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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Tuesday, 20 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 Evans, Mr Hunt, Mr Peter King and Mr Scott

Senators and members in attendance: Senators Kirk, Marshall and Tchen and Mr Adams, Mr Evans, Mr Peter 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.

WITNESSES

Committee met at 9.13 a.m.

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. This is the second public hearing on the review by the Joint Standing Committee on Treaties of the proposed Australia-United States free trade agreement. The inquiry was referred by the Minister for Trade, the Hon. Mark Vaile, on 9 March 2004, 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 by 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 batch of submissions were authorised for publication at the public hearing in Sydney yesterday and I hope that many of these now are available from the committee's web site.

The committee has announced a program of public hearings consisting of yesterday's hearing in Sydney and today's hearing in Melbourne, as well as hearings in 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, and will 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. Where you propose to provide a submission before commencing your opening remarks, would you please indicate that to the secretariat.

[9.14 a.m.]

HARVEY, Dr Ken, (Private capacity)

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. Do you have anything to say about the capacity in which you appear?

Dr Harvey—I am appearing here as a public health physician.

CHAIR—Although the committee does not require you to give evidence under oath, I should 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. Do you wish to make some introductory remarks before we proceed to questions?

Dr Harvey—I thought I might just give a brief background on why I am interested in this particular inquiry. As I mentioned, I am a medical graduate from the University of Melbourne. I have worked in Papua New Guinea. I specialised in infectious diseases and microbiology in Sydney and then returned to Melbourne and became Director of Microbiology and Infectious Diseases at the Royal Melbourne Hospital. An interest in antibiotic resistant organisms got me also interested in the forces at work on the pen that writes the script and medicinal drug policies. That led me eventually to leave hospital practice and move to medicinal drug policy, where I have worked in a number of countries under a number of auspices, including AusAID, the World Health Organisation and most recently the Australian Health Insurance Commission. I have just come back from Croatia, where we have been exporting Australian medicinal drug policy.

In a country which has a high international reputation for medicinal drug policy, in particular with our Pharmaceutical Benefits Scheme and its equity of access provisions, I and a number of international colleagues are extremely concerned that the provisions under the free trade agreement will substantially weaken the Pharmaceutical Benefits Scheme. I have outlined in my submission five areas of concern. I would be happy to either go over those briefly or to take questions.

CHAIR—Have we received a copy of your submission?

Dr Harvey—I have sent a letter in which I indicated that there is a published document on the University of Sydney web site and I have also indicated that I have been involved in two public meetings about this matter, in Melbourne and in Sydney.

CHAIR—We have the letter here.

Dr Harvey—I have also included lecture notes from the Melbourne and Sydney meetings.

Mr WILKIE—I would like you to go through each of the points. We only got the submissions yesterday. Because we have been in hearings all day yesterday and flying most of the night it would be good to have a bit of a rundown on them.

Dr Harvey—I would be happy to go over that. As I said, I have five concerns about the provisions of the Pharmaceutical Benefits Scheme. The first is the principles of the agreement. As they are outlined in annex 2-C the principles of the agreement are entirely unbalanced because they focus purely on the rights of innovative pharmaceutical manufacturers. They neglect the rights of consumers to equitable access to affordable drugs. In particular, the principles leave out a key and hard-fought principle of the Doha declaration on the TRIPS agreement in public health, which has been a matter of great international concern: namely, that trade agreements should be interpreted and implemented so as to protect public health and promote access to medicines for all. That is a particular concern in the region of the provision of AIDS drugs. This is a particular area where Australia's Pharmaceutical Benefits Scheme has been held up internationally as a very good principle.

But, as I said, in the principles that underline the free trade agreement concerned with the Pharmaceutical Benefits Scheme there is nothing about protecting public health and promoting access to medicines for all. It is purely about looking after the rights of innovative pharmaceutical manufacturers. We are all concerned about making sure that the goose that lays the golden egg continues to lay more eggs but there is a need for balance in medicinal drug policy and that balance is lacking in the principles.

The second concern is that the free trade agreement allows US pharmaceutical manufacturers to ask for an independent review of a decision by the Australian Pharmaceutical Benefits Advisory Committee not to list a drug. If PBAC does not list a drug it is because it has evaluated the economic evidence and feels that the drug does not provide a cost benefit to Australia. Indeed, companies will often resubmit after a period of time—their prices will drop, their indications will narrow and a drug will eventually be listed. But this second provision allows US pharmaceutical manufacturers, purely, to have an independent review of the negative decisions of PBAC.

In briefings in Canberra the Department of Health and Ageing has argued that this proposed review process cannot overturn a PBAC decision and therefore is of no concern. But if a review cannot result in PBAC decisions being overturned then I ask: what is the point of them? And why else would Medicines Australia applaud the introduction of an appeals mechanism—which is how Steve Haynes referred to it—and why would US Senator Jon Kyl be so enthusiastic that this provision is going to raise the prices of Australian pharmaceuticals and make Australian consumers pay their way? That is another argument that we might get into. I believe Australia does pay its way with innovative pharmaceuticals. But certainly that has been a push from America and why they wanted these independent reviews.

My third concern is that the agreement sets up a medicines working group with health officials from the United States of America, a country which I and many others would argue has the worst health system in the world; it is the most expensive and inequitable. Indeed, that is why consumers in America are flocking to Canada and Mexico; it is the only way they can afford to buy medicinal drugs. Again, the public health goal of equitable and affordable access is not a consideration of the free trade agreement or of this working group. The working group is solely

concerned with looking after innovative pharmaceutical manufacturers. Again, there is no balance in the working group. If the goal of equitable access were in fact a consideration of the working group, then I believe the US officials would have much to learn from Australia because, as I say, we have an excellent, balanced medicinal drug policy.

The fourth area of concern is a free trade agreement provision concerning the dissemination of pharmaceutical information via the Internet. The concern is that this may allow direct-to-consumer advertising in Australia. Direct-to-consumer advertising is legal in the United States. It has been associated with a substantial increase in the use of products which are targeted. I might add that the products targeted tend not to be those of public health interest; they tend to be products for male erectile dysfunction, baldness and other expensive and interesting conditions. Direct-to-consumer advertising has been clearly associated with the increased use of products, often not in accordance with best practice principles. Again, the Department of Health and Ageing argues that this clause is nothing new—that it purely reiterates the current legal situations in both countries—but when asked why, if there is nothing new, these matters and clauses appear in a free trade agreement, they can provide no sensible answers. Indeed, I believe the words are sufficiently obscure to allow American provisions to take precedence in Australia.

Finally, the fifth area of concern is that the free trade agreement proposes changes to Australian patent laws which I believe will delay the introduction of cost-effective generic drugs on the Pharmaceutical Benefits Scheme. The Department of Health and Ageing insists that these changes will only affect six to seven per cent of generic applications. The Deputy Secretary, Phillip Davies, said:

> We believe that ... we can implement the changes to ensure that the likelihood of delaying the entry of generic medicines to the market is very small.

Again, this opinion is not exactly encouraging. There is a great tradition in America of the evergreening of patents—of applying legal mechanisms to prolong and extend patent life. The expiration of patents is important for cost-effective medicines. Just as a patent is important to ensure the innovator is rewarded for the duration of the patent life, so the expiration of a patent is important for competition in generic drugs and to lower drug prices and make them affordable. In public hospital practice in particular, we rely much more on cost-effective generic medicines than we do in the Pharmaceutical Benefits Scheme. In the PBS, with monopsony bargaining power, we have lowered the price of originator brands considerably. In the public hospital system, which lacks that monopsony buying power, generic drugs are much more important. Any delay caused to the entry of generic medicines by these free trade provisions will have quite deleterious effects on the pricing and availability of drugs, particularly in public hospitals.

In conclusion, I would argue that the free trade agreement opens up additional pressure points on the pharmaceutical benefits scheme that are likely to result in higher drug prices, less generic competition and more pharmaceutical promotion. Most important of all, the fact that we have made an agreement with a country which has the worst medicinal drug policy in the world has substantially undermined our reputation in the region as a provider and exporter of good medicinal drug policy.

CHAIR—I am sure that most members would agree that Australia's Pharmaceutical Benefits Scheme is an excellent scheme. Is there anything wrong per se with a review process in the Pharmaceutical Benefits Scheme?

Dr Harvey—You are referring to this so-called independent review—the provision in annex 2-C?

CHAIR—Yes.

Dr Harvey—I have not been a member of the Pharmaceutical Benefits Advisory Committee, but I have a number of colleagues who are. I have been a member of other government committees involved in medicinal drug policy. My colleagues would argue, as I indicated before, that there currently is a very good review mechanism. Firstly, the Pharmaceutical Benefits Advisory Committee is independent in itself. Why do we need another independent mechanism to review their decisions? Secondly, if drug companies are concerned about a particular decision, they can and do resubmit. As I said before, often, after taking into account the concerns of the Pharmaceutical Benefits Advisory Committee—for example, perhaps reducing the indications and lowering the price—a number of those reviews get up. So I would argue that there is a review mechanism. It works perfectly satisfactorily. Why do we need another one?

CHAIR—In 1996 the Industry Commission, the precursor to the Productivity Commission, looked into the pharmaceutical industry. They found:

The lack of administrative appeal processes for recommendations of the PBAC reduces transparency and accountability ...

and also:

current processes, particularly review processes, may not provide adequate opportunities ... for consultation.

Would you care to comment on that? What is your view of the Industry Commission finding?

Dr Harvey—I have no problems about increased transparency. The problem, in my opinion, with transparency to date has been purely with the pharmaceutical manufacturers. Lloyd Sansom, the chair of PBAC, has said that he would hold meetings of PBAC in the Sydney Cricket Ground so that they are open to everyone, but the pharmaceutical manufacturers will not agree because of commercial-in-confidence provisions. It is those commercial-in-confidence provisions that have been primarily responsible for the lack of transparency, in my opinion. There has been, as you know, a succession of inquiries, including the Baume report—which was very effective in encouraging processes of drug administration and others to go faster.

There is no problem about administrative efficiency or increased transparency, but I would argue that the block has been the originator brand pharmaceutical manufacturers. They are the ones that, for commercial-in-confidence reasons, do not like to make their submissions public. Although we have been successful recently in getting positive decisions of PBAC up on the department's web site, as you know we have not been successful in getting negative decisions up because they are commercial-in-confidence. The clauses on transparency in this free trade agreement still enshrine the principle of commercial-in-confidence and secrecy. So I fail to see how this free trade agreement is actually going to change anything apart from the rhetoric.

CHAIR—In your paper you have said that the only outcome of the review process will be drugs listed at higher prices than the PBAC thought justified by the pharmacoeconomic evidence. There are two legs to this: the Pharmaceutical Benefits Advisory Committee and the Pharmaceutical Benefits Pricing Authority. Given that the appeal and review process is primarily related to the access part rather than the pricing part, how can you justify this claim that it will lead to increased prices?

Dr Harvey—The access part and the deliberations of the Pharmaceutical Benefits Advisory Committee rest on pharmacoeconomic evidence: is a drug worth what the manufacturer is asking? Are the increased benefits or the reduced side effects worth the increased price that the innovator manufacturer is requesting? Obviously that is a matter of negotiation and debate. Inevitably, manufacturers will set a price but the evidence will suggest that it is not worth paying that amount of money. As I have said before, a negative decision of PBAC is based on the fact that they do not believe a drug, or its benefits, is worth the price that is being asked. Or, if they believe that the indications are too broad—as, for example, in the case of Viagra when they believed that the indications were too broad for erectile dysfunction—then the PBAC will reject that decision. So price and cost effectiveness are integral parts of them agreeing to or rejecting a drug going on to more discrete negotiations with the pricing tribunal.

If we allow a review process purely for American pharmaceutical companies of negative PBAC decisions then it seems to me inevitable that they will use their public relations power, their marketing power, their money and their lawyers—all the opportunities they have—to create pressure on PBAC to modify and soften their decisions. That is likely to lead, therefore, to less stringent concern about the pharmacoeconomics or broader indications than the evidence might otherwise have portrayed. To be fair, I have every confidence in my colleagues on the Pharmaceutical Benefits Advisory Committee. They are legally obliged to follow the evidence. But they also are very busy people. They all have other full-time jobs and are being paid a miniscule sitting fee to digest large amounts of information and make decisions in the interests of the community, and they do not need extra pressures like this. They did not need, in the past, drug companies like Pfizer to take them to the Federal Court arguing about the legality of their decisions, which ultimately were upheld. They do not need this review process, I would argue. They are already independent, and there is a review mechanism.

CHAIR—Are you familiar with the PBS listing history of the glitazone drugs for diabetics?

Dr Harvey—Yes.

CHAIR—In 2001 the Pharmaceutical Benefits Advisory Committee decided on their cost-benefit analysis that the glitazones could be listed on the PBS, yet it took 2½ years for the Pharmaceutical Benefits Pricing Authority to find a price to list these drugs. Do you think that was an optimal process?

Dr Harvey—No, I do not, but it is inevitable in the haggling that will go on between companies and either PBAC, the pricing tribunal or the government. I do not, for example, believe that it was a good decision by the previous minister of health to totally take all drugs for male erectile dysfunction from the PBS. That was contrary to the recommendations of the Pharmaceutical Benefits Advisory Committee. So there are a number of areas where an evidence based decision can be haggled with, delayed or subverted by ministerial and cabinet processes.

To be fair, that is the government's right, because they are ultimately responsible for the purse strings and the decisions. But I do not think that a review process of PBAC will help the particular problem that you have alluded to.

CHAIR—If the review mechanism, the consultative mechanisms and so on lead to speedier access to pharmaceuticals that would have otherwise been listed but have perhaps gone through a second or third PBAC process, isn't that a good thing for consumers?

Dr Harvey—I teach medical students: 'Never be the first to use a new drug; never be the last to use an old one.' It is not always appropriate to have the latest drug rapidly available to the market. There have been many instances, particularly in America, where those drugs have had to be taken off the market because ultimately, when they have got out into larger populations and more evidence has accumulated, they have been seen to do harm. So my first comment is that the desire to have every new drug rapidly available is not necessarily a good one. People sometimes forget this. I have seen many patients with side effects, problems and untoward effects from drugs that have only been revealed when those drugs have got out into a broader population and more evidence has accumulated.

CHAIR—With respect, Dr Harvey, that is talking to an even earlier part, which is the TGA listing of a pharmaceutical when it becomes available to the population.

Dr Harvey—Sure, but the principle is still the same. If, for example, there is dubious evidence of benefit and the cost is very great it is perfectly reasonable, if there are other drugs out there doing the job, to wait until there is more evidence or perhaps until the company decides to reduce the price. The point I am making is along the same lines: purely to have a new drug available rapidly is not necessarily in the community's interest if the cost is greater than it should be, if the benefits are minimal and if there are alternative drugs available. Let me emphasise your words: the review process is only going to review negative decisions in which the Pharmaceutical Benefits Advisory Committee felt the evidence was not substantial enough to warrant this drug getting up. If the evidence is clear cut, if the drug is genuinely good, if the benefits are genuinely great—and if they are genuinely great we can argue again that the high costs are reasonable—then those drugs get up. So we are only talking about negative decisions. I believe this is just another mechanism for companies to haggle and have a go at reducing the power and the influence of the Pharmaceutical Benefits Advisory Committee.

CHAIR—I have been around long enough to see a whole range of drugs that often get up at their second or third PBAC listing. While you could say that their original case was not strong enough or that they should produce more evidence, it seems to me that there is a detrimental effect which means that we are seeing drugs listed on the PBS much later than in other developed countries. My point essentially is that, with these drugs, they are going to get listed anyway and there are other parts as well as the review mechanism—there is earlier consultation and so on—where perhaps, if there is going to be a problem, they can actually get their application right in the first place and then the drugs will be listed more quickly.

Dr Harvey—Come on! There has always been the prospect of consultation through the PBAC process. The only new thing is a face-to-face consultation. Again, I am not disputing the value of that. I am disputing, as I say, a review mechanism of negative decisions and also this medicines

working group, which certainly US Senator Kyl is quite convinced is going to review and improve our system in even more ways that would suit high prices.

Mr WILKIE—Dr Harvey, I am very impressed with your submission. Thank you very much for your time today. A concern I have with the review process is that, and I think you have outlined this already, even if it is a toothless tiger but comes out in favour of a company putting in for the review, then I would think it could then use that finding, both publicly and in future hearings, to try to bash us around the ears and get us to agree to a future listing. Is that your fear?

Dr Harvey—Yes. The industry quite rightly uses every mechanism they can to try to get drugs up at a price that is most favourable to them. This includes supporting consumer groups, advertorials and articles in newspapers trumpeting the latest advance and cure, when indeed the evidence is not usually quite as impressive. As you say, this gives them yet another mechanism to put their case, which is not necessarily an evenly balanced case. Companies have many more resources than do the Pharmaceutical Benefits Advisory Committee or other people interested in the appropriate use of drugs. I cannot see the purpose of it, and if there were to be a purpose then surely it should not just apply to US pharmaceutical manufacturers—surely it should apply to everyone. Why be part of a trade deal with just one group of industry? It just does not make sense to me.

Mr WILKIE—I read in your submission that the United States has spent over $US100 million just lobbying for different products.

Dr Harvey—The US pharmaceutical industry is the most profitable in the world. Its CEOs are some of the highest paid in the world—$60 million remuneration a year for some of them. It fights, understandably, very hard to change the international market to preserve its benefits and it spends a lot of money in doing that. In part of my submission I pointed out that they have spent something like $18 million fighting price controls and protecting patent rights in foreign countries and trade negotiations. They fought a union driven initiative in Ohio that would have lowered drug prices for people who have no insurance to cover such costs. They spent $16 million. I am not arguing with their right to do this; if you are a profit orientated enterprise responsible to your shareholders then, presumably, that is legitimate in their view.

Very clearly, this free trade agreement is part of a long series of tactics by the American pharmaceutical industry all around the world to get what we call TRIPS-plus provisions. The TRIPS international agreements have said that trade agreements should be interpreted and implemented to protect public health and promote access to medicines for all, which means reasonable prices. The American pharmaceutical industry has fought that everywhere. Thirty-six pharmaceutical companies took the government of Nelson Mandela to court because South Africa wanted to be able to get cheap AIDS drugs. That court case was dropped only after substantial public lobbying from the European Parliament and international organisations. The US pharmaceutical industry, as I keep saying, and the US medicinal drug policy, has a reputation for being the worst in the world. It is most protective of the industry, it has the highest prices and it has no equity of access. Again, for us to get into a deal with that country is dragging our reputation down in the region.

Mr WILKIE—Given that we do not have the financial modelling in place yet to determine whether we are or are not actually better off as a result of the deal, if it becomes marginal in

terms of benefits for Australia and if we were going to place the Pharmaceutical Benefits Scheme at risk, do you think it would be worth pursuing the free trade agreement?

Dr Harvey—For the life of me, I cannot see why a public health scheme that gives equity of access became part of trade negotiations, except that that is what the Americans wanted, because they wanted to undermine it. To me, it should not be part of a free trade agreement. I do not have the expertise to do a global evaluation of whether we are better off or worse off, although I am well aware that there is conflicting evidence at the moment on that. The Pharmaceutical Benefits Scheme and the rest of Australia's medicinal drug policy, including equity of access and our industry policy—we look after our industry here; we have a specific industry provision policy—are highly regarded. To have that put on a negotiating table as part of a trade deal is appalling. My medical colleagues in the region regard it as appalling. They cannot understand how we let the United States do this to us.

My understanding is that it is 'take it or leave it', which again I cannot understand from the point of view of democracy. To me, it seems that if there are clear concerns about one aspect, like the PBS, and if the department feels it is telling us that it is cosmetic and the Americans are telling us that it is not, let us get rid of that bit. It does need legislation over the patent provisions. Let us get rid of that bit. Then I hear you guys say that we cannot get rid of one bit; it has to be all of it. I put it back to you, gentlemen: why does it have to be all or nothing? My understanding is that, down the track, you can amend a free trade agreement. Why can't we get rid of this bit now?

Mr WILKIE—With regard to this committee, at the end of the day we can only recommend whether it is or is not in Australia's interests overall. Whilst we might make some observations in the body of the report, at the end of the day the recommendation is to sign or not sign, basically, or to ratify or not ratify.

Dr Harvey—That does not seem like democracy to me.

Mr WILKIE—Thank you. I might come back with some other questions later.

Mr KING—How does the medicines working group that you have mentioned actually operate?

Dr Harvey—That is a good question. We do not know. All we know at the moment is that it is meant to be made up of officials from the US health department and the Australian health department and it is meant to review future dealings of the free trade agreement in light of the principles. Again, that is my concern. The principles are all about innovative pharmaceutical manufacturers and they say nothing about equitable access to affordable drugs. It seems to me that this gives American officials opportunities to chip away, yet again, at the PBS. Apart from saying that the agreement was a breakthrough made with respect to pharmaceuticals and that Australia is now going to pay its way, Senator Kyl has been further quoted as saying:

> … I know that there is much more work that needs to be done in further discussions with the Australians.

This is to make us pay our way. Senator Kyl's remarks came from a hearing of the US Senate Finance Committee on the administration's international trade agenda. Very clearly, the

Americans believe, wrongly, that Australia does not pay its way, that Australia should have higher drug prices to keep American pharmaceutical companies in the manner in which they are accustomed. And, very clearly, US Senator Kyl believes that the medicines working group will provide opportunities for more work that needs to be done on our PBS.

Mr KING—My impression of what he means by that, with regard to what you refer to as 'looking after innovative manufacturers' as being the driving imperative behind the American view on this, is that they say that our research and development expenditure on new drugs is unsatisfactory and that we have been really relying upon money expended in the United States in that regard. I am not saying that that is right or wrong, but one way of testing that is through the review mechanisms that have been put in place under this free trade agreement. That is assuming that, in favour of those who will be administering the PBAC in the future, they will have the same dispassionate objective approach to determining availability, pricing and listing issues as they have in the past.

Dr Harvey—In 2001 the Productivity Commission addressed the issue that you are dealing with. They reviewed the prices of Australian drugs on the PBS. They looked at the top 150 PBS drugs, which account for 80 per cent of all PBS costs, and did an international price comparison. Our prices were on a par with Spain and New Zealand. Our prices were something like 60 per cent below US prices. However, if you looked at the differences in prices on innovative pharmaceuticals compared to me-toos and generics—me-toos are drugs that offer very little additional benefit—then Australian PBS prices of innovative pharmaceuticals were much closer to the US prices. We do pay our way on innovation! Not only do we pay our way on prices under the PBS, we also pay our way with an industry assistance scheme, such as through what used to be called the Pharmaceutical Industry Investment Program. That was $300 million of Australian taxpayers' money to support companies that genuinely did research and development in Australia. That scheme is being continued under the P3 scheme from July 2004. We pay our way.

Mr KING—I just want to examine a little further the assumptions behind this debate. What you are saying is that the US pharmaceutical prices are 60 per cent higher than ours, relatively speaking—is that correct?

Dr Harvey—They are 160 per cent higher than ours across the board.

Mr KING—In a perfect free trade environment they would have no hope in the Australian market.

Dr Harvey—The pharmaceuticals industry is not a perfect free trade environment. Medicine is not a perfect free trade environment.

Mr KING—What are you saying? What are the mechanisms that favour sellers of goods that are priced at 160 per cent higher than our products?

Dr Harvey—If you have—

Mr KING—No, it is quite important from my point of view. I really want to know what you say are the mechanisms that would favour somebody who has a pricing arrangement of that sort in the Australian marketplace.

Dr Harvey—The mechanism is patent monopoly. If I make a genuine drug that has genuine benefits and I have patent protection I can charge whatever I like.

Mr KING—Let us take AIDS. It is an important area.

Dr Harvey—That is a good example, because the Americans will charge whatever they like—a price which is outside the reach of many poor people.

Mr KING—But you are saying that different manufacturers invent, create or produce—whatever—different drugs and they patent them. But surely it is not beyond the wit of Australian manufacturers or competitors from Europe such as Hoffmann-La Roche or whoever—I do not know—to come in and create similarly effective drugs that can underprice that sort of competition.

Dr Harvey—If you create a similarly effective drug by an innovative pharmaceutical manufacturer you will tend to price it right up there near the original innovator. You may—

Mr KING—Why do you say that?

Dr Harvey—To be fair, an innovative pharmaceutical manufacturer, for every thousand drugs it researches, may get one that gets to market. There is a lot of wastage and attrition which needs to be paid for, which is what the patent system is all about. The patent system gives the innovator the right not only to recoup its research and development on the 999 drugs that have not got to market but also, if it is a real blockbuster, to make a killing to keep it going into the future.

Mr MARTYN EVANS—Isn't it true that European pharmaceutical manufacturers are just as greedy as American pharmaceutical manufacturers?

Mr KING—Well, isn't it true that every—

Dr Harvey—I have never said that they are greedy. I think to be fair—

Mr MARTYN EVANS—I think that is the interpretation of what you are saying.

Mr ADAMS—I do not think that that is so at all.

CHAIR—Dr Harvey can answer for himself.

Dr Harvey—I have not said that they are greedy. I have said that the way in which our research and innovation of the new pharmaceutical system works, which is market driven, is that it quite rightly encourages people to charge what they can, and that tends to be what they can charge in the developed world.

Mr KING—Sure; it is a free market.

