. The second question that I have relates to your pamphlet called *Ten devils in the detail*. It talks about the economic benefits and a study done by the Productivity Commission which predicted losses to Australia. I have been very critical that the Productivity Commission have not been called upon to investigate the economic benefits for the country based on what we actually achieved, as opposed to what we were looking at. I have not seen any other studies that they have done previously so I wonder if I could get a copy of that Productivity Commission report which predicted losses. And I would be interested in your view on why they were not included in the current investigation into the benefits.

Dr Ranald—That working paper was prepared by staff at the Productivity Commission and it examined 18 preferential trade agreements, as they call them. The full reference to it is given in our submission. The committee would have access to that. The agreement found that, out of 18 preferential bilateral trade agreements:

> … 12 had diverted more trade from non-members than they have created amongst members.

It also found:

> … many of the provisions needed in preferential arrangements to underpin and enforce their preferential nature—such as rules of origin—are in practice quite trade restricting.

The full reference is in our submission. I could provide a copy of those bits of it, but I am sure the committee can get it from the Productivity Commission.

Mr WILKIE—Do you think that, given that they have been negative in the past about these sorts of agreements, that is one of the reasons that they were not even asked to get involved this time?

Dr Ranald—I think it is inconsistent of the government to use the Productivity Commission for some things and not for others. I suspect that the reason they were not called upon to do this particular study is that their studies might be too objective in the current circumstances.

Mr WILKIE—Do you think they would be the best organisation to have done a review, a model?

Dr Ranald—I think there are a number of organisations. I am not really qualified to say that they would be the best one, but I think it is interesting that they have not been asked on this occasion.

Senator KIRK—Thank you, Dr Ranald, for your submission. I want to clarify a matter in relation to the disputes resolution procedure as you see it working. You referred to the panel, as I think it is called under article 21, as the 'trade tribunal'. I think you mentioned that it would be composed of three members who would be trade experts. Are they people appointed by the United States government or by the Australian government? What is your understanding?

Dr Ranald—They are jointly appointed by both governments, but the point about them is that they are experts in trade law. They are not experts in social policy, health policy or environmental policy. If you look at the decisions on previous similar trade tribunals, it is very clear that what they look at are the trade issues. They look at whether something is too burdensome for business or whether it is a barrier to trade. They do not look at the social impacts.

If I can give a recent example from the World Trade Organisation, the World Trade Organisation, which has similar tribunals, recently made a decision that US restrictions on Internet gambling were a barrier to trade. We also, in Australia, have restrictions on Internet gambling. Ironically, that is one of the issues that have been completely reserved from the US free trade agreement, because there is agreement between the two governments that they should have the right to have restrictions on Internet gambling. So it is not an issue for the free trade agreement. But I think it is a very interesting example where a trade tribunal in the WTO has said to a government, 'You do not have the right to place limitations on Internet gambling because of the social harm that might arise from gambling'. When we look at Internet gambling in trade terms we will only look at whether something is a barrier to trade. We will not look at the social harm that could arise from gambling. So I think that is a very good example of the limiting effects of these kinds of trade tribunals on the right of governments to regulate.

Senator KIRK—A final point of clarification: my reading of the provisions suggests that the panel can only make findings of facts and determinations regarding consistency of an action with the agreement, rather than be able to enforce its decisions. What is your understanding of the way this will operate?

Dr Ranald—In fact, the panel does have enforcement powers. It can recommend that a law or policy be changed and it can also recommend financial penalties. That is very clear in article 21.

CHAIR—What was your organisation's view on the Australia-Singapore free trade agreement?

Dr Ranald—We had a number of concerns about the Australia-Singapore free trade agreement, because it has a very similar structure to the US free trade agreement.

CHAIR—Were your concerns as strong as they are with the Australia-US free trade agreement?

Dr Ranald—We made submissions to this committee about it. We had two areas of major concern. One was the negative list structure for services and investment, which means that, as with the US free trade agreement, you have to list all areas of regulation which you want to be excluded from the agreement. Everything is included unless it is excluded. So we had an objection in principle to that structure because of the limitations that it places on the ability of governments to regulate, particularly for future regulation. But in relation to the US free trade agreement we were also concerned, as I said, that even the reservations for the US free trade agreement are fewer than the reservations for the Singapore agreement. We are particularly concerned about the omission from the reservations of areas like water, electricity, public transport—the ones that I mentioned before.

CHAIR—Have any of your 85 organisations been involved with the movement called S11?

Dr Ranald—I am not aware of what you are talking about.

CHAIR—Do you remember that on 11 September 2000, when the World Trade Organisation met in Melbourne, there was a group that called themselves S11?

Dr Ranald—I am not aware of a group called S11, no.

CHAIR—Have any of your 85 organisations been involved in the protests which surrounded the World Trade Organisation?

Dr Ranald—I think some of them may have been, but when you say 'protests' do you mean protests in Mexico or—

CHAIR—The protests of 11 September 2000?

Dr Ranald—They were not about the World Trade Organisation. The 11 September 2000 meeting was a meeting of the World Economic Forum, not a meeting of the World Trade Organisation.

CHAIR—Were any of your 85 organisations involved in those protests?

Dr Ranald—I am actually not aware, because our organisation was only formed in 2000.

Mr CIOBO—I ask for clarification on one point. I am unclear as to why you would be so critical of the position taken with regard to sugar when in fact all the US government has done, to use your logic, is apply what you would like to see in the manufacturing industry in textiles, clothing and footwear to their sugar industry. Aren't you trying to have your cake and eat it as well?

Dr Ranald—Our point about sugar is in relation to the claimed economic benefits of this agreement. The government did claim that there would be market access for agriculture across the board and that would lead to economic benefits for Australia as a whole. The fact that sugar has been excluded considerably reduces the economic benefits for the Australian economy as a whole.

Mr CIOBO—You obviously did not believe that there were economic benefits that would flow to Australia from the liberalisation of the sugar industry in the US.

Dr Ranald—What I am talking about is the claims made by the Australian government about the economic benefits of this agreement. We are merely pointing out that the economic benefits for Australia as a whole are less than predicted or promised.

Mr CIOBO—All I am asking is: did you agree with the claims about there being economic benefits from sugar? Yes or no?

Dr Ranald—We are not opposed to trade in general. We believe that the sugar industry would benefit from having greater access to the US market.

Mr CIOBO—So you want the Americans to liberalise their sugar trade, but you do not want us to be required to reduce tariffs to liberalise those industries in Australia. Is that your position?

Dr Ranald—No. What we have said about the reductions in tariffs in manufacturing industry is that there should be proper economic studies of the regional employment impacts of those reductions. They have not been done, and they were not done before negotiations commenced.

Mr KING—In your observations about trade law experts, have you taken into account the approach that experts of that kind take in relation to restrictions—namely, whether the rule or law in question is, in the first instance, contrary to the interests of the parties themselves, and then whether it is contrary to the interests of the public generally? If that two-tiered approach were taken in relation to any particular restriction of law, wouldn't it address the concern that you mentioned a short while ago?

Dr Ranald—I am sorry; I am not sure that I understand the question.

Mr KING—It comes down to a question of the approach that trade law experts will take to an examination of the laws in question that are objected to under the trade tribunal, which I think you criticised. What I am suggesting to you is that, in fact, a proper approach to an examination of those legal restrictions does allow a consideration of both the public and private interest.

Dr Ranald—I will just come back to the example from the WTO. The WTO made a decision that it was not legitimate to restrict Internet gambling on the grounds of the social harm caused by Internet gambling. They made their decision based solely on whether those regulations were a barrier to trade. I think that is an example. There are other examples of similar decisions which have been made by trade tribunals.

Mr KING—So you have not actually examined the legal arrangements and the rules that would govern these issues.

Dr Ranald—Yes, I have. I have looked at a number of the decisions of trade tribunals. I can give you other examples if you want them.

Mr KING—What I am suggesting to you is that the rules do enable an examination of both the private and the public interest with respect to any restriction. The Internet gambling example you have given is just a blanket exemption. It has nothing to do with the content of the rules themselves.

Dr Ranald—I could give you examples of decisions that trade tribunals have made. For example, they have said that a requirement for the labelling of genetic engineered food was a barrier to trade. In the context of the North American Free Trade Agreement, there have been decisions about local government environmental zoning which were successfully challenged as a barrier to trade. There are a number of other decisions that I could provide to the committee, so I do not believe that these trade tribunals always give a sufficient account of issues other than trade issues.

CHAIR—Thank you for your evidence and your attendance before the committee today. It would be helpful if you could provide any documentation, such as the *Ten devils in the detail* pamphlet.

Mr WILKIE—Would you like to table that as an exhibit?

Dr Ranald—I did not actually provide that to the committee; it was sent to individual parliamentarians. I am happy for it to be tabled. Our major submission is the longer document, which has four references and so on.

CHAIR—We authorised that submission this morning. There being no objection, we will accept that pamphlet as an exhibit. Thank you very much, Dr Ranald.

[12.25 p.m.]

CAMERON, Mr Doug, National Secretary, Australian Manufacturing Workers Union

KENTISH, Mr Alister, National Project Officer, Australian Manufacturing Workers Union

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Cameron—Yes, thank you. The first issue I would like to raise is that, from our perspective, we see the US free trade agreement as an ideological agenda of government based on dogma, not an economic or social agenda. We believe it has gone badly wrong and the Australian negotiators, including Minister Vaile and the Prime Minister, were outperformed, dudded and comprehensively routed by the American negotiating team. The US free trade agreement is not in Australia's economic, social or cultural interest. The free trade agreement would hasten a position where Australia simply becomes a farm, a quarry and nice place to visit. This committee, based on the evidence that comes before it, should reject the signing of the agreement as not being in the public interest.

We see a range of problems with the free trade agreement. There is a huge trade imbalance with the US at the moment, and the effect of tariff reductions will be to make that worse. The economic effect of the agreement is a problem in terms of the Australian economy. The labour chapter in the agreement is inadequate. The loss of tariff revenue has not been factored into government expenditure. The social and cultural impact of this agreement is quite significant. The commitments that Australia proposes to give on foreign investment are not in the national interest. There has been a capitulation by the negotiators and government over sugar. The issues concerning rules of origin are not simple but extremely complex, and the issues concerning government procurement are not being promoted by government spokespeople.

We will be preparing a submission to the Senate select committee. We will in that submission include some economic modelling by NIEIR, which is headed by Dr Peter Brain. We are in the process of doing that now. Because of the haste with which this committee is pushing this through, we are not in a position to adequately address that for this committee, but we are prepared to forward a copy to this committee when it is available.

CHAIR—Thank you very much.

Mr Cameron—I will go to a couple of points of concern to us. The manufacturing trade imbalance with the United States is extremely high. We have an imbalance of something like $12 billion with the US, the highest we have with any trading partner.

The United States automotive industry deficit worldwide—and I note you have some vehicle industry in your electorate, Chair—is about $110 billion, so they have got a huge deficit they are trying to make up. We will be a victim of their making up that trade deficit. We certainly will not be able to meet the overall United States trade deficit, but the US has a surplus with us now that is in the region of $885 million. We believe this agreement will increase that deficit and make the current account deficit even worse and is not in our economic interest.

In terms of tariffs, we both have pretty low tariff structures. The WTO has indicated that the applied tariff for non-agricultural products is 4.2 per cent in the US and 4.7 per cent in Australia. But we will be disadvantaged because the vehicle and components sectors have currently got tariffs of up to 15 per cent. The Canadian experience is quite interesting. I draw your attention to page 6 of our submission. Industry Canada in 1999 heard from Duncan and Murphy all of the same arguments that are being put here by members of this committee and the arguments that are being promoted by government that this free trade agreement is really good for you—'Just trust us.' The Canadian public trusted their government and ended up in NAFTA. The analysis that was done there showed that 276,000 jobs were lost by the introduction of NAFTA. Even though 870,000 export jobs were created, 1.1 million jobs were destroyed as a result of imports.

We seem to have a debate raging publicly which is about export potential. Even if the export fairytale that we are being pushed towards comes true, you will have to take into account the other side of the coin, which is imports. We simply think the minister for industry, and the government as a whole, are asleep at the wheel on this issue. It is not being addressed properly. We are in one of Dr Karl Kruszelnicki's microsleeps in terms of this. We are just not on the ball. We really need a close analysis of the impact of increased imports into Australia.

The Americans have got absolutely no doubt about who won out of this agreement. I take you to pages 7 and 8 of our submission. You will see that the President of the National Association of Manufacturers quite clearly indicated that there will be an additional $2 billion a year in US manufactured goods exported to Australia. I would like someone to tell me why I have heard the figures of a $4 billion benefit to Australia when America can export an extra $2 billion worth of manufactured goods to Australia and that does not have a significant impact on manufacturing jobs in this country. The President of the National Association of Manufacturers has got no doubt what this agreement does.

Even the US trade representative himself, Bob Zoellick, said on 3 March that this will support 150,000 good-paying American jobs in new export opportunities—not existing export opportunities, but new export opportunities. The US Business Roundtable supports the $2 billion figure from the National Association of Manufacturers, and the US Chamber of Commerce, in a letter to the US House of Representatives, also indicated that this will create more American jobs. The Chairman of the American-Australian Free Trade Agreement Coalition indicated that the significant reduction in tariffs will mean benefits to Australian manufacturing workers. I have not heard any major Australian manufacturing group other than those companies whose parents are United States companies openly give this agreement the type of support that the American industry gives it, because—I will go back and say again—we were comprehensively dudded in this agreement.

The effects on manufacturing, in our view, will be significant. The Centre for International Economics or CIE, the Australian group, predicted a weakening of the bilateral trade balance in

the automotive sector. Remember that was the study that the government tried to hide from public view. That CIE document predicted a weakening of bilateral trade. The Victorian Department of Premier and Cabinet has conducted a study. They see 1,100 full-time and part-time jobs lost in the car and components sector in Victoria. The University of Michigan have conducted a study and they say that there will be a reduction of output and employment in metal products and manufacturing in Australia.

The initial analysis by NIEIR being undertaken for the AMWU indicates that there will be far larger job losses in the auto and component industry even than that predicted by the Victorian Premier's department. I draw your attention to the chief executive of Toyota, Ken Asano. He is one of the executives who can speak his mind about this freely because he is not subject to the United States determining his position on this. He says:

A free-trade deal between Australia and the US that cuts automotive tariffs quickly will be 'suicide' for the local industry.

In South Australia, in terms of Mitsubishi, if we do have trade being diverted from Asia to the United States and we see pressure on the Japanese companies here then we take the view that the Productivity Commission approach which says that, if Mitsubishi closes down, there will be between 11,000 and 22,000 jobs lost could come true. If we divert our trade more into an export position to try to achieve exports in the US, which we believe is a fairytale, then Ken Asano has quite clearly indicated what he thinks about it.

There is nowhere that we have seen where there has been a proper critical analysis by government of the effect of the rising Australian dollar. We have gone from 48c to the US dollar in April 2001 to now, where it is consistently above 75c. The Australian Industry Group in a recent survey indicated that 57 per cent of exporters had had a reduction in export orders and had lost $3.2 billion worth of export orders. Fifty-three per cent of manufacturers reported increased competition, with a loss of $4.1 billion. That is a total of $7.3 billion lost in the manufacturing industry, and 10 per cent of manufacturers are now saying that they will employ fewer workers.

The higher dollar has also meant that 20 per cent of manufacturers are considering moving some of their production offshore. You have to take into account when dealing with this trade agreement the issue of the dollar, the technological advantage that the US has over our industry, and the economies of scale that the American industry has over ours to get a picture of what is going to happen. That analysis has not been done. We are currently undertaking that with NIEIR. Some of the broader economic effects you know about—

CHAIR—Without any disrespect, given that we have the submission, if it is acceptable to you I think it might be better if we move into questions—

Mr Cameron—I am happy to do that. Given some of the questions that came forward to the last speaker, I did not think you had read our submission.

CHAIR—We have your submission in front of us. I think we can take it as read and move into questions if that is okay. You have raised a number of points about the impact on manufacturing of the free trade agreement. Looking at the automotive and automotive components sector, it is true that this is an area where we have a trade deficit, but, relative to the size of the trade, the trade deficit is a small part of that. We export something like between $4

billion and $5 billion in autos and automotive parts. I think the deficit is $US885 million. I suppose what I am saying is: do you see any benefits on the export side? Some of the companies within your sector have been quite bullish as well about the opportunities they see.

Mr Cameron—The companies that have been bullish are mainly the US owned companies, so you have to take that with a pinch of salt. In terms of what benefits are there, we agree with the general economic analysis that has taken place: that there will be job losses in manufacturing. That has been said in a clear and consistent voice by independent economic analyses into the US free trade agreement. Even the Productivity Commission in an internal working document indicated job losses in manufacturing as a result of the US free trade agreement. That is why the government will not go to the Productivity Commission. I am not a fan of the Productivity Commission but I certainly think they would give a far more independent position than the manufactured outcome that is being promoted as part of the so-called independent analysis from government.

Senator MARSHALL—In terms of the economies of scale, you have indicated in your submission that, even though there will be relatively low trade barriers in terms of tariffs and even if in an overview sense it looks as if there is free and open trade between the parties, we will still be at a significant disadvantage because of the economies of scale. Can you further elaborate on the problems that that creates for our industry in terms of trade with the US?

Mr Cameron—There are a number of problems. The US multinationals operating within Australia at the moment have an aggressive cost-cutting agenda, demanding from their component suppliers a 30 per cent reduction in the cost of individual components to the Australian car industry. They are aggressively seeking offshore production, at some cost to Australian jobs. We have had reported to us the disappearance of hundreds of jobs.