Dr Harvey—It is not what they can afford in Thailand, India or Asia. The whole reason that there has been such great concern about patents, TRIPS and World Trade Organisation agreements is just this: everyone agrees that a patent is valuable and important to make sure that we get innovation but a patent in perpetuity means that poorer people cannot afford equitable access to essential drugs. This is true in America today. Poor people in America cannot afford drugs that are readily available in Australia at $24 under the PBS because they do not have the PBS system that we have. Therefore it is important that patents are not allowed to evergreen by innovative ways of manipulating intellectual property, which is one of the concerns that we have with the free trade agreement. It is important that generic manufacturers are allowed to come in and compete. Competing originator manufacturers tend not to produce the price drops that a generic manufacturer produces. When a patent expires they obviously do not have the same research and development costs or the same marketing costs to keep patents in perpetuity, and they can provide efficient competition. We need innovative manufacturers, generic manufacturers and a balance. The whole principle of Australian medicinal drug policy is a balance between equity of access and rewarding the pharmaceutical industry.

Mr KING—I understand what you say about that. Your point may or may not be accurate because I think there needs to be some economic modelling done. It strikes me that at the end of the day the mechanism about which I asked you and on which you seem to be focusing as being the critical difference that gives rise to all the problems that you are speaking about appears to be this review mechanism. I for one as a barrister have some difficulty in understanding how a review mechanism can lead to higher pricing.

Dr Harvey—I keep saying that the review is going to impact only on negative decisions. If a pharmaceutical advisory committee decides that a new drug is not worth what the manufacturer is asking, and they start asking up there, and if it is decided that in terms of years of life gained and extra benefits it is not worth that amount of money, it will reject it on pharmacoeconomic evidence. Here we are giving US pharmaceutical manufacturers, and only US pharmaceutical manufacturers, another bite at the cherry. I cannot see the point of it unless it is to bring pressure on the original PBAC decision.

Mr KING—I will interrupt there to give you one final example on this. Let us assume that US company A are unsuccessful in getting a listing on the PBS, so they appeal. I do not know how long this appeal process will take. The chairman is hoping that it will take less than 2½ years. Let us assume it takes only six months. In the meantime, Hoffman-La Roche or some creative Australian pharmaceutical company who have seen what is happening will come in and invent or produce their own similar product—it will not be the same. What good is it going to do the US company to appeal and even succeed on the appeal? I would have thought that that mechanism may actually improve competition.

Dr Harvey—With respect, I think you are totally underestimating the time it takes to develop new pharmaceuticals. If you have a new, really innovative drug, it may be five or 10 years before the competition catches up—and rightly so: they should be rewarded for that innovation. I believe the outcome of the review process—and, again, my concern is also for the intellectual property aspects—is that this will essentially allow companies another argument to get a higher price than they otherwise would have got. That is why PBAC rejected them—they did not believe that the price justified the benefits. This gives US companies—and only US companies—another bite at the cherry. As I said, I continue to reiterate my other concerns—

including the IP concerns. If we delay the entry of six to seven per cent of generic drugs, we are delaying competition and we are enabling higher prices to be maintained longer than they otherwise would be.

Mr MARTYN EVANS—You have covered a lot of those other areas very well. I have two brief questions on the other two points you raised. The first relates to Internet marketing issues. In the United States the companies now publish web sites on specific drugs, as you indicated earlier in your commentary, such as viagra. Those sites are now accessible from Australia. I have clicked on statin web sites and whatever, and you can go to allergy web sites and the like. Those US sites are available to Australian consumers now. Given that Internet sites are available around the world anyway, what is your fear about that? If you are an Australian consumer interested in a particular drug, you can already go to the US web site. What is the issue about that?

Dr Harvey—The issue is not so much concern about people being able to go to a manufacturer's web site and find out information about a particular drug: the concern is what we call direct-to-consumer advertising. At the moment, we are seeing the thin end of this wedge through what is called disease awareness advertising in which you open your Sunday paper and Pele the soccer player will be saying, 'If you have problems with erectile dysfunction, go to this web site.' It usually does not say a manufacturer's brand name of a drug but I would argue from a public health point of view that such disease awareness is clearly distorting the public health debate.

As I said before, the drugs that are promoted are not, by and large, drugs that are dealing with major public health problems in Australia. I would argue that erectile dysfunction, baldness and hay fever are not major health problems, but this is where the manufacturers put direct-to-consumer advertising. Both Medicines Australia and US manufacturers would like—and it was certainly part of the original free trade negotiations—direct-to-consumer advertising of, for example, lipid-lowering, antihypertensive and antiarthritic drugs. Again, all the evidence is that such advertising distorts the information channels. Not only does it distort information channels in terms of the drugs it is targeting, but it magnifies the benefits. It inevitably says very little about side effects and problems and it encourages overuse and sometimes unnecessary use of drugs.

Mr MARTYN EVANS—Do you think it will go beyond the Internet and into the mainstream media?

Dr Harvey—This is the concern. This is the thin end of the wedge. You will be aware that not only—

Mr MARTYN EVANS—Do you actually think that the clause allows this now or are you concerned that it will be amended in the future?

Dr Harvey—My concern is that, by linking Australian information provision—and that is the clause—to US standards of information provision, it is encouraging us to move in a direction of direct-to-consumer advertising, which is legal in the US, and in New Zealand, I might add, and which no public health physician supports. We support education but we do not support promotion.

Mr MARTYN EVANS—So you are not concerned that it allows it now; you are concerned that we may be pushed in this direction in the future?

Dr Harvey—Yes, particularly through the medicines working group, which continues to have dialogue. It is hard. I have been at briefings with the department of health. I like my colleagues in the department of health. I hear that they had been browbeaten for 20 hours at a stretch by US negotiators. They believe they have held the line under great difficulties, and I am very supportive of them. On the other hand, I do believe in a thing called the 'hostage syndrome'—that if you are locked up with people for too long you start to take on some of their views and you start to forget some of your own principles. I believe our DFAT and department of health negotiators have been held hostage, and they have let things slip which, if they had not been locked up for 20 hours at a stretch for months on end, they would not have.

Mr MARTYN EVANS—And the other one I was worried about was the generic drugs area. You mentioned this without saying explicitly what change you believe has occurred in the generic drugs area. You express your concern in this paper that the generic drugs area has been limited but you do not say precisely what the change is that we have made in the generic drugs area which will restrict their entry onto the market. What precisely is the change?

Dr Harvey—Articles 17.10.5(a) and (b) are the sections in point. They are not part of the pharmaceuticals at 17.10.4(c); they are buried in the intellectual property section. Again, this is spelt out in my lecture notes and in the article on the Internet. It is articles 17.10.5(a) and (b) which say—there are various bits of it—that agreement requires that patent owners be notified of applications for marketing approval when patents are considered invalid. This is a complicated area but, essentially, there is always haggling between innovative manufacturers and generic manufacturers over when a patent ends, as you can imagine, because it is worth a lot of money to keep a patent going. There are the terms 'evergreening' and 'patents in perpetuity', and lots of lawyers and legal experts are used to extend patents. Equally, a generic manufacturer tries to have what is called 'springboarding'—tries to get into the act when they can see a patent coming up, without being challenged by an innovative manufacturer. What some of these provisions mean is that generic manufacturers now must tell the innovative manufacturer when they are considering marketing. Let me read it:

The Agreement requires that a patent owner be notified of an application for marketing approval in the limited cases in which the person seeking the approval considers the patent invalid—

and this is one of the areas of argument—

and intends to market a generic version of a patented product before the patent expires.

That really means that a generic company concerned about evergreening and believing that they have a legal challenge now have to notify the innovative manufacturer, which gives the innovative manufacturer lots of opportunities to do clever things to block and delay that generic manufacturer. There are about three provisions along those lines which will require legislative change. They should be blocked.

Mr MARTYN EVANS—Thank you.

Senator MARSHALL—Thank you for your evidence, Dr Harvey. A number of times you talked about the US having the worst policy on health in the world. I think you said it is the worst health system and the worst health policy in the world. There is a growing tendency for anyone who criticises the US policy position to just be labelled anti-US and, therefore, discarded in total. I would like you to clarify why you say that and whether that is generally accepted evidence. I assumed that you were talking about the developed world. It might be easy to assume that there are some underdeveloped countries that have worse systems than the US. Could you just clarify why you have said that.

Dr Harvey—In teaching public health policy, generally teachers use comparisons of OECD countries, looking at the amount of money expended on health care and correlating that with indicators, such as infant mortality, life expectancy et cetera. The World Health Organisation provides rankings and listings of countries on how well they fare in terms of expenditure on health systems, looking at objective health outcomes. Australia rates about third in those WHO rankings of OECD countries; America is 23rd. America spends more money on health care per GDP than any other OECD country but, comparatively, they have some of the worst health outcomes.

You might ask, 'Why is that so?' when obviously American medicine at Harvard and Boston is equivalent to, if not better than, that in many other areas. The reason for the discrepancy is lack of equity of access. If you are wealthy in America, if you have access to a good health maintenance plan, then you have access to the best health care and you have good health outcomes. But if you are one of the large number of people who cannot afford health insurance—if you are unemployed, black or Hispanic—you have no affordable access to American health care. Those people's health outcomes are worse than in many Third World countries, and that drags America down. The reason we use America as a classic example of public health is that they lack equity of access. Rich people do very well, poor people do very badly, and their country does not rank well overall.

The opposite view is in a state like Kerala in India, which has very low GDP but has excellent health outcomes and health indicators. Why? Because they spend the little money they have on public health, educating women, vaccinating people and trying to provide basic health services to all. That is the key message we have learnt about public health. If you leave it to the marketplace, which the American pharmaceutical manufacturer associations would like, you get bad health outcomes for poor people. You need some redressing system, such as our Pharmaceutical Benefits Scheme in Australia, to get that equity of access so that all can do well.

I believe that America knows this. If the government changes, we could well see a different health policy. There is a lot of concern and debate in America about the statistics I have mentioned. In the free trade negotiations I believe there were letters from US senators to President Bush telling him to take his hands off what many US Democrats believe is an excellent health and pharmaceutical system from which America could learn much.

Senator MARSHALL—Thank you. It was important to clarify those earlier statements. Are you anti-American?

Dr Harvey—No. I was in America late last year. I have many excellent American colleagues. We sometimes have some interesting arguments because they tend to have a somewhat myopic view of their health system. At one public meeting at Harvard—

Mr KING—We have many American friends, too.

Dr Harvey—Yes. When I raised the WHO statistics, many of them had not heard of them. Some of them implicitly believe that their system is the best in the world, without the evidence that you so rightly want.

Mr ADAMS—I think it was Mr Colbatch in the *Age* in 2003 who pointed out that President George Bush benefited by $US14 million from the US pharmaceutical industry for his election campaign. When he came to Australia he singled out changes to the PBS in Australia that would help US companies get better access. So there is some politics involved there as well. That was pointed out and I just wanted to get that on the record.

If we go down the track of the Treasurer of Australia and basically say that the PBS is really costly in an ageing community in Australia and that we really have to address some of those costs, then maybe this is an overall policy to get it into a free trade agreement and change it to the extent that it may fit into that type of public policy thinking. Dr Harvey, I have read that you have been around public policy for a long time. What do you think about that?

Dr Harvey—We teach our students that different political parties have different views on how to provide health care. At the extreme, one view is that it is an individual's responsibility and that the market will provide. The other view is that markets do not work well in health or pharmaceuticals and there is a need for some redressing of markets to make them fairer in these areas, and that it is a community concern which needs government and community action. Far be it for me to say that the Australian political scene is as black and white as that—I do not think it is. But there are tendencies—and being old and grey, I have seen governments come and go—to change universal access towards individual responsibility when some governments come in and there are tendencies to go back to more universal coverage and social responsibility when other governments come in.

There is no doubt that health and pharmaceuticals are contested ground between those philosophies. It is for those reasons that a number of organisations in Australia have come together under the umbrella of the Medicare Alliance. This includes a large number of organisations—the Australian Consumers Association, the Public Health Association, the Australian Nurses Federation, the Health Issues Centre and ACOSS—to defend the principles of equitable access and universal coverage. In my lectures, I have been trying to encourage support for the National Medicare Alliance, debate on these issues, defence of the Pharmaceutical Benefits Scheme and support of international campaigns for equitable access to essential drugs. We have also been saying that we should make these issues election issues. That is our campaign.

CHAIR—In the transparency and review sections on pharmaceuticals, do you believe that this is only open to American companies or is it open to any company which makes an application to the PBAC?

Dr Harvey—The free trade agreement is with America. I presume that in the implementation of these agreements, something else could be done. But, again, my concern is that these provisions have arisen in a free trade agreement with the United States. If they were felt to be universally applicable, there are other ways and other mechanisms to bring these in. There does seem to be a logical progression from the sorts of political pressures that Mr Adams has alluded to and what we have ended up with in the PBS. I do not think this is an appropriate way to introduce change.

CHAIR—You spoke earlier about American companies. Do you believe that it will only be available to American companies?

Dr Harvey—I do not know. The department of health keeps saying that the details of implementation have yet to be worked out. Presumably, in the implementation, things could be broadened, but at the moment it is there as part of a free trade agreement with the United States. Certainly my colleagues overseas are looking at it and saying, 'Why has Australia made concessions in pharmaceutical policy to the United States? If changes were needed, surely they should be across the board as part of some other review process.'

CHAIR—I agree with your comments on the US health system. They spend much more than us, their health is not as good and they have enormous problems of equity and access but, as you mentioned, they do have pockets of excellence and some quite good examples of health within that overall system. However, I do not think we should ever seek to emulate their system. Is it not drawing a long bow to say that there is any part of this free trade agreement which does adopt the US health system?

Dr Harvey—I think if you look at the precursors and what the American pharmaceutical industry wanted, clearly the arguments and negotiations came out of the American pharmaceutical industry wanting to undermine our equity of access and get higher drug prices in Australia. That is clearly on the record.

CHAIR—But that did not occur.

Dr Harvey—That is what the department of health and DFAT negotiators would say, and Minister Vaile would say—'We have held the line.' I would argue that there are five areas of weakness that this agreement has opened up and, if this gets through, I would like to come back to you in five years time and we will see where the answer lies.

Mr WILKIE—In relation to that review being for the US, using the arguments you have outlined here, if in fact the review process was opened up to others, it would just compound the problem, wouldn't it?

Dr Harvey—As I say, I cannot see the purpose of having another independent review to what is already an independent review. The only decisions that are going to be reviewed are decisions where one independent body feels that there is no economic argument to justify—

Mr WILKIE—I agree with what you are saying. Where I am coming from is that if you look at other companies from other parts of the world, it just makes it worse.

Dr Harvey—I agree—it will get worse.

CHAIR—Thank you for your attendance before the committee today. This is a very important part of the free trade agreement. We welcome a range of views and we thank you for your well thought-out evidence today. Would you like the committee to publish the five-page article we received from you as an exhibit—because it has already been published—or would you like to rework it as a submission?

Dr Harvey—I think the article stands for itself. I sent you a copy of my lecture notes, which have not been published, and I would be very happy for them to be made public.

CHAIR—We will take that as an exhibit then.

[10.18 a.m.]

OXLEY, Mr Alan, Director, Australian Business Group for a Free Trade Agreement with the United States

CHAIR—Welcome. Do you have anything to add to the capacity in which you are appearing?

Mr Oxley—I run a consultancy called ITS Global, but today I am appearing on behalf of the AUSTA group.

CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Mr Oxley—Let me first apologise for being late. It is the old adage of being slowest to get to a place in your own home town. I mistook the venue. I have a submission on behalf of the group, which I will leave with you. I will read the executive summary, then make some very brief comments. The executive summary says:

> AUSTA believes the Australian United States Free Trade Agreement ... to be the most important trade agreement negotiated by Australia since the completion of the Australia New Zealand Closer Economic Relations Trade Agreement ... and the adoption of the Agreements of the Uruguay Round ... The result of AUSFTA is "deep economic integration" as characterized by the World Bank. Agreements that achieve such integration have been dubbed "WTO plus" agreements. The Agreement liberalises the Australian economy, facilitating its integration with the global economy. This is the role of a trade liberalisation agreement.

Ultimately, you will be making a decision about whether this agreement is in Australia's interests. I would like to leave with you, for consideration, three test questions. One, does it improve the Australian economy? Two, not every agreement achieves every purpose, so, on balance, does it serve that purpose? Three, does the agreement contribute to Australia's capacity to compete successfully in the global economy for the next 50 years?

Mr KING—What is the difference between questions 1 and 2?

CHAIR—I have the same question.

Mr Oxley—Let me explain what I mean by those things. Does it improve the Australian economy? The reason I put this forward is that we often forget that the purpose of a free trade agreement is to make one's own economy more competitive. If you look at the debate that we have had you will see that it is all about whether we have more or less access to the US market. Are we getting more or fewer US imports into Australia? Are we getting more or less investment? Is this industry more or less disadvantaged? Historically, that has been the way in which we have tended to talk about the politics of free trade agreements. Governments tend to sell free trade agreements, to try to justify any changes, on the grounds of: 'Don't worry. If we

are lowering a barrier here it is because we're getting more access to other markets.' So the political language in justifying free trade agreements tends to focus on the gains.

If you speak to economists and go through the literature you see that the economic impact of free trade agreements is to make your own economy more competitive. The most important thing that free trade agreements achieve is to encourage countries to reduce their impediments to business to invest in trade. Often the most important thing a free trade agreement does is not to secure gains to another market; it is to reduce one's own barriers. One of the most important things that this agreement achieves is to loosen restrictions on foreign investment in this country. I will come back to that, because this is a little bit out of field, but that is the proper economic test of the effectiveness of a free trade agreement for the national economy.

We would argue that in fact this agreement does that. While the average level of trade barriers at stake has changed, in fact what this agreement achieves is a significant commitment to an open market economy. It is probably the first one that this government has made since it was elected to office—and its predecessor. I will not go into the details of this, but the public mood has been against competitiveness in markets, despite the fact that we have not changed many of the public settings. Governments of the day have been somewhat reluctant to stand up and say, 'We support trade liberalisation.' This agreement will have these broader effects because the increased capacity for US investors to invest in this market—we believe; in fact we urge and we have advocated to the government—will follow naturally, and the greater freedom for US foreign investors to work in this market will be extended to foreign investors from other economies. It is actually not in our interest that we make it easier for US foreign investors to invest here than for investors from Europe or Japan. We do not believe that Treasury will stick with this position. As a group we have argued to the government that we should not.

This is the first time this government has actually indicated some way of achieving the APEC commitment to which the Hawke and Keating governments signed up in 1994 to 1996 to ultimately reduce all of Australia's trade barriers. In this agreement this government has agreed that virtually all trade barriers with the United States will be reduced to zero. It will put pressure on it to continue to do this. The change is not very great. The average tariff in Australia is only five per cent. But while we have an average tariff of five per cent we are actually penalising our economy to be globally competitive by five per cent. Why would you do that? If it is an easy thing to achieve, we should do it and help make the economy more competitive.

The second question is: does the agreement in fact achieve that broader goal? There is an important point to make here. When assessing the impact of a trade agreement on an economy we are making a judgment about the national interest. Free trade agreements today—and this one is no exception; some time has been spent on the pharmaceuticals issue, which, economically, is a very minor question in the impact of this agreement—must be assessed for their whole of economy impact. In whole of economy activity it is always the case with trade liberalisation agreements that it is not possible for every interest to be satisfied. There will always be some interests who will claim not to be satisfied. The ultimate judgment for you and for everybody else is: on balance, is this agreement right? The question I would put in relation to question 1 is, therefore: on balance, does it make the Australian economy more competitive? The third question, which is closely linked, is: will it assist Australia to compete in the global economy in the next 50 years? I come back to a reminder on this point. Free trade agreements are about

creating open environments for the private sector to operate more successfully in. These are not instruments for other public policy outputs.

It has been fashionable in the last few years—really since the Seattle riots—to talk about globalisation and complain that economic policy does not take into account public policy interests in non-economic spheres. This has been a somewhat fallacious argument. It has never actually prevented the capacity to improve environmental or labour standards within those public policy sets, but for about the last 10 years it has been fashionable to dog assessments of free trade agreements with claims that they do not achieve non-economic goals. At the end of the day, the ultimate assessment of this agreement must be: does it or does it not contribute to Australia's economic interests and does it or does it not make it easier for the private sector to do business, because that is the basis of our economy.

Why do I put the question: how does it look for the next 50 years? Let me mention two or three interesting statistics that are regularly thrown around. Today if you ask anybody in the IT or telecommunications industry what the dominant technology is going to be in five years time they will say they do not know. They will say the pace of technological change is so fast that it is simply not possible to predict. This has interesting consequences. The first is for employment. Ten years ago you would have found thousands of people in jobs that no longer exist, today you find thousands of people in jobs that did not exist 15 years ago, and we know that in 10 to 15 years time there will be many people in jobs we could not have dreamed of.

We are in a period of extremely rapid change with the impact of information technology but we do not seem to talk about it much any more; we take it as given. Since the dotcom boom in the US—and I think there is a bit of a feeling that that has passed and gone—the reality is we have missed that what is locked in place is a really significant and powerful process of change. I often think it is like when we look back in history to the end of the 18th century, when we saw Britain start to industrialise. I bet that in 1790 nobody appreciated what the consequences of the Industrial Revolution would be 100 years later. The pace of change of technology is exponentially greater today with IT than it was with the introduction of industrialisation in the 18th century.

If this is the case, what is going to be the driver of change in the global economy in the next 50 years? What we do know about IT is that it is coming out of the United States. Some technologies are developed elsewhere but the key thing about the United States is that it is the adapter; it uses these systems to change business systems; it changes our daily lives. What we do know is that that process is going to continue to develop. The United States may not always remain the world's biggest economy. I would say that in a few years time there is a fair chance that China may be larger. But what we do know is that the United States will be the world's best economy, because there is nothing at this stage to suggest that that process of change will not continue.

It has already had some fairly dramatic impacts. The last decade had the highest rate of productivity gain we have seen in the US economy in modern times. Our own economy had high rates of productivity gain for similar reasons. The reason I mention all this is that we basically contend that one of the most important features of this agreement is that it pegs Australia's reference points to business to the driver of technological change in the world economy. That is

probably its most important consequence. I want to leave as the test question: what does it do for Australia for the next 50 years?

I would like to touch quickly on one or two things before we run through this. Much of the debate we have had about the free trade agreement has been on what I would call yesterday's issues. It is not just that we have not had too much focus on IT; it is that a lot of the discussion has been about agricultural access, and there has been some discussion about the impact on manufacturing and changes in tariffs. In fact the agricultural access issue was almost an inevitable political consequence of raising the flag when the government said it wanted to negotiate a free trade agreement with the United States. The first thing the journalists did when reaching for their files or talking to their colleagues was to ask: what is this issue going to be about? The answer was agriculture.

As a business group, when we came together we appreciated that our biggest challenge was to have people focus on the issues of the future and not the issues of the past. We still think that is a challenge, and it is a challenge we would like to leave before you. In reality, if we look at the trends of change in the world economy and Australia's economic relationship with the United States, I am more than happy to contend that the agricultural issues are issues of the past, notwithstanding the value we will secure from the greater market access which has been promised in this agreement and which is in fact very significant.

There is a second reason why much of this is about the issues of the past. Again, it is probably a failing of convention. We really should not be calling this a trade agreement as such. In today's modern economy, investment is probably as important as trade for facilitating integration of markets. In global figures on trade and investment we are now seeing circumstances where the offshore sales of multinational companies are probably larger than the total exports from their home countries. In other words, for companies to do business in global markets, it is as important for them to have the opportunity to invest in, and supply, the foreign market from that foreign establishment as it is to export from. In the Australia-US relationship, we have seen this clearly demonstrated in the trends of the last 15 years, where two-way investments have become very significant, and where there is nearly as much Australian investment in the US as there is US investment in Australia. If you look at the total numbers, they are actually quite large.

We have had this rather silly debate—and I am sure you are going get to it—about the economic impact of the agreement: was it $3 billion or $4 billion over 20 years? Senator Conroy had a chip at me at one point when I said I thought it was probably worth $30 billion to $50 billion. He said that I was just making the number up, and I said, 'Yes, because we do not really know what the full impact on investment is going to be.' Investment numbers are probably much more significant than trade numbers. In fact, that is a reality about today's debate about international trade.

Mr ADAMS—Why is it a reality?

Mr Oxley—I will get to that in my next point.

Mr ADAMS—How long are we going with this?

CHAIR—We will just let Mr Oxley finish.

Mr ADAMS—I heard this a couple of years ago. It was the same speech—pie in the sky.

CHAIR—Please do not editorialise, Mr Adams.

Mr Oxley—The sectors which generate high-level growth—and this is very important for understanding the economic importance of this agreement—is the services sector. Today, in Australia's economy and in the United States, it is the service sector which generates 70 per cent of jobs and growth. In economic relationships between countries in the future, the services sector—and I see that you have someone from the Services Roundtable speaking to you a little later today—is the one in which the basis for growth of integration between economies will occur. And one of the primary vehicles for delivering services is investment. Investment is also the primary vehicle for delivering technology. So the importance of this agreement for these broader issues which have received scant attention in public debate—how much do you hear about trade; how little do you hear about investment?—lies in the fact that this agreement, in fact, recognises what the modern state of the US economy is today. This agreement therefore is of fundamental importance for dealing with the circumstances of the future.