In terms of the US position, we strongly believe that the United States see Australia as a medium sized to large market. I was interested to see that Bob Zoellick indicated Australia was a large market. We are getting preached at continually that we are a small market, but the US does not see us as a small market. If they can concentrate more production in the United States, they will. In our submission we quote the GM head of operations in the United States basically saying that, if the Pontiac GTO, which is our Monaro, starts taking off in terms of sales in the US, it will not be General Motors here who will build it; it will be repatriated back to the US and built in the US. There is an overestimation from even the most optimistic supporters of this free trade agreement that we will achieve benefits in manufacturing. All the signs are saying we will not. All the signs are saying that there will be job losses.

Senator MARSHALL—Just on the job losses, the economic modelling that has been done so far, as I understand it has made the assumption of full employment, which I guess in summary means that, if there are job losses in manufacturing, people will simply walk into another job—and it might be in processing ground beef for export, which is an area we expect to grow in. But I would assume the reality is significantly different from that, particularly in the manufacturing area and the automotive industry. Can you describe the social impact of significant job losses in the manufacturing industry?

Mr Cameron—We did a social and economic analysis of the effects of the closing down of the BHP steelworks in Newcastle—that was part of this globalisation approach and the argument

that we had to open the economy up more to external trade. What we found there was that workers did not achieve anything like the wages or the jobs that they had previously enjoyed at BHP. Mainly the jobs were short-term, casual or contract jobs, with lower wages and worse conditions than the jobs the workers enjoyed at BHP.

Many families in Newcastle indicated they could not pay for their family's health costs, especially since the government had introduced private health funding. They were having problems looking after their family's health needs. Many people in Newcastle had seriously considered suicide because of the lack of job opportunities. They said they simply wanted jobs, some security and some stability in their lives. In these discussions we hear a lot about the implications for trade and big business. We very seldom hear about the issues for ordinary Australians who are the victims of trade liberalisation in this so-called dogma of free trade.

Senator MARSHALL—I have one last question. In terms of industry skill levels, the vehicle and auto components industries, as I understand it, are fairly highly skilled and provide a feeder stream for skilled trades people and value added skills that are then used by the rest of the community—someone who is very interested in trade skills. What would be the flow-on impacts? Your study may say, 'Mitsubishi may close down' and other studies may say, 'There could be 11,000 job losses' or whatever the figure is, but are there flow-on effects through the rest of the manufacturing industry? One thing has always concerned me. I have a view that you need a critical mass of manufacturing technology and a skills base in order for the whole manufacturing base to move. If you take away or threaten a significant part, you effectively undermine the whole industry. Could you comment on that.

Mr Cameron—There is no doubt about that. The practical evidence is there already. The TAFE system is now not supplying the required number of apprentices in the real trade area, not the mickey mouse trades that are being promoted as being of great benefit to the Australian community. For the real trade area, the traditional trade area, the TAFE system is not geared up to handle the reduced number of trades people coming through. If there was a loss of a significant part of the industry, the multiplier effect would move down into the components sector and the industries that supply the components sector. We believe that the basic skills, the fundamental transportable skills, for manufacturing will be lost, and that is a problem not only for the economy but also for the defence of this country. If we cannot maintain our defence capacity through having skilled trades people in this country, because we are not training them up and because we have lost our economic independence as a manufacturing country, then that has not only economic but defence implications for this country.

Mr WILKIE—In the lead-up to the agreement, I remember Minister Vaile going on about the Jones Act and how we were going to get some wonderful concessions from the US in relation to the Jones Act. Unfortunately, none of that came off and he had to do an about face at a recent maritime industry seminar in Canberra. What was the impact of not achieving anything from the Jones Act in terms of ship building and manufacturing in Australia?

Mr Cameron—The implications are that more jobs, more technology and more ideas are being exported to the United States, such as what happened in Tasmania where the aluminium shipbuilding industry was forced to build a manufacturing plant in the US to access the US market. Nothing has changed on that through this agreement. In fact, in some aspects it could get even worse. The agreement provides for more access here for American manufacturing, so it

would be easier for the aluminium shipbuilding companies to set up in the southern states of America and supply both the Australian and the American shipbuilding industries from the southern states of America. We were absolutely done over. They took our play lunch away from us in these areas.

Mr WILKIE—Also in relation to the vehicle manufacturing you talked about, Toyota and Mitsubishi, have they made many comments—you quoted some—about the impact of the agreement since it was signed? I asked the department this recently but unfortunately it is a confidential transcript so I cannot talk about their response, but I am interested to know if you know of comments made by the industry since.

Mr Cameron—I know what some levels of management are saying to us in terms of the impact, and in those Japanese companies it is not good. Toyota were on the public record saying that they may not put more investment into Australia if the dollar hit 65 against the US dollar. Now Toyota have clearly said that this US free trade agreement makes that even more a problem for them in terms of the competition that comes into Australia from the US car companies. They are not saying anything publicly to my knowledge, but I know what they are saying to us privately about the problems of this agreement.

Mr WILKIE—That would mean that if we wanted to maintain a manufacturing industry such as Mitsubishi in South Australia we would need to look at enormous government support yet again?

Mr Cameron—I am not so sure about enormous government support. This goes back to the fundamental argument about whether you have an industry development policy or whether you just have a market based ideology and you say the strong will survive and the weak go to the wall. It just depends whether you want Mitsubishi in Australia. Countries all over the world are making huge investments to attract the car companies into their country. We cannot treat that with a cavalier approach and we cannot pretend that there is some so-called free trade agenda out there where these car companies are looking dispassionately at every country where they invest. They are not. They are going in there and ruthlessly achieving the best outcome for that car company, and that means that governments all over the world intervene in support of that investment. We have to make a call on whether we are going to be purists, whether we are going to continue to say that we will set an example about doing nothing about bringing industry to this country and then simply become a farm, a quarry and a tourist destination. I take the view from the manufacturing industry that we need strong industry policy with an investment strategy to make sure that jobs are created, and with cutting edge technology such as in the car industry.

Mr WILKIE—And this agreement threatens that.

Mr Cameron—We certainly think it threatens it in a whole range of areas.

Mr KING—I am interested in part 2 of your submission. Assuming in your favour that the FTA as it is currently proposed will have the impact you suggest, what proposal do you have to address the opportunities that the FTA gives rise to in the area of vehicle manufacturing in particular, to take that as an example, to address the concerns that you have, or are you just preaching a doctrine of despair?

Mr Cameron—I do not have a doctrine of despair. I think I am a realist. Certainly some of the government—

Mr KING—What proposals do you have?

Mr Cameron—Just let me finish. The government certainly seem to be the doctrinaire people on this. I object to being positioned the way you are trying to position me in terms of being doctrinaire. Our position is one based on an analysis, not on an ideological position such as the government's. Let me say that in terms of the so-called opportunities in the United States no-one has proved that these opportunities will come to fruition; no-one. The pro-government economic analysis that has been done indicates that there will be job losses in manufacturing. Why can't the government understand this?

Mr KING—Assuming in your favour what you assert in part 2 of your submission, what solution do you have? Is your solution simply to reject it?

Mr Cameron—Our solution is that there should be a tripartite body established between the government, the trade union movement, representing the bulk of the workers in industry, and the industry to sit down and look at what are the key drivers for us to succeed in a more open economy. What can we do in terms of more industry development, what can we do about more research and development, what can we do about more training in the industry? We on several occasions have put this type of proposal to government, and on every occasion we have done it it has been ignored because of the mantra of the market and free trade coming back from government.

Mr CIOBO—Mr Cameron, is it your position that we, in a zero tariff environment, simply cannot compete with the United States with respect to manufactured items?

Mr Cameron—I think we will have great difficulty competing with the United States in a zero tariff situation, because of a number of the factors we have outlined in our submission: firstly, the economies of scale that the United States has; secondly, the dollar, and the deliberate devaluation of the American dollar; and, thirdly, the technological advantage that the United States has. These are the simple realities of world trade that we are having to face. We have taken a view that, if we simply open up and get rid of the tariffs, there will be significance job losses—and not only for us. Look at every external independent economic analysis—for example, the International Monetary Fund has done a paper that says there will be job losses in manufacturing in Australia as a result of this agreement. People should really read these things—analyses from the IMF, the independent economic analysis within Australia, economists like Garnaut, who talks about the effect of moving trade out of Asia into the US. There are not huge gains in this.

Even the government at its most effusive cannot find more than $4 billion of benefits to the Australian economy from this agreement. It is a pittance. When you take into account that the Canadians have refused to allow any access by the Americans to their government procurement program, the alarm bells are sounding. We are asleep at the wheel on this stuff. It is just ideology and dogma that is driving the government in pushing this along. It is really a political campaign, as distinct from something important for the Australian community.

Mr CIOBO—From what you were saying just now, it seems that, to keep the industry sustainable, tariffs are required. Is that correct?

Mr Cameron—In the short to medium term, tariffs are required. There is absolutely no doubt about this. I take the view of Ken Asano from Toyota that that is a legitimate position. Do not just take my word; take the word of a leading independent voice in the industry who is not beholden to Washington.

Mr CIOBO—So effectively we have a situation whereby Australians pay additional taxes to ensure that people remain in jobs?

Mr Cameron—We have been through all these student debates before about the effects of tariffs. We really need to move away from the pure economic debate on this and start looking at what those jobs in Dr Southcott's electorate mean. Okay, it might cost a little bit more to buy a car. I am not interested in some pre-graduate economic debate about the effect of tariffs.

Mr CIOBO—Are you interested in—

Mr Cameron—I am really interested in answering your questions; so do not interrupt me, please.

Mr CIOBO—Could you answer it?

Mr Cameron—I am coming to that. I will answer it how I want to answer it.

Mr CIOBO—Sure. Fire away.

Mr Cameron—We are not interested in these academic debates; we are interested in people. We are interested in people's jobs, we are interested in communities. It is high time that the politicians in this country did the same thing.

Mr CIOBO—So when companies—

CHAIR—We are now going into lunch, so—

Mr CIOBO—But this is fundamental to this issue, Chair.

CHAIR—Okay. If you can just ask one question, then we will have a question from Mr Adams and a question from Senator Tchen and then we will break for lunch.

Mr WILKIE—I just want to make a very important observation: we were supposed to finish this section at 12.15 p.m. and it is now 1 p.m. There are other people who want to ask questions, so we do need to wind it up.

Mr CIOBO—I appreciate that. If you have a situation that continues to pervade, which is that we are uncompetitive and as a consequence we need tariffs that make it unsustainable for industries to continue to operate, what rhetoric do you give to those people who lose their jobs entirely because factories pull out of cities such as Newcastle, for example? If you are so

concerned with individuals and communities, where is all your goodwill and rhetoric with respect to those individuals that are thrown on the scrap heap when companies pull entirely out of Australia because it is simply uncompetitive?

Mr Cameron—I hope you have got a lot more questions! On this one, in terms of our position on workers in Thailand, we have a very clear position. We believe that workers in Thailand should have access to core labour standards. They should have access to be able to bargain. They should be able to join unions freely. They should be able to lift their conditions. That is the key issue for workers in Thailand, and they are the struggles that are going on within the Thailand economy at the moment by getting access. Billions upon billions of dollars of investment is going into the manufacturing industry in Thailand in the car component industry. You have got an attack on Australian industry from two areas here—first, the high-tech investment that is going into Thailand from all over the world, particularly from the United States; and, second, at the bottom level workers, who are denied even basic human rights, who are working for a couple of US dollars a day. That is the twin attack. I do not hear anyone within the government articulating how we deal with that.

Let me tell you how I think we deal with it. We deal with it by having a decent approach at the ILO, the International Labour Organisation. You need to change the position the government is taking there. If you are really concerned about workers in Third World countries, do something about it. Get in there and support the ILO to lift their wages, conditions, social rights and human rights. Your government has been an absolute failure at that. So I reject any attack on me—subtly or not so subtly—about workers' rights in Thailand. At least we are in there trying to do something about it. Your government is doing nothing.

Mr ADAMS—I want to ask Mr Cameron about free capital. I take it that capital still moves around the world, wherever the lowest wage component is or wherever it is easier to access government free taxes. Is that your understanding of how capital works in the world—in the sense that, if we lower our tariffs and we are not competitive, the capital will go somewhere else?

Mr Cameron—I think that is partly the economic theory that has been ruling investment for some decades now. There are some restrictions to that, because once you start making the capital investment, sometimes it is not so easy to just up and move out. I think we have to err on the basis that what you are putting forward is a clear choice for companies who invest in Australia: that if the conditions are not there—in terms of government support, government industry development, policy—they can up and move somewhere where they will get that, even to the United States.

Mr ADAMS—The brief of this committee is to look at treaties, which this agreement is, and whether this one is in the interest of Australia. I am finding it difficult to find reports on this. You mentioned $4 billion as a figure used as a plus for our economy, but I think that figure has changed somewhat in recent times. I do not know if it is still holding at $4 billion. I am looking for any reports that deal with the social size or the loss of jobs. I know your union is putting together a report, but I cannot find any reports based on modelling of what sort of effect it will have on our economy. Do you have anything?

Mr Cameron—We are in the process of trying to do some econometric modelling now from NIEIR into the effects of the free trade agreement. As I indicated, our preliminary analysis, without running the model, is that there are grave concerns for manufacturing jobs within Australia. I do not think that modelling will be available for us until we make our submission to the Senate inquiry. When we do that, we are happy to have that modelling available for you.

But I do not see anywhere where that $4 billion stands up. Since then, the dollar has continued to appreciate against the US dollar, We have been dudded in the agreement. This is a very bad agreement. We indicated to the Senate inquiry that we would end up in this position. We have been proved right. We have not had full access for agriculture. Even if the government were prepared to sacrifice manufacturing for agriculture, it now looks as if we are sacrificing manufacturing and we are getting very little for agriculture anyway. We will do work on all of that and we will make a submission to the Senate inquiry on that.

Senator TCHEN—In answer to Mr Ciobo's question to you about whether you believe that Australia would not be in a competitive position vis-a-vis the USA in a zero tariff environment, you said that you believe Australia would be at a disadvantage because of economies of scale and the levels of technological development. We have a comparable situation between Australia and New Zealand in terms of economies of scale and technological development. Can you tell us whether New Zealand has suffered the kinds of dire consequences that you have forecast for Australia, following our close economic relationship?

Mr Cameron—Do not take my word for it; take the Productivity Commission's word for it. There was an internal Productivity Commission document published in the *Australian Financial Review*—

Senator TCHEN—Internal but published?

Mr Cameron—You know how these things happen, Senator, don't you? The Defence department is a perfect example of that at the moment. That demonstrated that the bilateral approach on trade was a disadvantage. It looked at the US, it looked at—

Senator TCHEN—I am sorry, Mr Cameron, but I am asking you to look at the actual example of New Zealand and Australia.

Mr Cameron—That is what I am trying to do. If you ask me the question, I have to try to give you the answer as comprehensively as I can.

Senator TCHEN—All right; go ahead.

Mr Cameron—That Productivity Commission report indicated that there was not a significant gain for either of the two economies as a result of the New Zealand-Australia trade agreement. There are no auto plants in New Zealand; they were gone a long time ago. I can give you a reference to that Productivity Commission report if you are interested—

Senator TCHEN—I am sure you can.

Mr Cameron—and hopefully it will give you some more insight into the problems of bilateral free trade agreements.

Senator TCHEN—But there is no disadvantage to either, you said.

Mr Cameron—The Productivity Commission did say there was a disadvantage, because of this process of markets that were in other areas disappearing and being consumed internally.

Senator TCHEN—I read your submission before you came in. There are quite a few questions I need to raise with you, but obviously I do not have time. It did strike me—particularly, for example, on pages 7 and 8, which you yourself quoted—that you give the American leadership and representatives a lot more credence than you do corresponding Australian officials and representatives. You seem to accept the American statements, regardless of who made them, 100 per cent. Is that a fair comment?

Mr Cameron—I do not think I would be pilloried for not believing what this federal government says on some issues: 'children overboard', the war in Iraq and the US free trade agreement.

Senator TCHEN—So are you opposed to a free trade agreement per se, or are you simply opposed to this government?

Mr Cameron—I support fair trade, not free trade. I support trade where the community is put at the forefront of the trading issues, not simply the rights of big business.

Senator TCHEN—So you are simply opposed to this government?

Mr Cameron—Are you finished? I am opposed to this government, and I can go into that if you like. But that is not why I am here.

Mr KING—Part 3 of your submission deals with the broader economic effect of the agreement. I think you have identified a possible $4 billion-plus advantage and you have mentioned the downsides. Assuming the FTA does come into effect from next year, do you think there is scope for a focused program by government, industry by industry, working with industry and perhaps unions within industries as well to seek to exploit the potential opportunities that this agreement gives rise to? What form would that take?

Mr Cameron—That is a theoretical question. There is absolutely no evidence that this government is prepared to work with the trade union movement to—

Mr KING—I asked you: do you see scope for that?

Mr Cameron—There is always scope, but what I am saying to you is: there has been absolutely no evidence during the life of this government that it is prepared to do that. If you are signalling a change of heart by the government, I welcome that.

Mr KING—I am asking you about the opportunity that you identify in part 3 of your report.

Mr Cameron—I do not see huge opportunities in this. I agree with most of the independent economic analysis that the opportunities are pretty poor, if there at all, that the Americans have comprehensively out-negotiated the Australian negotiators and that we have a pig in a poke.

Mr KING—So you have no constructive suggestions at all?

Mr Cameron—I have plenty of constructive suggestions. I will put them to the Senate inquiry, because in reality the haste in which this inquiry has been put together leads me to believe that the outcome of this committee is not really where we will get the true analysis of what is going on—and I think there has been plenty of external comment about that.

CHAIR—Thank you for your attendance before the committee today.

Mr WILKIE—Thank you for your submission and your time today. Hopefully we will come out with some recommendations that might support some, if not all, of the thinking around the table. But we are coming back to Sydney on 6 May, and if there are other questions it would be good if we could get you back.

Mr Cameron—I can come back. For the interest of the chair, yes, I did participate in the demonstration in Melbourne which was in the press as S11. We did that as a trade union movement under the auspices of the ACTU and the Trades Hall Council. I addressed thousands of people, along with Bob Brown and other parliamentarians, at that rally who were concerned about the implications of free trade. It was a very successful and good demonstration of the real concerns that the Australia public have.

CHAIR—I cannot let your comments about the haste of the inquiry go unchallenged. For your information, we first advertised this inquiry on 10 March. We advertised it the *Australian* on 17 March, and we wrote to some 200 organisations at that time. We are conducting five days of public hearings this week. In two weeks time we will be conducting another three days of public hearings. It has been necessary to start these public hearings now, because once the budget session begins there is very little free time when the parliament is not sitting, and the committee felt that it was important to travel around Australia. We will not be tabling our report until 23 June, or thereabouts, so there will be plenty of opportunity to hear people's views.

Proceedings suspended from 1.13 p.m. to 1.51 p.m.

HORN, Mr Antony Robert, Solicitor, Arts Law Centre of Australia

HARRIS, Mr Richard Miles, Executive Director, Australian Screen Directors Association

ELLIOTT, Ms Megan, Executive Director, Australian Writers Guild

CARTER, Ms Bridie, Member, Media, Entertainment and Arts Alliance

WHIPP, Mr Simon, National Director, Media, Entertainment and Arts Alliance

LETTS, Dr Richard Albert, Executive Director, Music Council of Australia

HERD, Mr David Nicholas, Member, Screen Producers Association of Australia

CHAIR—I welcome representatives of the Australian Coalition for Cultural Diversity, and thank you all for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I advise you that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I invite you to make some opening remarks before we proceed to questions.

Mr Whipp—Thank you for the opportunity to give evidence before the committee today. I would like to focus on what the alliance hoped to achieve for cultural industries out of the free trade agreement, why we wanted what we were wanting, what the negotiators have given us in the proposed free trade agreement, how it is different from what we wanted, the likely consequences of the difference and why we care about that. Firstly, what we wanted in the free trade agreement comes from a history of concern about how free trade agreements may impact on Australian culture. It goes back to a concern about the closer economic relations treaty with New Zealand, a series of GATT negotiations, the proposed multilateral agreement on investment and now the proposed US-Australia free trade agreement.

In each of these sets of negotiations we have campaigned for the same thing, which is that the Australian government ensure that it preserves a national sovereign right to intervene to support and promote Australian culture in any media, at any point in time and in any way necessary to achieve the government's objectives. The alliance also argued that the free trade agreement should include a provision for culture that would be free from challenge by the United States government or corporations, and free from trade retaliation measures. This is the outcome the Howard government secured in the Singapore-Australia free trade agreement and for which we applauded the government when it was negotiated.

Why has the alliance then campaigned for this? Australia's culture is a fragile creature. For many years most Australians believed that culture was something that happened elsewhere. It did not happen in Australia. It was something that happened in Europe and North America, but it was certainly something which was foreign to our country. It spawned something under which

we suffered for many years, which was our cultural cringe. Governments of both political persuasions, however, realised that for us to have an independent, proud nation and a nation which had a sense of itself, intervention was required. Intervention was required to support and promote Australian culture, to give us a sense of ourselves and to ensure the world had a sense of who we were.

So from the 1950s onwards, governments have intervened in a variety of ways by regulation, taxation measures, subsidies, co-production treaties and investment to support and promote Australian culture. The measures used have been introduced and have been changed and some have been abandoned. 10BA is a classic example of this. The measures were introduced, substantially changed, changed again and now operate under a substantially different form to that which was originally intended when they were introduced. This is why we campaigned for the government to preserve the right of future governments to intervene to promote Australian culture in whatever way was believed appropriate at any particular point in time.

If there is one thing that we know is true about our industries it is that they will continue to change. They will continue to change by the mediums through which they are delivered. If this free trade agreement had been negotiated in 1935, at that point in time there was no understanding that we would all now be sitting in front of a box for three hours a night watching entertainment or educational or informative programs. Consequently, if provisions similar to these were entered into at that time, there would now be no local content on Australian television.

What did the Australian negotiators give us in the proposed free trade agreement? What we say about what has been given is what in trade parlance is referred to as 'standstill' and what we refer to as 'practical standstill'. It is actual standstill in some respects in relation to free-to-air television. It is standstill effectively for all analog television. It is standstill for digital television in that the rules for digital television will never be any better than they are for analog television. In fact, we know that 80 per cent of digital television channels will not be regulated for Australian content. In relation to pay television, it is practical standstill in that we get to keep the 10 per cent expenditure quota for pay television drama channels, but that is currently delivering only a 3.2 per cent level of Australian programming on those channels and we are able to increase it only in very restricted circumstances after consultation with the United States. It is practical standstill in a number of other respects. In relation to the 3.2 per cent, even if we are able to increase the expenditure quota to 20 per cent as is envisaged as a possibility under the agreement, the best we can hope for is roughly 7 per cent of Australian content on pay television drama channels.

Other media which are not currently regulated are all exempt from government intervention for regulatory purposes. For example, cinema—which is regulated in some countries—is exempt and video stores are exempt. But all other media which currently exist which are not of an interactive nature are exempt from any form of government intervention. Interactive is the only other area which is dealt with in the agreement. This is another area where we say there is practical standstill. It is practical standstill because of the hurdles which are placed in the way of government regulation. The hurdles are that there must be a finding that Australians have too little access to local content. There must be consultation with the United States. Any regulation may only regulate Australian-based service providers and any regulation may only be the minimum necessary and no more trade restrictive than necessary and may not be unnecessarily

burdensome. Also, decisions taken by the Australian government would be able to be challenged by the United States.

So what is the difference between what we sought and what was negotiated? The two are diametrically opposed: we sought an ability for the government to do whatever it needed to do whenever it needed to do it and in any media; what has been agreed to is a straitjacket being placed on the government and its ability to intervene to support and promote Australian culture. If, for example, the government forms the view that the expenditure tests on pay television are not meeting its goals, it may not introduce transmission quotas. It may not introduce requirements in relation to advertising and giving prominence to Australian programming. So, even if the government increases local content on pay television to 20 per cent after the consultation with the US, there is nothing else that can be done if that does not deliver the cultural outcome the government is seeking.

Practical standstill means that all of the hurdles which are in place make the likelihood of regulation minimal. In particular, the two hurdles I would like to focus on in relation to pay television and new media are the requirement to consult with the United States and the requirement that Australians have too little access to Australian culture. Those together mean that we can only consider intervening in this important area once it is determined that Australians have inadequate access to Australian content. That means, in effect, that the market has already been dominated by external forces—it has already been dominated by the United States and other countries.

What we will then be effectively doing, pursuant to the consultation requirement of the agreement, is going back to the United States and saying: 'Despite the fact that you now control 90 per cent of our cinema market and despite the fact that you now control the amount of our new media market that you do, we are considering regulation which will restrict your access to our market. What do you think about it?' Our view is that it is unlikely in those circumstances that the United States is going to give a positive response, because we are inviting them to consider reduced access to our market. At that point in time that is effectively what we will be inviting them to consider—reducing their access to our market—and we do not accept that that is something they are going to take lightly. Also, governments will not feel bold and do what they need to do to support and promote Australian culture, because they know that any decision they take will be subject to challenge.

What are the likely consequences for Australian culture flowing from this agreement? Our view is that the likely consequences are that Australian culture will go back to where it was prior to the intervention of governments in the 1950s. Why will that happen? It will happen for a number of reasons. The market is changing. We have seen reported only in the last week that pay television advertising expenditure has increased by 40 per cent in the last year. As pay television increases its encroachment on network television, network television will argue that it is no longer the cash cow that it once was and that there is no doubt that in time they will get lower advertising revenues than they currently do compared to the overall advertising market.

As pay television takes off and encroaches more into their market, they will be substantially unregulated. We know that the networks then will seek regulation which is comparable with that of the pay television operators. It will be unfair for them to operate in a market where their competitors are operating in a substantially unregulated way, and in new media they will not be

subject to any regulation at all, on our hypothesis. They will also be competing in the same market, unregulated, and the networks will argue for reduction in their quotas based on that ground as well. It will mean that none of the markets for the delivery of cultural programming will have substantial levels of Australian content into the future.

Why do we care? We care because we remember the time when culture happened somewhere else. We care because we remember the cultural cringe. We care because we are proud of what Australia has become—a proud, independent nation with an understanding of itself—and of the understanding that others have of us. We care because we are proud of Australia's gifts to the English language, words like 'bloke', 'crikey', 'bonzer' and 'fair dinkum'. We care because we remember how proud we all were as we watched the opening ceremony of the Olympic Games and the demonstration of Australia's culture to the world. We care because we are proud of the Australian accent and we seek to keep it. We care because we do not wish to look back at this period as the golden age of Australian culture; we know we have more to give. We care because we do not want Australians to regret our government entering into this proposed free trade agreement. We care because we want to be free to be Australian.

CHAIR—Thank you.

Mr KING—We have the benefit of helpful written submissions from three of the organisations. Because it is important that we hear from as many as we can and get to ask questions, I suggest that additional contributions be to the point and brief.

CHAIR—Certainly. The committee finds that it generally works better to have fairly succinct opening statements and then we can get on to questions, when there will be plenty of opportunity to elaborate on the points. Who would like to go next?

Mr Herd—I will, thank you. I would like to emphasise that, although we are here as honorary members of the Australian Coalition for Cultural Diversity, we are speaking on behalf of our individual organisations. I am representing the Screen Producers Association of Australia. Mr King referred to written submissions. The Screen Producers Association has not yet put in a written submission, but we would like to table one today, as will the Australian Writers Guild and the Australian Screen Directors Association.

In the spirit of your instruction to try to keep things brief, I will not repeat the things which my colleague Mr Whipp has said, other than to say that the Screen Producers Association shares the alliance's view of the problems in the agreement in relation to Australian content regulation in current media and new media. What I would like to do—and this is done in more detail in our submission and the submissions from ASDA and the guild—is to highlight some other areas where there are significant problems for the cultural sector.

Before doing that, I would like to say that, overall, one of the most disappointing aspects of the agreement is the way in which it highlights to the sector—and, we think, to the rest of the world—Australia's declining aspirations on how to regulate for and support Australian culture. We see that in the levels that Mr Whipp has been talking about, in the decline from current analog media going into new media. Despite the fact that current Australian content regulations will be kept, they cannot be increased and we think it is likely that they will roll back in future years as the government is subjected to pressure from the United States to further liberalise.

There are also some other worrying aspects in the text of the agreement, now that we have had the chance to look at it. In particular, they relate to another significant area of the government's support for the cultural sector—that is, through measures such as grants, subsidies and investment—and support through the national broadcasters, the ABC and the SBS.

There are no reservations in the treaty for any of those organisations, so they are subject to more general exemptions in the treaty, particularly the Film Finance Corporation and the Australian Film Commission, which are the principal agencies through which the government provides development support and investment in Australian film and television production. Those organisations are subject to prohibitions under the agreement on making performance requirements. For example, they can invest only in film and television programs that are made in Australia by Australians and under the control of Australians. The practical effect of the text of the agreement is that America can object to the existence of those agencies and that an American producer, because investment is subject to national treatment under the current text, can apply to the Film Finance Corporation, for example, for funding and it would not be permissible for the Film Finance Corporation to discriminate against an American producer. So, in a practical sense, government funding would be available to non-Australians and therefore would defeat the purpose of the existence of those organisations.

With regard to the ABC and the SBS, the text of the agreement provides that where government is providing services it cannot do so in competition with the private sector. For example, while the SBS gains some of its revenue from advertising, the ABC, as well as providing film and television services, is a significant publisher of books, music and online material. Under the current text of the agreement it would be permissible for America to object to the ABC and the SBS providing those services. Along with the restrictions on content regulation, we also see restrictions on other measures that the government currently has in place to support the cultural sector. We see nothing in the treaty which would give Australia any better access to the US market. So there is no benefit at all in the text of the agreement. All that we can see are negatives. Lastly, I would like to make a brief comment upon the way in which the process has been undertaken. The national interest—

Mr KING—Is this in your written submission?

Mr Herd—Yes, it is.

Mr KING—You do not need to add to it.

Member of the audience interjecting—

Senator MARSHALL—During the Singapore free trade agreement we agreed that we would conduct public hearings in a public forum.

CHAIR—I think that Mr Herd has taken the point on board. Please wrap up your comments.

Mr Herd—I will be brief. We just wanted to get on the record that, despite the fact that the national interest analysis talks about the consultation that was undertaken with the sector, we agreed that there was a lot of talking, but what we saw at the end of the agreement is way past what the sector was consulted about. In fact the deal that was done in Washington earlier this

year is not what the sector supported and it was not discussed with the sector at all by the Department of Foreign Affairs and Trade.

Mr WILKIE—Were sector representatives invited to Washington to be part of the negotiations?

Mr Herd—No. And that, as we say in our submission, stands in stark contrast with what we believe the level of consultation was with the American cultural sector.

Mr WILKIE—Did the sector ask to be invited? A lot of industry groups went to Washington and were part of the negotiating process. I do not know whether the government invited them to go.

Mr Harris—We asked to be involved as much as we possibly could. We did not specifically ask to go to Washington.

Mr WILKIE—But you did ask to be involved and they did not include you in that request to go to Washington?

Ms Elliott—No, not for the final negotiations at all. Indeed, at a breakfast on 20 October last year the Minister for Trade, Mark Vaile, said to me that nothing would be signed off on that we had not seen. As my colleagues have pointed out, what we were led to believe until around 19 December was completely different from the actual exclusion which was negotiated. We were led to believe that we would have a Singapore-Australia free trade agreement style exclusion with a couple of commitments and that that was the model which was being taken forward to the Americans and being presented. What we were presented with in the final text of the agreement, as Simon said, is diametrically opposed to that and very detrimental not only to our sector but also to the future national interest.

Mr KING—I would like to say something about the process issue. I do not know about other electorates, but quite a few people in the arts community live in my electorate, and I arranged for a delegation of those people to meet with Mark Vaile and then with Senator Alston, the senior minister for the arts at the time. These issues obviously have to be taken through a process and, at least for the people in the eastern suburbs of Sydney, there was that opportunity. But I take your point about where it went from there.

Mr Whipp—With respect, consultation is about more than just arranging meetings. The level of consultation that we understood we were to have was that, before the government put anything to the Americans, it would be put to us. That is not what occurred.

CHAIR—We will move on with opening statements, but I reinforce the point that, although the submissions have been received today, you can take the information in them as being read, and what we are interested in is a succinct summary and any new information you want to add to the record.

Mr WILKIE—Mind you, given that we have not read it—because we have only just received it—if there is anything that is very relevant I would like to hear about it.

Dr Letts—The Music Council of Australia has voted that it cannot support this agreement. It does not regard itself as competent to judge the whole agreement; its decision is based on its assessment of the cultural aspects. I would like to touch briefly on two aspects of our position—the first follows on from what has just been discussed. As I think Simon has already stated, the position put to us by the negotiators was that there would be a total cultural exemption. Later on, it became apparent that, within that total cultural exemption, there would be some concessions made to the US in the audiovisual area. Apparently, in the last week of negotiations, that was upended and there was no longer a cultural exemption. While the government previously had the prerogative to act in any way to support Australian culture—but had made some defined concessions to the US—when this general exemption was taken away the effect was that those concessions became the government's only right to act in the cultural area; on everything else it is unable to act. The problem with this is that it is virtually impossible to anticipate all the possible detrimental circumstances, or circumstances in which the government could take beneficial action for culture, because the future cannot be predicted in this way.

I would like to refer briefly to our concerns on music. There is an Australian music quota for radio. The effect of the agreement is that that will be capped at a level that was negotiated without any thought having been given to the idea that it would be the final negotiation for all time. In Australia this cap is lower than in other countries. There is a 25 per cent here, but Canada has 35 per cent and France has up to 50 per cent. There are various other types of intervention that accompany quotas in other countries, some of which might have been emulated to the benefit of Australian music but now will not be possible.

Our other concern is that the quota in music applies only to the commercial radio sector. At present there is also a quota in the community radio sector, which is very important to us because community radio broadcasts all manner of styles of music that are not touched by the commercial sector. If there is no quota for the community radio sector included in annex 2 of the agreement, it is quite possible that the government will no longer be able to require or encourage that.

Mr Horn—I want to say by way of background that the Arts Law Centre is the national community legal centre for artists and arts organisations. The vast majority of people that we advise are emerging artists, and we have particular concerns for emerging and developing artists as a result of the free trade agreement. As such, we support the comments made by our colleagues.

Ms Carter—I am an Australian performer and I am working at the moment on *McLeod's Daughters*. Last night Australians celebrated the achievements in television at the 2004 Logie awards. As millions of Australians got swept up in the excitement of the night we could almost be fooled into believing that our film and television industry is alive and vibrantly successful. But it is not. It is in a precarious position and is heavily reliant on a web of government regulations and subsidy to keep its head above water. Without all these life jackets there would be no industry. The safeguards have changed from time to time as governments have responded to the ever-changing media landscape. For example, the 55 per cent general local transmission quota was only introduced under the Howard government. The government is also currently considering the introduction of local content quotas on pay television documentary channels.