Just a final point: I have noticed that you are getting lots of groups talking to you about problems with the agreement. That is why I made the point about taking an overall judgment. Our group twice conducted Newspoll assessments of what the public thought of the economic importance of this agreement—once in November last year, and also in early March after the agreement was released—and in both of those reports 70 per cent of Australians indicated that they thought this agreement was important, or very important, for Australia's economic future.

CHAIR—Thank you very much. Could we have a copy of your submission because then we can authorise it for publication. Firstly, with regard to the AUSTA coalition, how many members do you have? Do you have a list of the members?

Mr Oxley—Yes. I have not got it with me, but I will bring it; it is on our web site. We have got about 35 members. I will do my best to remember all of them: Southcorp took the initiative of bringing this group together because of the importance in the rise of exports of wines to the US market. Other members include Blue Scope Steel, News Limited, Telstra, FM Foods, Visy Industries, Westfield, the Business Council of Australia, the Minerals Council of Australia, the Australian Food and Grocery Council, the Australian Chamber of Commerce and Industry and the Australian Industry Group. I always get into trouble because I always leave a few companies out—Alcoa is another one.

CHAIR—It is something you can take on notice. I do not need all 35 names now.

Mr Oxley—Basically, there was also the Australian Meat Industry Council, meat exporters, and the Australian Dairy Industry Council. So I think we do represent most industry groups and most industries that have a significant interest in the Australia-US economy.

CHAIR—What is the message from the AUSTA coalition?

Mr Oxley—The message is that this agreement is fundamental to the success of Australia's capacity to compete in the global economy in the future.

Mr WILKIE—I see from some of your background experience that you are heavily involved in the Cairns Group and the WTO. What is the impact of this agreement likely to be on those organisations?

Mr Oxley—I would have thought that it would not be significant.

Mr WILKIE—They are pushing more for multilateral agreements as opposed to bilateral agreements, aren't they?

Mr Oxley—The members of the Cairns Group have engaged in a number of bilateral and regional agreements. Argentina, Uruguay, Brazil, Chile and Colombia are all members of the Cairns Group and the group of Latin American countries that, for several years, has been trying to secure an agreement with North America, called the Free Trade Area of the Americas initiative, while supporting multilateral liberalisation at the same time. Thailand, Malaysia, Indonesia and the Philippines are also members of the Cairns Group and have negotiated the regional trade agreement, called the ASEAN free trade agreement, as well as supporting the WTO. Thailand wants to negotiate a free trade agreement with the United States, and Malaysia and Indonesia are talking about it. The point is that the argument that countries cannot do both is a misstatement of reality.

Mr WILKIE—So you would agree that the same would apply with the WTO?

Mr Oxley—I am not sure of the question.

Mr WILKIE—In terms of our impact on the World Trade Organisation and our ability to say that we need to get involved in more multilateral agreements when we are doing bilateral agreements.

Mr Oxley—I am aware that this point is made regularly. I have never actually understood the factual basis for it. Going back to the Uruguay Round, which was from 1985 to 1994, that is arguably the most successful multilateral negotiation that we have had since the GATT was negotiated in 1948. While the Uruguay Round was being negotiated, Australia negotiated the ANZCERTA agreement, the ASEAN countries negotiated their regional agreement, the three leading Latin American countries in the Cairns Group that I mentioned negotiated the MERCORSUR regional agreement, the European community consolidated the single market agreement, the United States first negotiated the bilateral agreement with Canada and then consolidated NAFTA, and at the same time they negotiated in the WTO. Therefore, the suggestion that countries diminish their capacity to work multilaterally while they do things regionally and bilaterally has no historical foundation.

Mr WILKIE—You talked about the survey that was undertaken by the group which said that people believed that they would be better off with a free trade agreement.

Mr Oxley—No, we asked them if they thought it was important for Australia's economic future.

Mr Wilkie—So you were not asking for an opinion as to whether or not they supported a free trade agreement?

Mr Oxley—We asked them in the second survey, in March, whether they thought the Senate should block or support the agreement, and the response we got to that was that 51 per cent said no, 25 per cent said yes and 25 per cent said they do not know.

Mr WILKIE—What was that based on, given that people did not have any information then as to whether or not the agreement would be in Australia's interest?

Mr Oxley—It was based on the quite extensive debate that had occurred after the agreement was signed.

Mr WILKIE—But without any economic modelling based on the actual reality as opposed to what was hoped to be achieved?

Mr Oxley—That is true, but I have not seen much change in the character of the debate about this issue, frankly, since before the agreement was completed. I personally do not think economic modelling will make the slightest bit of difference. That is my personal view.

Mr WILKIE—Thank you. I might get back to that later.

Mr MARTYN EVANS—You made some extensive points about the services economy and the importance of that in the future, particularly IT and biotechnology. Those areas will obviously be very extensive in the future. Those areas are a personal interest of mine, as colleagues will know. If our trade in those areas is to grow with the United States and we are to benefit extensively from the services economy areas—IT and investment in biotech—one of the things that disappointed me about the agreement is that it does not allow us to capitalise on improvements in people movement.

There is no area in the agreement that has enhanced our ability to gain business visas to allow Australians to improve their ability to personally gain access to the US market. When Australians want to spend a couple of years in the US in enhancing their business access to the US, they are still forced to go through the whole US green card process. There is no enhanced access personally there, which would be an enormous improvement in the services economy access to business—the IT and biotech market areas. None of that was tackled at all. I agree there are a lot of areas which relate to IP and to foreign investment areas. Would you like to comment on that? Then I will have another question in that area.

Mr Oxley—Thank you for raising that. I in fact overlooked a point that I intended to make in the summary. On the technology issue, IT is a giant. We keep talking about biotech but we are still yet to see the surge in biotech that we think we are going to see. We have certainly got the IT surge in front of us—every facet of our daily lives is changing as a consequence of that. You are completely right about the issue of the failure to address movement of people. I said in my comments that not every point is satisfied in this agreement. Our group was deeply disappointed that the question of freedom of movement of people was unable to be picked up in the agreement. We understood the reason for this: at a time when you have such an upsurge of international terror it is very difficult to get governments to agree that they should be changing their migration procedures when it relates to security and this was something that simply had to be ruled out.

There was actually a second reason it got ruled out as well: it is on the public record that USTR Zoellick wrong-footed the Senate judiciary committee. He put freedom of movement provisions in the bilateral agreement with Chile and the bilateral agreement with Singapore, and by the time they got to this agreement they said to him, 'This is out of your jurisdiction. You haven't consulted us.' One of the visiting senators actually told us over dinner that they said to Zoellick: 'You pop that up in the Australian agreement and we will cut the funds to USTR.' That was an entirely jurisdictional issue, but probably what was more important was that the timing was all wrong. Our group has proposed to the government that this FTA process should not be regarded as complete until the issue of freedom of movement of people is elevated into a key and continuing activity.

This is for two reasons, really: one is—you are quite right—that it is quite fundamental to be able to get the full benefits out of services and, in fact, generally to give people the opportunity to get the benefits of being able to work in both economies. There is a second and broader point: if you are talking about getting benefits enabling people and business to move freely between economies and countries—we have always talked about freedom of trade and of goods; we are now increasingly talking about services; we have come to accept it as capital—the reality is that freedom of movement of labour is actually occurring as a part of the global activity anyway. One of the reasons the Australia-New Zealand economic integration is so successful is that, separate from the agreement, we have always had freedom of movement of personnel. It is an integral part of the creation of the European single market. We believe that to secure the full benefit of this free trade agreement it is essential that whatever governments are in office accept, as a high-level and permanent political commitment in the relationship, to work to achieve that greater freedom of movement of people.

Mr MARTYN EVANS—My related and final question is: as an absolute side issue to that and on a parallel track, surely we should also work for mutual recognition of professional areas because in the United States you are dealing with 50 separate state entities and professional areas, probably even 50 times 25 professional groupings in regional sectors in all of the professional areas with the state bars, accounting and pharmaceuticals—all of those professional recognition areas. In Australia many of those are on a national basis, so professionals from the US can come here and in many cases get national professional recognitions or five or six state professional recognitions and can practise relatively simply in Australia. In the United States when a professional from Australia goes over there, in almost no cases can they readily practise a professional qualification without going through a myriad of practising certificates, and none of that was covered, so far as I can tell, in the agreement. So the practical imbalance in our two 'professional trading' situations is enormously imbalanced. None of that was addressed, so far as I can tell. There is a side agreement on mutual recognition to some small degree, but the imbalance in that is enormous because of the relative way in which we address our professional qualifications.

Mr Oxley—The agreement creates a framework to tackle this. It was probably the only way to do it. If you held up the agreement to secure a negotiation on mutual or cross-recognition of all of these professional qualifications, it would probably have taken 20 years to negotiate. That in fact is going to be a really big challenge to our officials. Even in the EU, where, formally, they have agreed to allow this sort of thing to occur, it then devolves to these endless grinding-on sessions of negotiation between professional associations who are never in a hurry to allow competition in their own sectors. So I do not think it could have been done any other way.

There is a framework agreement which now creates a process to do it. In this respect, I think that the acid test will come from people watching it—the scrutiny from parliament and the private sector seeing that the government actually makes an effort to give this thing a bit of a push-along. It is just the sort of thing that could actually die through being an endless bureaucratic process. So that is the second thing that I think is quite important to get the full benefits of the agreement.

Mr MARTYN EVANS—You make the point about services and so on being critical to this. How does that work? That is vital, but the US has 50 states. If you want to practise in the US it is almost impossible if you are an Australian, isn't it?

Mr Oxley—As I understand it—and I am not an expert on all of these professions; you go profession by profession—if our bar council and the law councils were willing to negotiate with the New York bar council then that cross-recognition would in fact provide quite a significant entree to others. The shot would be to pick the strategic jurisdictions in the states, I would have thought.

Mr KING—It seems to me that this agreement does not liberalise international trade either between Australia and the United States or between Australia and third countries by extension. I am talking now about the rules that you would be familiar with—UNCITRAL, UNCTAD, Hague-Visby, the Warsaw convention and those sorts of rules—which actually govern international trade. But your first point appears to be that what it will do is liberalise the Australian economy. Can you give me an example of what you mean by that proposition?

Mr Oxley—Some of the groups you have mentioned set laws governing commercial transactions, but when I refer to international trade—and I think it is the way the government refers to it in this—it has a narrower and more specific meaning. It is really in the disciplines and rules that are characterised by the World Trade Organisation, which is, in a sense, the framework agreement. Almost every bilateral or regional agreement tends to ape the structure. The basic guiding principle in the WTO is to get countries to commit to reduce barriers to trade, which are principally tariffs or non-tariff controls such as licences or quotas. Through those agreements people enter legal commitments that, once they reduce a measure—once they cut a tariff, say, from 10 per cent to five per cent—they commit not to change that.

Mr KING—But I am looking for an example of what you mean by your first proposition. How will it liberalise the Australian economy?

Mr Oxley—Australia has agreed to—

Mr KING—Just an example—that is what I am looking for.

Mr Oxley—reduce all tariffs on imports from the United States from an average of five per cent to zero. That puts Australia in a position where those goods will be cheaper. If they are cheaper, it makes the economy more competitive. That is not a very big cut. In fact, one of the points about this agreement is that the actual average height of trade barriers between Australia and the US in traditional senses, apart from services, are not very high compared to other countries. It is one of the reasons why I always thought that doing the economic assessment by the standard system of econometric modelling was not going to tell us much. What I think was

more important was the agreement that the governments made on investment from the US. As I understand it—

Mr KING—I was going to ask you about that next. I think you gave us the liberalisation of the rules on foreign investment in Australia as the key result which would give you a tick in relation to the first two tests that you put to us on whether or not this agreement should be in the national interest. What do you mean? Can you give me a specific example of a rule on foreign investment that will be loosened up by this agreement?

Mr Oxley—Under existing law, any so-called greenfield investment—for example, if a US company comes in and wants to invest in a plant cold without buying an Australian company—of more than $10 million has to be reviewed by a committee of officials, who then comb through it and decide technically whether it should be permitted or not.

Mr KING—This is the FIRB process?

Mr Oxley—Correct. That limit is being removed for any investment from the United States for greenfield sites.

Mr KING—Does that mean the FIRB is going as a result?

Mr Oxley—No. The FIRB retain the residual right to check a foreign investment if the government decides that the national interest might be at stake. They have the residual right to check.

Mr KING—How is that going to be an improvement on the present position?

Mr Oxley—Currently, if you are an American company and you want to invest $10 million in a company, you have to go to Treasury and go through the palaver with them of whether or not the investment is in the Australian national interest, whereas no Australian company has to do that.

Mr KING—I have not read the detail of the investment chapter. I think it is chapter 17 or something. Aren't you saying that the effect of that from the business point of view is going to be that they can invest $10 million in a coal business in Australia but it is still subject to FIRB review?

Mr Oxley—No. The FIRB would have to intervene and trigger an inquiry if it decided that the national interest was at stake.

Mr KING—So it is a supervisory role. It is not a gate.

Mr Oxley—It has a watching brief. It shifts it from a gate to a watching brief.

Mr KING—How is that in the national interest?

Mr Oxley—If US investors are deciding whether they will invest in New Zealand, Australia or Malaysia, they weigh up the various factors. One factor which deters foreign investors is regulatory intrusion.

Mr KING—Let me take that one step further. Why wouldn't a US manufacturer or producer simply export to Australia instead of investing in Australia?

Mr Oxley—It depends on the business. In fact, this brings me to the point about the significance of the shift of economic activity in our economies from export industries to manufacturing industries. The companies will take a decision on which is the best way to do it. Let us look at the other side of the coin, which is Australian investment in the US. We have several automotive component companies who make a decision about whether they are going to manufacture an export to supply Ford or General Motors in the United States or whether they are going to build a plant over there to supply. The decision that they take should be a commercial decision, not one dictated to them by governments. In a proper free trade agreement where you reduce the capacity for governments to determine what the structure of the business should be, the business will grow and flourish more freely when it is able to take its decisions on commercial grounds.

Mr KING—That brings me to my third topic. I do not mean this in a pejorative fashion, but there has not been a tremendous track record of success of Australian investments in the United States in recent years—and I am talking about HomeSide for NAB, Hardy and a few others. Could you explain to us how this agreement will actually improve the opportunities for Australian business in the United States? I just want to explain why I ask that question—

Mr Oxley—Your numbers about investment in the States are wrong.

Mr KING—Perhaps you can correct me. The concern of Australian business has been that they have found that the real impediment to doing business in the United States has been local regulation and unfair competitive advantages given to United States businesses in the United States. Is this agreement going to resolve that problem in favour of Australian business or not?

Mr Oxley—Yes.

Mr KING—How is it going to do that?

Mr Oxley—This agreement provides a legal right for foreign investors in both countries to be treated on the same terms as domestic companies. I was getting to this as a second leg. Typically, this interference does not occur at the national government level; it is usually at the state or county government level in the US or the state or local government level in Australia. When, say, IBM or Kellogg want to invest, companies generally comply with the local councils if they want a car park or to do this or that. They usually want to be good citizens. In the United States, I am aware of one case—and there may be some others—where companies will be discriminated against because they are foreigners. This agreement provides a legal right of recourse and, if the company considers that this is happening, it can go to Canberra and ask Canberra to go to Washington and say: 'Your legal right under the agreement to ensure that Australian companies receive equal treatment with US companies has been breached. Will you ensure that right is executed?' That is new.

Mr KING—That is positive. I have one other issue. Your involvement with the Cairns Group is interesting in this context. It is my understanding that in effect after Cancun the Cairns Group has collapsed as an effective international force in trade liberalisation and indeed trade advantages. Could it not be said that that has been as a result of proliferation of bilateral agreements? Is this not going to create further difficulties, or do you see there being synergies the other way?

Mr Oxley—I do not see that. The issue of the credibility of the Cairns Group arises from a change in the political demographics of the WTO. What happened at Cancun, which I think is extremely serious for the WTO, was that the Brazilians succeeded in creating a new coalition of developing countries. It included most of the members of the Cairns Group but, more importantly, it added China and India. India has always played politics in the WTO but the demographic change was China's membership, because India is actually not nearly as important a global trader as China is. The appearance on the scene of this group, with China sitting in the group, actually significantly altered the political landscape as to who was going to be called into the room when something serious had to be settled.

I think the issue of the authority that the Cairns Group carries now is quite fundamentally challenged by that group. How long the group will stay together is another matter, but the WTO is currently confronting a very fundamental challenge by developing countries that walked into the group and are basically saying that world trade liberalisation means that the rich countries cut their trade barriers. From an economic standpoint, that is not what it is about. That type of stuff belongs in the UN—that is what UNCTAD is for. If the developing countries hold to this position in the WTO, you may never see another serious trade liberalisation agreement in it.

Senator TCHEN—I have two questions for you. Firstly, I know that you have been described as one of Australia's foremost experts in international trade: you were the Australian international ambassador to GATT under the Hawke-Keating government, you were chairman of GATT and you also played an important role in the establishment of the Cairns Group. This committee—and I think there is a Senate select committee as well—will be going around Australia seeking and receiving public opinions about the benefits and disbenefits, advantages and disadvantages of this free trade agreement. You have said that you are strongly supportive of it. From your perspective, can you suggest to this committee, as we go around receiving opinions from diverse sources, what the issues are that we should beware of.

Mr Oxley—The reason I put those initial three questions is that a lot of the debate we have had has, in fact, been what I call a political debate. The political debate has become the tenor and fashion of debates about globalisation. I think the basic question to come back to is: is it or is it not going to be in the fundamental interests of the Australian economy? There is a series of secondary questions to ask out of that. One thing I have not gone into is what I call the political economy of world trade negotiations. There is an issue of whether Australia would have been competitively disadvantaged by not having an agreement with the United States, given who else has. The United States has embarked on a relatively new approach of negotiating bilateral agreements with a number of countries—some of whom would be competing exporters with us. Had the United States gone ahead and finished an FTAA agreement which included Argentina, Brazil and Uruguay and not included us, then we may have actually been quite significantly disadvantaged in getting access to what is a rigged US agricultural market.

We do not tend to put that argument up as the No. 1 argument, but if you asked me as someone looking at it from the standpoint of somebody who has looked at international trade policy over a long time I would have thought that it was more of a political argument than an economic argument, but it is a relatively compelling one. Can Australia afford to put itself in a position where it does not have a free trade agreement with what is going to be the leading economy in the world for the next 50 years? I make the point that is not going to be the biggest but the most competitive.

The second issue is when people raise issues to ask them as to what the full economic import really is. As I watched the debate I saw that we had what I would call a sort of fringe hangover of the protection and free trade debates we have had in Australia. You may recall there was a WTO conference in Sydney about two years ago out at Homebush. It cost about $25 million to corral the 700 protestors, max, who turned up. We had a very close look to see what groups were still arguing in the community against free trade, because in fact in this country we now have one of the most open economies.

One of the other interesting things about the agreement is that the negative and last question to ask is: what is the pain in joining it? You might say, 'What would be the costs for us of not signing up?' The economic pain is, I would argue, very small. I listened to our previous speaker and it seemed to me that the only key economic point he had was whether or not the slowing down of approvals to six per cent of generics would be economically significant. It does not sound like it to me.

On local content, there is no economic case at all. In fact, those film industries are not disadvantaged. What is notable—I do not know if they have come to you—is that the Australian Film Commission were leading the campaign on cultural industries. They spoke at a conference we put on in Canberra two months ago and they decided at the end of the day that the agreement did not hurt them much. So the question you should be asking when people come along and actually make these points is: what is the real overall economic significance of the point of discontent with the agreement?

Senator TCHEN—Mr Oxley, you earlier said in reference to economic models that you do not expect much light to be thrown on the issue from economic modelling. Can you tell us why?

Mr Oxley—The economic models are always backward looks. They are modelling what in fact are quite low trade barriers, so the number is always going to be low. What the economic models do not ever do is actually capture what is called the dynamic effect. You ask any economist and they will always tell you that the real gain from opening up and reducing barriers and interference by governments in markets is bigger than the actual numbers ever produce. That is why we always thought that they were a bit of a distraction to the whole discussion. What they also do not ever capture is the impact of changes of barriers to foreign investment.

I did not mention before in answer to Mr King's question Australian investment in the US now. The numbers are difficult. It depends how you measure them. It is about $190 billion worth of investment—not much less than US investment in Australia, which is about $220 billion. There are variable exchange rates. You mentioned a couple of failures, but, if you look, Westfield and Visy Industries have very large investments in the United States. Their business there is probably bigger than their business here in Australia.

More importantly, fund managers are investing very significantly in the US and that is actually going to continue to increase because with the raising of money for national superannuation funds they are going to want to get world-class returns from their investments. The protection this agreement gives for Australian investment in that US economy is very important in the long run.

Mr ADAMS—Along the same lines, basically you are being pretty general. Just on the US investment, the figures jump around. Mr King indicated that he thought that most of the companies that had invested in America in recent years had not done very well. You say that is not true. Can you produce any figures to back that up—not now but on notice?

Mr Oxley—Two or three investment failures do not demonstrate the failure of Australian investors at large. You will always get failures by companies investing; it is the nature of the private sector and business. We have some numbers on the web site on levels of investment and the rate of growth.

Mr ADAMS—In the futuristic arguments that you constantly put up—and I have heard you arguing along those lines before —there is nothing specific. It seems that the line being taken by you and the organisation you represent is that trade agreements are great and wonderful and there are all these things that we cannot measure. But I think the public really want some sort of measurement. If, in the public interest, things like their PBS are going to be threatened, they want to see some tangible gains. But you do not think we can produce that—that modelling economically, as we have traditionally done it, is not good enough. How do we actually measure whether this is in the interests of the Australian people?

Mr Oxley—What we do know, as evidenced today as compared to 25 years ago, is that an open economy produces much greater prosperity and wealth and has a bigger impact in cutting unemployment than does a closed economy. With high levels of protection in manufacturing in the seventies, we nearly killed our manufacturing industry. Manufacturing today is struggling to come to terms with the fall of the 30 per cent tariff, but I am not aware of anybody in this country who would seriously maintain that we should return to high levels of intervention—

Mr ADAMS—I am not arguing for that.

Mr Oxley—by government in the way business works. Free trade agreements are designed to achieve a commitment by governments to continue to maintain open economies and to get benefits from opening their economies to other open economies.

Mr ADAMS—You argue that free trade agreements are about making your own economy more competitive.

Mr Oxley—Yes.

Mr ADAMS—I do not argue with that. I do not think anyone is arguing that trade is bad. It is just that, with these issues of getting equality or winning some points, there seems to be a lot in this agreement that says that maybe the negotiators did not get it right and did not do as well as they could have done. We are trying to find some measurements. I think it is pretty acceptable that we find some measuring sticks to say that we have made some gains and that this could be

in our interests. Your statement generalises that the benefit would be $50 million. Is that per year?

Mr WILKIE—$50 billion.

Mr Oxley—You did not ask me to be specific; it was a throwaway comment. My numbers are not any better than the other numbers being thrown around. We have had a disease in this country of thinking that econometric modelling gives us the answer to everything. If you sat down with an econometric modeller and had them explain how they do it, I think you would find there are more conventional ways to make assessments. I argue that economic policy tells us we get certain results. This agreement leads the Australian government to take some actions that restrict the capacity to intrude in the way business operates, and that is the primary point of trade liberalisation.

A second point which I have generally made is that I have not come across a person yet who, when asked, 'Don't you think it would be valuable to Australia to tie in with what is going to be the world's most competitive economy for the future, the United States and don't you think we'll get some benefits from that?' has not said yes. I know you would ask, 'How can you demonstrate that?' The answer is that you cannot. There is a common view right through our business that, without finding an economic justification for it, it is basic commonsense.

Mr ADAMS—I agree with that, but it is about the cost we might pay for that.

Mr Oxley—Evaluate the cost very carefully.

Mr ADAMS—That is what we have to do as a committee.

Mr Oxley—There is only one area that now seems to be a point in question, and that is pharmaceuticals. I suggest you be diligent.

Mr ADAMS—Thank you for that. The line you take that every agreement is better, especially if it is with the US, would be an easier line to take—and I have read it several times—if we might not have got as good a deal as we could have done. We cannot prove that we have got a good deal, so it would be a good line to run. But it is a good thing to lock into an agreement with the US for the future.

Mr Oxley—The agriculture results speak for themselves. There has been a sleight of hand in the agriculture case, and you actually mentioned it yourself. The argument that the agreement is not as good as it has been has been transformed into an argument that this is a bad agreement. The actual economic results to be achieved for dairy and beef are very good. You have had the beef people in front of you and you are going to have the dairy people in front of you. They will all tell you what the results are, and the numbers are very significant in terms of extra exports. That speaks for itself.

Mr WILKIE—But the beef representatives say it is shocking. I cannot see how you could say that beef is a good outcome.

Mr Oxley—Stephen Martyn did not say it was shocking at all.

CHAIR—He said he supported it.

Mr WILKIE—No, that was the meat producers, who were talking about manufacturing of meat, mainly lamb. But the beef industry says—

Mr Oxley—The lamb producers told you it was shocking?

Mr WILKIE—No, they said lamb is good. But that is meat generally. The beef industry, I believe, have a totally different perspective. They are talking about how they have achieved 70,000 tonnes over the 18-year life of the agreement, but their actual production is increasing by 350,000 tonnes over the next five years. They could not even get an extra 30,000 that they wanted in the agreement. Their economic modelling says that they will be $1 a beast better off over 18 years.