This is why the US free trade agreement is particularly concerning to me as an Australian performer. The FTA trades away our ability to introduce these safeguards for our industry and effectively trades away our cultural identity in the future. America already dominates our market. To take films as an example: of the 250 feature films released in 2000, 67 per cent were from the United States and they accounted for 90 per cent of box office takings. The majority of overseas programs on Australian commercial free-to-air television are already from the United States, with the balance principally derived from the UK. In 2002, for example, 63 per cent of new programs on Australian network television were from outside Australia and only 28 per cent of new hours were from non-US sources. Conversely, in the US 98.5 per cent of new programming was generated inside the US. In the UK the figure was 95.7 per cent. That is not much space left for us.

Only 55 per cent of programs screened on free-to-air television must be Australian. Only 10 per cent of expenditure budgets on pay TV drama channels has to be spent on Australian shows, and this delivers less than four per cent of shows on drama pay television. In this year's Logies there were no pay TV nominees in drama or acting categories. Of the total 133 nominations, pay TV accounted for only two, including Playhouse Disney, which also airs on the Seven network. Why? Because it is much cheaper for pay TV programmers to purchase pre-made shows from overseas than it is to invest in a homemade production. We all know that US and UK television product is sold into the Australian market at a fraction of the real cost of production. A $US1 million per hour series fully financed out of the American market can be sold to an Australian broadcaster for $A20,000 to $A65,000. That is a real steal. An Australian drama series like *McLeod's Daughters* will cost between $350,000 and $500,000 per hour to produce in Australia. When you do the maths, I am sure you can see where the greater incentive lies.

The situation is bad and it is going to get worse with the free trade agreement. Yes, the negotiations have ensured that we will be able to keep the current regulations, but what about forms of media that have not yet been thought of? There will be absolutely nothing to ensure that Australian productions will feature at all on these new media. With digital media hot on our heels, this is a scary prospect. Current quotas for free-to-air television can never be increased and if they are ever lowered there will be no turning back. On pay television there is a chance that we can raise the expenditure quota on drama channels to 20 per cent, but only after getting the okay from the US. For children's, educational, arts and documentary channels, the best we can hope for is a 10 per cent expenditure requirement. Are we completely comfortable with the idea of our kids watching less than four per cent home-grown children's programs on pay TV?

Australians like to watch and hear about Australian stories and Australian points of view. We like it because we can all relate to it. It reflects our culture, our identity, our spirit and our sense of belonging. Movies like *Lantana* and *Shine* resonate with us because they have Australian faces telling Australian stories. We also like to dabble in the US-produced media and entertainment as well—and there is nothing wrong with that. It is just that there has to be a place on Australian screens for the world of *McLeod's Daughters*, *The Secret Life of Us* and *All Saints* along with *Sex and the City* and *Frasier*. We want to see local news alongside CNN, and laugh and cry to Australian dramas as well as blockbuster American ones. While it is good to see a few Australian faces on American screens, they have never got there without an opportunity to shine in Australian productions about Australian stories.

Australia's cultural identities are already wide open and struggling against a tide of foreign influence. The present regulations, small as they are, prevent us from being totally pulled under. However, the free trade agreement threatens to reduce what is left of the vibrant Australian voice into a mere whisper in the future. That would be a very great shame. If our culture is the heart of a nation, let us protect our heart, our red centre and our true Australian spirit.

CHAIR—Thank you very much for that. Before we proceed to questions, I acknowledge a resolution moved by Mr Wilkie and seconded by Mr Ciobo that we authorise submission No. 131 for publication. That being so resolved, the submission is now able to be published.

Mr WILKIE—I have a question in relation to your submission which I would like you to expand on. Many of us who have been on the committee for a long time have heard this argument before, but there are quite a few new members. That argument relates to the whole issue of a show in America costing $1 million an hour to produce but being sold here for a fraction of that. Obviously, they are making their money in the US and they want to make a few bucks here, so they dump it on our market. Can you explain that to people so they can get an understanding of where that is coming from?

Mr Whipp—The answer to the question is that the US network pays for the entire cost of production for a show like *Friends*, *ER* or whatever. So, if it costs $1 million to make it, the US network will spend the $1 million it costs to make it. Then, when they sell into the Australian market, it is all profit. So they do not care whether they sell it for $50,000 or $10,000, and sometimes it is packaged in a group of programs all to be sold at the one time. They do not care; it is all profit from their perspective. With a show like *McLeod's Daughters*, it is a much harder situation, because the networks here normally do not pay the whole cost of production. So, if it costs $500,000 to make, normally the network will only put in $250,000 to $300,000. The producers have to make up the cost from overseas sales. In converse to the American situation, even going overseas is not profit; it is still about trying to recoup some of the money that it costs to make the program. Those are the dynamics of financing Australian programs compared to American programs.

Mr WILKIE—That is because of our limited market here for our own product.

Mr Whipp—It is 20 million people here versus 300 million people there.

Ms Elliott—I would just like to point out that when Simon says, 'Go overseas,' he basically means Europe; he does not mean the United States. The United States is one of the most closed audiovisual markets in the world. You can see that from our submissions. Using a free trade agreement is not actually a way to leverage open that market for our industry. It is closed because of cultural perspectives—that is, Americans like shows made by Americans. We have a much more open market. Indeed, the regulatory mechanisms that have been in force since the sixties up until now—disregarding whether the FTA comes in the future or not—are actually about opening our market and having a plurality of voices. So, when Simon mentions overseas or deficit financing, he does not mean American money.

Mr WILKIE—To expand on that point: Megan, you have talked about how Americans do not buy anything other than American product—and you can see that—and then they flog it off here, so we may have an agreement which allows us to trade in their market, but they will not buy it.

Ms Elliott—We are already allowed to trade in their market, and that is what you are saying. What we are doing now is limiting—completely fettering—the Australian government's ability to intervene in the most efficient and reliable way to ensure that Australian product still gets onto Australian screens. We have run a large press campaign over the past 18 months. You have all seen that and you are aware of the comments that we have made. Given the amount of consultation which will be required with the American government to introduce any kind of cultural policy in the future, when we say that you are outsourcing Australia's cultural policy to Hollywood we actually mean it. This is a huge shift in what has been a bipartisan policy for regulating and supporting the Australian film and television industry.

One of the big questions is about the national interest. Everything that we have presented to you today and that we are presenting to you in our submissions shows that what we are seeing in terms of pay television, which we know will eventually have half market share in Australia, is that 10 per cent expenditure results in four per cent transmission time. What this agreement is saying is that four per cent of Australian children's programming is able to be Australian and that that is in the national interest. Australian children in the future will only have access to four per cent Australian made programs and the rest will be from offshore. Given that the United States has the biggest self-sufficient audiovisual industry in the world, we can assume that that is basically where it is going to come from. So we are saying in this agreement that it is okay for our kids and it is in the national interest that 96 per cent of the television shows they are going to be watching are American.

Mr KING—Before we go any further, can I clarify the written material we have? I have a one-page document signed by Mr Harris and Ms Elliott. Is that the complete submission?

Mr Harris—No; there is a submission attached to it.

Ms Elliott—AWG, SPAA and ASDA have submitted one submission.

Mr KING—I also have a two-page letter signed by Mr Brown of the SPAA.

Mr Harris—The submission attached to that is basically from the three organisations.

Mr KING—Then there is a submission of about 15 pages that is unsigned. Is that from the three of you?

Mr Herd—That is right.

Mr Harris—Those other pages are essentially covering letters.

Mr KING—I just wanted to clarify what I had. Thank you.

Mr CIOBO—I want to walk through this a bit. Currently, with regard to analog free-to-air TV we have a situation where we have a 55 per cent local content requirement with an 80 per cent requirement for advertising. Is that correct?

Mr Harris—Yes.

Mr CIOBO—And that continues under the free trade agreement for analog TV?

Mr Harris—It does.

Ms Elliott—However, it continues with ratchet provisions, which we have described.

Mr CIOBO—Yes, I am aware of the ratchet provisions. But the current requirements continue. When there is a change to digital TV, do those exact same thresholds carry across to digital TV?

Mr Whipp—But only for 20 per cent of channels.

Mr CIOBO—When there is a change to digital TV under free-to-air?

Mr Harris—Digital TV is currently running now, and the same regulations apply.

Mr CIOBO—If we then look at multichannelling, the situation there is that we can in fact increase the local content requirement with respect to multichannelling, can't we?

Mr Whipp—We are not going to be increasing it, because there are not going to be more viewers. There are going to be the same number of viewers watching a fragmented number of programs.

Mr Harris—But you are right; we have the capacity to go to one extra channel.

Mr CIOBO—We do. So we can actually go up to three channels in a multichannel environment. In fact, if we had 15 multichannels we could see a quota requirement three times higher than it currently is for Australian content.

Mr Whipp—No, it is not going to be three times higher.

Mr CIOBO—Why?

Mr Whipp—For other channels it is going to be the same as is currently the case on analog television. It is not going to be three times higher. There is no requirement—

Mr CIOBO—There will be more channels—channels that are required to have Australian content on them—so therefore the overall level of Australian content will increase, will it not?

Mr Whipp—No.

Ms Carter—No.

Mr CIOBO—Can you explain? Why is that?

Mr Herd—Not on each individual channel, it won't.

Mr CIOBO—I am talking about the total pool. The total pool of Australian content will be three times higher.

Dr Letts—The total amount of Australian content broadcast—

Mr CIOBO—will be three times higher.

Ms Elliott—No.

A member of the audience interjecting—

CHAIR—We do not normally have comments from the public gallery. We will continue now.

Mr CIOBO—My position is correct. As I understand the situation under the free trade agreement, that is the correct position, is it not?

Mr Harris—Yes, it is. The issue really is that we are not even sure whether we will have multichannelling.

Mr CIOBO—I will get to that in a second. We see status quo with regard to analog TV, we see status quo with regard to digital TV and we see a three times increase with regard to multichannelling. I am aware of your concerns about the amount of foreign content coming into Australia, and I will deal with new media in a second. But, just with respect to those issues, why is that a bad thing?

Ms Elliott—What if we had 50 new channels introduced under multichannelling? We would still only be able to introduce two additional—

Mr CIOBO—We could not get that many. Fifteen is the maximum we can get.

Ms Elliott—At this stage.

Mr CIOBO—I am from the Gold Coast and, believe it or not, we have a film and TV industry there that we would really like to grow. My point is simply that I do not believe there is a monopoly on the future of Australian cultural enterprises that says that they must be fully protected. We have heard lots of emotive comments from each of you about how this FTA is going to lead to an erosion of Australian content and cultural identity. We have status quo across digital TV and we have a three-times increase with regard to multichannelling, so how is that an erosion?

Mr Whipp—We do not have that at this point in time. The agreement envisages that that may occur. Do not forget that, at the same time, pay television is bound by a 10 per cent expenditure requirement on drama.

Mr CIOBO—Which can be increased to 20 per cent.

Mr Whipp—Which may be increased, subject to US consultation, to 20 per cent, only on drama. Then on children's television, arts and entertainment, and education it may be increased

to 10 per cent. All of the others will have none. You are asking the networks to accept at that point in time that they should not only keep their existing regulation in relation to the primary channel but should be subjected to regulation in relation to multichannels which is substantially greater than their competitor, pay television. My view is that that is not a likely outcome when that review occurs.

Mr Herd—I would really question your assumption that we are potentially going to get 15 new free-to-air channels.

Mr CIOBO—A maximum of 15.

Mr Herd—We have three free-to-air networks now. It would be our submission that if you increased them even by one there would be a significant diminution in Australian content because you are talking about free-to-air channels that are dependent on advertising in order to pay for that. One of the things about the agreement that we find odd is that the government apparently has made a decision about multichannelling, in the context of negotiation with the United States, without consulting with anybody in Australia, as far as we know, about what multichannelling should be, and has said, 'It's going to be free-to-air.' The more likely model is that it be pay TV. That is where the money is.

Mr CIOBO—I am aware of what you are saying, but we are talking at cross-purposes. I am saying you have all the same restrictions carrying on and you can have three by five channels. Three free-to-air by five channels on multichannelling is a maximum of 15. I am not saying there will be 15; I am saying there could be up to 15. With regard to the aggregate amount of Australian content in that multichannelling, you are getting up to three times more than there currently is.

Mr Herd—I am saying that it is a more likely scenario that if the free-to-air—

Mr CIOBO—Sure. I will deal with pay TV in a second. I am just dealing with those issues.

Mr Herd—What I am saying is that it is a more likely scenario that, if multichannelling is introduced, it will be some form of subscription television rather than free-to-air. Therefore, the lesser amounts apply on those channels.

Mr CIOBO—It is not a lesser amount. Those requirements still exist. I will move on to pay TV. With regard to pay TV, a 10 per cent requirement exists at present. Under the FTA we can increase that to 20 per cent. Whether we will or not is a separate issue, but we can increase it to 20 per cent. In addition to that, we can increase a new expenditure requirement in new areas of children's television, educational television, arts and documentaries. So, again, under the FTA we are actually getting broader reach than we do at present, are we not?

Mr Harris—We are, but the point really is that those levels have been set remarkably low. The benchmarks have been set so low, not only for pay TV, which is currently an emerging medium. The sorts of percentages they are talking about are in fact less than we were arguing for last time the Australian Broadcasting Authority had a discussion about this.

Mr CIOBO—My only point is that it seems to me that your concern is not that this free trade agreement leads to an erosion of Australian content but rather it is your collective point of view that you need more protection across the board in order to sustain Australian culture. So there is a difference there.

Ms Elliott—No.

Mr Whipp—We are saying that media changes and that the government needs to be free to change with changing times. This agreement straitjackets the government so it is not free to change with changing times. It is assuming that free-to-air television will be the paradigm indefinitely. We know that it will be the paradigm for the next 20 years.

Mr CIOBO—But your language says that this FTA reduces the amount of Australian content.

Mr Whipp—No; it reduces the ability of the government to support and promote Australian content and will in time lead to a reduction of Australian content on Australian screens—that is what we are saying.

Mr CIOBO—My final point is with regard to new media. On new media, I know, for example, that the inquiry by the House of Representatives Standing Committee on Communications, Information Technology and Arts into film, TV, special effects and animation indicated that it was predicted that one of the biggest mediums in the future would be the Internet, with the ability of people to download programs et cetera off the Internet. Can one of you explain how we would enforce local content rules over the Internet?

Mr Whipp—Certainly. It has already been considered overseas; we can provide you with a paper which deals with the issue. There are a number of rules that can be introduced; for example, giving prominence to Australian programs on the catalogue and requiring that Australian programs are on the catalogue—'must hold' requirements. There are a number of ways in which the Internet can be regulated for local content. We are happy to provide the committee with a document which deals with that issue.

Mr CIOBO—That would be good. Each of those ways can in fact be raised by the Australian government and introduced as a restriction under this FTA, can't they?

Mr Whipp—No.

Ms Elliott—We do not know, because it talks about—

Mr Whipp—After consultation with the US and only subject to the language provided for in the agreement and subject to challenge by the US in relation to any measure which is introduced.

Ms Elliott—As we point out in each of our submissions, the definitions within the agreement only speak about new media in terms of interactive audio and/or video. We do not know what that means; it does not provide a meaning for us.

Mr CIOBO—It is deliberately broad; that is right.

Ms Elliott—But it could also be deliberately narrow, and that is what is still not clear.

Mr Harris—The other issue is that the benchmarks have again been set low. The use of terms like 'unreasonably denied' when you have set the benchmarks for pay TV at levels of 10 per cent and 20 per cent means that if you actually did come to the determination that you wanted levels higher than that it would be very difficult for anyone to argue for it on any of these new media services.

Mr Herd—The other issue in relation to that is that, as my colleague said, interactive and new media are not defined in the text of the agreement. What is defined in the e-commerce chapter is 'digital products', and it is clear that the meaning of digital products includes all forms of digitised media. So what we are seeing is that anything that does not meet this hazy definition of interactive media would be caught by the e-commerce chapter. Already, we can see that e-cinema and perhaps those aspects of datacasting which are not interactive are caught by the e-commerce chapter. We are fearful because, as we have said, we do not know what new media are coming and, because it is not defined in the reservation, we fear that it will be captured by the e-commerce chapter and subject to liberalisation.

Senator TCHEN—I would like to direct my question to Mr Whipp because it arose when I was listening to him, but I will welcome contributions from the other gentlemen and Ms Elliott if they choose to make them. In a sense, the question I wanted to raise has actually been answered in the discourse you had with Mr Ciobo. Mr Whipp, you talked about the importance of preserving the right to Australian culture. I do not think anyone in this room would actually argue with that point. However, I would like to ask you, Mr Whipp, to have a look at my nameplate and have a look at the nameplates of my colleagues on either side of me and tell me what you mean by Australian culture.

Mr Whipp—I mean the nation that we are today.

Senator TCHEN—That does not tell me anything.

Mr Whipp—Australian culture means who we are, and that changes from time to time. That is one of the reasons we argue the government should not tie its hands behind its back and tie the hands of future governments behind their backs. In the 1950s Australian culture meant one thing and I am sure that today it means something completely different to what it meant in the 1950s.

Senator Tchen—I agree with you on that absolutely.

Mr Whipp—It will change over time. What this agreement does is enshrine a paradigm which exists now and will not exist in 50 years time.

Senator TCHEN—That is the point you keep trying to make, but I cannot see where you get that conclusion from. You keep saying that this is a standstill agreement because all of the power that the government has to protect Australian content—because you are talking about Australian content, not Australian culture—is already in place. So why do you keep saying that in future years there will be changes that the government, the representatives of the Australian people, cannot do anything about?

Mr Whipp—Because we know that that is the case. For example, the point I made before was that free-to-air television now has the lion's share of the audience in terms of the screens that people are watching, but we know that in 20 years time that will not be the case. Ten years ago free-to-air television had 100 per cent of the audience. It now has an 80 per cent share, and it will not have that in 10 years time. Free-to-air television is relatively well regulated for local content. Pay television will never be well regulated for local content. The rules which are now in place deliver 3.2 per cent Australian programs. As a result of what the government has agreed, we know that 3.2 per cent is the most that we can expect for Australian children's programs, arts and entertainment, educational programs and documentaries. On pay television, that may be a little bit more, subject to consultation with the US. So on pay television we certainly know that levels of local content in the long term will be significantly less. Are we happy that 97 per cent of documentaries which are broadcast to the Australian public are from overseas? I do not think we should be.

With respect to new media, we do not even know whether the government will be able to regulate in new media. We do not know whether they will be challenged or whether the US will be happy with it. If we look at the words that are in the agreement, it is likely that the US will be interpreting it more along the lines of what we have agreed in relation to pay television—if they have a mind to agree to anything at all—rather than what we currently have for free-to-air television. Our view is that, over time, the level of local content will decrease.

Senator TCHEN—You said that you do not know whether the government can introduce any control, but you do not know that the government cannot introduce any control either, do you?

Mr Whipp—We cannot say that the government cannot introduce any control, of course—it is all subject to the consultation with the United States.

Senator TCHEN—You base your argument around free-to-air television and pay television. I suggest to you that the fundamental difference between free-to-air television and pay television is that pay television is strictly in response to audience acceptance, whereas free-to-air television's existence and prosperity depend on an assumed acceptance of the audience. In other words, if you run something on pay television which is not accepted by the audience, you are out of business. You get direct response because people just switch you off and no longer subscribe, whereas there is the assumption with free-to-air that people are watching you. In other words, what you are looking at is whether your content is going to get Australian market acceptance. If the Australian content you are talking about meets Australian market requirements, you have no concern.

Mr Whipp—It has nothing to do with market acceptance. The Australian Broadcasting Authority has done an analysis of viewing habits. People will watch television or view a screen rather than not view a screen. The issue is whether people have the opportunity to choose Australian programming. People will watch because they want to watch, but should they have the ability to choose Australian programming? The rules which are in place at the moment mean that do have that choice.

Senator TCHEN—And those rules will remain in place.

Mr Whipp—What is being agreed means that people will not have that choice in the future as the media landscape changes.

Mr Harris—What is the same with pay television and broadcasting is the way the market works. With respect to broadcasting, although a lot of people do watch Australian programs, without regulation we simply would not have most of those programs on our television screens. We know because 30 years ago when we had no regulation we had no Australian programs. The same logic applies to pay television. People may get enough to continue paying but it is about having the choice to watch Australian and overseas programs.

Senator TCHEN—I just want to make the point that the FTA actually allows the existing government controls to continue.

Senator BARTLETT—Can any of you give me a clear indication of whether legislative change is required to implement the FTA and, if so, where the changes would need to be made?

Mr Whipp—It is certainly our view that section 160(d) of the Broadcasting Services Act would need to be amended to give effect to the change. That is the section which requires the Australian Broadcasting Authority to have regard to the CER treaty in its deliberations about Australian content. It has been amended by parliament to confine the scope of its regard to international treaties. As you would know, section 160(d) previously required the Australian Broadcasting Authority to have regard to all international treaty obligations, but as a result of the Blue Sky decision in the High Court it was amended by parliament to only give the Australian Broadcasting Authority the scope to have regard to the CER. So it is our view that that section would need to be amended to give effect to the free trade agreement as proposed.

Mr Herd—In relation to the comments I made in my opening statement about the conditions on grants, subsidies and investment, if they stand in the text as they are, we can foresee that the legislation that covers the Australian Film Commission and the Film Finance Corporation will need to be changed to make what they do now conform with what the treaty says, effectively changing the entire nature of those organisations. I am saying that, if this text is true, then we as a nation will be under pressure from the government to make those organisations conform with what the text of the agreement says.

Mr KING—But that would only be in the circumstance that the purpose of the legislative change would be to prevent or prohibit any grant or access to those organisations by a US organisation.

Mr Herd—I am saying that if the text stands then the USA could object to anything which prohibited an American gaining access to, say, a grant from the Film Commission or investment by the Film Finance Corporation.

Ms Elliott—What we believe has occurred is that many people think that the way that government support the Australian film industry is through subsidy. They do not. They invest in the intellectual property of that work. Therefore, the way that we finance Australian film and television comes under the investment chapter. This is why it is a problem. We should perhaps put on the record that we have asked for clarification from DFAT regarding that. We have been told by DFAT, and indeed by the Australian government, that it was not the intent to open up our

Film Finance Corporation or the AFC to Americans. But we are still to receive succour, one could say, and I understand that during this process of the legal scrub they are looking at that issue. However, we will not see the outcome and changes that may be amended within the text prior to it being signed by the Prime Minister in May, so we will not know whether they have alleviated our concerns.

Mr WILKIE—We are only looking at the draft text here, and when they do make those final changes they will have to be referred back to us so, if there is anything that you see in that final text that is a problem for the industry, we should be told about it.

Mr Whipp—One other issue is obviously that there are a whole raft of changes which are required in relation to copyright, which I did not deal with before.

Senator BARTLETT—The area of copyright and intellectual property has been mentioned a couple of times. In the submission we got today it is outlined as one of the most important chapters. People seem to be talking a lot about quotas and caps and things but not a lot about copyright and IP. I also noted that in the submission we got today it says under the very small section that deals with IP:

There are differences of opinion amongst the members of the cultural sector about the effect of this harmonisation—

of copyright law. Are those differences depending on whether we are talking about screen or music or recording versus performance, or is it just differing views about what it means?

Ms Elliott—I think that something that we are all aligned on is that the free trade agreement has made dramatic and drastic changes to intellectual property—dramatic policy changes. We could have implemented or not implemented the intellectual property provisions under domestic processes. A free trade agreement with the United States of America was completely the wrong forum through which to introduce this policy.

Senator BARTLETT—So you are saying we should not make any changes to our copyright regime here?

Ms Elliott—I am saying that it should have been an open and frank discussion with the Australian people and copyright creators, owners and users, as opposed to a negotiation between two governments. That was the wrong forum through which to hand down those policy changes.

Mr Horn—Just an example of that is the copyright term extension. It was reviewed and looked at by the Ergas report. It was considered in the Myer report as well. They both said that it should at the very least be independently reviewed before the term is extended, whereas with the free trade agreement those recommendations are pretty much going to be set aside.

Senator BARTLETT—In relation to music I am curious because a lot of the comment more broadly has been about quotas and caps and broadcast and the like. Is there anything specific in relation to particularly the performance of music? Does that have a specific component in the FTA? I note the overall comment, which is quite good and which boils it down to the simple point that at the moment we have the scope to regulate how we see fit into the future and that

that will be restricted. It is a pretty clear change. But is there anything specific in relation to music performance?

Dr Letts—Do you mean live performance?

Senator BARTLETT—And writers and those sorts of things as well, beyond just the audiovisual side of things and radio.

Dr Letts—No, I do not think so, other than possible unforseen consequences of not having the general exemption.

Senator BARTLETT—Is there anything specific to the music arena that has its distinctions compared to film or other cultural pursuits?

Dr Letts—One thing that is not often remarked on is that the situation of music is a little bit similar to film on television in as much as the industry here is pretty much controlled by five multinational companies. It is more profitable for them to import already—as it were—culled pop tunes for sale or broadcast here than to produce local artists or new discs, many of which will fail, of course. This is another reason why the quota here is very important. The broadcasters traditionally are against any sort of imposition like this. While the major record companies have been in favour of the quota in the past, they have gone very quiet on it lately. For instance, to my knowledge they have not made a submission to the current review of quotas that is being carried out by Commercial Radio Australia. It could be in their financial interests not to have the quota.

Mr Whipp—There are two answers that are relevant in relation to the music industry. One is that music video channels will never be regulated for Australian content. At the moment one of the primary ways in which Australian musicians get their work to the Australian audience is through the radio code of practice, and a similar code of practice may never occur in relation to music video channels. The other thing that we are concerned about is that at this point in time we have not got any confirmation one way or the other about how the general provision in relation to the assignment and the assignability of copyright—that is, that copyright must be freely assignable—relates to the provisions in the free trade agreement about the adoption of the performers' rights arrangements under the WPPT. If the two are separate and completely distinct issues with performers' rights not being regarded as a copyright—and certainly we would not regard them as such—then that, from our perspective—

Senator BARTLETT—Who would not regard it as a copyright?

Mr Whipp—Performers in Australia do not regard it as a copyright—and I do not think that internationally it is necessarily regarded as a copyright; it is regarded as a neighbouring right. If those two issues are separate and completely distinct then that would be an acceptable outcome from our perspective. But if the performers' rights section of the treaty is subject to the 'copyright being freely assignable' section then we do have a problem with it. As many of the members of the committee may know, in the vast majority of jurisdictions in which performers' rights exist, the right to equitable remuneration is not an assignable right except to a collecting society. Certainly, we would be seeking a similar arrangement for performers in Australia if performers' rights were ever introduced.

Mr ADAMS—With regard to the issue of the networks of America producing television and then dumping it on Australia, has antidumping ever been explored?

Mr Harris—That does not apply to services. Essentially, if we were talking about any other industry, such as a manufacturing or goods industry—

Mr ADAMS—Have you never mounted the argument?

Mr Harris—The argument has been mounted. We mounted the argument many times with DFAT, but, in terms of international trade, at this point it is not a goer.

Mr ADAMS—I just wanted to clear up the point that the senator over here was making. We did have a film industry in the twenties, thirties and forties and then we lost it. We only got it back because of government support. Is it correct to say that?

Mr Harris—Yes, that is correct.

Ms Elliott—I think that is what this agreement is about. It is about taking things out of the policy toolbox, if you like, so that the government cannot be as flexible, as efficient, as it otherwise could be. It is going to completely limit the government's ability to deliver cultural product in the most efficient way possible.

Mr ADAMS—Am I correct in understanding that you were talked to and had discussions about this agreement but you believed that in the last week of negotiations the exemption for cultural matters was taken out of the negotiation?

Ms Elliott—Yes, in the last four weeks or so. The last conversation we had was in mid-December with the negotiators. Up to that point we were under the impression that we would see a SAFTA style carve-out, complete with the SAFTA definition of culture and cultural heritage and with a number of commitments. It was in that teleconference that we heard for the first time that some of the language of that SAFTA style exclusion would be omitted and that actually what the SAFTA style carve-out does is turn what we would consider to be a negative list agreement into a positive list agreement for our industry. It was in that teleconference that we heard that parts of that language would be omitted and that it would be a negative list exclusion, which means that anything that the government is unable to think about in 2004—or unable to include—we cannot do in the future.

Mr ADAMS—A country as big as America—which probably leads in many ideas and whatever, because of how rich they are, in money and everything else—would be looking forward 10 years, I would think, at making opportunities for themselves.

Ms Elliott—In all of their bilateral and multilateral agreements, the Americans are very ambitious in terms of audiovisual. We have made that submission for years. This is a complete turnaround in Australian government policy. In 2001 in the multilateral system in Geneva, the Australian government said, 'We reserve the right to be able to do whatever we like in terms of social and cultural policy.' This is a complete shift from that. What has not been explained to us by DFAT or by government is: what does this agreement mean in the multilateral context?

Where do we go in the GATS in terms of our industry once we have signed it all away to the United States?

Mr ADAMS—So they have done you over in the last month.

Ms Elliott—Yes.

Mr Harris—The really important thing to point out is that for the Americans it was always about precedent. The point is that they look at Australia and say, 'You're a very regulated market.' But, do you know what? We have got incredible saturation of American programming despite being regulated, so why on earth do they need a free trade agreement to get more stuff in here? I just do not know. Why they wanted the agreement is not for Australia. They wanted the agreement to be able to take to other trade forums. I think that needs to be pointed out.

Mr KING—Is there anything in the FTA, including in the fine print, that requires Australia to increase its present percentage of foreign content on TV?

Mr Whipp—No. The level of foreign content has never been regulated, because foreign content has never been a problem on Australian television or in Australian cinemas.

Mr KING—If there is no issue about cutting existing protection, doesn't the FTA actually guarantee the right of this government to increase protection against foreign imports across the complete spectrum of TV and the new media?

Mr Whipp—It does not guarantee anything of the sort. We have to remember, as we said before, that, where the agreement envisages the possibility of increase—for example, in relation to pay television—or where the agreement envisages the possibility of the introduction of regulation in relation to new media, it can only happen after consultation with the United States, and any action is subject to challenge by the United States. So it does not envisage any increase in Australian content at all; it provides a possibility, but subject to those requirements.

Mr KING—I wanted to ask a couple of questions about process. Have the alliance and the other organisations that are part of this very worthy group, which has put together a very important presentation for us today, given some thought as to the ways in which the Australian cultural community can actually exploit the opportunities that this FTA opens up, such as they are, so that instead of 'bonzer' and 'bloke' dying out, as it were, they might actually become part of the universal lingua franca?

Ms Elliott—The FTA provides us no opportunities in terms of the exploitation of overseas markets. We do not need an FTA to do that; we need good product, which we have. We also need in the United States—but an FTA cannot do this either—an openness to other audiovisual product. The United States does not have that. Ninety-six per cent of everything watched on the thousands of channels in the US is made in the US. They have in the industrial agreements the insistence that the American scene be included.

Mr KING—Is that a cultural thing, or is it a regulatory thing?

Ms Elliott—It is a cultural thing; is not a regulatory thing at all.

Mr Harris—The truth was that we had very little to gain, really, in terms of the opportunities that an FTA could break open. The reality we face when we face an American market is an enormous production sector which is highly vertically and horizontally integrated. Actually trying to crack that market is more difficult than an FTA is able to deal with.

Mr KING—I guess what I am really asking—and this is my final question—is this: have any of your organisation considered what rules or regulations, statutory, state or otherwise, exist in the United States which would inhibit Australian producers, authors, writers, or whatever, from accessing new markets?

Mr Herd—We have given consideration to that, and as far as we can see from our examination there are no barriers: there are no government regulations; there is no American content regulation on television or new media; there is no other form of regulation.

Mr KING—Contractual rules?

Mr Harris—There are industrial rules, but it would be very difficult to challenge that part of this. One thing that would be interesting would be if you had an international competition regulator that made sure that they could take programs from independent and other sources beyond those that they produce themselves.

Ms Elliott—Or, indeed, an equivalent to the SBS: that would have helped, but it was laughed off, we were assured. I think it is important to recognise that last year the creative community of the United States gathered together in their own coalition and actually lobbied the FCC for the introduction of independent content quotas—that is my language but that is what they are. Because of the complete horizontal and vertical integration of the five major multinational corporations that own the major free-to-air stations, from development through to distribution, independent product by independent producers in America was unable to be distributed and unable to be shown, so that actual creatives in that country were arguing for the introduction of regulation to ensure a plurality of voices. When you think that your own indigenous creative community is suffering from being unable to get its work distributed and broadcast, an overseas community has Buckley's in terms of arguing for regulation.

Mr KING—To summarise that, you are really saying that there is a sort of cartel that is locking out independent producers in the United States.

Mr Harris—That is part of the story.

Mr Whipp—That is certainly the US view.

Ms Elliott—That is the US independent producers' position, yes, absolutely.

Mr KING—Why isn't that an improper, inappropriate or unlawful limitation?

Ms Elliott—It is a matter for domestic law, I would understand.

Mr Whipp—But the issue is that there is a reluctance to accept stories other than American stories on American screens. Can I leave you with this or ask you to consider this as an example

of that: *Mad Max* is a seminal film in Australian film-making history. It is known by every Australian and it is an internationally renowned film with, now, international stars in it. The only way it screened on American television was with all of the performances being revoiced with American voices. Is that the type of future that we are looking towards? Is that the type of future that we want?

Mr MARTYN EVANS—If we look to the digital future, which is what we are talking about—the unknown as to what occurs in the future—and we look at the digitisation of broadcasting and new media and pay television and the spectrum going digital, we are looking at a much greater propensity to be able to broadcast a much wider range of channels. We are looking at multichannelling, potentially, pay TV, with a much higher range of channels on digital than it has now on analogue, and the same for cable TV. If we then look at local content rules on these things, what you were saying earlier was that this will be a problem because you then have to regulate that to have local content on a much wider number of channels. Does that then mean, in the reverse of that argument, that if you cannot actually generate local content across that wide range of channels, including pay TV, that you would then have to actually limit the amount of content that can be shown in total?

Mr Whipp—Do not forget that the vast majority of those channels—pay television and multichannelling where they work overseas—do not work with 100 per cent of new content for every hour. If you consider a pay television program, for example, they work in high rotation. So *Friends* may air five times in one day. We do not envisage it changing significantly when we move to multichannelling, if we ever do, here. The same applies for Australian content here. So there is no requirement, at the moment at least, that it be new—particularly on pay television. Obviously we would be seeking the retention of the requirement that it is new on free-to-air, as it is now, but there is no requirement that it be new on pay television. Similarly there is no requirement that necessarily moving forward it would need to be new in relation to each and every screening of each and every program. We do not necessarily think that that presents the problem that you might be envisaging.

Mr MARTYN EVANS—It could, couldn't it? As we get to this digitisation stage, because of the fact that overseas content, particularly from the United States, is available at the lower marginal cost that it is, that is going to become a problem in the future, isn't it? You will have space available on digital airwaves and not enough content to fill it, to the point where that is going to become a dilemma.

Mr Whipp—I do not agree that that necessarily will be a problem. That is our view.

Mr MARTYN EVANS—You will never have that dilemma? You will always have enough Australian content to fill all of that multichannelling? It is not going to be a limiting factor?

Ms Elliott—What will be limiting will be the amount of money that they are prepared to pay. When they talk about 10 per cent I think we need to remember that if you have an entire channel of *I Love Lucy* reruns, which we can expect—and I'll be watching it—they have bought that half-hour product for $3. We are talking incredibly cheap. It is really old; we have all seen it. We could end up with a situation on a drama channel where it is 10 or 20 per cent of nothing, which is actually not going to invest a whole heap into creating new Australian product.