CHAIR—That was not the evidence yesterday from the Australian meat industry.

Mr WILKIE—No, but that was what I put to them.

Mr Oxley—You should be listening to Stephen Martyn, who represents the meat exporters who are actually running this, not the producers.

Mr WILKIE—We are talking about the beef industry, not the meat producers. You mentioned beef specifically.

Mr Oxley—Are you including pork and chicken?

Mr WILKIE—Beef.

Mr Oxley—The beef industry has its interests reflected in exports, through the meat exporters. Stephen Martyn has explained to you the benefits in that. Stephen Martyn is on the record as saying that this is a market access deal that could probably not have been secured through the WTO.

CHAIR—Yes.

Mr WILKIE—He did mention that.

Mr Oxley—If we come down to the judgment about whether this is a good result or not, and he is saying that it is better than what we could have got through the WTO, it seems to me that that speaks for itself—whether or not you think it could have been better.

Mr ADAMS—Is wine old time or is it still a new industry?

Mr Oxley—Wine is new.

Mr ADAMS—Thank you.

Mr WILKIE—You mentioned film earlier. The TV industry has said that culturally we could stand to lose in the longer term because, whilst current media is covered, in the longer term IT technical changes may mean that future technology is not. Therefore, we could end up losing. You mentioned that the film industry says it is quite happy. I would suggest, particularly based on the evidence that we received yesterday, that it is quite the opposite. In relation to IT you have said that the driving force of the Australian economy in the future will be IT. A number of people who have given us submissions suggest that, particularly because of what is happening with patents and the fact that our laws may have to comply with United States laws, the future growth of IT in this country will be severely diminished as a result of signing this agreement.

Mr Oxley—I have not heard that evidence. It would surprise me greatly.

Mr WILKIE—Finally, I am interested in your comments in relation to this. Yesterday we heard from Doug Cameron, of the Australian Manufacturing Workers Union, whom I am sure you know.

Mr Oxley—Yes.

Mr WILKIE—He was talking about how, with the reduction of tariffs from 10 per cent to zero over five years—he did not mention that specifically—we might end up seeing Mitsubishi move offshore. Would that be a good outcome for Australia? Is that likely and would it be good for the future of our manufacturing sector?

Mr Oxley—I would have thought that if anything happened to Mitsubishi it would be a consequence of the state of health of Mitsubishi itself, and of DaimlerChrysler who now own it. Mitsubishi has been the weakest manufacturer for a long time. Is it good for Australia or not? All I observe is that years ago when the Button car plan was put together it argued even then that we had too many car manufacturers. I forget the number it put up. But our having three manufacturers, from a standpoint of efficiency for the size of our economy, is probably not effective. It all depends on how good Mitsubishi is at building a competitive product and exporting it. All I would say is that if we continue to have motor car companies that cannot survive without continuing high levels of government protection then we do not have industries that are going to be able to serve us in the longer run. The future for at least two of them is quite bright. I do not know whether or not the others can make it.

I do think it is important to have a manufacturing auto industry. I want you to understand that. I would not argue that, come what may, we should see it go. But, again, some of the arguments have to be nuanced. Doug Cameron has been opposed to this agreement from the day the words were mentioned. He is as much opposed to free trade as anything. I think he would oppose any free trade agreement, not only this one. I have debated extensively with Doug, and ideologically that is his position. So I think his comments need to be weighed.

I did notice yesterday that Julius Rowe was quoted as having said that we might lose the 15 per cent tariffs on the auto components. That was a news report. I do not know that it was accurate. The average tariff on auto components is not 15 per cent. It is less than that and has been for some time.

CHAIR—Thank you very much for your attendance before the committee today. It is resolved that the committee authorises the submission from Mr Oxley on behalf of the AUSTA business group.

[11.16 a.m.]

BURROW, Ms Sharan Leslie, President, Australian Council of Trade Unions

MURPHY, Mr Ted, International Committee Member, Australian Council of Trade Unions

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. Do you have any comments to make on the capacity in which you appear?

Mr Murphy—I am also the National Assistant Secretary of the National Tertiary Education Union, so I can cover any matters pertaining to its submission as well.

CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Ms Burrow—Following Alan Oxley I almost feel like we ought to be having a debate about the nature and depth of any economic structure, but I will resist. I do not think it advantages any of us in the decision about this agreement to be breathless on one side or the other. We genuinely have to look at the arguments about the possible benefits and disadvantages to the Australian economy and people, which perhaps goes a tad beyond the question of the economy in its narrowest definition. I am intrigued by the notion that we cannot measure even projections of relative net growth of wealth as a basis for determining whether something is good for the economy. While I think there is a healthy scepticism about some econometric data, if we cannot take the measurement points and agree on what they should be, which I think was put forward by one of your team, then we are left in this 'trust me' situation that I frankly do not think any Australian worker or many Australian voters would be too comfortable with.

We all need to consider the arguments on the basis of as much fact as is possible. There is not a lot, and that is where we come to the real questions for us. If I was served up this deal as a union leader, I would send the negotiators back to the drawing board, because you cannot have a very difficult time finding the winners in this yet be able to see all of the potential losers and not say, 'Hang on a tick. This is not a fair deal by any stretch of the imagination.' It is not good enough in our view to be attached to one of the largest economies in this world without any benchmarks to judge what that attachment might deliver. Though we might be on occasions oppositional, we are multilateralists by definition, because if you are going to set a global trading system you need a fair set of rules. Those rules need to apply to the movement of product, services and capital as well as the movement of people, but they also need to have rules around people and the communities or environment in which they live.

Although this agreement includes a chapter on labour, it is rather hypocritical in that it suggests that we would strive to meet ILO standards while the government's own legislation does not provide for adherence to the core standard of the right to collective bargaining by

workers in this country. Indeed, when you know that there are a dozen bills in the parliament that would seek to weaken those standards, you have to ask about the bona fides of the government.

More broadly, I have heard a lot about investment in the last few weeks. It is still not quantifiable. I am intrigued by this. With one sweep of the pen we have lifted the review threshold from $50 million to $800 million. That is a huge leap. It is a leap that does not allow us to look at what the conditions might be if we were to make that leap. It actually wipes out issues of performance requirements, particularly areas of local content procurement and the like. I would have thought that those are the sorts of things that you can use to make sure that emerging industries have a potential start in this country so that they can grow to the sort of strength of industry that we might rely on in future and the like. I do not see any evidence that American investment has been thwarted. The review has been very minimalist at best. I am sure that Ted and others can go into more detail on that.

I wanted simply to say that there are a whole range of industry sectors for our affiliates that we have serious questions about. I ask the committee to take them seriously in the interests of economic development, decent jobs and community protection. I am not talking about notions of industry protection; I am suggesting that we need to have a good look at what it would mean to our communities, whether it is the environmental base of community standards or whether it is the capacity to develop and grow jobs.

You should take the Media, Entertainment and Arts Alliance's concerns very seriously. We are virtually giving up our capacity to shape a future industry on the basis of digital or other technologies that will emerge. In fact, as the previous speaker said, they are already emerging very rapidly. I put it to you that if we had had these kinds of restrictions in the 1950s we would not have the cultural industry that we have today. You have a responsibility, frankly, for our own cultural future and the development of our creative heart, to take that very seriously, in addition to the economic arguments that warrant merit as well. If you look at the relative cost of production to your economies of scale and the way in which the US cultural industries, particularly film and television, are funded, in terms of sale of those products here you could look at them on the basis of some of the rules around dumping and see some equivalents. We would all still be opposed to the notion that dumping has a viable place in any economic agreement.

As to manufacturing, again I am astonished that when I ask the AI group and others for their economic modelling they tell me that they do not have any, yet there again is the breathless view that it is going to be good for manufacturing. Look at the car component sector: there are real and genuine concerns about whether we will lose not only significant capacity and jobs but also skills and spin-off technologies in Australia that come from the automotive sector generally.

As to car companies, all the argument about subsidies aside, if we want to go to the question of subsidies in Australia and the US, that is another huge debate. I do not think it is fair to talk about subsidies to one industry or the other as the basis of judgment for eradicating them and, therefore, a competitive base for development. My understanding is that, despite the hype, Holden has not met its export targets into the US for the Holden Monaro, so I do not know why it thinks that we will have huge capacity to get additional cars in and out of that or any other country when America is probably the dominant large-car manufacturer in the world. The arguments astonish me somewhat but I hope that they are right, because it will mean jobs for our

members. We clearly have a whole lot of data on the component sector that should give the committee reason for concern. I have no doubt that the manufacturing union, which has commissioned its own modelling, will provide you with more information.

On the pharmaceutical question, we ask you to consider very seriously the rights of our members as taxpayers and the broader Australian public. We do not believe that, in the absence of language in the agreement itself, there is comfort for us or that a review of products listings is not really about the US pharmaceuticals having a huge say over what should or should not be listed at a price set by them. Of course, it does not only go to individual consumers. We ask you to look at the cost to hospitals, where the cost of distribution of drugs for hospital patients could potentially escalate. The services sector is simply not transparent enough for us to make judgments about, and I sure Ted will say a bit more about that given the industry that he comes from.

In summary, we wonder about the relative economic outcome of potential growth in wealth terms, and we are concerned about a whole range of other questions that go to our rights as taxpayers and, indeed, our rights as a sovereign nation to look to how we develop and grow niche industries that may in themselves become big market players over time. We say to you that, in our view, it is flawed and inadequate and the labour standards simply do not add up to the protection of people's rights around the question of the very fundamental standards of ILO conventions to which both countries are signatories.

Mr Murphy—I want to add a couple of things. One of the issues that is highlighted in the submission is the non-transparency of this agreement with respect to the impact on the services sector and the extent to which further liberalisation commitments additional to the benchmark of Australia's commitments under the General Agreement on Trade in Services have been made as a result of the fact that this is a negative list agreement and, therefore, unless a sector or a service is specifically listed as exempt, the liberalisation obligations apply automatically to that service sector. So, whilst we may have a relatively transparent outcome on agriculture and industrial goods, with a very detailed schedule of tariff reduction, we do not have in the national interest analysis, the regulatory impact statement or the agreement itself a transparent outcome in services liberalisation.

We have given what we admit is a rough and preliminary list of services which are potentially liberalised beyond what Australia agreed to under clause 22 of the GATS in 1994. To do that, you need to go back to the GATS commitments as the benchmark, because they are commitments that apply multilaterally and are therefore commitments which operate with respect to the US already. Those commitments in the GATS context are expressed by reference to numerical codes under the United Nations provisional central product classification system. You might have a subclassification 96, and then you will have within those codes 96.1, 96.2, 96.3 and 96.4. Then you can also have 96.4.1, 4.2, 4.3 up to 4.9.

Quite rightly, Australia's negotiators in the GATS specified what commitments have been given using those codes. Very importantly, because we were quite precise about recreational and sporting services using those codes, we are unlikely to be affected by the recent WTO decision that requires the US to open up gambling and betting to offshore Internet provision. In order to work out what the impact on services will be, you need to go back to all those codes, see which ones we have given commitments for and then compare them to the exceptions and the negative

list structure of the agreement. That is why we have given a quite extensive list, albeit on a preliminary basis, having looked at the commitments we gave where we believe additional service sector commitments have been given. My main point is that that is not transparent from any of the material that I have seen from the department and certainly not from the text itself.

The only other comment I want to make on the debate—and it is a quite legitimate debate—is: how do you judge a free trade agreement? The argument that we often hear from supporters of this agreement is that you judge it in the sense of the level of domestic liberalisation and domestic deregulation that it achieves, that the main advantage is the removal of impediments for business to do business within Australia itself. It is sometimes called the unilateral liberalisation thesis. You might as well just do it unilaterally, without negotiating an FTA, if the main advantage of a bilateral free trade agreement is the removal of domestic regulatory impediments to business activity, services, the movement of capital et cetera. There are a number of problems with that economically. Some of the modelling assumes that if the actual viability or even just the growth prospects of particular local industries—whether they are goods or service industries—is limited by increased import competition, the displaced resources are automatically allocated to new, more efficient and productive activity. Many of the models also assume that any displaced—that is, retrenched—workers move frictionlessly from one sector of the economy to another, from blue-collar employment in a manufacturing context to white-collar employment in a notionally expanding service sector.

I also want to point out the political problems and disadvantages of using an FTA to achieve domestic regulation. First of all, it is a backhanded way of acknowledging that the prime purpose of this FTA is a backdoor way of achieving a domestic deregulatory agenda. Secondly, it is a domestic deregulatory agenda that the government or parliament might not otherwise approve unless it were part of an FTA. Thirdly, it is a non-transparent domestic deregulatory agenda, with respect to the service sector, because of the negative structure of the agreement. In addition, you would have to assume that, because a deregulatory agenda in an FTA reflects the demands and priorities of your negotiating partner, some of the deregulation that has occurred would otherwise not have occurred, even if there was a pro-deregulatory national government hell bent on further reforming the Australian economy. So you would have to ask yourself whether a pro-deregulatory Australian government would have made the changes with respect to local content or the PBS were it not for the fact that the domestic deregulatory agenda is being driven by an FTA.

The final point I want to make is that, if you use an FTA to do that, you are rendering domestic deregulation more difficult to reverse; whereas, if you undertake domestic regulation within normal national politics—through government action and through votes of parliament—then it is easier for a future government, with different policies and priorities, to reverse, amend or weaken the deregulatory effect. If you do it by way of an FTA and lock it into an international treaty then you are circumscribing the political rights of governments and parliaments in the future. So, for political as well as economic reasons, we do not adopt the perspective that, because there is major domestic deregulation in this FTA, it is therefore a good outcome for Australia.

CHAIR—Thank you very much for that presentation. Ms Burrow, is there anything good in the free trade agreement?

Ms Burrow—We acknowledge that there is measure in the fact that labour standards have been put into a free trade agreement for the first time by the Australian side. We would hope that means that the Australian government will champion the role of labour standards in the context of the WTO, although we do not hold our breath. We certainly understand, from the sectors that believe that they have benefits, that it should be looked at. We would like to see the facts of what those benefits are. Where there are genuine jobs and investment opportunities, it is in our interest to acknowledge them. There is no question about that.

Could I go to the question of investment. I heard Alan Oxley argue that it would drive a higher proportion of investment in the critical area of technology, and I think he is right. Yet it seems that, by structuring the investment agreement in the way that it has been, we are assuming that transfer will occur voluntarily. We have actually given up the chance to put forward performance requirements that would make the transfer in technology and intellectual property a condition for the approval of some of those massive foreign investments.

For example, I could go to parallels with regard to allowing India to set standards in IT and to own the IP associated with it, which is actually deskilling our own sector in Australia at the moment. I would be very concerned about the skills base in terms of retaining future possibilities for market access in those areas which require high-level skills if we gave that up without any other performance criteria. Look carefully at where people say there are advantages. If you think they are genuine, accept it, but do not accept it blindly without arguing, as Ted just said, whether we are able to make adjustments in the future if they are perhaps not there.

CHAIR—In your submission, the ACTU expresses a preference for multilateral trade deals over by bilateral trade deals. What is the position of the ACTU on the Australian-Thai free trade agreement?

Ms Burrow—We have not seen the details of the Australian-Thai free trade agreement. It has been signed but as yet we have not seen the detail of the deal, so it is very hard to make a judgment. Again, I do wonder about the hype around big car production when I cannot see a whole lot of huge cars being driven on the roads in Bangkok and other large cities, given the traffic problems. To the extent that it looks like there might be some interest in services and in investment and so forth, let us have a look at it. But, again, we object to deals being signed before you can see the details. Frankly, the parliament ought to be the group that has the right to do that on our behalf.

CHAIR—It does not enter into force in Australian law until domestic legislation has passed. What about the Australia-Singapore free trade agreement?

Ms Burrow—The Australia-Singapore free trade agreement has some deficiencies, in our view. Ted is much more across the details, so he would probably love to answer that.

CHAIR—Did you support it or oppose it?

Ms Burrow—We opposed it, first and foremost because it does not contain labour standards. We also looked at the deficiencies in local content and some of the areas where we think that, as time goes on, it will be very interesting to see whether the New Zealand experience is not the

one that Australia will experience. Despite the hype around the Singapore-New Zealand agreement, New Zealand's level of exports to Singapore has gone down.

CHAIR—In your remarks you mentioned that it is very important that we do examine closely the claims of people who say there is a benefit. I say that, equally, there is a responsibility to examine the claims of people who say that there is a detrimental impact. You mentioned automotive parts. Are you aware of what the current tariff is on automotive parts?

Ms Burrow—Yes, it is 10 per cent. The government has made its views clear that over the next five to 10 years it will come down to the five per cent that exists in domestic regulations for other industries. We have argued that there is a benefit in maintaining this industry at the levels that currently exist because the technology spin-offs are critical to a skilled and innovative future, particularly in the areas of new technologies around environmentally clean and green fuel cells that will drive the motor car into the future. There are a complex set of arguments, but we would argue that the car components sector is a vital part of the manufacturing base. It does not mean that we would argue that it has to be protected at all costs, but you do have to get the balance right.

CHAIR—Also, with regard to audiovisual stuff, you mentioned that there was, for example, a detrimental impact for digital television, and yet, multichannelling aside, the existing quotas that we have now apply to free-to-air analog as well as free-to-air digital. Are you aware of that?

Ms Burrow—My understanding is that in the emerging digital area there is a requirement for 10 per cent of expenditure—

CHAIR—That is in pay TV—so what you said was incorrect.

Ms Burrow—in pay TV, which would mean four per cent of content. In terms of the multichannelling area, only 20 per cent of that capacity has been protected.

Mr Murphy—With respect, if you look at paragraph 16, the main comment made about digital television is precisely the impact of multichannelling. There was not a broad comment that this was bad for digital television. Paragraph 16—

CHAIR—No, I think that if we look at the transcript, Ms Burrow was talking about digital television.

Mr Murphy—Yes, but based on the submission, what we talked about was that multichannelling will undermine the effectiveness of the local content requirement. The other comments in paragraph 16 pertain to existing content quotas for pay TV.

Ms Burrow—I would make the point also that by simply negotiating the status quo we leave Australia, and sovereign rights within Australia, deficient in terms of adjusting content quotas—for instance, increasing it for specific periods of time or for developments or new technologies that we have not even dreamed of yet.

CHAIR—There is an area that does deal with new technologies and it does retain our right, if there is not sufficient Australian content, to actually regulate for that in the free trade agreement.

Mr KING—I would like to follow up on what you had to say about foreign investment. As I understood, Alan Oxley spoke about a $10 million limit that has now been lifted. He talked about the change from the gateway to the supervisory role. You spoke about a $50 million limit being lifted to $800 million. What were you talking about when you mentioned that?

Mr Murphy—There are two changes—

Mr KING—I am directing my question to Ms Burrow.

Ms Burrow—We are actually operating as a team and I openly acknowledge that the technical knowledge that Ted holds is often superior to mine, so would you allow him to answer?

Mr KING—Sure.

Mr Murphy—There are two changes. The $10 million limit pertained to greenfield sites, or new investment—that is, investment by the United States in new business. The change from $50 million to $800 million is a change in the threshold with respect to takeovers and acquisitions by American companies. We currently say that any takeover or acquisition—not only from the US, but from countries broadly—which is $50 million in value or higher is subject to FIRB national interest screening. Under this agreement, with respect to US sourced takeovers and acquisitions outside certain nominated reserve sectors, the value of an investment or of the takeover or acquisition has to be $800 million or higher in order for national interest screening to occur.

Mr KING—You are talking about M and A rather than FIRB regulation.

Mr Murphy—Yes.

Mr KING—So the two are not incompatible.

Ms Burrow—No. We would point out, as we do in our submission, that potentially that is 86 per cent of the current stock exchange capitalisation in Australia.

Mr KING—In this context, at paragraph 21 in the last sentence you refer to the free trade arrangement by saying that investors:

> ... are placed in a position analogous to that of a car driver who parks and falls asleep in a two way street, and wakes up to find the street designated as one way.

What did you mean by that comment? I am having a little difficulty in working out that metaphor?

Mr Murphy—It actually does not talk about it. It says:

> … a wide range of Commonwealth and State measures—

or regulatory activity, if you like—

with respect to Services … and Investments—

are placed in that position.

Mr KING—Do not worry about what it says. What do you mean by it?

Mr Murphy—Okay, what it means is this: there is a ratchet mechanism in the free trade agreement that simply says that for some exceptions there is an annex I and an annex II. Annex II gives national and state governments the right to full policy discretion for the nominated area. They can maintain their existing measures which are trade restrictive. They can amend them in a way which increases the trade restrictions; they can adopt new ones. Annex I exceptions only allows the state or Commonwealth government to maintain the existing measures that they have in place at the time the agreement comes into force. The ratchet effect means that if, for example, the Commonwealth or state government changes that existing measure—not because of a requirement of the free trade agreement but autonomously—in a way that makes that existing measure less trade restrictive, then the exception now applies only to the amended measure, not to the level of nonconformity at the time the agreement came into place.

Mr KING—I now understand your criticism.

Mr Murphy—That is why it is a one-way street. At the moment you can go both ways, but if you move in one direction you wake up and find you can only continue to move in one direction, towards further compliance with the obligations.

Mr KING—On the other side of the coin, you could argue that that is a provision in favour of liberalisation.

Mr Murphy—Yes. I readily accept that it is a provision designed to lock in liberalisation. That is certainly the case.

Mr KING—My second question concerns econometric modelling. I appreciate that since the initial modelling was done on this the goalposts have moved, so it has been a little bit hard to come up with some hard figures. I also appreciate your criticism of Oxley. You are basically saying he is saying, 'Take it on trust,' whereas you say the thing does need to be econometrically assessed. Have you done such an assessment?

Ms Burrow—We are waiting on some work that is being done in the manufacturing area which we would like to submit to your committee through the AMWU at a later date; we will certainly have it available for the Senate inquiry. In the agriculture sector, we have had a number of discussions with the AWU and, through them, with the various farm lobby groups. Frankly, it is unclear to us where there is genuine benefit other than in some of the areas you have already touched upon. We appreciate Kim Wilkie's questions about disaggregating that, because, even among meat producers, there is a variety of views. To the extent that we personally have commissioned research, through the AMWU there is certainly work going on in the manufacturing sector, and in other sectors we have largely relied on the employers themselves to give us the benefit of their understanding.

We accept what Alan Oxley says, which is that econometric data is not going to be the be-all and end-all. But I do not think you can dismiss it. We spend enormous amounts of money on economists and economic analysts to judge every other sector of the world. We would like to see independent research, where the assumptions are transparent across the board, that we could argue about. With the two previous reports, you could at least argue about the assumptions, rightly or wrongly. Some of us were right and some of us were wrong, but it was on the table, the assumptions were there and the research was transparent. With due respect, what we all need and I think you need before you make any decision is a range of independent research that you can make judgments about as well.

Mr KING—Subject to that qualification, are you able to put a monetary value on the downside which you have referred to?

Ms Burrow—No, we cannot, but there was a wide disparity in the previous two models. One model gave a breadth of $4 billion, and everybody agreed that the assumptions were wrong because it was about a total free trade environment, which this clearly is not, and I think it was based on data that was a decade old. Looking at the other assumption, at best you would have a very minor increase in some sectors and maybe even a considerable loss. So I would have to say to you that we would not be audacious enough to suggest that we can put a figure on it.

Mr KING—From the point of view of the Australian worker, one merit in an agreement with an economy like the United States—and perhaps you can assist me on this—is that the standard of living of most, if not all, American workers is as high as, if not higher than, that of the Australian worker. I do not know whether that is true or not, but that is my general impression.

Ms Burrow—It is not true.

Mr ADAMS—It is probably true if you are unionised but not if you are not.

Mr KING—Mr Adams would say that, and I am not disagreeing with that at the moment. But if Australia were to enter into a free trade agreement with anybody, from the point of view of the Australian worker and of maintaining standards, we may as well do it with the United States rather than anybody else.

Ms Burrow—I do not know on what basis you make that assumption.

Mr KING—There has been a lot of criticism by the union movement about companies going offshore to, say, Sri Lanka or even Indonesia—

Ms Burrow—China, India.

Mr KING—and exploiting cheap labour, putting Australian workers out of jobs and bringing the goods back into this country, where they would have been manufactured in the first place but for the trade liberalisation measures. I guess that is really what I was referring to when I made that observation. You could not make that criticism of an agreement of this type, could you?

Ms Burrow—If you are making the argument that we should think very carefully about a trade agreement—I would not call it ‘free’—with China, then we would absolutely agree with

you, for a variety of those reasons and many others, some of them ethical, around many of those questions. It is not true to suggest that workers in the US have a higher standard of living; it is hugely disparate. In the unionised sector, perhaps at the high-skilled end, you would see some higher living standards overall, but there are 50 million workers in America without access to health care—that is workers, not unemployed people. So you have to balance our bargaining outcomes and our award base with the social wage in Australia that is largely part of the bargaining framework, particularly in regard to health, often in regard to other areas in the US.

What I would say about the US is that, despite our respect for the workers' struggle around their communities and their political right to protect their jobs, overall the US talks about being a free trade advocate and a nation that is at the forefront of free trade, but it is more protectionist than Australia has ever dreamed about being. Certainly, with respect to my colleagues in the States, the relative arguments between the union movements are like chalk and cheese.