Mr MARTYN EVANS—I do not quite see how that reflects on—

Ms Elliott—The expenditure quota is about 10 per cent of the expenditure. When expenditure is low, you have got 10 per cent of not very much to create new Australian product. So it may not even be the most efficient way of ensuring that there is Australian content. But at the moment it is the only way.

Mr Harris—It is a bit like the argument that was put—and I cannot remember which Packer said it, or who said it—in the fifties or sixties that basically said that we could not make Australian programs, that no-one would want to watch them and why on earth would we want to do them. It is a little bit like saying now: 'Why are you worried about pay TV? We' re never actually going to be able to make enough stuff for the sorts of requirements that you are talking about.' Those arguments do not hold water. We can make as many programs as Australians want to watch if the regulations are there to make that stuff happen.

Mr MARTYN EVANS—I am sure you can make it. If multichannelling actually occurs at that level, and given the marginal cost of American material that you import is quite low at that level, unless you make the quotas effectively on a volume basis, which is pretty impractical on a multichannelled, pay TV, hourly based system, it would impose some extraordinary limits. You would effectively be limiting the hour based quota.

Mr Harris—It is hard to know. It is worth noting that, for instance, with the pay TV expenditure requirements here now, when people are investing in a film it might actually go on to a broadcast, a whole different theatrical run and then turn up on pay television. So it is not simply a case of pay television paying for all of the production costs; they are actually going to get the revenue back from across a series of different media. It is not necessarily just a game of, 'We're pay TV: we are just paying for something to turn up on pay TV,' and therefore that has limited the market.

Mr Herd—Mr Evans, the situation you are describing applies in Canada. Unlike in Australia, the Canadian government has limited the number of pay TV channels and imposed much higher levels of Canadian content on those channels in order to make sure that the industry is self-sufficient and can pay for the level of Canadian content that they want to see on those most channels. We do not have that opportunity here.

Mr WILKIE—Firstly, Mr Adams mentioned Australians being very involved in the film industry years ago. I just wanted to remind everybody that it was the Australians who came out with the first-ever motion picture, *The Story of the Kelly Gang*, many years ago. There are fragments of that still around. It was not until Hollywood took over that we really lost our industry. Hopefully, that will not happen again.

In the submission from the Media, Arts and Entertainment Alliance, there is a comment regarding the fact that the Productivity Commission was given a directive back in March 1999 to come up with some 'practical courses of action to improve competition, efficiency and the interest of consumers in broadcasting services', looking at this whole issue of cultural content. I notice that the commission reported in April 2000 and made recommendations, but there is an observation here that four years down the track the government still has not responded to any of the findings in the report and that, really, they should have prior to agreeing to anything in the

US free trade agreement. Is that the case? Why has it taken them four years—and they still have not responded?

Mr Whipp—That is the case. I cannot answer why they have not responded; it is not for want of requests for a response.

Mr WILKIE—Any speculation? Have they had concerns about what the Productivity Commission found?

Mr Whipp—We have no information about that.

Mr WILKIE—We have asked why the Productivity Commission have not even responded to the free trade agreement. The government has decided to get someone else to respond.

CHAIR—Regarding the structure, you mentioned before that production costs are not covered just with screening within Australia and that Australian drama needs to be exported. I am aware that we have been quite successful in exporting our dramas to Europe and, obviously, the United Kingdom. How do we go into the United States at the moment? Do we not sell any of our dramas into the United States?

Mr Herd—We do; it is in our submission. In the last audiovisual trade figures, which were released about two years ago, we exported $A10 million worth of film and television programs to the United States and took $A518 million worth of their film and television.

Mr Whipp—And no Australian production airs on network television in the US.

CHAIR—So The Wiggles and Steve Irwin are on cable television in the United States. How much of that is the $10 million? Are any of our domestic dramas sold into the United States?

Ms Elliott—You would have heard on Radio National this morning perhaps that *Neighbours* has just been bought, since Holly Valance was introduced, which is very exciting for Australia. It is the very first time.

Mr Harris—They have only bought 13 weeks worth, though.

Ms Elliott—That could have something to do with record—I would not like to say what that has to do with—

Mr Harris—*All Saints* is also sold to a small pay television network in the US.

Ms Carter—We are sold to 104 countries around the world.

Mr CIOBO—I have a follow up question. Last year, Macquarie Bank funded about 45 per cent in private financing of Australian films through their FLIC scheme. My understanding is that this year Macquarie Bank are not funding any because they were unable to return a positive cash flow back to those investors who took the punt on investing in Australian film. Isn't there another approach to this? Can't we look at the opportunities to grow a commercially sustainable industry? If you are getting a negative return out of an Australian focused product, clearly you

are not getting a commercial enough response to that product to generate a positive cash flow. Shouldn't we be trying to produce the kinds of things that Australians want to watch and grow an industry?

Ms Elliott—I think that is something the industry is addressing, but that is not what we are here to talk about. We are here in terms of the free trade agreement and how the free trade agreement will impact on our industry. The free trade agreement does not have anything to do with the FLIC scheme or our questions to Senator Kemp about what is going to replace that.

Mr CIOBO—No, that is an example. My thrust is to talk about something that is commercially attractive both domestically and internationally. If we do it, and we have done it in the past—

Mr Whipp—The answer to that is yes we should be doing that as well. There is no doubt about that. But do not forget that, internationally, 19 out of 20 films will fail financially; one film out of 20, internationally, will succeed. We have the same statistics in the Australian market as there are internationally. The difference for the Australian market is that we are not supported by a studio system which cash rolls the entire industry. That is the difference. The statistics that we have for films succeeding or failing are the same that applies internationally.

Mr Harris—It is also worth noting that almost every other country, except perhaps India and the US, have film industries that are supported by government because it is a marginal business. They rarely bring back their budget, because films are expensive to make. The lowest budget films you are talking about that are on the market are a million dollars, and that is extremely low budget. The issue then is the government essentially has to ask: do we want a film industry, for a series of reasons, or do we not? Of course we all want a film industry that makes buckets of money, that gets a lot of people into see the films and that has a whole series of successes on the international stage. I guess, when it comes down to it, it is very difficult to deal with the complexities of that within a two-minute answer.

Mr CIOBO—My point is that you will not find any member of the government who is opposed to supporting the Australian film industry, but that is a slightly separate question to whether or not we can build a commercially sustainable industry.

CHAIR—Thank you for your attendance before the committee today. On behalf of the committee, I would like to congratulate Bridie Carter for the success of her drama and the recognition it received from the public last night.

[3.29 p.m.]

MORGAN, Ms Caroline Elizabeth, General Manager, Corporate Services, Copyright Agency Ltd

WILLAN, Ms Melissa, Corporate Lawyer, Copyright Agency Ltd

CHAIR—On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Ms Morgan—I would like to start by providing the committee with some background on the Copyright Agency Limited and why we are interested in the free trade agreement, particularly the copyright provisions of the free trade agreement. We will be making a written submission. I apologise that the submission is not available to the committee at this stage. Later in my remarks I will be referring to some research that we have undertaken. Our written submission has not yet been completed because this research has not yet been finalised and we would like to include it in our written submission.

The Copyright Agency Limited, also known as CAL, is a copyright collecting society that administers copyright—controlled by its members—on a non-exclusive basis. We are a not-for-profit company, limited by guarantee. We represent over 6,000 Australian authors and publishers. We also represent thousands of overseas copyright owners through reciprocal agreements with collecting societies like us in other countries. We have been declared by the Attorney-General as a collecting society for the reproduction and communication of works by educational institutions and governments under the Copyright Act. Under this declaration, we administer statutory licences through which educational institutions and Commonwealth, state and territory governments obtain access to copyright works and we remunerate copyright owners for the copying of their works in those contexts. We also have voluntary licences with members of the public and corporations.

As a consequence of these different licensing arrangements, we provide copyright clearance for hundreds of thousands of books, artistic works and journal articles. This puts us in a unique position to have access to information about the copying practices within educational institutions, libraries and governments, and therefore we can quantify the impact of some of the provisions of the copyright section of the free trade agreement, such as extension of term. That is the research we are undertaking as part of our submission to the committee.

We strongly support the IP chapter in respect of copyright provisions. We believe the recommendations would benefit all copyright owners in Australia and ultimately Australia's long-term economic and social wellbeing. We share the concerns of the Coalition for Cultural Diversity, which we have just heard, about the cultural provisions of the free trade agreement

and the effect they may have on cultural diversity, but I do not intend to comment on those today.

I will now turn to some specific areas in the agreement. The first is the requirement in the IP chapter that Australia enter into international agreements by acceding to the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. We understand that was already the government's policy, and that they had intended to accede to these treaties and have been making changes to domestic legislation to allow us to enter into those treaties. We understand that both copyright owners and copyright user groups support us entering into those treaties.

The second thing I would like to comment on is the increased term of protection for copyright material in the agreement from life plus 50 years to life plus 70 years. We support the requirement that Australia extend the period of copyright protection and harmonise with the period that applies in America and the European Union. In our submission to the committee, we will be providing a copy of the Allen Consulting Group's report on term extension, which looks at the costs and benefits to Australia of copyright extension. The report recommends extending the term of copyright for the purposes of harmonisation and encouraging foreign investment and providing an incentive for copyright owners, whose protection has been undermined by the reduced cost of copying which has been brought about by technological development. The harmonisation will result in cost savings in managing intellectual property rights, because of consistency with foreign laws.

The Allen report also says that the additional costs of increasing the term of protection of copyright would be quite insignificant. We understand that comment to the contrary has been made in the press by educational institutions and libraries, so we have undertaken our own research into the copying of out-of-copyright material in the educational sector.

I have to say that, at the moment, these figures are quite raw. It is difficult for us to go back into the details of our records and identify which works are at a certain age or period of copyright protection. What we have done is look at the works that are currently over 50 years but less than 70 years and ask: if the term of protection in Australia was extended tomorrow to be life plus 70 years, what would the impact of that be on payments to copyright owners from educational institutions and who would those copyright owners who benefited be? Quite a lot of the comment has been about how it would be of benefit to foreign copyright owners, not to Australian copyright owners.

The proportion of copying in the educational sector of out-of-copyright material is 0.3 per cent of total copying. It is roughly three out of every 1,000 pages that are copied, and that is all of out-of-copyright material. If you look at the period of 50 to 70 years it is 0.02 per cent, which is roughly two pages out of every 10,000 pages. It is a very small amount. This does not surprise us because, if you consider the types of works that are copied in schools and universities—books and journals—many of them are quite recently published. So the works that are in this period of 50 to 70 years are the works of composers, visual artists and, largely, poets—not the technical material that is often copied in educational institutions.

Of the top 15 copyright owners in that period who would now receive payment rather than not receiving payment, four are Australian. The most copied of those copyright owners, who is copied in universities, schools and TAFE pools, is Banjo Paterson. Some of the other copyright

owners that are Australian are Arthur Streeton, C. J. Dennis and John Sulman. I am happy to answer any questions about that and we will be providing more information in our written submission.

Another issue in the agreement concerns Internet service providers. We support the introduction of procedures for notice and take-down of infringing copyright material by ISPs. We understand that the Australian Copyright Act has provisions in relation to an industry code of conduct. Those provisions have been in place for three years and no action has been taken in respect of a code of conduct, so we are of the view that legislative provisions are necessary. On the issue of anticircumvention devices, we support the requirement that the Australian copyright be amended to meet the standards in the US copyright law.

Our reasons for making this submission are that, during the round of amendments to the Australian Copyright Act in the digital agenda reforms, we very strongly put the view that the government should take a 'wait and see' approach to see whether or not the market found an answer to these issues before legislating. The Australian government took the position of legislate first and see what happens later. In our view, that has caused a market failure. Australian copyright owners and content creators are reluctant to put electronic materials on the market because of a fear that they may be hacked into or accessed without payment by educational institutions and libraries. In our view, the proposed changes in the free trade agreement will remedy that market failure but still allow flexibility so that, if there is a market failure in the future by materials being locked up and not made available to members of the public, there is a mechanism for dealing with that. In our submission to the committee we are including a report that we did on the digital agenda changes where we interviewed authors and publishers about their attitudes. That will be available to the committee as well.

On the issue of enforcement of copyright material, we support the requirement that we strengthen our enforcement measures to combat piracy. Most of the enforcement measures in the free trade agreement are consistent with the recommendations made by the House of Representatives Standing Committee on Legal and Constitutional Affairs on the enforcement of copyright, *Cracking down on copycats*, a few years ago. We have been anxiously awaiting the introduction of those recommendations, so we are pleased that it is included in the free trade agreement. There are some areas where we are concerned that there may be clarification needed, such as peer-to-peer copying, the need to introduce a distribution right and whether or not copyright term will be extended to unpublished materials. We will cover those in our written submission. That is the conclusion of my opening remarks.

CHAIR—Thank you very much for the work that you have obviously done. We look forward to receiving your submission soon.

Mr MARTYN EVANS—The American term is 'life plus 70', which we are proposing under the agreement to adopt here. You mentioned the European term. Is that in harmony with the European process? Can you tell us briefly what that European process is?

Ms Morgan—The European term of protection is also life plus 70.

Mr MARTYN EVANS—So, effectively, we would also be harmonising with the European process if we did that?

Ms Morgan—That is correct.

Mr MARTYN EVANS—What is the situation in relation to digital millennium copyright protection in the United States? There has been some concern that, if we harmonise our laws with the Digital Millennium Copyright Act in the United States, we would proceed to an overly litigious process in Australia. How do you respond to those kinds of concerns?

Ms Morgan—My view is that the Digital Millennium Copyright Act is a perfectly fine act in America. It would not work in Australia because, as you said, there is a different approach to legislation. However, if you look at the principles that are underlying certain aspects of that copyright act, such as increased enforcement provisions for copyright owners and ISP liability, those two areas can be implemented in Australian legislation in a way that is more appropriate to our way of doing things and which still reflects those standards of protection.

Mr MARTYN EVANS—So there are aspects of it that we can harmonise without incorporating all the procedures?

Ms Morgan—That is right.

Mr WILKIE—At the moment, is much enforcement being done when people breach copyright in Australia? It is one of those areas that you never hear about publicly.

Ms Morgan—I can speak only in relation to the books and journal publishing industry. The Australian Publishers Association has been taking quite a lot of action recently in relation to out-and-out piracy of textbooks in Australia. They have closed down a number of illegal pirate businesses, where they had been selling whole books that had been copied. In terms of access to copyright material, Australia has a fairly access focused system because we have the statutory licence for educational institutions and governments, which allows governments and educational institutions to access material under the law and then pay the copyright owners. That is not the case in other countries. That would not be considered to be an active infringement in Australia.

Mr WILKIE—You never hear of private individuals being prosecuted for breach of copyright in Australia.

Ms Morgan—Other than the instances that I referred to of action being taken by the Publishers Association against piracy. They are the only ones. Quite often people will use copyright material and infringe it, and then when you go to them and say, 'You have infringed our copyright material,' they will say, 'Fair cop,' pay the fine, and it does not go to court.

Mr WILKIE—Under the legislation we need to introduce to comply with the FTA, do you think that there would be more prosecutions, if we had to have more enforcement procedures?

Ms Morgan—I would start at a different point. One of the things that copyright owners are concerned about, particularly in relation to digital products, is that they feel that there is not a sufficient standard of protection for them under the Australian law as it now stands. So they are reluctant to invest in these products. The higher standards of protections give them more certainly—a perception that they can enforce their rights if needed. That may or may not flow through to increased litigation in that regard. I could not make a comment about that.

Mr MARTYN EVANS—A comment that is consistently made in a number of other submissions is that the US Digital Millennium Copyright Act and other associated US rules are fairly tough in a number of regards, including the life plus 70 years rule, but that is counterbalanced by the rules in relation to educational institutions and libraries having quite generous provisions for fair use and access for educational purposes. The contrast has been made by a number of people that there is the balance of the life plus 70 years rule, tough enforcement and the very generous provisions for educational institutions. Could you comment on that to contrast the availability of copyright material to educational institutions in the United States. Is it any more generous there than it is here?

Ms Morgan—The provisions you are referring to are the fair use provisions. One of the key things in relation to the application of the fair use provisions in the US copyright act is that the use must be transformative. Standard access—in other words, by photocopying or just by copying onto a computer—would not be considered to be a transformative use and would not be covered by the fair use provisions of the US law. So in fact the US law is much more restrictive, in terms of what the legislation allows an educational institution to do to provide material to its students, than the Australia law is. The Australian law provides as of right that educational institutions can have 10 per cent or one chapter of a book or one article from a journal. They pay a collecting society, which happens to be the organisation I represent, for that use and then we pay the fees on to the copyright owner. My perspective would be that the Australia law actually provides more access—easier and cheaper access—to copyright material than the US law does.

Mr MARTYN EVANS—And that would continue under these provisions?

Ms Morgan—That is correct. Those areas are not covered by the free trade agreement.

ACTING CHAIR (Mr Wilkie)—As there are no further questions, thank you for your attendance before the committee today.

[3.46 p.m.]

ROBERTSON, Ms Regina Lucia, Manager, Technical and Corporate Development, National Association of Testing Authorities

ACTING CHAIR (Mr Wilkie)—On behalf of the committee I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available.

Ms Robertson—We made a submission, dated 7 April, and it was prepared and forwarded by our chief executive, Mr Tony Russell, who is unable to attend.

ACTING CHAIR—Thank you. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make some introductory remarks before we have questions?

Ms Robertson—I would. Thank you very much. The chapter that we are making reference to is chapter 8, 'technical barriers to trade'. I am assuming that you have before you a copy of our chief executive's letter dated 7 April?

ACTING CHAIR—Yes, we do.

Ms Robertson—NATA is a laboratory accreditation company. We are recognised by a memorandum of understanding with the Commonwealth. We carry out accreditations of inspection bodies. We currently have about 2,700 accredited laboratories and about 100 inspection bodies. Our concerns, as expressed in our letter of 7 April, relate to the fact that we are not absolutely clear about how specific the agreement is going to be in relation to matters associated with conformity assessment activities.

We have made a number of points about our concerns. Under 8.5—equivalent technical regulations—how that will be actually determined is one concern that we have. How will we decide objectively how that can be achieved? We have a concern about the lack of a dispute settlement process in a number of cases. Most specifically, our biggest concerns relate to part 8.6, where it says: 'A broad range of mechanisms exist to facilitate the acceptance of conformity assessment results.' This is true. There is a long list there. It goes down to part F.

What it does not specify, however, is any recognition or knowledge of the fact that we have international memoranda of understanding in relation to conformity assessment. There is an international laboratory accreditation cooperation and an Asia-Pacific laboratory accreditation cooperation MRA in existence as we speak. These actually cover the competence of accreditation bodies such as NATA all around the world, and certainly in the Asia-Pacific region in the case of APLAC. This actually ensures that bodies such as NATA do our job effectively and that the laboratories and facilities that we accredit are actually competent and capable of producing reliable results. There is no mention made of knowledge about this, and I suppose we

are asking you a question rather than answering your questions: is this knowledge available to the committee or not?

There is also currently available through the OECD a good laboratory practice monitoring role and we are the monitoring authority for that, which is known as GLP. There is a mutual acceptance of data agreement between compliance monitoring programs, and that is the OECD GLP group. That requires that data must be accepted by other regulators—the United States is one of those bodies, as is Australia—and it relates to non-clinical areas.

A question that we would also like to raise is whether there has been any submission made by the Therapeutic Goods Administration in relation to dealings with the FDA and clinical trials work. Another concern we have relates to 8.7, which deals with the development of standards. It requires that we cooperate as much as is possible between ourselves. That seems to be a reasonable thing, but we do have our own national systems for preparing standards. I am not sure how that is going to work either and so we have a question about how well that can really be achieved.

We also have had some experiences with a number of bodies in the United States, such as the Federal Aviation Administration, in our attempts to communicate with them and get mutual acceptance of our testing data and difficulties that have arisen in that regard. I am prepared to give a little detail on that if you wish. However, the FAA situation seems to us like an example of what is being proposed here: that, where there is no recognition of existing national measurement infrastructure, there needs to be negotiation and that negotiation can be rather difficult, as we have been finding. We have been attempting to do that for the last five years and keep striking barriers.

That is largely what I wanted to say. The concluding remark is that we wish the committee to be aware of the fact that we have a national measurement infrastructure in Australia and that the United States does not have an equivalent structure. We also have a very robust and well-recognised accreditation system for conformity assessment that is the oldest in the world and the most extensive. Our accreditation covers a larger number of fields and areas than any other in the world, and we believe we have something rather strong and robust which, through what is being proposed—unless some of these points of detail can be clarified—could well be undermined, making it rather more difficult for good test results to be recognised and accepted and easier for poor ones to be accepted instead. They are our concluding remarks.

ACTING CHAIR—Thank you, Ms Robertson. I think that, given the text of the letter, which is really raising questions—

Ms Robertson—And I have raised a few more for you!

ACTING CHAIR—And you have raised a few more, which is fine. The problem we have is that we are actually here to take advice from you about where you would like to see things go so that we can then put that to the appropriate people involved in the negotiations. With some of the questions that have been raised, obviously now that we have them here we can ask them when they come back before us and ensure that we have people who can give us the answers. So you will be able to pick that up later on in the text of, hopefully, public hearings and not closed-door hearings—we should be able to get the secretariat to respond. If you have any specifics about

where you would like to see things go, we would love to hear that so we can get that on the official record.

Ms Robertson—I suppose the specific is that we wish the existing structure that we have—the national measurement infrastructure—to be considered and to be recognised. With the way things are written in chapter 8 it appears to not be aware of those. It appears to be opening up all sorts of possibilities that we are aware have problems, and it is probably not in Australia's interests for that to happen.

ACTING CHAIR—Do you think they are following a path that is already in place in America and they have just transposed that into this agreement?

Ms Robertson—I would say so. The long list—(a) to (f)—contains all the sorts of things that the United States may be engaged in. It is not very coherent—in fact, it is not coherent at all—whereas in Australia we have what we are calling the national measurement infrastructure. We believe that that is well described, that it provides reliable results from conformity assessment bodies. We are not as convinced of that from the United States. We would see that we ought to be negotiating for an acceptance of what we currently do, with a recognition that where the United States cannot provide us with something equivalent that we then negotiate—not that we negotiate at any point and every point, which is how this appears to be described. We also have a suggestion that there are a number of bodies that could be consulted about this—not only us. We are just one part of the whole process. If the committee is interested, when you wish to look at these points of detail we would certainly be prepared to provide a few contact points for that information.

ACTING CHAIR—We would be interested in getting such information. The committee may make suggestions about where we see the agreement having some failings and some merits, but at the end of the day the only thing that we as a committee can recommend is whether or not we ratify it. But we can raise the concerns that you have brought before us. If you have any further information, I would encourage you to provide that to the committee.

Senator SANTORO—Basically, are you saying that the recognition framework or the accreditation framework in the United States is less rigorous, less scientific and—

Ms Robertson—It is less structured and there is less acceptance in the entire country that accreditation is the best option for determining competence in laboratories. I will give you an example. There are a very large number of accreditation bodies in the United States. I cannot even begin to tell you how many there are. However, only three of them actually have come through the International Laboratory Accreditation Cooperation MRA process. Many, many more are being formed as we speak—often very specifically related to sectors.

Senator SANTORO—They are industry based?

Ms Robertson—Yes, they can be. Often they are not related to the international standard for laboratories, which is ISO 17025. General Motors Holden, for example, is one of those that wishes to have—from our perspective—a watered down system. It is not necessarily going to be in Australia's interests to not query these points with the United States, because we will end up with a lower standard of testing coming into this country.

Senator SANTORO—How many accrediting authorities are there? You mentioned a figure.

Ms Robertson—I do not know how many there are in the States. That is an unknown figure, but it is in the hundreds. Australia has one—that is us. There are three in the United States that have come through the process that have actually been evaluated. We evaluate each other.

Senator SANTORO—Are they mainly recognised or registered at a state level or are they federal?

Ms Robertson—Those that are in ILAC system operate federally. The others can be state based; they can be sector based. Some of them come in and want to offer services in all areas with no experience. There is quite an interesting situation in the United States compared with the rest of the world. That relates to competition. They are obviously all competing with each other, which raises questions about standards as well.

Senator SANTORO—Using, say, the pharmaceutical industry as an example, how many accrediting or recognition authorities regulate that?

Ms Robertson—That would be the FDA. In Australia that is the TGA. That was one question I had for you—whether or not the TGA has made any submissions about concerns about exchange of data in relation to clinical trials work with the FDA.

Senator SANTORO—But you would assume that the FDA in the United States would be as rigorous, as scrupulously severe, if I can put it that way, as—

Ms Robertson—I think the FDA is a different case. That is more a case where they are not accepting data from Australia when it is being produced in accredited laboratories. They have data in the States that is probably coming out of unaccredited laboratories that they are accepting and they are not accepting our data without making the statement, 'We feel it is our right to come and assess you and check you out at any point in time.'

Senator SANTORO—That is one fairly significant industry sector that is very much, I suppose, a concern in relation to the agreement.

Ms Robertson—That is the TGA, though. I think they are the ones that you should speak to about that. That is not so much of an issue for us. We are more involved in the non-clinical side. I would not like to make a judgment on their behalf.

Senator SANTORO—Is there any other major industry sector—

Ms Robertson—The Federal Aviation Administration has some contacts with Australian companies. The problems we have there relate to the fact that it sends across auditors who are not necessarily very clear about what they are auditing against. They do not make clear what is and is not acceptable and they either do not know or do not recognise existing systems in Australia. That is our biggest concern: there is a lack of knowledge about what exists here or at least a lack of acceptance of what we currently have.

Senator TCHEN—You have placed on the record a number of questions, both in your written submission and those you have just posed. I understand that they are all directed to chapter 8, which is 'Standards and Technical Regulations'.

Ms Robertson—Yes.

Senator TCHEN—Article 8.3, according to my notes here, is that under this article both parties agree to provide information to state levels and governments and relevant bodies to encourage their adherence to commitments in the chapter. I think article 8.4 also relates to the multiple standards in the United States, whereas in Australia there is a single standard.

Ms Robertson—Yes.

Senator TCHEN—Basically article 8.4 provides for both parties agreeing to use, to the maximum extent possible, international standards.

Ms Robertson—Yes.

Senator TCHEN—Also, in a similar vein, 8.5 provides that the United States would take into account Australian standards.

Ms Robertson—Yes.

Senator TCHEN—Do you just want clarification of these articles or do you mean to challenge them?

Ms Robertson—I am not sure.

Senator TCHEN—When we put our questions to the department, I think it is important for us to know whether you are seeking clarification about how they work.

Ms Robertson—We are seeking clarification. We are not necessarily challenging this chapter, because we are not aware of what is behind this. We do not know whether there is more knowledge and information behind this than we are aware of. We are simply raising the point that we have a system in place here that we think is rather good, and that is not necessarily reflected in this particular chapter. It appears to detail all sorts of points that allow the United States to continue to have its rather unstructured system for conformity assessment and it forgets that we have a very nicely structured one which works very well. They would be better off attempting to follow rather than have us switching to how they do things.

As for the international standards, I found that interesting to read just from a personal perspective. The United States, even when there is an international standard, will still look at that standard and make it American. We have a certain tendency to do that in Australia, but we are doing that less and less. I am not sure how well they will be able to deal with that particular issue, because they have their American National Standards Institute, ANSI, that takes an international standard and Americanises it, making it slightly different. I do not know how well they will comply with this either and how happy they will be to do that.

Senator TCHEN—But with the written words it seems to me that there is a commitment from the United States at least to go away from their own multiple standards to an international standard.

Ms Robertson—It sounds that way.

Senator TCHEN—That is an improvement on the current situation, where they do not recognise Australian standards at all.

Ms Robertson—This bit certainly is promising. Our concern is more with 8.6 and the long list of possibilities for accepting conformity assessment results. We know there need to be various options available for all of us, not only the United States but also Australia. However, there is a lack of recognition in here about the fact that there are existing MRAs in relation to conformity assessment testing.

Senator TCHEN—Articles 8.6, 8.7 and 8.9 all provide for further negotiation.

Ms Robertson—They do.

Senator TCHEN—That is a positive move, isn't it?

Ms Robertson—But our concern is that there are points at which there does not need to be any negotiation in the first place. That is one of the examples we have in relation to the Federal Aviation Administration. They were actually negotiating individually with testing laboratories. That may be fine, but it turned out that they were telling different laboratories in Australia, then in Singapore and also in Thailand different things. So that was not very satisfactory negotiation. But that is in the past; perhaps this will make all the difference. But an example of that sort of approach has not been very effective.

Senator TCHEN—Are you able to provide us with examples of where the FAA is doing that?

Ms Robertson—The FAA is one of the bodies that I suggested you may wish to talk to. The National Measurement Laboratory has a lot of experience with this and is the body that has been negotiating with the FAA, and I had a discussion with them about that this morning. So, yes, we can give you more information should you wish to have it.

Senator TCHEN—That would be helpful, particularly for us to put it to the department.

Mr WILKIE—You mentioned General Motors earlier and said that they want to have a lesser regime in place. In what sorts of areas of testing would that be?

Ms Robertson—You would need to be familiar with the standard that is applied around the world in accreditation bodies that are part of these MRAs that I mentioned—that is ISO/IEC 17025. It is a basic good laboratory practice standard and it requires certain things like qualified personnel, appropriately described and validated methods and all the sorts of reporting procedures, proper records and accommodation that you would expect to be available in a competent laboratory. We have had problems with General Motors on traceability issues. It is a

scientific concept—and I am not sure whether there are any scientific people in here—which relates to a measurement.

I will give you an easy example. When you go out and purchase a kilo of beans or a kilo of chocolates—that is much nicer—you can be sure that that weight is traceable back to the actual granddaddy of all kilograms, which is based in Paris, at Sevres. All of the national measurement laboratories have some link back to that particular kilogram, so it allows traceability of measurements at the kilogram level back to that particular standard. It means that you can compare results that you obtain in laboratories all around the world in relation to a measurement of mass. General Motors Holden were not very keen to introduce the concepts of traceability, which is obviously a big issue for us because it means you cannot compare results around the world, and that is the whole purpose of what we are doing. You should be able to get a test done in one country and in another, and they should be able to be compared. This basically means that we cannot do that with a great deal of confidence. Their attempt has been to water down some of the technical aspects of the standard.

Mr WILKIE—I imagine that we are talking about the automotive industry here and General Motors.

Ms Robertson—I am using a weight as a measure in this case, because it is easy.

Mr WILKIE—What sorts of issues would they be specifically concerned about? Obviously, if you are talking about testing, you are talking about a whole range of laboratory tests—not just chemicals, but a whole range of different issues.

Ms Robertson—They do a test to see how robust the seat is, so they have a standard bottom that sits down a thousand times or something like that.

Mr WILKIE—That is I what I mean: safety type issues.

Ms Robertson—There are all sorts of different issues relating to the lights that are used in the car, the durability of the upholstery in the car, the actual components that are used in the engine. This is not one of my areas of expertise; I am a medical person. There may be issues along those lines that are of concern to us.

Mr WILKIE—I suppose I am more concerned about safety type issues.

Ms Robertson—Ultimately, those things can become safety issues too. Accreditation is not that concerned with safety per se. It is more likely to be interested in doing a test which indicates that something is going to be safe or not safe.

CHAIR—As there are no further questions, I thank you for your submission and for your attendance before the committee today.

Mr WILKIE—It is probably worth pointing out that I have raised with the secretariat the issues that you have been mentioning here, and I have asked for them to be followed up and reported back to me.

Ms Robertson—Will they contact us directly? Do we not need to do anything until we are contacted by them?

Mr WILKIE—No, but I think that, if you have anything you believe you should put it in, such as further information which could help—particularly in relation to questions that we want to go to the department with about clarification—you should get that in as quickly as you can.

[4.10 p.m.]

JENKIN, Ms Beverly, Chief Executive Officer, Interactive Entertainment Association of Australia

WATTS, Mr John, President/Director, Interactive Entertainment Association of Australia; and Vice President, Managing Director Asia/Pacific, Activision Pty Ltd

CHAIR—I would now like to welcome representatives from the Interactive Entertainment Association of Australia. On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Ms Jenkin—In the knowledge that you have had some 130-plus submissions to date, ours being one of those, I thought today we would try to give you a short precis of the specific issues we have and point out particularly the two where we believe the FTA assists the industry in Australia. The Interactive Entertainment Association of Australia is the Australian not-for-profit trade association dedicated to serving the business and public affairs needs of companies that are responsible for sales, marketing, distribution and development of computer and videogames software, hardware and accessories. For the record, I will leave this document for you.

CHAIR—Thank you.

Ms Jenkin—In terms of both consumers and games development, Australia is a global player. In 2003 the total value of the Australian interactive entertainment market was estimated to be in the region of $796 million—that is about $2.18 million a day or about $106 per household per year. It is a significant industry and has basically increased over a couple of years by about 43 per cent. The size of the industry is not the only thing that is not fully appreciated; there is a misconception that only children or geeks play computer games. This is not true. People who started playing games about 10 to 15 years ago—games like Pong and Pacman that I imagine you all remember fondly—are still enjoying the interactive medium and appreciate the sophistication and evolution of modern technology. We are talking quite significant technology on this issue. The age breakdown of those who play computer games is as follows: 30 per cent are under 18, however 50 per cent are in the 18 to 39 age group and 20 per cent are over 39. I am one of those.

While employment in Australia's interactive games industry is growing, as is local and international investment, the growth rate is restricted by our inadequate copyright laws. However, IEAA believes the growth of the industry could be stronger with a stronger intellectual property protection regime such as that contained in the FTA. It is in this context that we support the FTA for bringing Australian copyright law to the same level as laws in the European Union and the United States.

To facilitate what we are talking about today, I am going to highlight the two key points for IEAA in regard to copyright and IP protection. The two priorities are Internet service providers' liability and legal protection for technological measures to be strengthened. These are the two key issues that we see the FTA presents for our industry to develop and grow. In short, the FTA meets these priorities in that it recommends an expeditious process to allow for copyright owners to engage with ISPs and subscribers to deal with allegedly infringing copyright material on the Internet and it provides for tighter controls in circumventing technological protection of copyright material. I will add to that that we are talking here about organised criminal activity, not Johnny at the end of the street. So, in brief, an increased copyright enforcement mechanism—including ISP liability and increased criminal and civil protection—will both deter potential copyright thieves and raise confidence in the industry, encouraging economic investment and growth in the local industry.

The newest forms of entertainment that we talk about today are those that are most susceptible to piracy and counterfeiting. It is a criminal activity. I will not apologise for emphasising several times that it is a criminal activity, because it is, and that is something we need to come to terms with. It was ignored for far too long. We believe the Australian government has ignored the industry's pleas to strengthen protection of intellectual property, specifically in new technologies.