Mr KING—We do not have a Jones act.

Ms Burrow—We do not. I might add that maybe we should be talking seriously about that for a variety of reasons related to security and protecting vital industries. But we do not have a Jones act, you are right, and there are many other equivalents.

On the subject of what I think you are getting to, which is also the dynamic efficiency argument that the economists put forward, we acknowledge that there are often gains in having relationships with people and therefore the capacity for trade development. But, again, we would say that just being associated with a large and complex market is not a guarantee that would urge us to say to you that you can give up our sovereign rights to actually do what Australians have done forever and make judgments about industry development—and on occasions that is industry protection while we get industries up and running—about local content rules, about standards, about our own intellectual property, about the use of our taxpayers' funds and so on. These are all really critical responsibilities that you have for protecting our rights.

To the extent that we would say to you that there is the offshoring trend, as you put it, even the companies that we talk to about some of those current debates like Telstra and the like acknowledge that the cost convergence argument is a short-term argument in the context of globalisation. You have to balance the current cost advantages, to the extent they exist, with the actual skills requirement and skills retention for future development and economic growth in Australia. They are very serious arguments.

CHAIR—We are running well over time, so I ask that questions be brief and answers be succinct.

Mr ADAMS—In relation to the ILO standards and non-compliance, if an American company or a multinational does not comply with Australian labour standards, are there mechanisms under the trade agreement for dispute settling?

Mr Murphy—No. The mechanisms do not pertain to companies; they pertain to failures of governments to enforce their domestic labour standards. So it would be a matter of a failure on the part of the Australian government to enforce its domestic labour standards. The main problem we point out about this is that you can weaken the domestic labour standard, you can

reduce it, you can move further away from the ILO standards under the labour chapter of this agreement, and that will not attract any penalty or enforceability. As long as you enforce your weaker, domestic labour standards, you are okay.

Mr ADAMS—In relation to investment, Ms Burrow was talking about performance measures. I take it that is about tying skills transfer, issues of intellectual property gains et cetera with getting a billion dollar investment in an industry or something.

Ms Burrow—Absolutely, and even to the point of shared intellectual property, for example, that enables us to be party to skills development plans that will take advantage of the ownership and the wealth inherent in that.

Mr ADAMS—That is seen as being part of the future, isn't it? That is where the wealth generation is. We had evidence yesterday from people in the creative arts area that it is all about intellectual property and whether you lose access to that. That is the same in every industry these days, isn't it?

Ms Burrow—If you accept the argument that we are at the beginning of the knowledge era and not well on the way to the continuum then you are absolutely right. I would not want to see the balance upset. Some of the debates we had in the early nineties were nonsensical—that we should give up a resource sector or manufacturing sector of the economy because we were going to make fantastic wealth from services. All too often, unfortunately, at this point services, not at that high-end level but in general, are quite low-paid jobs by comparison.

Mr ADAMS—It is the argument against old jobs versus new jobs. There have been some comments that American education companies or institutions are keen to get into the Australian education sector and make money. Their view is that state governments have education departments and that: 'We could deliver education if they gave us some of the money.' That seems to have dropped off in this agreement. Did you hear of argument about that?

Mr Murphy—There are two issues there. One is their right to enter the Australian market. They already have that under the commitments given by Australia under GATS. They have the right to enter secondary and higher education but not primary education. As to their right to obtain government grants, one of the good things about this services chapter—one of the few good things, but I will acknowledge it—is that the services chapter reserves the ability of the Australian government to distribute grants and subsidies to whichever entity they so choose. That is equally the case with the states. So the distribution of subsidies and grants by Australian governments is not affected by this agreement.

Senator MARSHALL—There are concerns about the negative list approach. There seems to be an inconsistency between the approach taken by the government in relation to the Singapore free trade agreement negative list, or the carve-out, and the US free trade agreement. With the Singapore agreement, public utilities, water and public transport were clearly excluded by reservation, but in the US free trade agreement they are not. I am wondering what conclusions you draw from that or what concerns you may have.

Mr Murphy—We are worried about what has happened there, and also in broadcasting. In Singapore there was a comprehensive reservation for broadcasting, whether it was by public or

commercial broadcasters. That is not reproduced. Also, in the Singapore agreement there was a comprehensive exception for services in the exercise of governmental authority devolved to the private sector, which may or may not be relevant to the Job Network, for example. We are saying that the standard and the scope of the exceptions here, relative to Singapore, are inferior. But to work out the actual practical difficulties you need to look at how effective the reservations are that allow state governments to maintain existing measures in covering the hole that has been created. It would have been far preferable—both as an expression of governmental intent and from the standpoint of ensuring that transport, water, energy, services and broadcasting are fully excluded—to have reproduced the Singapore reservations and exceptions. There are holes in the way that they are structured in this agreement.

Ms Burrow—It would have been even better to take a positive list approach.

Senator MARSHALL—Yes.

Ms Burrow—That makes for transparency and again protects a growing area of the economy in terms of Australia's sovereign rights into the future.

Senator KIRK—I have one question to ask of you, Mr Murphy. I took the point that you said that entering into a bilateral trade agreement such as this is going to bind the parliament into the future. But it occurred to me that that is the case with any kind of treaty that you enter into, whether it is multilateral or bilateral. Does your argument not logically follow that Australia really should not be entering into any sort of trade agreement that is going to bind the parliament into the future?

Mr Murphy—No, that was not my argument. First of all, I acknowledge the point that any treaty or convention does bind parliaments into the future. Therefore, you have to look at the commitments given and whether the commitments given are appropriate. But the point I was trying to make is that, if you were using domestic liberalisation as the prime justification for a bilateral FTA, then you can achieve domestic liberalisation without giving largely irreversible commitments and without giving some of the changes that are required by doing it with a bilateral partner who says, 'The domestic liberalisation we want is in the following areas.' However, an Australian government committed to deregulation may not have made those changes in those areas—audiovisual being one example, PBS another. We can go through the whole service sector. So it was in that context that I made the point. But I agree that international treaties and conventions can bind parliaments. That means that you have to be very careful about what the commitments are and also whether there are rights of termination of the agreement or rights of revision of the agreement.

Senator KIRK—Thank you.

Mr WILKIE—Just going back to economic modelling again, there has been a lot of comment about how the Productivity Commission should have been the organisation looking at the economic impact on Australia, particularly given their past work in free trade agreements. What is your view in relation to that?

Ms Burrow—If you have a look at the Productivity Commission's recent report that goes to the analysis of, I think, 17 bilateral agreements, then our points stand. If we are going to see a

world where trade liberalisation increases, where we are dealing with establishing the sorts of sets of rules that we have fought over at a national level to facilitate trade and investment on a global scale, then multilateralism is far more efficient. Going back to the question asked by Senator Kirk, we would say the same about investment liberalisation as Ted answered with regard to trade liberalisation. We can have a debate, as Australians, and I do wonder why it is that we think it is so terrific to get an unimpeded approach for American investment when it seems to me that capital investment is capital investment. If it is good from one source, potentially it is good from a whole range of sources provided we have control over what the rules are that underpin that and that as a nation we are happy about it.

Mr WILKIE—I suppose the reason I was specifically asking about the Productivity Commission is that in the lead-up to this agreement I have noticed that the department of agriculture did not do any modelling about how it would impact on their people. Treasury has not done any modelling to work out how it would impact on the overall Australian economy. I would have thought the Productivity Commission would be the perfectly placed organisation to do that modelling and now we find that there is an outside agency that has been contracted to provide that for the government.

Ms Burrow—That is right. Somebody has to do it and, although we are not always great advocates of this beast, given that the Productivity Commission exist and we all get to argue with them, then there would certainly have been some inherent logic to use them. I would just like to make the point that I think it is a real deficiency—for politicians and for the Australian community; for all of us, whether from industry or, indeed, from our sector or the general public—that the level of research in this area in Australia is just pathetic. You go to the US and you have got all manner of investment in some broad capacity to analyse the impact on industry, individuals and communities, and yet we cannot go to our own government departments—and could not even prior to the free trade agreement—and get disaggregated information around the impact on various sectors. With all due respect to us and the industry advocates in this arena, there has to be a transparency that government takes responsibility for based on independent research—or on what basis are you making decisions about this?

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

[12.05 p.m.]

JOHNS, Mrs (Margaret) Ann, Director, Education, CPA Australia

PEEK, Mr Ian David, CPA Australia

CHAIR—Welcome. 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?

Mrs Johns—Thank you for the opportunity to speak at this hearing. Firstly, I would like to give you some background information on CPA Australia as you may not all be aware of our organisation. CPA Australia is an internationally recognised professional body serving members in the areas of finance, accounting and business advice. Members are distributed across the sectors, with 42 per cent working in industry and commerce, 20 per cent in public practice, and 12 per cent in the government and not-for-profit sectors, and the rest are distributed over a range of lesser defined areas.

CPA Australia is the largest body representing professional accountants in Australia. In 2003 CPA Australia's membership surpassed 100,000. These members predominantly live in Australia and South-East Asia, with a growing presence internationally. Since the early seventies, new members of our organisation have been required to have a university degree. Since 1986, they have also been required to have completed a professional education program called the CPA Program and have three years of practical experience, which is now called the Mentor Program, to be able to use the CPA designation in Australia and overseas.

CPA Australia services are managed by approximately 450 staff in eight offices around Australia and in divisions in Hong Kong-China, Singapore and Malaysia, with branches in Indonesia, Europe, New Zealand, Papua New Guinea and Fiji. CPA Australia provides services to members through lobbying and providing advice to the government, representation on a variety of sector committees and groups, research, publications, professional education, continuing professional development, special interest groups and networking events. CPA Australia's offerings and projects are determined by four elements of its strategic agenda: build and maintain the reputation, quality and prestige of the CPA designation in Australia and around the world; attract eligible new members, both in Australia and world wide; offer value to existing members; and make effective and efficient use of our resources. Any further information that the committee would like on CPA Australia can be found on our web site.

Addressing the AUSFTA issues, our specific interest lies in the category of professional services, which is covered in annex 10A of the agreement. CPA Australia has sought to increase its activities in the international environment. The first entry into international activity came from overseas students studying for their degrees in Australia, returning mainly to South-East Asia and becoming our members. CPA Australia has worked with Australian universities very closely over the last 10 years by accrediting offshore Australian degree programs in Hong Kong,

China, Malaysia and Singapore, leading to our membership. We now have over 23,000 members in those countries. We have expanded our offices in South-East Asia to meet the growing needs of our members. Another significant aspect of our international activities is working on bilateral arrangements with other professional accounting bodies to reduce barriers to entry for Australian professional accountants wishing to practise overseas.

We state in our submission that CPA Australia believe the proposed US free trade agreement will be of positive benefit to our members. We wish to focus on two specific areas of interest: firstly, the reciprocal recognition of professional accounting qualifications and, secondly, the rules for members and their partners entering and working in the United States.

In October 2000 CPA Australia signed an agreement entitled Principles Agreement for Reciprocal Licensing for a period of five years, with the option of renewal or extension through a mutual recognition agreement of the parties. We will shortly commence negotiations for the renewal of this agreement with the United States in 2005 for a further five years, so we will seek the Australian government's support for the renewal of this agreement on similar or better terms. To be eligible to practise in the United States, an Australian CPA must have a four-year Australian degree or equivalent, have completed our professional CPA program and also pass a US international qualifying exam, which they call IQEX.

One of the major problems for our members who are eligible to practise in the US under our reciprocity agreement—and which was raised earlier this morning—is the current US state based licensure and practise rules, which are different for each state. A US CPA who registers with CPA Australia can work anywhere in Australia—that is, they enjoy national recognition. In contrast, the Australian CPA who meets all their qualification requirements then faces the problem of being recognised in a particular state.

The problem arises because, while the states accept the US uniform CPA exam as the basis for practising in the US, for Australians it is different. The international qualifying exam, which the US sets, is not accepted by all states in the US. At present, 31 of the 50 states will accept our members who meet these specified requirements. We also note that, in terms of travel and employment, the agreement does not address the issue of streamlining access for Australian professionals wishing to work in the United States. CPA Australia would welcome specific provisions to streamline the current entry and work visa procedures for professionals and their partners to enable them to realise potential opportunities. We therefore request that the agreement be amended to introduce a transparent and streamlined process of visas for Australian accounting professionals.

Mr WILKIE—I am trying to work out how the US free trade agreement in any way, shape or form benefits your industry. The visa issue was not covered in the agreement; therefore, people will still have to wait two years to get visas. States will still not recognise qualifications and people will still have to apply. What is there in this agreement that actually benefits your members?

Mr Peek—As you will appreciate, our members pretty much operate in every sector of private and public enterprise, so the impact for them involves the various organisations they work for and the opportunities that the free trade agreement opens up for Australian companies doing business in the US and for US companies wishing to do business in Australia.

Mr WILKIE—But accountants have access now. Professionally, your organisation's members currently have access to US firms once they go through those other procedures which will still be in place.

Mr Peek—That is correct.

Mrs Johns—That is due to the bilateral agreement that the professional bodies arrange themselves.

Mr Peek—So the opportunities that open up also benefit the businesses that they work for or advise. As you will appreciate, CPA members are not purely accountants; they also provide business and financial advice for organisations wishing to do business in Australia as well as potentially overseas, including advice on trade and export issues. So we consider the opportunities provided to them from this agreement to be very positive.

Mr WILKIE—If that was the argument, irrespective of whether those businesses were Australian businesses moving over to the US or US businesses moving here, your members could still be employed. They would not need the free trade agreement to participate in those industries.

Mr Peek—Certainly they would still be employed, but it is more to do with the volume of new business that this is likely to open up. Looking at the numbers, if the enabling legislation is passed then Australia has access to the vast majority of a market of three million people and a $14 trillion economy. That is going to open up a wide range of opportunities for Australian businesses that wish to operate in the US market. In terms of providing finance and business advice to those organisations, either working directly for them or as independent public practice businesses, we see the opportunities to be quite extensive.

Mr WILKIE—So it is more a link by association rather than a direct link?

Mr Peek—Certainly.

Mr WILKIE—I am not anti-accountant by the way; my father is a retired one, so I have no problems there. I think he might have been a member at one stage. What I mean is: there is no direct benefit for your organisation or members where we are opening up new markets that they would not have had access to previously. You are saying that Australian businesses may be able to move there and that will create opportunities for employment in the future?

Mr Peek—Absolutely. Obviously, the fortunes of our members are tied to the fortunes of business here in Australia and overseas.

Mr MARTYN EVANS—There are two issues which you are primarily concerned about: mutual recognition of qualifications and the free movement of people between the two countries. Those two issues were, in fact, specifically excluded from the free trade agreement. Those are the two issues that you were mainly concerned about in a professional capacity?

Mrs Johns—That is correct.

Mr Peek—In the survey that we have done of our members, especially those who are working over in the US, we saw that the issues about entry and access to the US both for themselves in terms of securing work visas and for their partners continue to be significant. We understand that, given the impact on immigration policy in the US of terrorism and so forth, with an election coming up and job issues being at the fore, this is going to be a difficult issue to negotiate. We also understand that this impacts widely beyond just the accounting profession. In our submission prior to the negotiation taking place we said that that was one of the things that we would have liked to have seen included in the agreement. One of the concerns that we have is that there is no reference to facilitating the entry and work of our members within the US. There is that reference to professional services in the annex to chapter 10, but we feel that is perhaps a bit too general.

In terms of enforcement, the dispute mechanism does not appear to be binding in any decisions that they make on disputes that may arise in the future about the progress of reciprocal recognition. The agreements that we currently have in place that we have negotiated through the GATS process are up for renewal next year. We would like them renewed on at least as good terms as they are at present. But what we would like to see is better terms, particularly on the national system of registration of our professionals within the US.

Mr WILKIE—In relation to that other issue of visa access, how difficult is it for an American accountant to get a visa to come to Australia?

Mr Peek—I have to admit that I do not know the specifics of that. I do not know enough about it to actually give you an answer to that.

Mr KING—You have asked for an amendment to address the problem of double taxation on retirement income. Is that topic not dealt with in the existing taxation treaty with the United States?

Mr Peek—It is covered. We have double taxation agreements with about 40 different countries, including the US. The US agreement was updated in July of last year with the aim of overcoming issues of double taxation as well as fiscal evasion. However, there are cracks still there that members can slip through in terms of being taxed twice on certain things. I would have to declare that Ann and I are not taxation experts. If you want some more specific detail in terms of that particular issue we have raised, we would be happy to provide an answer to your question through our taxation experts.

Mr KING—If there is still a problem, it really requires an amendment to the taxation treaty, not to the draft FTA. Would you not agree?

Mr Peek—Again, I would certainly be happy to take that back to our taxation experts and have them provide a more specific response to you if that would help.

CHAIR—Within the free trade agreement there is a framework to allow for and encourage mutual recognition of professional qualifications and experience between Australia and the United States. In your submission you are saying that that is already occurring between the CPA and the equivalent professional bodies in the United States.

Mr Peek—It is indeed, and I guess the free trade agreement as it stands at the moment on that issue is not a significant improvement for us. What we would like to see are some specific references there that might improve on the current arrangements that we have got in place.

Mr WILKIE—Is it fair to say you actually have concerns about the fact that you do not have the visa issue sorted out primarily and that you still do have problems with state based recognition, though you agree that you may get further benefits for your members? It is a balanced view.

Mr Peek—Yes.

Mr WILKIE—Thank you.

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

[12.22 p.m.]

BURGESS, Mr Allan John, Chairman, Australian Dairy Industry Council Inc.

KERR, Mr Paul, President, Australian Dairy Products Federation

PETTIT, Mr Robert John, Manager, Americas and Caribbean, International Trade Development Group, Dairy Australia

CHAIR—On behalf of the committee, I would like to thank you for appearing to give evidence today. 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 brief introductory remarks before we proceed to questions?

Mr Burgess—Thanks very much for the opportunity for the dairy industry to speak with you this afternoon. Certainly the Australian dairy industry is very supportive of this US free trade agreement and would urge all members of parliament to support it. While the industry was disappointed that the FTA did not ultimately end up giving us free trade in dairy products, the agreement will lead to an immediate threefold increase in Australia's quota access for dairy products to the US and new access will grow at five per cent a year, year on year. The agreement therefore contains commercially tangible outcomes from year 1 onwards. I would like to put on record some of the background to the industry and then ask my colleague to make some further comments. Dairy is the largest processed food industry in Australia and is Australia's largest processed food exporting industry, representing about 30 per cent of Australia's processed food exports. It is also Australia's third largest agricultural industry at a farm-gate level. The industry also has the largest value adding food industry with ex-factory value of $8.5 billion. The industry also creates either directly or indirectly around 200,000 jobs, most of which are in regional Australia.

The dairy farming business environment at this time is very difficult. Over the last 20 years we have seen production double. However, because of the very severe drought that we have faced in the last year or so, we have seen production drop by 10 per cent. According to ABARE, dairy farming was the agricultural industry worst affected by the impact of the drought, with losses averaging $76,000 last year. The high cost of the drought has been compounded by lower farm-gate prices and of course the increased value of the Aussie dollar. All this has made our exports return us lower value in recent times. We have seen the Aussie dollar move from 50c to 80c over a short period of time.

The US FTA provides the industry with welcome good news at a time that is most difficult, and we are very keen to see it supported. Manufacturers also felt the impact of lower milk deliveries because of the drought, and that has affected their own efficiencies. Paul Kerr might now like to make a few comments.

Mr Kerr—I would like to make a few comments on the export focus of the dairy industry. Over the past 10 years Australian dairy exports have grown by about 2.5 times to a total value of $2.5 billion in 2002-03. In fact, in 2001-02, before the drought, exports were at $3.2 billion. The Australian dairy industry is an export success story, exporting to over 100 countries, with about 65 per cent of exports by value going into our near neighbour markets in Asia. The long-term prosperity of the Australian dairy industry is linked to export markets and international market access. Australia is the third largest dairy exporter after New Zealand and the European Union. The tripling of quota access through the FTA is broad based, with European style cheeses—Italian varieties, goudas, edams and blue-mould—ice-cream, cream, milk powders, gruyere cheese and other dairy products added to Australia's country-specific access.

The new access offers Australian manufacturers a unique opportunity to grow demand for dairy in the United States, with innovative customer-tailored products, before our competitors can secure increased access either via regional agreements or multilaterally through the WTO. Regarding the impact of the proposed agreement on the Australian dairy industry, it is estimated that the value of exports to the United States in year 1 will grow by at least $A50 million to $A60 million. The five per cent growth in access each year will mean that access will double in about 16 years.

The size of that access gain needs to be put in perspective from a US dairy viewpoint. In year 1 it is equivalent to about 169 million litres of milk in a US domestic market of about 75 billion litres of milk. This is about 0.23 per cent of the domestic market in the United States. We see this as a stepping stone to the Doha WTO round. It is important to note that the proposed FTA is only a stepping stone to the industry's most important trade objective: fundamental reform of the world's dairy products trading arrangements through the Doha development round negotiations.

The dairy industry has a long-term milk production growth potential of three to five per cent per annum. Given the mature domestic market, this will feed directly into exports and will lead to sustainable downstream job creation in the rural and regional communities where the dairy industry operates. In conclusion, this agreement is not a panacea for the challenges currently facing the dairy industry but it will give both dairy farmers and manufacturers renewed confidence in the underlying strength and future prospects of their industry. Again, as Allan stated, the Australian dairy industry urges all members of parliament to support the proposed free trade agreement with the United States.

CHAIR—You may have said it in your opening statement, but I am aware that most exports go to our immediate region—East Asia and so on. What proportion of Australian dairy exports are currently going to the United States?

Mr Kerr—Approximately five per cent of dairy exports by value are going into the United States, into non-quota markets.

CHAIR—We have not actually heard that figure before. It is a bit different to beef, for example, where I think about 45 per cent of beef exports are going into the United States.

Mr ADAMS—Mr Kerr, do you see the increase of three to five per cent in milk production in future years, and the potential growth of what we are going to do with that milk, as part of this agreement?

Mr Kerr—The three to five per cent growth for the industry will be subject to world demand. Access into the US will assist the industry to grow, but production is down 10 per cent from two years ago, and that additional 10 per cent went into world markets. Today, there is more than adequate demand for dairy products from Australia.

Mr ADAMS—So there is plenty of demand?

Mr Kerr—Today the demand is greater than our ability to produce products.

Mr ADAMS—What are the new products of the future for dairy? Are they dairy drinks, yoghurt drinks and so on? Are they a part of this agreement that we have just signed?

Mr Kerr—The new products for the future are typically in nutraceutical areas and pharmaceutical drinks, including health food, high protein supplements, biofractions and nutritional supplements.

Mr ADAMS—Are they a part of this agreement?

Mr Kerr—We already have access into the US for those products, but those products are under threat from current moves in the US to try and restrict them. However, they are not part of this agreement.

Mr ADAMS—Could we lose those?

Mr Kerr—Potentially we could if the US wants to breach its WTO obligations.

Mr ADAMS—Do you think they will do that?

Mr Kerr—We hope they do not.

Mr ADAMS—What is the penalty if they do breach them? Is it set by the panel?

Mr Kerr—It would be set by the WTO, but Australia would expect some compensation.

Mr Pettit—There could be compensatory arrangements, possibly in other dairy products.

Mr ADAMS—So we have ice cream and soft cheeses, some blue—

Mr Kerr—Yes. There are hard cheeses. We have mozzarella type cheeses and pizza type cheeses—specifically Goya cheese, which is a hard, grating parmesan type cheese.

Mr ADAMS—Which I guess would be big in America.

Mr Kerr—It is big, but to keep it perspective the access is only a small part of the domestic market over there—but it is pretty positive for us.

Mr ADAMS—Do some of those cheeses go into food manufacturing?

Mr Kerr—Some of those will go into food manufacturing and some will go to companies that rebrand them.

Mr ADAMS—So we will not get state recognition. Will we win out of that with our brand?

Mr Kerr—There is a possibility of that, but remember our access is limited by quota, so there is only a limited amount of growth.

Mr ADAMS—There is only so much you can get out of that. Today's world is about brands. The corporates now run Australian dairy. The farmers have lost their power. It is about building brands, isn't it?

Mr Kerr—At the moment, about 65 to 70 per cent of the Australian dairy industry is in a cooperative structure. At the moment, about 55 per cent of dairy products produced in Australia are exported by cooperatives. So the dairy industry in Australia is not necessarily run by the multinationals. Certainly marketing is about branding, but we see our focus in the industry as adding a value added ingredient to enable. It is very difficult for Australian based companies to compete on the brand against major multinationals, so we see our niche as providing specific ingredients for the application which adds value above commodity pricing to our farmers. So it is not only about branding; it is about developing specific products for specific applications that give a benefit.

Mr ADAMS—How does that go for the long term?

Mr Kerr—It has been pretty successful to date within the dairy industry. The dairy industry has doubled in size in the last 10 years and has the potential to grow significantly in the next 10 years.

Mr Burgess—I think you can make a mistake to make it as black and white as brands or commodities. We are seeing that we have an extremely sophisticated industry which has the latest technology—much better than most places in the world. It is about the breaking down of milk into other products, such as protein concentrates et cetera. The future as we see it is, as well as there being brands for cheese—and there will be opportunities for speciality cheese—is about giving a specialised ingredient to particular products that you may not initially recognise as a dairy product. That is where we see the future of the dairy industry—in using technology for what is the best food in the world.

Mr ADAMS—Is that powdered milk or long-life milk? What are you talking about?

Mr Kerr—It could be various forms of milk powder. It could be long-life milk in the form of drinks.

Mr ADAMS—But have we gained here by getting the long-term future markets of products that we will benefit from as a country? Or is this just a commodity going in which they are going to rebrand and then they will trade us off against some other country and they will slip something else into the package from somewhere else in the world?

Mr Kerr—We do not see the US as a commodity market at all. We see the US as a value added market. We already export significant amounts of dairy products to the US. They are high-value milk proteins and those types of products. We see this agreement complementing that access and giving us further reason to continue in the US market. It is the world's largest economy. It is still the premium market for dairy products—domestic prices in the US are significantly above world prices. If we make specific products for applications, we see very limited opportunities to be traded off against other players. The dairy industry is less and less a commodity business.

Mr ADAMS—Is it more of a brand?

Mr Burgess—It is more of a value adding, application specific business. Over the last seven or eight years, the dairy industry has invested hundreds of millions of dollars in technology that is not widely used in the US. That has given us a competitive advantage.

Mr WILKIE—Thank you for your presentation; it is very good. The industry talks about how it is a little bit disappointed about the agreement. I made the comment previously that what we ended up with was a trade agreement—and certainly not a free trade agreement—because there are still a lot of barriers. If it had been a free trade agreement, what would have been the potential benefits to the industry?

Mr Burgess—You have to put that into context. What we are talking about is an initial amount which is about what the industry asked for. What we were hoping for was around what we have as an up-front amount, but we were hoping over a shorter period of time to have something that was true free trade. We will still have something like free trade, but it will take a lot longer because of the growth phase.

Mr WILKIE—Have you put a cost figure on what you have lost out?

Mr Burgess—No.

Mr Kerr—I do not think you can put a cost on it.

Mr WILKIE—The reason I ask is because your submission says that you are disappointed that you did not get the free trade agreement up-front, so you must have some indication of what it has cost the industry.

Mr Kerr—That is looking at it the wrong way. It is a lost opportunity; it is not a cost to the industry. Today the Australian dairy industry can export all of the product that it produces. So it is not a cost that we are looking at but a lost opportunity for free trade. To talk about a cost is to look at it from a pretty negative point of view. We have lost an opportunity to get greater access.

Mr WILKIE—I am using your words. You have said that you are disappointed. You must be disappointed for a reason.

Mr Kerr—We are disappointed because we had the expectation that, at some point in time, we would have free trade in dairy products, whether it was in 15 or 20 years time. We have ended up with an increased quota, which is positive for us, but we are disappointed because we

had an expectation that we would achieve free trade after a period of time, in line with some other agreements that the US has negotiated in dairy. That is what we are disappointed about.

Mr WILKIE—So we did not actually get free trade; we just got an increased quota?

Mr Kerr—An increased quota which has added value to our dairy industry, which is important to us.

Mr WILKIE—I am not disputing that, by the way. I want to make that distinction because there are a lot of people talking about how it is a free trade agreement and it has been great for the industry but in most cases, when you look at it, people have not actually achieved free trade. They might have achieved a little bit of an increase in quotas, which is a bit different.

Mr Kerr—Our industry will be better off for this agreement, but it could have been even better off.

Mr ADAMS—You have got five per cent, but you would have been better off still.

Mr WILKIE—It would have been better off with the free trade agreement, as opposed to a—

Mr Kerr—We may have all been better off with a free trade agreement.

CHAIR—What is the value of Australian dairy exports to the United States? I cannot find it in your submission,

Mr Kerr—It is in excess of $100 million.

CHAIR—And you are anticipating that in year 1 the value will grow between $50 million and $60 million.

Mr Kerr—That is correct.

CHAIR—We have also been told that the immediate increase in access for dairy is more than a doubling of our current access. Is that your understanding as well?

Mr Kerr—That is the current quota access.

CHAIR—It is hard to see. For example, you have gone from 0 to 7½ million in milk, cream and ice cream. Other things, such as the European style cheeses, have gone 0 from 2,000 tonnes as well.

Mr Kerr—That is correct.

CHAIR—So, overall, it appears to be more than a doubling of current quota access.

Mr Burgess—In fact, it is a trebling.

Mr ADAMS—Is all that cheese pasteurised?

Mr Burgess—Yes.

CHAIR—We do not export unpasteurised cheese.

Mr Kerr—We will not enter into that debate.

CHAIR—No, that is a separate issue.Thank you very much for your submission. We apologise that we were running a bit behind time. Thank you very much for your attendance before the committee today.

[12.42 p.m.]

TURNER, Ms Liz, Trade Campaigner, Reclaim Globalisation Collective, Friends of the Earth Melbourne

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing today to give evidence. 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.

I advise committee members that Liz Turner has tabled a revised submission to the Joint Standing Committee on Treaties inquiry on the Australia-US free trade agreement. I have it here. It is resolved that this be accepted as a submission to the inquiry. So we ought to be able to publish that on our web site. Would you like to make some introductory remarks before we proceed to questions?

Ms Turner—Yes. I will just introduce Friends of the Earth to the committee. Friends of the Earth Melbourne promotes community action to achieve an ecologically sustainable and socially equitable society. FOE is run largely by volunteers and funded through membership fees, donations and a small number of grants from charitable foundations. FOE Melbourne itself receives no corporate or government funding. FOE Melbourne is an integral part of Friends of the Earth Australia, a federation of 13 environmental groups around Australia. Friends of the Earth Australia is part of Friends of the Earth International, a network of 66 environmental organisations across the world. FOE Melbourne is a lead group in Friends of the Earth Australia's trade project and an active participant in the FOE international trade, environment and sustainability program, or TES.

The TES campaign is made up of FOE members from 27 countries. The TES program is campaigning to replace corporate globalisation with a sustainable framework for trade regulation based on democracy, equity, reduced consumption, cooperation and caution. The first step is to curb the power and scope of the WTO and other regional trade agreements. We are working with others to build an international movement opposing the expansion of the WTO and demanding that food, natural resources, environment and development agreements not be subject to trade rules.

Just for the committee's information, in case you have already gone through the submission that was formally put forward by Friends of the Earth, the specific changes are with regards to water and also with regards to investment. I will structure my presentation as follows: I will talk specifically about the environmental concerns of Friends of the Earth and then I will actually be asking for clarification with regard to the investment provisions. Just to get into it—

Mr ADAMS—That is our foreign affairs committee.

Ms Turner—Okay. In that case, I will put two potentially competing interpretations of what we think the investment provisions are. First of all—specifically on the clauses relating to the environment—article 19.4 encourages US and Australian governments to engage in voluntary approaches and market based mechanisms for environmental protection. We have a concern about voluntary mechanisms for environmental protection. We believe, based on global practice and the practice of the Australian government and also practices of corporations, that voluntary and market based mechanisms for environmental protection are flawed. One good example of how such voluntary mechanisms are flawed is that we do not believe that they provide protection for the environment.

The global compact is one example. Companies such as BHP Billiton are members of the global compact. The global compact, a United Nations document and a partnership program, enables companies to proclaim to be good environmental citizens and to be socially responsible and to be protecting of human rights. However, we saw companies like BHP Billiton and other Australian mining companies in the Asia-Pacific area not too long ago use the Australian Embassy in Jakarta to lobby the Indonesian government to overrule environmental protection laws so that BHP Billiton could continue their practices of mining which have previously been considered illegal. So we outright reject a voluntary and market based approach to environmental protection.

We believe that the clause which encourages joint cooperation between Australia and America is similar to the Australian-American cooperative climate change statement, which enables Australia and America to act outside of the Kyoto Protocol. We are concerned that this bilateral approach to environmental protection will not be effective. We are concerned generally that a bilateral approach to trade going outside of the multilateral mechanisms of the WTO provides for fewer protections.

We note that this free trade agreement, unlike many other free trade agreements, contains chapters and clauses on labour and environment, and that can be seen on its face as a positive thing. However, we do not believe that these clauses go far enough in terms of protecting labour standards or environment standards.

I would now like to talk about the clauses in relation to quarantine and GMOs. With the clauses about GMOs, a concern that we and other environmental groups have with the technical working group and the newly established—under the agreement—committee on sanitary and phytosanitary matters is in relation to quarantine. This group has the purpose of facilitating trade. It is our concern that it is not a purpose of the committee to protect the environment.

In terms of how this could translate into practice, the Minister for Trade, Mark Vaile, was questioned by the ABC's *AM* program on 23 February and he was unable to state that these new bodies would be able to protect Australian environments from contamination. He was specifically questioned with regard to the pork and apple industries. His response to these questions was that the purpose of the newly established bodies was to facilitate trade. Based on this and also Australia's previous practice with regard to quarantine and trade disputes at the WTO, we believe that it is risky for these bodies to be established and we believe that it is risky for the clauses that currently exist in the FTA not to contain provisions that strongly prevent contamination.

To provide an example of the Australian government's current response to trade disputes, I would like to highlight the Tasmanian salmon case. People here are quite possibly aware of the details of the Tasmanian salmon case. Canada challenged Tasmanian quarantine rules before the World Trade Organisation and the World Trade Organisation dispute settlement mechanism required that the Australian government provide risk analysis. This risk analysis is quite a time consuming and resource intensive thing for the Australian government to do. However, even free trade advocate Alan Oxley concluded that the Australian government's approach to this risk assessment was a shambles because they did not put in the required amount of resources and effort to prove that a risk of contamination occurred. While not all the findings in this case were against Australia, it should still be noted that the current Australian government does not take its quarantine and environmental protection seriously enough, and this has been shown in the Tasmanian salmon case. Based on that, we fundamentally object to the way that the quarantine bodies are established and we object to the fact that these bodies do not have environmental protection as one of their objectives.

In relation to GMOs, a major concern for us is that the free trade agreement encourages Australia and America to accept each other's regulations with regard to GMOs. At the moment the Australian states of Victoria, Tasmania and Western Australia have moratoriums preventing the imminent spread of GMOs and, therefore, preventing the imminent contamination of biodiversity. It is a concern that, if Australia does accept the US's regulations, we will basically be accepting a lack of regulations with regard to GMOs. Basically, the US has shown that it is opposed to such laws preventing contamination. It has recently been involved in disputes with the European Union. Interestingly, Australia actually joined that, perhaps for the reason that we are in line with the US position. They are the basic things that we object to.

Perhaps I can just put two positions that we find we are having difficulty grappling with in respect of the investment provisions. This deals with chapter 11 and the consultations that we have had. It is the understanding of Ted Murphy, who earlier presented the ACTU's submission, that chapter 11 will not lead to corporations being able to sue the Australian government. It is a major concern for us if the potential for corporations to sue the Australian government occurs. As we have seen under previous and existing free trade agreements—the North American Free Trade Agreement is a perfect example—taxpayers have been left out of pocket by billions of dollars by corporations from these countries.

Basically, Ted Murphy puts forward a position with regard to the clauses where the wording is that there is required to be a change in circumstances. His interpretation of a change in circumstances is that that requires major shifts in the judicial process in Australia to the extent that the Australian judiciary would be consistently making decisions that were opposed to US governments. If this is what it means then there is much less chance that the Australian government would be sued by American corporations because it is very unlikely that our judicial system would have such an ideological overhaul that we would be making decisions consistently opposed to the US government's position. However, I have chatted with the Australian Conservation Foundation and, in particular, with Michael Kerr, who has prepared the submission for the ACF. He has been working with others and I believe they hope to present to the committee in Canberra. One of the main points that they are concerned about is that the investment chapter will enable American corporations to sue the Australian government. Not only that, but it will also give American corporations higher legal status than an average

Australian citizen. So, ultimately, McDonald's may have stronger legal rights than me. If this is the case, it is of extreme concern to us.

Another thing that I would like to highlight with regard to the investment clause, which is a more general reflection on the FTA itself, is that it is extremely difficult to work out what is going on and it is extremely technical. What is up on the Internet at the moment is still only a draft and that, we see, is a major problem. It is difficult to access. There are a lot of things that are not even spelled out yet. There are a lot of things in the FTA that are not defined properly. If you go through our submission, we talk about our concern with regard to the local content issues that are not defined properly. There are lots of things in there on which it is really difficult to work out what it means. I find it a little bit frustrating actually. I know that this is a process point and none of you can actually help me with this, but I would really like to know what the interpretation of this investment chapter is because it is difficult for me. I do not know whether I am supposed to be talking to the media and saying, 'American corporations could now come in and sue the Australian government.' They may or may not be able to as far as I am concerned, because there are two competing interpretations of it, and that makes me very angry.

CHAIR—We might fire away some questions.

Mr KING—I just wanted to take up two things with you, Liz. Thank you for your presentation. On the GM product disclosure laws, as I understand it, those are state laws, aren't they?

Ms Turner—Yes.

Mr KING—Let us take the Victorian example. What do you say the effect of the Victorian laws is at the moment?

Ms Turner—Are you asking about the effect of the Victorian laws at the moment with product disclosure?

Mr KING—No, with GM product disclosure.

Ms Turner—So are you talking about labelling?

Mr KING—Yes.

Ms Turner—It is my understanding that at the moment we do have labelling requirements and, yes—

Mr KING—Let us take baked goods—wheat. Wheat is a pretty good example. Maybe you can offer some examples.

Ms Turner—Are you asking me for examples of—

Mr KING—Yes.

Ms Turner—I am not exactly aware of the technical, precise definitions of the legislation with regard to baked wheat. Sorry.

Mr KING—I am just asking you for examples of labelling laws that promote disclosure of GM modified food.

Ms Turner—My understanding is that under the FTA the change—

Mr KING—No, no. Just give me an example of a Victorian law that has the effect that you are referring to—namely, that it requires GM product disclosure.

Ms Turner—Did you want me to name legislation or regulations?

Mr KING—Yes, just give some examples.

Ms Turner—I am afraid I cannot do that.

Mr KING—Can you give one example?

Ms Turner—I will take that question on notice.

Mr KING—It would be useful if you could do that.

Ms Turner—Sure.

Mr KING—As I understand it, your proposition is that the United States laws do not have that same result.

Ms Turner—It is my understanding that US laws do not require labelling of GM products.

Mr KING—I appreciate that there are some WTO actions by the US government relating to the EU in this area, but I am not entirely convinced that that has implications for the Australian market where you are dealing with precise labelling of specific products. I cannot see how a labelling regime could be affected by a free trade agreement.

Ms Turner—It is my understanding of the agreement that it encourages Australian and American governments to accept each other's regulations with regard to labelling. My interpretation of that is if the American government does not require labelling of GM foods, then we would be encouraged to take that approach.

Mr KING—No, I think it would depend on the market, if the Americans wish to sell in the Australian market. I would be interested to know why you say the FTA will result in the American manufacturer not having to comply with the Australian market. For example, if the American manufacturer bought into a business in Australia and manufactured and sold here, it would certainly have to comply with the Australian market—would it not?

Ms Turner—If it bought in here?

Mr KING—Yes.

Ms Turner—Yes, but if the regulations were different, then perhaps the market would not be so concerned—perhaps the consumers would not be so concerned.

Mr KING—You are really only concerned with an export product from the United States. It is not clear to me that this agreement has the result that you are contending in relation to GM foods and disclosure laws.

Ms Turner—In what way is it not clear to you? I just want to clarify what you are saying.

Mr KING—In your submission you do not offer any examples.

Ms Turner—Are you looking for an example of a piece of legislation—is that right? I can certainly provide that.

Mr KING—Yes, and I also want you to offer an example where a US manufacturer of GM foods would not have to comply with Victorian laws in respect of an importation into Melbourne, say. I should know more about GM foods than I do. My only familiarity is with some agricultural products. Dick, you may be able to help me. Does GMO affect dairy products?

Mr ADAMS—The argument goes if you feed the cows something, does it come out in the milk and is it affected by GMOs. It is a difficult issue. It is like the argument around oil—for example, canola oil. In the United States if you use canola oil to cook something and that product is then put in a can and sent to Australia, is that a GMO product?

Mr KING—If you could offer a couple of examples, Liz, that would be very helpful. I need to be convinced of your assertion that the impact of this agreement is to exclude American manufacturers exporting into Melbourne from GM disclosure labelling laws.

Ms Turner—That is not exactly what we are saying.

Mr KING—I do not think it does have that effect, but I may be wrong.

Ms Turner—If I could quickly respond to that. Perhaps I may not have been exactly clear. Our contention is that it is not so much to do with the market; it is more to do with the acceptance of each other's regulations.

Mr KING—I am concerned about the Australian consumer. It is not clear to me from your submission that the Australian consumer, who is concerned to not consume GM foods, will be any worse off under this FTA.

Ms Turner—It will be to do with labelling. Are you talking about labelling being a thing that companies choose to do because, say, a soy milk producer will get more from the market because their consumers want to know that it is GM free. Is that what you are saying?

Mr KING—No. I am concerned with the content of the laws of Victoria as a result of the FTA. It is not clear to me that, as a result of the FTA, the laws of the state of Victoria will change to the effect that the labelling laws will be repealed by implication through the treaties power.

CHAIR—That transcript should be available on our web site; so it should be very clear.

Mr KING—The second question I want to ask you, Ms Turner, is related to your concern about the phrase 'change of circumstances'. I actually had a look at that myself. To me, the problem is not the phrase 'change of circumstances' but the word 'affecting' immediately following that phrase. The phrase is 'change of circumstances affecting the settlement of disputes on matters within the scope of that chapter'. In this context, the word 'affecting' is enormously difficult to define. Judges of the High Court of Australia find it difficult to define, and I am not surprised that people looking at the phrase in this context have difficulty—particularly when it is qualified by a phrase such as 'change of circumstances'.

I would have thought that it is arguable that your colleague, Murphy, has adopted a rather tight definition of the phrase 'change of circumstances', and if you look at the phrase 'affecting the settlement of disputes', which follows it, it may have a broader impact. I am not suggesting it does but, if that is the case, there may be a compensation system here that needs to be examined somewhat more closely. Perhaps that is an argument in favour of your position.

Ms Turner—We will think about that one.

Mr KING—Whereas the other argument I was putting to you is against your position. So you might like to have a look at that.

Ms Turner—Yes. With regard to the Australian Conservation Foundation, perhaps what I need to do is go away and talk to Michael Kerr and Wayne at the ACF and then, when they present to you, perhaps we will have had a bit of time and they can present their idea of what needs to happen.

Mr KING—And the issue relates to investment. That is the concern I have. It is not clear to me that your submission fully addresses that issue.

Ms Turner—In what way?

Mr KING—It is not clear to me that—

Ms Turner—Because we talk about the possibility of corporations, as opposed to investors, suing the Australian government?

Mr KING—That is right.

Ms Turner—Yes, we are giving the label of 'corporations' to investors. I am not quite sure of the technical differences there. The way we see it, investors are going to be corporations as far as this goes.

Mr ADAMS—If you have a look at the Canadian and the American free trade agreement—the NAFTA stuff—you will see a lot of companies from the States suing Canadian companies and vice versa and a lot of litigation going on.

Ms Turner—So you are saying that there is a big difference between companies and investors?

Mr ADAMS—If you were looking for some argument. I want to go to your organisation's concerns about the phytosanitary and sanitary arguments that you raise in relation to the environment. That is a quarantine issue. You talk about the Tasmanian salmon industry. It was quite a good analysis, but whirling disease is a disease in trout in the USA. Take, for example, chicken flu: if some of the problems the US has with chicken flu were to get into our poultry industry, it would go to our wildlife as well. I think your submission may have held up a bit more if you had put in some of those—

Ms Turner—Those examples?

Mr ADAMS—Yes. In your submission you talked about pork and apples—which go well together.

Ms Turner—That is good feedback. I will keep that in mind.

Mr ADAMS—I wanted to touch on your corporate code of conduct. Can you outline that a bit for us?

Ms Turner—Sure. This is something that Friends of the Earth International has been lobbying for. It is not something that is being taken up in a major way by Friends of the Earth Melbourne or the collective that I am part of. It was advocated for in a major way at the World Summit on Sustainable Development in 2000 in Johannesburg. Basically, this is a very idealistic and long-term goal of Friends of the Earth International. At the moment there are negotiations going on somewhere within some body in the United Nations Economic and Social Council. FOE International is trying to establish a code of conduct that would effectively provide legally binding activities that corporations must follow. They are to do with environmental and human rights protection and labour standards.

Basically, it would be like an international or multilateral treaty but it would also have broader ramifications than just a treaty contained in itself. It would extend legal liability to directors for corporate breaches of national, environmental and social laws and to directors and corporations for breaches of international laws or agreements. It would guarantee legal rights of redress for citizens and communities adversely affected by corporate activities and establish human and community rights of access to and control over the resources needed to enjoy a healthy and sustainable life. It would establish and enforce high minimum environmental and social labour and human rights standards for corporate activities based, for example, on existing environmental agreements and reflecting the desirability of special and differential treatment for developing countries. So you can get the gist of it. One of the more significant things about it is that it would extend the jurisdiction of the International Criminal Court to try directors and corporations for environmental, social and human rights crimes.

Mr ADAMS—Yes, we have a bit of trouble getting them to our civil courts here in Australia. This code of conduct is about civilising capital, basically?

Ms Turner—Yes. That is one of the reasons why Friends of the Earth Melbourne have not taken it up. We do not really think that civilising capital is a major focus.

Mr ADAMS—Your organisation is not involved with Earth First, is it?

Ms Turner—No.

Senator MARSHALL—Thank you for your submission, Ms Turner. I think that, for a community based organisation, it is a very broad and comprehensive submission. I agree with your opening remarks about the uncertainty in the community about what the free trade agreement actually means and what a lot of the clauses actually mean. We are not able to answer those questions because we are trying to grapple with those issues too. I certainly have seen a lot of community concern about those sorts of issues in general. Some of those have probably been answered in some of the submissions that have been put to us.

In terms of the questions which you very legitimately raise, do you intend to specifically ask the department to clarify those matters and ask for a response or would it be your intention to be specific about the sorts of questions you want answered? I certainly have some of those concerns and would be happy to ask the department too if I had them more specifically put. I guess I just wanted to make that opportunity available to you and thank you for your submission.

Ms Turner—Thank you—that is great. I can have a chat with Michael Kerr from the Australian Conservation Foundation and bring up this issue of the wording being changed to 'circumstances affecting'. Then perhaps we can work out what is the best way to raise that.

CHAIR—I would like to thank you for your attendance before the committee today. I think you have some things that you have offered to take on notice.

Mr KING—I am sorry to interrupt you, Chair, but there was just one thing that I forgot to say to Ms Turner. When you are looking at that expression, as I understand it you want to tighten and not broaden. I would be very interested to hear how you have suggested it ought to be expressed.

Ms Turner—Okay.

CHAIR—You can take that question on notice. Thank you for your submission and evidence today.

Proceedings suspended from 1.14 p.m. to 2.04 p.m.

WHITEHEAD, Mr Derek John, Director, Information Resources, and University Copyright Officer, Swinburne University of Technology

WRIGHT, Ms Robin, Swinburne Legal, Swinburne University of Technology

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 Whitehead—We will both make a few comments about the submission. We have provided a written submission which relates to the intellectual property aspects of the free trade agreement, in particular those that negatively impact on universities. Our main concern is that information, knowledge and so on, which are the lifeblood of universities, not be subject to further limitations on access. The education industry is a major user of information and therefore has a large interest in intellectual property. It has not been argued by anyone that the intellectual property aspects of the free trade agreement have particular direct benefits to the Australian community or positive outcomes. The argument is normally in terms of trading off the concessions that are made in the intellectual property chapter to achieve benefits in other areas. Sometimes the term 'harmonising' has been used in reference to the agreements set out in chapter 17 of the free trade agreement.

Our submission makes a basic key point, which is that the free trade agreement does produce outcomes which benefit those dealing commercially in intellectual property. Robin is going to set out a couple of the negatives. We believe that we can produce more balanced outcomes for Australians if we also, along with the free trade agreement, take on the US concept of fair use and widen that in our legislation. What we basically propose in the submission is that, as part of the legislative changes that go along with the free trade agreement, there is an adjustment of our concept of fair dealing to more closely accommodate the American concept of fair use. In particular, fair use provides a broader scope for public interest access to copyright material and, in the education sector in particular, it could provide a major benefit if we come closer to the American concept. We think that would also level the playing field in the education industry, take up recommendations that have been made in the past by the copyright law review committee and restore some of the balance lost by the other concessions within chapter 17 of the free trade agreement.

Ms Wright—Swinburne has specific concerns about the proposed changes to copyright legislation in relation to digital technologies. The changes proposed in article 17.4.7 will extend the prohibitions on technologies which circumvent technological protection measures beyond those already provided for in section 116A of the Australian act. Section 1201 of the US legislation was carefully drafted in order to preserve fair use rights in light of those prohibitions, although it may not have been totally successful. It is therefore similarly important for Australia to try to develop creative ways to preserve users' rights in the Australian context.

An increasing amount of scholarly research is now made available through the use of digital technologies, and this is likely to increase in the future. If copyright owners can apply technological protection measures to aggregated collections of this material, there is a potential to eliminate many forms of public access. If owners' rights are to be so clearly enhanced, then effective countermeasures should be put in place to protect access to information. This is particularly important for the education sector. It is also an important part of ensuring Australia's future creativity and innovation as part of the information economy. It is important that at this digital moment in history we do not destroy the overriding intention of copyright legislation to promote the progress of science and the useful arts.