For example, the penetration of online interactive games in Australia has been impeded because the absence of ISP liability provides little protection for distributors. Hence, Australian consumers are not getting access to the latest forms of games as regularly as their counterparts elsewhere in the developed world. Developers are not investing as much in the local production of online games, as the market does not justify such investment when there is little protection to prevent theft of the final product through piracy. In the absence of the introduction of measures such as those contained in the FTA, the cost of the piracy and counterfeiting of computer and video games is likely to continue to grow.

We sent to you with our submission a copy of the Allen Consulting Group report. This report was commissioned by three associations: the Interactive Entertainment Association of Australia, the Australian Toy Association and the Business Software Association of Australia. The report estimates the cost to the interactive entertainment industry for 2002 to be $100 million in lost sales and $21.8 million in lost profits as a result of piracy. Other documentation from a later study in 2003 clearly indicates increases in that figure, so it is a significant issue for the industry. The Allen Consulting Group report assessed the benefits that would accrue from a reduction of counterfeiting in the three industries over five years. This reduction would bring Australia into a position comparable with New Zealand and the United States by increasing real gross domestic product by around $41 million a year, increasing government tax revenue by $34.4 million a year and generating more than 400 full-time and part-time jobs. These are conservative estimates. To make the document credible, we kept to conservative estimates.

In conclusion, we urge the committee to recommend adoption of the IP chapter and its speedy translation into legislation, in the interests of both Australian industry and consumers. A secure online copyright regime in line with the European Union and the United States will benefit both consumers of interactive games and the community as a whole by accelerating broadband penetration and encouraging further investment in the Australian industry. On the whole, the IEAA believes that, with carefully drafted legislation, the FTA will strengthen—not inhibit—the

Australian IP regime, allowing economic growth through trade and investment through increased confidence in the protection of copyright.

CHAIR—Thank you. This morning we heard from the Australian Interactive Media Industry Association. You would not have heard them, but they told us they represent over 300 digital content and software development companies, and they were very concerned about the intellectual property changes in the FTA, specifically the 20-year extension, process patents and the adoption of the Digital Millennium Copyright Act. Bringing this all together, is the difference that you are a trade association representing people who are marketing, selling and distributing computer games and video games whereas they are principally involved in production and software development?

Mr Watts—Our association represents all key industry players—publishers and developers—for example, Microsoft, Sony, Nintendo, Activision and Electronic Arts. All the key players globally are represented in this association.

Mr WILKIE—Are any of those manufactured here?

Mr Watts—Yes.

Mr WILKIE—Which ones?

Mr Watts—Sony and Microsoft software is manufactured locally; the hardware is obviously brought in from the Asian territories. A majority of members embark upon local production of PC product, including printer parts. So there is a majority of manufacture for the industry.

Mr WILKIE—Are there any Australian owned companies?

Mr Watts—I think we have one or two members that are Australian owned companies.

Ms Jenkin—When you say 'Australian owned companies', do you include international companies that have an Australian presence and reporting requirements in Australia? There is a slight difference.

Mr WILKIE—Chair, I could explain that a bit better. I am trying to draw a comparison between the people this morning and the people whom you represent. The people this morning were talking about how they represent smaller manufacturers of games and software.

Mr MARTYN EVANS—Developers?

Mr WILKIE—Yes, people who develop and market it.

Ms Jenkin—There is a Game Developers Association as well.

CHAIR—I think we are hearing from them as well. Are you familiar with that association?

Ms Jenkin—We have heard the name. To be frank, we are not particularly familiar with the organisation.

Mr Watts—The size seems to be somewhat misrepresentative in relation to the contacts that we have.

Ms Jenkin—Seeing that there are 300, it is surprising. Obviously we have to do our homework on that.

Mr Watts—We will certainly check further.

CHAIR—If it is of help to you, they gave us a PowerPoint presentation which will be on our web site, and the evidence will be on our web site anyway. You are both in the same industry, but perhaps it is because they are focusing on small to medium enterprises producing digital content.

Mr Watts—With all due respect, we deal very specifically with interactive entertainment. 'Interactive' in the terminology can be fairly broad with respect to the number of public organisations and others that are involved with that space. We are very specific. In fact, we are copyright holders, and our membership is very specifically all of those copyright holders.

Mr WILKIE—Is it the international companies that have that copyright?

Mr Watts—Yes.

Mr WILKIE—Would copyright apply here or would it be registered offshore?

Mr Watts—Registrations are made locally. There are Australian companies that are working to develop game content on behalf of international organisations, so copyright is held here under certain agreements. It is not in all cases, but in most cases the copyright—or the intellectual property rights—of games and content that is developed in this country is now being retained in this country.

Mr WILKIE—So is it companies like Chrome and Torus?

Mr Watts—That is correct. There is Torus and Chrome and a lot of very strong development talent in this country that are now developing game content for worldwide consumption.

Mr WILKIE—And you are mainly concerned with protecting that copyright?

Mr Watts—That is correct. Our concern is the copyright retention of that particular development, as well as being in a position to ensure that that copyright is protected for and on behalf of the industry in the future.

Mr MARTYN EVANS—In your case, though, it is not the 70 years, because it is unlikely that a game is going to be relevant for that time. You are more concerned with enforcement against theft, removal of protection and so on.

Mr Watts—Yes.

Ms Jenkin—That is why we focused on the two key points from our perspective. That is where we see the FTA assisting the industry in Australia.

Mr Watts—The technology that can be received globally from the Internet opens up an enormous amount of access for a lot of people to do a lot of things with. As representatives of copyright holders in this country, we are very keen to ensure that we are protected in that right.

Ms Jenkin—I think it is more than just protection. It is ensuring that those people who are involved in criminal activity are brought to book and that there is enforcement in place relative to that. The term 'protection' can often sound as if it is exclusive. The issue is that those involved in criminal activity should be made to pay or brought into some focus.

Mr MARTYN EVANS—It is theft.

Ms Jenkin—Pure and simple theft. Unfortunately, the computer industry has a history of some sort of amusement with regard to piracy and hacking, when in fact we are talking about significant theft. We are not talking about one-off type issues.

Senator MARSHALL—Just so I can understand what your submission is saying, the dollars that you are quoting and the jobs that you estimate are lost to the industry, was that on the basis of organised crime or was that on the assumption that every copy that is made is actually a copy that was not going to be bought?

Ms Jenkin—Your very point was addressed in the methodology that Allen Consulting Group adopted, so it was clearly not 'if we lose a dollar here, that it is a dollar lost to us'. It was actually more sophisticated modelling than that, which I cannot pretend to protect at this moment.

Senator MARSHALL—Basically, what you are saying is that it is organised crime and copying. So people who choose to buy a game are buying a copied game, but it is fair to assume that that is a direct dollar lost. The eight-year-old who copies from a home computer to a laptop computer so he can take it on his holiday is not figured in.

Ms Jenkin—That is not what we are talking about.

Mr Watts—This is highly organised.

Ms Jenkin—We are talking about the organised activity.

Mr Watts—It is criminal activity.

Senator MARSHALL—Is the non-organised activity a major concern? Is there anything that assists you in addressing that issue in this agreement, if it is a major concern?

Ms Jenkin—If the non-organised activity becomes organised activity it would be a concern, but that is really not our focus. Our focus is on true counterfeiting that is being organised at a significant level. It is interesting that you talk about something coming through Customs or even being downloaded, but a computer game or even a film comes on a very small piece of medium. You may think it is really small beer, but it is the master from which everything can be copied. That is millions of dollars in that one piece of software. So it is a significant issue.

Senator MARSHALL—Does anything in the free trade agreement help in bringing the criminals to book, to use your words?

Ms Jenkin—With technology moving forward the online activity is a great concern, particularly with the speed at which technology is developing. The term 'online gaming', by the way, does not mean online gambling. It is to do with interactive games being played online. We do not want to get diverted into that.

Mr Watts—There is a distinction between the two.

Ms Jenkin—An online game is often used to describe what we are talking about. The activity that can develop in that area is inhibited by the fact that there are those who use that very excellent technology to pirate, counterfeit, steal and send things on for copying. Therefore, the ISP liability issue becomes very important to us.

Mr Watts—And that is obviously in the FTA.

Ms Jenkin—We would be getting ourselves on a level playing field with overseas. The ISPs overseas deal with it and we believe that it should be dealt with in Australia too.

Senator TCHEN—The FTA actually requires Australia to bring in new legislation which will help to enforce the prevention of piracy. It will become an obligation on the part of Australia.

Ms Jenkin—Yes.

Senator TCHEN—So the answer to the senator's question is actually yes?

Ms Jenkin—Perhaps I did not understand the question then.

Senator TCHEN—He asked whether there was anything in the FTA that would actually help to prevent copyright infringements.

Senator MARSHALL—There are two issues—one is that the laws can be clarified or strengthened as a result, but another is enforcement. I understood the difference. I was actually asking whether there was any requirement to bring them to book. So the answer to my question was not yes. Senator Tchen could ask his own questions rather than clarify mine if he wanted to.

Senator TCHEN—I just thought I would help you.

Ms Jenkin—I suppose the legislation to do with ISP liability will assist the association and the industry. Also, the technological protection—

Mr Watts—The tighter controls on circumvention devices, otherwise known as 'chipping', is also a significant positive for us and we want to ensure that that actually enters legislation as soon as possible.

Senator TCHEN—From your submission, the lack of effective legislation to deal with piracy, both in terms of copyright infringement or online piracy, is seen as a problem by the industry?

Mr Watts—As Beverley mentioned previously, we have experienced frustration with the government in that we are continually bringing examples. Certainly, the weakness of applying the law is something that has been extraordinarily frustrating for us. We welcome the FTA and the implementation of those clauses so that it does strengthen our ability to move forward with convictions.

Senator TCHEN—You gave us some specific information about how this lack of proper legislation actually disadvantages Australia domestically. Does it also disadvantage Australia in the current situation in terms of development and export of interactive products?

Mr Watts—The development of the product is somewhat transported electronically anyway. It is not as if specifically the finished goods are being exported as a product. While the copyright is registered here in Australia, a lot of copyright is being held offshore as well. It is more the technology rather than the finished, produced good that is leaving the shores.

Ms Jenkin—We take advantage of the technology of today to a great extent, which gives us the capacity to develop quite exciting and interesting game play. That is why so many adults still get involved in this. The sophistication is there. It of course takes significant investment. If there is a hint that that investment could be put at risk by the fact that it could be easily stolen without good enforcement measures, then it could affect capacity externally. But that is an opinion rather than something that I can give you chapter and verse on.

Senator TCHEN—That is all right. We have been getting opinions all day. Thank you.

CHAIR—There being no further questions, I thank you for your submission and for appearing before the committee today.

[4.31 p.m.]

FORWOOD, Mr Frank R.B. (Toby), Trade Consultant, Baxter Healthcare Corporation

CHAIR—Welcome. On behalf of the committee I thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have received submission No. 114 from Baxter Healthcare Corporation for our records. Do you wish to make some introductory remarks before we proceed to questions?

Mr Forwood—No.

CHAIR—The principal issue is the blood plasma products and blood fractionation services and Baxter is pleased it will now have the ability to tender for the supply of blood fractionation services from the end of the current contract until 31 December 2009. Is that correct?

Mr Forwood—It may be shortened. To take the first part of the statement, yes. We made a submission not to add to the burden of anybody's work, but I think we are No. 2 on the 26 side letters. We took a view that for any committee to pick up on the detail of those would be difficult. This is somewhat complicated. We made a submission supporting the FTA and the side letter which covers blood plasma and taking that opportunity to explain how the side letter got there in the first place. It is simply to help the committee. I would be pleased to elaborate on that or indeed on the side letter itself, where there are six points. To a general committee they are probably not very easy to follow. If I can help explain those, I would be delighted to do so.

Senator MARSHALL—Maybe you could. The way I read the submission is that you had an issue; you attempted to raise it with the Australian government; you got no satisfaction from that process—in fact, there was frustration. You accused them of entering into secret arrangements with people. Then you indicate that you raised it in the US. The US actually took it up on your behalf and lo and behold it was resolved through the free trade agreement. Have I got that wrong?

Mr Forwood—No, I think you have got it very right.

Senator MARSHALL—Then I would be very pleased to have you elaborate on how that came to be.

Mr Forwood—Our letter covers the key issues. It really goes back to a very good document which became aged. In 1993-94 when Commonwealth Serum Laboratories was privatised we think that, although I do not think anyone is really sure, the Commonwealth government asked itself—and this was the first of the privatisations, if you like: it was 10 or 15 ahead of the current wave of corporatisations and privatisations—what would be the worst thing that could happen if CSL went broke and folded? They decided that probably the worst thing would be that the health

system would run out of fractionated plasma. So the federal government assisted CSL financially to build their Broadmeadows fractionation plant and awarded them a 10-year contract to give them a reasonable ability to do a very good job. There were obligations both ways: that they be paid by the federal government and that CSL must deliver.

Baxter thinks that was a very wise thing to do. However, seven, eight or nine years on that was getting pretty tired. Baxter took a view—and everyone may not agree—that it was time, when the 10-year contract ended, to open up the new contract to other tenderers. The short of our endeavour and the synopsis of this letter is simply that, when we went to do that, there was a considerable reluctance within some of the government departments to indicate that they supported change at the time of the new contract. We were not trying to break the contract that was current; we were not criticising the contract that was current other than to say, 'We think it is getting tired and it is time to change.' But there was great evidence of considerable reluctance.

Having taken that view, we took the matter to the US FTA and also the Australian FTA negotiators and said, 'We think improvements can be made to this particular federal government process.' I met with Stephen Deady way back at the very start of negotiations and we have kept him and his team informed all the way through, but the Americans picked it up and took it on board as an issue to the FTA table and argued it very strongly. So the side letter is in fact what came out of that. I think it is a very good compromise, if you like, and I mean that in the best sense of the word. It moves Australia along as it should be moved along; at the same time it does not risk the health of the nation or the operations of the Red Cross Blood Service or anything like that. It is an excellent outcome after some very tough negotiations. It ran every session and sometimes, so I am told, it got fairly heated, and we think the side letter is an excellent milestone.

Senator MARSHALL—Just to clarify it in my own mind, the American negotiators obviously thought you were right.

Mr Forwood—Yes.

Senator MARSHALL—But you indicated that you had briefed our negotiators and I thought you also indicated that you were happy with their response. I do not understand the next step about these heated negotiations. I thought everyone would have been—

Mr Forwood—We were happy with their diligence and their work. The Australian negotiators did not like what the Americans had to say at all. Baxter's plasma fractionation skills and supply would have come from overseas—it would have come from Europe or from the Baxter plant in the USA. This was a potential threat, if you like, to the order of things in Australia. The negotiators did not mind what we had to say but they found, I think, the same reluctance.

The negotiations, as you know, ran for a year. At the start of that year, I think the government of Australia were equally reluctant with the negotiators when they took their tale to the various departments, saying that the Americans were asking for change. I think there was reluctance at the early stages to make any changes. There had not previously been any indication to us that they would make a change. So the discussions were fairly willing. Our comment here was to acknowledge the hard work. The negotiators were only doing at any time what they were asked to do by the government of Australia. We hold them in very high regard in terms of their

diligence in trying to understand a very technical topic. Whether or not they agreed with our position is by the bye.

Senator MARSHALL—What was the government concerned might happen as a result of what you wanted?

Mr Forwood—As we read it, the government was concerned, firstly, with the introduction of foreign blood plasma. That has been, if you like, a national worry. I remember meeting with one of the advisers to the trade minister, and he was not up on the topic at all. He said, 'We don't want any foreign blood.' The implication was that it might be poisoned. There were huge barriers, and they permeated upwards into the department as well as downwards into the community. So, in a sense, the department was reflecting community concerns and needed persuading that times had moved on—that science and safety had moved on. To add to the resistance—and some of these things were formalised—there was in the TGA a regulation that required that imported blood plasma be of a higher standard than local blood plasma. That was one of the things that Baxter was disappointed about, and it was part of our submission to the FTA negotiators that that should be taken away.

Senator MARSHALL—Do your laboratories apply international standards?

Mr Forwood—Yes.

Senator MARSHALL—We heard earlier from the National Association of Testing Authorities that there is a problem with the US being willing to adopt international standards and wanting to have their own standards. But you say in this instance that you apply international standards.

Mr Forwood—I heard some of that evidence. As one of the witnesses said, this is outside my field, but my understanding is that this area of health is very international. As I understand it, there is no room even between competing commercial companies and between academia and research laboratories. From my observation and understanding, the standards are universally very high—just about right through.

Mr WILKIE—I am not making any observation here one way or another but, just for clarification, can you tell me whether Baxter is an Australian owned company?

Mr Forwood—No. Baxter Australia Pty Ltd are owned by the Baxter Corporation of the USA. Having said that, they have been here since, I think, 1964. They are very much an Australian outfit, and they have a very large business. It is probably worth emphasising that Baxter International's position was not simply that of an outsider coming in and saying: 'Hey, I think we'll have a bit of this market. What can we do to stir it up?' As evidence of their Australian business, I should mention, for example, that Baxter does millions of dollars of business a year with the Red Cross Blood Service alone, on other products. They are very much part and parcel of the health care sector in Australia. They are very proud of that and they have been doing it for a long while.

Mr WILKIE—Did Baxter Australia lobby the US, or did the parent company lobby the US government on their behalf?

Mr Forwood—The parent company did it with their consultants, when the Australian consultants found they were not making a lot of progress in Canberra directly with the relevant departments. We might have been making more progress than we knew, but they were not prepared to say so. We had no way of believing that we had made any progress. We then alerted the people in the USA—the parent company and their Washington trade consultants—and conveniently the FTA came along at that time. So we decided to take it to the US and explain it to Australia, and they picked it up.

Mr WILKIE—That was a very smart move.

CHAIR—Thank you for your attendance before the committee today.

Resolved (on motion by **Senator Marshall**, seconded by **Mr Wilkie**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 4.45 p.m.