In addition, Swinburne is also concerned that its ability to use new technologies to deliver educational services is not limited by any potential regulations imposed on commercial Internet service providers, as proposed in article 17.11.29. The sector has already developed an industry code of conduct in this area, and Swinburne considers that this is an appropriate way to proceed in such a rapidly changing environment.

CHAIR—Thank you very much for your submission and your opening statement. When the committee finalise our report, we will have to make a recommendation as to whether or not the free trade agreement should enter into force. Do you have a view on that? Is it your view that it should but that we should be looking at some changes to copyright law within our own domestic sphere, for example?

Mr Whitehead—Swinburne University does not have a specific view on whether the free trade agreement should enter into force.

CHAIR—If the free trade agreement does enter into force then would our own IP laws be improved by also adopting the fair use provisions of the United States?

Mr Whitehead—Very definitely. Correspondingly, our copyright laws would be less useful if the opportunity was simply taken to amend them in accordance with what our commitments are in the free trade agreement. We feel that would unbalance that copyright legislation by giving it a much greater weighting towards commercial interests and losing a lot of the weighting it now has for public interest use and the concepts of fair use.

CHAIR—My understanding is that the Australian Attorney-General has announced a review of copyright at the moment. Is that right?

Mr Whitehead—There is currently a review of crown copyright—copyright owned by the Crown. That is the only current review. There have been a number of reviews over the years by the Copyright Law Review Committee, which is conducting the crown copyright review.

CHAIR—I suppose if the committee took on board your concerns then it would be open to the committee to perhaps make a recommendation—which is really going to be separate from the question of the FTA entering into force; it would be about part of our own domestic legislation and nothing specifically to do with the FTA—that we look at perhaps adopting a United States style fair use provision. Would that be something that would be welcomed by Swinburne?

Mr Whitehead—It certainly would be.

Mr WILKIE—I suppose what the Chair was talking about is a possibility. Where there is a concern is that the free trade agreement provides for us to harmonise our legislation with the US legislation. If ours were contrary to theirs it may be that we would need to make ours a lot stronger, which might not suit the purposes of universities. At this stage, we would need to get further clarification on that from the department, I would think.

Mr MARTYN EVANS—You actually canvass the American fair use provisions in your submission in a general way. But we had an indication yesterday in Sydney that the American fair use provisions actually require some degree of transformation of the material and that straight out copying of them—as applies in Australia in some cases—is not enough for fair use. The use has to be transformative to qualify as fair use. What is your understanding of those American fair use provisions in that respect? It was indicated to us that it is not quite as simple as just the copying of material. A little more detail, perhaps on notice, as to how you think those American provisions might translate in that context would be helpful as well.

Mr Whitehead—We can certainly provide more information about that. The core concept of the American fair use legislation, though, is that rather than specifying, as our legislation does, what kinds of uses are fair it simply requires that the uses that are made should be fair and then sets out some criteria as to how they can be judged as fair or otherwise. Certainly my understanding is not that transformation is required. Some kinds of transformation are permitted by the American fair use doctrine but my understanding is not that it is required.

Mr MARTYN EVANS—Thank you. But if you had any further information on that it might help the committee in looking at what recommendations, if any, we wanted to make. I notice also that in relation to the change in term of copyright you say that it would have a significant effect on the availability of material. You say that it would 'significantly reduce material available in the public domain'. We have also had evidence that the amount of material which is accessed by Australian universities in that 50- to 70-year period is an almost vanishingly small percentage of the total amount of material that they access. Have you actually taken out any figures in relation to your own use or general university use? That would also be helpful in assessing the impact of that area. To date, the evidence we have had is that it is a microscopically small percentage of the total amount of material that universities access whereas you use words like 'significantly reduce'. If you actually had some figures on that it would be very helpful.

Mr Whitehead—There certainly would be some kind of use data available, but most of the material we are referring to would be journal material, and universities typically would not have use data for that, because most of their use is in-house and so I am not sure where the information comes from. The use of books that are borrowed can obviously be measured—

Mr MARTYN EVANS—No, I am referring to material which is photocopied, for example, and therefore is reported back to the copyright agencies.

Mr Whitehead—It should not be reported back to the copyright agencies if it is in the public domain.

Mr MARTYN EVANS—No, I mean that the amount which is in the zero- to 50-year period is reported and then the amount which is in the 50- to 70-year period is not reported, although it can be looked at as a percentage of the available journals and so on around.

Mr Whitehead—Sure.

Mr MARTYN EVANS—For example, I would have thought that the amount of material which is in use in universities is mainly of recent origin. Universities, by their very nature, tend to focus on journal articles and so on which are of recent origin, obviously, more so than perhaps articles which are in the 50- to 70-year time frame. That is why I am asking if you have any material—your saying that it will significantly reduce material available made me ask if you had any.

Mr Whitehead—We do not have any data as to the extent to which that material is used. We do not have any information that we have collected on that basis and I assume that the copyright collecting societies would not either, on the grounds that they are not at present interested in material that is more than 50 years old. University libraries would characteristically still have quite a significant proportion of their collections more than 50 years old—that is, published before 1954. A research library in particular, like the University of Melbourne or Monash University, would probably have up to half of its collection in that category—especially monographs rather than journals, because publishing was larger then. It is very hard to tell what people use, although it would be possible to find out on a useful basis.

Mr MARTYN EVANS—It is life plus 50?

Mr Whitehead—Depending on ownership of the copyright.

Mr MARTYN EVANS—Yes.

Mr Whitehead—Again, with journals, where the copyright is owned by the publisher, on the whole 50 years would be the length of the copyright. The extent to which there is use of older material depends very much on the subject matter. So in computer science, material goes out of date extremely quickly. There is not any computer science material which is 50 years old but, if there were, it would not be used. In other areas, particularly in the humanities and social sciences, then a lot of material retains its validity and value over quite a long period of time. Again, it is hard to generalise.

Mr MARTYN EVANS—How do you think this fits in an international context if Europe has also gone to the extended period—as it has, I understand—as have many other countries? Do you see this in an international context? Is it a practical proposition on an international basis that if Europe and many other countries go to that extended period Australia will be able to remain on an isolated basis? Is there any issue internationally if we stay? Do you foresee any other issues about that occurring if we remain an island on that basis?

Mr Whitehead—I do not particularly see any issues. There are still quite large numbers of countries that do retain a shorter period of copyright. Until the free trade negotiations, it was certainly not the policy of our government to extend that period; in fact, on the contrary, it was the policy of our government to retain the 50-year period. Our treaty obligations, other than the

one that is under discussion now, do not require us to extend the period of copyright beyond our current law. It was seen to be in our interests to have a relatively shorter period of copyright than the big owners of copyright material—the United States and European Community countries. Essentially, Australia is not a major owner of intellectual property by comparison with the United States or European countries. In terms of a level playing field, we do not have one in that sense. We are basically a massive net importer of intellectual property.

Mr KING—You spoke about a restriction on creativity, as I understood it, because of tightened intellectual property laws. I presume you have read chapter 17 of the proposed treaty—the one that deals with intellectual property.

Mr Whitehead—Sure.

Mr KING—It has a pretty impressive list of international treaties and conventions to which both parties are obligated to conform. In addition there are a number of treaties which each party is required to accede to as a result of entering into this agreement. Do you recall that?

Mr Whitehead—Sure.

Mr KING—I am interested to know whether your opinion is based upon a view you have of the effect of American law in this area or is it the result of accession to these various international treaties and conventions that chapter 17 requires both parties to undertake?

Mr Whitehead—I might hand over to Robin. In the areas that we have the major concerns with, as far as I understand it, the current US law goes well beyond the requirements of those treaties, in particular the technological protection measures is one of those areas. Robin knows a lot more about that than I do.

Ms Wright—My understanding is that the Digital Millennium Copyright Act implements a treaty that Australia has already implemented in its own way, but it just places more rigorous requirements onto the legislation.

Mr KING—Are you saying that this is simply the result of both countries acceding to the copyright convention in relation to digital technology?

Ms Wright—Yes, the copyright treaty.

Mr KING—The WIPO treaty. What do they call it—the WIPO performances and phonograms and WIPO copyright?

Ms Wright—The copyright treaty, as I understand it, is the one that the DMCA was brought under and Australia's section 116A.

Mr KING—Would it be a fair comment then to say that the restrictions that you are referring to are simply the result of us bonding ourselves to more rigorous international treaties and not the result of any US law that might have an impact in Australia as a result of signing this FTA?

Ms Wright—No, my understanding is that it is the US legislation itself which is more rigorous in the way it implements the treaties.

Mr KING—Do you mean its domestic laws are even more onerous in terms of obligations to protect copyright than the treaties themselves?

Mr Whitehead—That is our understanding.

Mr KING—Could you give me an example of that?

Mr Whitehead—I think an example of that is in the US regime that relates to ISP liability, which is not currently, as I understand it, taken up in other countries.

Mr KING—What is ISP?

Mr Whitehead—Internet service provider. This takes a bit of setting out. The US legislation requires an Internet service provider to take down material which is alleged to be in breach of a copyright owner's copyright under certain circumstances. As far as I understand it, that US regime is unique.

Mr KING—So it is not part of any convention?

Mr Whitehead—No. Of course, we do not know the extent to which our legislative drafters would be following US law in that situation.

Mr KING—I did not notice any provision in chapter 17 which would have that result. Can you point to any?

Mr Whitehead—We can produce the wording.

Ms Wright—Also, the Digital Millennium Copyright Act, which is implemented in section 1201 of the US legislation, places more restrictions on the anticircumvention provisions than section 116A of the Australian act currently does, and yet both of them comply with the requirements of the WIPO copyright treaty.

Mr KING—Would you mind just focusing on the first question I asked you?

Mr Whitehead—Sure. Under current Australian legislation, as I understand it, in relation to Internet service providers' obligations, an Internet service provider has a set of obligations in Australian law. In the free trade agreement, under article 17.11.29(b)(iv)(D), for example, the service provider would have their liability limited provided that they met the condition of:

> ... expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

A number of other conditions that are set out are required to be met in order for an Internet service provider to avoid liability for material that was made available through carriage by their equipment or on their site. That is quite different from current Australian law.

Mr KING—I see. Robin, I think you mentioned digital technology.

Ms Wright—The Digital Millennium Copyright Act in the USA?

Mr KING—Yes. That is not referred to in chapter 17.

Ms Wright—It is. Article 17.4.7(a)(i) refers to the anticircumvention provisions. Many of them are similar to those that have been implemented by the DMCA in the USA, in section 1201 of their copyright legislation.

Mr KING—Whereabouts in 4.7?

Ms Wright—It is under article 17.4.7(a)(i), which refers to the act of circumvention of any effective technological measure that controls access to a protected work. Currently in the Australian legislation there is no prohibition on the act—there is prohibition on dealing in anticircumvention technologies—whereas in the US legislation they also prohibit the act of circumventing access to a protected work.

Mr KING—It is getting pretty tight, isn't it? That is a fairly focused criticism of chapter 17.

Ms Wright—It is. But the interesting thing about section 1201 of the US legislation is that it was specifically structured in order for it to protect fair use. They left the act of circumventing technologies that protect existing rights under the copyright legislation free from prohibition in order to protect fair use.

Mr KING—Yes, but this is only dealing with access.

Ms Wright—That is right, but it is still more limiting than the Australian legislation at the moment.

Mr KING—And you see that as being a problem, do you?

Ms Wright—I think it is important that we are very careful that the legislation protects whatever form of fair use or fair dealing or educational use is protected by the Australian legislation. It would need to be drafted in a different way because our legislation is drafted differently.

Mr KING—Do you say that this would require an amendment to the Copyright Act?

Ms Wright—Yes, it would.

CHAIR—There being no further questions, I thank you for your attendance before the committee today.

[2.30 p.m.]

D'APRANO, Mr Steven, Operations Manager, Cybersource Pty Ltd

ZYMARIS, Mr Con, Chief Executive Officer, Cybersource Pty Ltd

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 D'Aprano—Cybersource is a small to medium sized IT consultancy company. We specialise in the use of open source software, and we have grave fears that the proposed changes to copyright and patent law as part of the free trade agreement will have a very negative impact on our ability to do business. We have been watching the growth of open source software throughout the world over the last 10 to 12 years. It appears that there is a major shift in the way the computer industry operates towards that open source world.

There is some mythology out there amongst certain media people that open source companies such as us are opposed to intellectual property rights and copyright. That is not the case. With open source, we require very strong copyright laws in order to protect our own ability to work and our own intellectual investment. However, it is our belief that these proposed changes will actually increase the strength of those laws to the point that they are no longer protecting the open source industry but are actually preventing it from doing business. In particular I refer to the granting of patents to software.

One of the major differences between patents and copyrights is that, with copyright, independent discovery is still accepted as a legitimate way to discover things, whereas, if something is patented, then, even if somebody comes along afterwards and comes up with the same idea, the same concept—which has got an earlier patent on it—that use is an infringement of patent. For example, the existence of software patents can be used to prevent companies such as us and other small businesses from developing software.

A company like Cybersource does not have the resources to challenge companies like IBM, Microsoft, Sun and so forth for a patent which may or may not be valid. Without going forth and spending an enormous amount of money in court to challenge that patent, even an invalid patent is enough to prevent innovation amongst small and medium sized businesses such as us.

Mr Zymaris—To broaden your understanding of what we are on about: people understand patents as they can be attributed to devices, to—

Mr D'Aprano—Machinery.

Mr Zymaris—machinery—things that people create and can physically see. The complexity with software is that any medium sized software application might possibly touch upon dozens of software patents. You can use what would otherwise be efficient programming techniques to stumble across a particularly good way of doing something but, because your program might have 100,000 lines of code and 2,000 functional units, any one of those could actually be trampling on somebody else's software patent—more often than not a US software patent.

For most Australian companies it is very difficult, if not impossible, to enact the kind of legal machinery to vet all those functional units against a massive database of existing software patents to see if you have trampled on anybody else's toes. So it is a very difficult proposition to construct software in what is essentially a software patent minefield, where you do not have the resources to send out minesweepers beforehand. It makes for a very difficult business environment.

CHAIR—What is the difference between copyright and patent? Are you are saying that, if you infringe copyright, then you pay a licence fee to the owner of the copyright? What is the difference really?

Mr Zymaris—With copyright, you can write a book and you can copyright that book. That is your legal, monopolistic right to specify to others who has the permission to copy it—for example, your publisher and printer. You might write a book about a mermaid who happens to live somewhere off Copenhagen. If you are Hans Christian Andersen and you come up with that idea and that is your copyright, then the actual implementation—the creation of the words strung together in a particular format—is your copyright. I could come along sometime later on and also create a book about a mermaid that happens to live in Copenhagen and, as long as I do not copy the very explicit components and structure of your copyrighted work, I would be okay. But, if you could patent the idea—not that you can—of 'Denmark mermaid', then nobody else could come up with anything else at all related to mermaids in Denmark, even if they just happened to create their idea out of nowhere and they had no knowledge and no notion of your creation. The likelihood of them coming up with the exact same words in their book, not knowing yours, is extremely small. But the likelihood of coming up with the same patent idea is quite reasonable, particularly in the realms of software, where you have 10 million people around the world who have fairly similar thought processes in terms of how you achieve optimisations in software.

With a lot of the software patents that have been granted in the US, if you were to give the same problem to most competent software developers and say, 'Here is the problem; I want to get from A to B as fast as possible,' most of them would come up with essentially the same algorithm, the same process, to achieve that. For most programmers, this is something that is fairly obvious, but that does not stop the US patent office from saying, 'Yep. No problems. Done.' There are a number of different structural reasons as to why they do that. That is part of the problem. There are potentially incredibly innovative software processes that very few people would have thought of that may exist, but, in number, those are probably very small when you look at them overall. So the overall good or bad of software patents very much tends towards the bad for most software businesses.

CHAIR—As I understand it, open source software is placed in the public domain—

Mr Zymaris—That is actually not the case, if I can interrupt there. That is a fairly common misconception, even with people who have a reasonable amount of understanding of how IT works and so forth. That is a very common misconception. There are essentially three main forms of software construction and distribution. The one which most people are aware of is where you go the shop and buy a boxed set with a product in it. That is the standard form of software distribution and development. In specific terms, you could classify that as closed source proprietary software because you get what is classified as the executable binary: that which only a computer can understand and can run. Human eyes do not actually decipher that at all.

Mr ADAMS—What did you call that?

Mr Zymaris—We call that closed source proprietary software. At the other end is something which has been donated and gifted to the public domain. I believe there is a requirement for many US government instrumentalities, if they create software, to donate it to the public domain.

CHAIR—Isn't that what happened with the Linux operating system?

Mr Zymaris—No, it is not. That is something very specific. This is our little niche of expertise.

CHAIR—I am getting an education.

Mr Zymaris—At the other end, as I said, you have the public domain. Essentially, this is the programmatic code that is human readable and human modifiable donated to whoever wants it. There is no copyright on it; there are no restrictions on it whatsoever.

In the middle you have this concept of open source. The general notion of open source is that you do a share and share alike arrangement but the creator of this intellectual property maintains full copyright in that technology. They release it under what is known as an open source licence, which gives the user very specific usage rights. Generally the usage rights are unlimited: you can do whatever you like with the software. But if somebody is going to copy the software and give it to others it brings in a specific set of machinery to protect the intellectual property in place. So the machinery of Linux is protected under what is known as their general public licence. It is an intellectual property sharing mechanism.

For example, I create a Linux kernel and I get it to a certain level of functionality. I cannot get it beyond that. I release this under a licence that allows you essentially the same usage and development rights that I have. Your extensions to it have to be fed back into the same pool. I am using my IP to hook you in and get your IP. If you get 10,000 people doing that you get quite a monumental piece of infrastructure, which is why Linux has turned so many heads in the 12 years it has been in existence. But I maintain the copyright for the component that I have done, as you do for yours and everybody else does for theirs. If someone somehow comes and misconstrues or deliberately does things contrary to that third party copying licence, collectively you can go after that person for breach of copyright.

That is the machinery that it actually rests upon. If there were no copyright infrastructure within Linux there would be nothing to stop anyone from just walking in and saying, 'That's all good. We'll take that and run off with it and do whatever we like.' They can come and do that

generally as long as they live by the credo of share and share alike. You take the bits that you like. If you make extensions to them you have to feed those back into the communal resource pool. It is quite a clever midway point. It allows a certain number of freedoms to developers who did not create the original code base but also maintains full copyright capabilities for all the individuals who created the copyright in the first place.

CHAIR—Are you familiar with an American company called Red Hat?

Mr Zymaris—Absolutely.

CHAIR—As I understand it, Red Hat have based their business model on most of their revenue coming from service fees or whatever rather than from the proprietary licence or whatever using open source.

Mr Zymaris—Yes.

CHAIR—How are Red Hat doing under the American IP regime?

Mr Zymaris—Red Hat are doing reasonably well. In terms of business, because they do not have proprietary lock-in they would never make as much money as a Microsoft or a company that can enact a lock-in scenario—a 'you pay rent forever' scenario. However, I can understand where the question is coming from. When you download or purchase a boxed set of Red Hat or buy one of their enterprise package deals, which include support and what have you—which is, as you said, how they make their money—that technology has very specific bits of software infrastructure removed because they cannot put that in there. These are things like MP3 players because they are under a software patent belonging to the Fraunhoefer Institute in Germany.

So, from an end user perspective, I cannot get this package installed on my computer and expect it to be able to do all the things that I would generally want it to, such as play DVDs. Once again, that is—in the US, at least—beholden to the DMCA Act with regards to prohibition. So they do not ship out the capability to play DVDs. The same again for MP3s, and the list goes on. It is ever increasing. That is the core problem. So these guys explicitly say, 'We'd love to be able to offer this whole package deal where it all just works but we can't. We have to excise this; we have to excise that.' And the list goes on.

The complexity is that, even in what is called a generalist Linux distribution like Red Hat, there are possibly 5,000 or 10,000 software packages, each of which might have five million, six million or 10 million lines of code. It is likely that Red Hat has 800 people, and it is extremely difficult for an organisation of that size to be able to vet all of those lines of code. It enacts a certain cost to them—which is part of the cost of doing business—but they therefore do go forth and excise the other bits of useful software. Alternative vendors—for example, one that comes from France, where you do not have these essential illegalities pursuant to the software patents act in the US, the equivalent DMCA and so forth; Mandrake also has a package selling Linux—have this technology in place. So if you acquire the product from France it is not a problem, because it is not illegal in France to do these things. If we suddenly enact this law series here in Australia, we would not be able to run this software. That is where the problem lies.

Mr WILKIE—We heard this morning—I think it was from Alan Oxley—that the future for economic growth across the world is in IT. It has the potential to take off. I think Gates once said that we should not be worried about what we can think of in the future but what Microsoft can think of. Given that the IT industry is going to be so important for economic development, does the problem that you are faced with have the potential to cripple the industry in Australia, making Australia uncompetitive in the software business?

Mr Zymaris—Much of the Australian software industry—if I can use the term 'indigenous software'—and the ICT industry base comes from small-medium enterprises. In terms of the headcount of staff, there are very few 1,000-plus, 2,000-plus, 5000-plus players. As a country, we generally produce from quite talented, quite mobile and quite active five-, 10- or 100-person organisations. There are a handful of exceptions—Mincom and Technology One—of indigenous Australian companies that might have 300 or 400 technologists working for them. This is different to the big players—such as IBM, Computer Sciences Corporation and Oracle, which have quite large staff bases here—where essentially a large part of their IP development and IP machinery comes from overseas. So, yes, I think there is a substantial problem with the amount of effort that will be required to comply with, and to comply safely with, these possibly introduced laws, and particularly with software patents.

Creating a competitive environment basis and introducing laws like the DMCA—which removes the ability for third-party players to create interoperable software—particularly in this increasingly networked society, makes it very difficult. Steven has reminded me of something. I will give a specific example. A large part of what we gain from here on with computers is having the Internet working everything—communication, protocols and so forth. I can come up with a network protocol that I patent and, if I have a market position that is strong enough, I can essentially keep everybody else out of talking to my systems by implementing a patent. If a country does not recognise software patents, that country could allow its software base to develop the necessary reverse engineering capabilities to figure out how to plug in with that networking protocol technology. But if there are software patents in place, no matter how smart your people are at reverse engineering, you will not be able to do that legally. So there are issues involved with that.

One of the strengths that Australia has had over the years is doing things like reverse engineering of existing protocols. Protocols are the mechanisms for communication from one computer to another. Hundreds, or possibly thousands, of these things have been developed. Almost all of the ones that are used on the Internet are patent free, and that is one of the reasons why the Internet has flourished. If they are patent encumbered—and that is the term that is generally used by the software industry—then they generally cause problems and strife, and most technologists tend to avoid them.

One of the prime examples is the technology called Samba, which was developed by Dr Andrew Tridgell in Canberra. This fellow is very famous around the world. He has a whole team of people at work around the world, headquartered in Australia, who have developed the software. They are recognised as the world leaders not only in network protocol reverse engineering but also in implementing this quality software, which has been shown time and time again to be more secure, more robust and faster than the proprietary closed source equivalents. If the technology in place had a software patent and the company that created this original

technology chose to defend the software patent, this inter-operation software could not have been created—not legally.

Mr D'Aprano—Can I also point out that that will also affect companies such as Cybersource directly. Part of our main strategic area in the IT field is that we can go to customers who are using the proprietary software and are having to pay large amounts of money, most of which ends up in large corporations based overseas, and we can say to them that there is a much cheaper alternative because we can rely on this Samba software. It has been perfectly legitimately created. It is not infringing on any of the copyright on the SMB software, which is the alternative, because it was developed independently. If patents were allowed, then the fact that this Samba software was developed independently would be no defence. It would still be classified as an infringement simply because it does the same thing in a similar way.

Mr Zymaris—To cap that question, you were talking about Australia's position industrially with regard to software. The World Bank just six months ago produced a document which essentially said that 96 per cent of the profit from the ICT industry is vested in the United States. US based companies receive 96 per cent of global ICT profit—that is a substantial figure. I can actually show you that figure. I can get the report, if I can, via PDF or email to the committee.

Mr ADAMS—Is that a World Bank document?

Mr Zymaris—Yes, a World Bank document—infodev.org.

Mr ADAMS—If you could just provide the title, we can get a copy of it.

Mr Zymaris—The title is the Paul Dravis report on open source software for the World Bank. You can download a copy from infodev.org. That will give you an idea of how, I guess you could call it, skewed the market is with regard to who makes the money.

Mr WILKIE—Do you know whether this point you are making in your submission was raised during the negotiations?

Mr Zymaris—I suspect it is probably too esoteric to have been raised at that point—but that is just a suspicion.

Mr WILKIE—I will let Mr Evans go and I will come back to that.

Mr MARTYN EVANS—If 96 per cent of the funding of software in the world comes from the United States, it would seem that software patents have not held back the United States.

Mr Zymaris—You have to remember that 96 per cent of the profit is going to ICT companies. Another statistic—this is a statistic from Gartner—is that about 95 per cent of the software construction that happens does not happen for the purpose of creating product and product technology. It happens for what are known as turnkey in-house solutions. So Australia might generate $10 billion of software from NAB, Westpac and Telstra and so forth constructing software, but it is for use internally so that does not count as a profit for ICT companies.

Mr MARTYN EVANS—My point is that the United States is widely recognised, and your figures support that, as the most innovative IT country in the world.

Mr Zymaris—The most profit making.

Mr MARTYN EVANS—But also, I think, one of the more innovative in IT. I do not think many people would dispute that a lot of IT innovation comes out of the United States. They certainly seem to have a lot of companies, small as well as large, that make IT software. Yet software still seems to come out of the United States despite IT software patents—does it not?

Mr D'Aprano—Just to make an observation there, most of the software which is being paid for was developed in many ways before software patents were introduced in the US. In particular, the two biggest money-spinners in the software industry are probably Microsoft Windows and Microsoft Office. They have bases in software code going back possibly 20 or 30 years.

Mr Zymaris—At least 20.

Mr MARTYN EVANS—Most of that code is kept secret. One of the fundamentals of patenting is that you make your code public.

Mr Zymaris—You make the process by which the code actually transacts public. You do not necessarily need to give the actual code itself, just the actual recipe if you like—'This is what the algorithm will do.'

Mr MARTYN EVANS—Do you suspect that this process in the United States will actually result in a significant diminution of innovation in the United States?

Mr Zymaris—The United States have one specific and major difference with regards to the Australian context. They have a large number of very, very large companies who are very well heeled, and they are the major machine driving force for software patents. The Microsofts, the IBMs and the Oracles command the lion's share of software patents. Australia does not have many of these sized organisations to enact software patents locally. We have a very different context because of that. You also need to look at where this profit base is actually vested: how much of it is vested in small to medium firms in the US and how much is vested in organisations like Microsoft, which has $53 billion in cash in the bank. It is a very different market to here.

Software patents, in the US at least, seem to benefit large organisations. The model and the process that I have seen in terms of how they are used are very specific. When large organisations collect software patents, they mostly have them there as almost a trapping point. They do not invoke the software patent and hit you over the head with it if you step on their patent. Rather, when it comes time to negotiate a deal with an opponent, they say, 'By the way, you have infringed on these 15 patents.' The other company will come out and say, 'You have infringed on these 15 patents.' They use it as a war chest against mostly large players in that context; they use it as a mechanism to get better deals.

The deal between Sun and Microsoft in the past two weeks was essentially very similar. They had both infringed on a multiple set of each other's patents, and part of this was like the two

armadas opening up the gun barrels and saying, 'Let them have it.' That is how it works. If you are big enough to play in that space, you can play in that space, but very few Australian companies can play in that space and actually accumulate enough of this armoury to defend themselves in that kind of situation. That is one of the key differences between their context and our context.

Mr D'Aprano—I think there was also a very interesting perspective written by Mr Bill Gates, who I am sure you have heard of, in 1991 regarding the software patents. I have handed you a print-out of that quote, and you might have it in front of you. Basically, Microsoft through various reasons have managed to get themselves in a position where they are possibly the biggest IT company in the world today. That puts them in a good position to pull the ladder up from behind them and halt competitors from being able to come up the ranks in the same way that they did. Patents are one of the weapons that they can use to do that.

Microsoft are not the only company in that position, but generally speaking these big companies who are able to take advantage of software patents are mostly American companies. Australian companies cannot play in that field. Most of us are too small. Without infringing on other companies' copyright, we are still able to compete if we are allowed to look at their software and say, 'Their software does such and such a job. We can write our own piece of software to do the same thing but in a different way.' With the software patents, that is not possible. Even if you create the software completely independently and even if it works in a different manner, the fact that it does the same thing means that you are infringing on that patent.

CHAIR—The summary guide to the free trade agreement that was produced by the Department of Foreign Affairs and Trade refers to article 17.9 as follows:

> The Article on Patents generally reflects Australia's current laws and it is not anticipated that major changes to the *Patents Act 1990* will be needed to implement the FTA. Australia's ability to access certain exceptions to the scope of patentability in the TRIPS Agreement and current springboarding arrangements have been preserved.

That is my understanding. If there is no change to the Australian patents within the FTA——

Mr Zymaris—If there is no change, then I think we are generally happy. Beyond the legislative side, I guess there is the processing of software patent applications within Australia. It very much depends on the stringency level and what kinds of hurdles software innovation has to leap over. From our reading of what has happened in the market—less so I guess at the legislative level—the hurdles that somebody who is going to patent software in Australia has to leap over are far, far less surmountable than the ones in the US. The US ones seem to be the most surmountable of any of the industrialised nations—definitely by comparison to most places in Europe and, as far as we know, Australia.

CHAIR—From reading chapter 17, it looks to me like there are some things related to agricultural and chemical products and pharmaceuticals but no changes to software patents.

Mr Zymaris—As I said, if it is possible to keep that as is—the current regime and the current processing of how software patents are handled—then I think we are happy. It is status quo.

Mr D'Aprano—Sorry, Mr Chair. My understanding of section 17 is that it is going to introduce software patents which are not covered at the moment.

CHAIR—Can you point to which part of chapter 17 that is in? I am happy for you to take that on notice as well, because I realise you are up in front of us.

Mr D'Aprano—If I can do that, I will. From our perspective, adding software patents is not a very major change to the patent office; it is a small change. But to the software industry, it is an enormous change. We believe it will be harmful to the Australian IT industry and harmful to the open source industry in particular. The open source industry works best when there is a free flow of information from anyone who wants to join in on it. Software patents can be used to prevent that flow of information. I will take that on notice.

CHAIR—Please take it on notice, because we are finding our way through the chapters of the agreement as well.

Mr KING—I would like to follow that up because I was going to raise something along the same lines. Having regard to the nature of your submission and the impact you say this has, perhaps there could be, dare I say it, an amendment to address that issue. Steven has said that this is only a small matter in the whole context of chapter 17. Looking at chapter 17 for myself, it seems to me to be a very broad ranging chapter dealing with international treaties and the like. If what you are saying is correct—that it is only a matter of some detail, yet a very important matter to a business such as yours, which is obviously creative, vibrant and hopefully continuing to go places—then perhaps it was something that was overlooked. It may have been something that was not fully addressed or is still up in the air—who knows. I am not suggesting that is the case, but there may be room to deal with this question between now and whenever the signing actually occurs.

Mr D'Aprano—Even if we had the power to do so, it is not our intention to torpedo the entire free trade agreement.

Mr KING—No; I think I said the exact opposite.

Mr D'Aprano—Obviously there is a lot of good in there as well. But we are concerned about certain issues and we hope there is enough flexibility for our concerns to be looked at.

Mr Zymaris—Essentially we can only speak for ourselves as a company and we have now been in existence for 13 years. Our company has involved itself in a very recent coalescence of open source firms across the country. The organisation to which our firm belongs, Open Source Industry Australia, has a couple of hundred members across the country possibly representing an equivalent number of small- and medium-enterprise organisations working in this specific part of the ICT space. One reason that we decided to create this organisation was that we felt the kinds of issues which are first and foremost in importance to our part of the industry were not really being addressed by some of the existing organisations and players. Once again we are not here to point fingers and so forth but existing bodies like the AIIA, the Australian Information Industries Association—maybe not now but for quite the most part of their history—have been more centred around some of the very large foreign companies within that organisation than the multitude of small and medium enterprises.

Mr KING—There is also another way of dealing with your problem. Under article 17.9.3, it is possible for a party to create a limited exception to the exclusive rights conferred by patents. It may be that the issue that you have raised—assuming that it does give rise to perhaps a question of hardship or, alternatively, a question of an undue or inappropriate limitation upon a creative corporation or a creative idea—would be a sound basis for providing an exception to the exclusive rights conferred by patents.

Mr D'Aprano—My understanding of these exceptions is that they have to be reviewed I think every three or four years, which brings a lot of uncertainty into the business process. If you are selling a product without knowing whether in three years time its exception will be revoked, it makes it very difficult to do business.

Mr KING—So you need certainty.

Mr Zymaris—And, as I mentioned before, if you have 1,000 or 2,000 functional units in a substantial piece of software, you might be overstepping the mark on a dozen software patents and so you would need to take this act for each of them. That is part of the opposite to 'free flow of business'.

Mr ADAMS—How much input did your organisation have into the trade negotiations?

Mr Zymaris—None at all. The organisation that I mentioned beforehand did not exist three months ago.

Mr ADAMS—What about the other organisation?

Mr Zymaris—I have not actually seen the AIIA's stance on the FTA and so I could not really comment on that. My understanding is that, over the decade or so that I have been keeping tabs on what they do, for the most part they probably would not have had any issues with anything we have raised.

Mr ADAMS—Would you say that hundreds of companies like yours, which could be affected by these changes, really did not have an input into this agreement?

Mr Zymaris—Specifcally, yes. I would also point out that nothing that we have mentioned specifically affects just open source companies. Essentially most ICT companies in Australia would be in the same boat; they do not have the necessary legal wherewithal, the machinery or the practice of vetting all their code against the umpteen thousand software patents that come over from the US. Whether they are open source based technologists or traditional based technologists, similar problems would actually arise.

Mr D'Aprano—I would make one comment on that. To be perfectly honest, we were not aware that negotiations were happening on the free trade agreement until the agreement was made. So this has taken us a little by surprise—and possibly that is just because we have not been paying attention. But now that we know about it we are quite concerned about some of these issues.

Senator MARSHALL—I want to understand the size of the industry you are talking about. You say that you have been in existence for 13 years.

Mr Zymaris—Yes.

Senator MARSHALL—Did you say that you now have 50 employees?

Mr Zymaris—We have 32. We are a slow growth company.

Senator MARSHALL—Did you say that there are hundreds of other companies in your realm?

Mr Zymaris—In this specific realm, relating to open source.

Senator MARSHALL—Are they around the same size?

Mr Zymaris—Some would be around the same size; most would be smaller. A lot would be clustering around, say, the dozen staff mark.

Senator MARSHALL—Just so I can understand the size of your business, without being too specific can you tell me roughly its dollar size?

Mr Zymaris—Our size?

Senator MARSHALL—Yes.

Mr Zymaris—We are in the million-plus range; that is a bit of an idea. A lot of the organisations would be of a similar size—in the $1 million to $2 million range. So we are not really big in terms of the medium and larger size players.

Senator MARSHALL—If the worst case scenario that you have painted here comes to fruition, what impact will it have on you?

Mr Zymaris—I guess our strategic direction is with regard to this software and this software would—

Senator MARSHALL—Would it stop you dead in your tracks or would there be a slow decline?

Mr Zymaris—Over time there would be a lessening of the quality of the software we produce and an even greater lessening of the interoperability of the software we use, and a fear would be raised. Part of the issue I think goes to the current legal situation. I am not 100 per cent sure but I believe it is something like this: if you infringe on somebody else's intellectual property in the software patents base in Australia you essentially have to make reparations on any damage you have done. However, with the US model I believe it is not only 'You have cost us $10,000 worth of sales' but also 'We want to make an example of you, so we will charge you $1 million for your trespassing on this software patent'—even if you did not realise that there was a software patent. We do not have that secondary point in the current legislation. But if we adopt the US

model I believe there is that kind of machinery in place. That will scare a lot of people off from working in our particular part of the market. It might also scare a lot of people off from working in the software market in general if they realise there are these repercussions.

Mr WILKIE—Are there companies like yours operating in the United States at the moment?

Mr Zymaris—In terms of working in this similar kind of space, yes.

Mr WILKIE—How do they get away with their patents operating as they do?

Mr Zymaris—There have been quite a number of instances of problems, although not so much on the software patents side of the equation. Thankfully and luckily we have not had many instances of software patent infringement in the open source realm, but there have been quite a number of substantial problems with the DMCA side of the equation. I am sure that you have been briefed on these already, but there have been a number of instances where code has been developed to achieve a particular aim—in one instance to play DVDs on a particular platform—but subsequently has been misconstrued as an anticircumvention mechanism and then brought to court in the US; this regards the DMCA. So the software patent side of the equation has appeared to be less of a problem and the DMCA side of the equation has appeared to be more of a problem, particularly in terms of targeting small to medium sized industry players and also just individual programmers.

There was a very famous instance about 18 months ago. A Russian programmer working for a software house in Moscow was invited to present a paper at a security conference in the US. When he rolled up he was arrested by the FBI essentially for creating software which could read encrypted PDF files. This programmer was kept in prison for six months. After that happened, quite a large number of software developers who work in our side of the industry said that they would not go to the US—'We are not going to set foot in the US because of this issue. We don't know whether somewhere somehow we haven't written some piece of software about which somebody else can pop up and say, "Well, that circumvents my technology," and the FBI might arrest us as soon as we come onto USA territory.' The Russian programmer, who had a wife and two kids, was in prison for six months. The company who had pointed him out to the FBI said a week or a month after, once they had realised the furore that had been created, 'Oh, we'll withdraw that; don't worry about it.' But by then he was in prison. He is still not in the clear but has returned to Russia, and I have not followed the case in intimate detail. But that is an example of the kind of fear that this can create amongst a particular strand, even a broader strand, of the programming community.

There are other obviously poor examples of how this can go wrong or how it can be detrimental to the software industry with regard to lock-in measures that various vendors put in place—for example, printer cartridge manufacturers who develop printer cartridges that fit into their printers; they sell you the printer very cheap but the cartridges are very expensive. So if you were in the market of creating these printer cartridges and you were a third-party supplier, you would have to essentially figure out the process by which the printer cartridge and the printer communicate to allow your third-party printer manufacturer to compete in their market space. Here, that would be totally legal to do. It is standard reverse engineering with the concept of interoperability. However, in the US that is actually illegal, so several companies have taken

other companies to court because of anticircumvention measures. Same again, there is another famous case with a garage door opening company with the remote control—

Mr WILKIE—Sorry, could I interrupt? We have run out of time but I am very interested in these cases. If you could provide us with some of those specific examples I would not mind getting some feedback from the department, particularly regarding the one you talked about with the Russian chap here and the other instances with cartridges et cetera. We need the specifics so that I can go back to the department and ask them to provide advice to us on that.

Mr Zymaris—By all means.

CHAIR—I would like to thank you for your attendance before the committee today. I had the opportunity to speak at the open source conference at the University of Adelaide in January and I was very impressed with the enthusiasm of your industry for open source software.

Mr Zymaris—That is much appreciated. Thanks for your time.

CHAIR—Thank you very much. I require that the document presented by the representatives from Cybersource at the public hearing this day be received as an exhibit and included with the records of the committee's inquiry. There being no objection, it is so resolved. I also require that submission Nos 131 and 133 to 140 be accepted as evidence to the committee's inquiry and authorised for publication. There being no objection, it is so resolved. I further require that submissions Nos 7, 22, 23 and 24 from IFAD and supplementary submission No. 15.1 be received as evidence and authorised for publication. There being no objection, it is so resolved.

[3.18 p.m.]

DRAKE-BROCKMAN, Ms Jane Elizabeth, Executive Director, Australian Services Roundtable

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?

Ms Drake-Brockman—It is probably worth me explaining what the Australian Services Roundtable is. It is a recently formed peak body for the services industry in Australia. We have existed for roughly three years, since commencement of the Doha Round of WTO negotiations, but we have existed in corporate form for less than 12 months. We have a very rapidly growing membership, from the big end to the small end of town right across all the services sectors. In theory, that is 76 per cent of Australian GDP. Currently, we have over 50 members and we are very focused on the international dimension to regulatory issues that impinge on services issues, so trade negotiations have been very high on our agenda.

Briefly, I propose today to speak to you about the chapters on cross-border trade in services, focusing in particular within that chapter on professional services and domestic regulation. I do not propose to cover audiovisual, cultural aspects or intellectual property, although these three issues are of critical concern to some of our members. The reason I will not cover those is only that some individual members will be appearing before the committee specifically on those topics. I am happy at any future stage to come back before the committee on culture, audiovisual or intellectual property, if you would like the roundtable to do so, but I am not technically equipped to do that today. I also want to quickly cover financial services, telecoms and some aspects of competition policy, investment and government procurement chapters and the absence of a chapter on temporary entry of businesspeople. Those are the areas that concern the roundtable most significantly. I just want to say that I am representing the roundtable and I have board approval to speak, but the roundtable as a group does not have a formal position on the FTA as such. My responses today will be oriented to explaining, describing and analysing the agreement as we see it impacting on our industries. Would you like me to start on some of those particular areas, or do you, Mr Chair, have particular chapters you would like me to focus on?

CHAIR—We do not have a submission from you, so why don't you give us a summary.

Ms Drake-Brockman—I apologise about that. I will table some papers today, and I will formally submit my speaking notes after today.

CHAIR—Thank you.

Ms Drake-Brockman—The chapter on cross-border trade in services is of particular importance—chapter 10. That chapter confers national treatment on most professional service providers, and that means it prevents either government placing limits on the number of service providers that can operate in a market—that means via economic needs tests, requirements for certain values of transactions, quantities of output or the number of natural persons that can be employed. National treatment is a very important thing to achieve for all service providers. To what extent is this a significant achievement? The answer to that is: to what extent we have achieved in this agreement bindings from the US for national treatment that we did not already have under the WTO General Agreement on Trade in Services. Because the FTA has a negative list approach and the WTO has a positive list approach, it requires some analysis to actually work out the answer to that question. It is clear that in the case of the United States we have achieved national treatment on half a dozen or so sectors that we did not have national treatment commitments to in the WTO—some aspects of transport, some aspects of communication, certain business services, some aspects of R&D, education; it would require me to make further analysis, but some aspects of environmental services and energy services also.

It is worth asking: to what extent also has Australia given national treatment commitments in the FTA beyond what it had given in the WTO? Again, our analysis is continuing. The only ones that are crystal clear to us now are water supply services. In the GATS we have not provided national treatment on water supply. In fact, we have specifically said that we will not make an offer even in the Doha Round in that area, but in the FTA, in effect, we have now bound water supply services. It appears that we have done exactly the same across the full range of postal and courier services, including express delivery services. So those would appear to be areas where we have entered into new bindings on national treatment.

These commitments to national treatment are limited in the text of the FTA in a number of ways but specifically through annexes I and II. It is worth me covering very briefly the fact that the qualifications to those commitments in annex I affect the extent to which state governments in Australia are affected. Both the US and Australian versions of annex I of the FTA contain extensive carve-outs and grandfathering of what you could call existing nonconforming measures at the regional level in Australia and in all states of the US—that is, this liberalisation applies at federal level only. For the services sector, that is a very considerable qualification, because, in the case of services industries, the barriers to trade do not exist at the border; very largely they exist inside the economy, at the regulatory level. So annex I severely constrains the extent to which there is any new bound commitment in this area.

In annex II there are no equivalent carve-outs, which means that both US and Australian state and territory governments are committed by the FTA not to adopt any new or more restrictive measures that do not conform. So, with respect to the future, the commitment is much greater than it is with respect to existing measures in Australia. To sum up that analysis: the extent to which we have moved in this FTA to provide new legal protection for the services industries is actually very heavily qualified.

The reason that that matters is that this legal protection which is provided by the FTA is not what you would call a market access opening. I think it is fair to say that our analysis is that the 'Cross-Border Trade in Services' chapter provides no new market access opportunities at all for the services sectors. What it does—and the only thing it does—is provide legal protection by way of bindings on national treatment to that half-dozen or so sectors that were not already

covered in the GATS, and the extension to those sectors is heavily qualified in the ways that I have explained. So the new market access opening in that chapter is not very significant.

CHAIR—Do you see a big difference between the cross-border trade in services in the Australia-US free trade agreement and in the Australia-New Zealand Closer Economic Relations Trade Agreement? There is quite close harmonisation in most of the services area.

Ms Drake-Brockman—My evidence today is based on a close reading of the text of the FTA itself, and I have not revisited the CER agreement. The way that the GATS works—and I believe that is very important—is to extend as far as possible national treatment commitments across all services sectors. That is liberalisation. The deal with the US is therefore quite similar to that with New Zealand, yes. It does achieve some sort of harmony with the way we have it with New Zealand, yes.

Mr WILKIE—CPA Australia talked to us this morning about problems with getting their members into the US, with delays of up to two years on occasions to get visas. Has that been the experience of your members?

Ms Drake-Brockman—That has been the experience of a number of different professional service bodies. That is quite consistent. That leads me to comment, if I may, on the absence of a chapter in the FTA on temporary movement of businesspeople, which the services industries were very much looking for. The Australian government also fought very hard to achieve that but was unable to do so, given the security priorities in the United States. Nevertheless, as I have said, if what we are looking for in this agreement is real, new market access opportunity by which to measure some substantial positive impact then the absence of that chapter is really a concern and a problem.

In the service industries, firstly, you have to get over the border—you have to get your visa—and, secondly, you have to be able to deliver your service. Therefore, the third aspect to this equation, which I could perhaps deal with in response to your question as well, is the section on domestic regulation in the chapter on cross-border trade and services—article 10.7. That provision is limited in scope, but the fact that it is included at all is an achievement for the Australian government because it is not something which the US government would naturally have wanted to include. It is an area where there has been a lot of difficulty in Geneva in the WTO. So there is an article on domestic regulation, but it is extremely limited. What it does, in effect, is call for a process to be established whereby the two governments can go on talking about mutual recognition of qualifications and licensing arrangements. Apart from visas, those are the issues that concern all of the professions—architects, accountants, engineers, doctors, nurses and everyone else—most. Unless their qualifications are recognised and unless they can get a visa, they cannot do business.

The FTA does not in fact provide mutual recognition of qualifications. There has been some misinformation out there about that. Today I read in the ACCI newsletter again some misinformation about that issue. What the chapter does is establish a process by which both governments can facilitate business talking to business about getting on with the process of mutual recognition. It is a problem in many areas. In the case of engineers we already have mutual recognition of qualifications, but we do not have any recognition on the licensing front. So that committee would keep trying to push the agenda over the next two years on licensing.

For some other professions we do not yet have mutual recognition. What we have got out of this agreement is a process. When we try and sum up for the professional service providers, what did we get? We got nothing on the visa front—we got a process which, if used by industry and pushed by government in the way it has been pushed to date, might deliver commercial benefit. It does not deliver commercial benefit today, but in time it might. We also got some new bindings on national treatment in half a dozen sectors, including education.

Mr WILKIE—We have acknowledged today that the CPA also has that recognition in place, apart from the free trade agreement. Although there is a process and a dialogue there, someone might have a qualification recognised in Australia which would be recognised Australia wide, but if you had a qualification recognised in the United States and you shifted across state boundaries you would then have to be reaccredited for every one of those states that you visited.

Ms Drake-Brockman—Absolutely.

Mr WILKIE—That becomes a real nightmare for people.

Ms Drake-Brockman—The same applies for lawyers and architects. Architects in Australia have to be registered in each state and, likewise, lawyers have to be admitted to the bar in each state of Australia. So it is very difficult for professional service providers to operate. The FTA does not do anything immediately about those issues, nor could it. However, the inclusion of this article does indicate to the US government that Australia is serious about pushing this envelope and it would like both governments to help industry to push that envelope. We would have to say that we are pleased to have this new process in place; it does not deliver us anything today, but we have a process.

I am talking about professional services at the moment, but I represent everything from banking, securities and telecoms and right through the professions to the IT sector. What we have in services in the FTA is largely a series of processes. For the reasons I have explained, we do not have new market access opportunities—I have explained that what we have is national treatment—but we do have a series of processes. We have a new process on competition policy, we have a process on financial services, we have a process on telecoms and we have a process on professional recognition. Of all those various processes that this FTA has delivered, the most important is the process on professional service recognition.

Mr WILKIE—Are you aware of the visa process that US professionals coming to Australia have to go through? Is it the same sort of jumping through hoops?

Ms Drake-Brockman—They have problems. One of our members is IBSA, the International Banks and Securities Association. Their members are very concerned on that front, particularly in relation to spouse employment issues and all the visa problems associated with bringing the families of business people to Australia. There are some very serious issues in terms of getting our own house in order.

Mr WILKIE—What about the professionals themselves?

Ms Drake-Brockman—It is difficult, but nowhere near as difficult as going into the US market. We would have liked the FTA to push at that front, but it simply does not address it. We

have achieved nothing on that particular agenda, into either the Australian market or the US market. What we have is an exchange of letters that says that our immigration authorities, which already talk to each other, will continue to talk to each other and will look at some of these issues. We might be able to keep pushing away. If I can, I would like to quickly mention investment and government procurement.

CHAIR—Given that it is a written document, would you mind just summarising it? We will then be able to accept it in toto as a submission.

Ms Drake-Brockman—Absolutely. I will forward it to you tomorrow. Regarding financial services and investment, one of our members, the Australian Stock Exchange, was very keen to get its screens in front of New York investors. The FTA was not a vehicle that could deliver that outcome, but it has delivered a process on financial services whereby we can go on talking about cross-border trade in services. Again, we do not have a deliverable market access outcome, but we have a process which industry will continue to use. Regarding investment, the members of the roundtable welcome investment liberalisation and the new thresholds which apply but would be very concerned if this were implemented on a discriminatory basis. It is the view of our members that this investment liberalisation is in Australia's greater economic interest if implemented, on an MFN basis, for all investors rather than for US investors only. We except that 'binding' is only for the US, but we would like to see the practical implementation as a FIRB reform across the board, whatever the nationality or ownership of the investor. Our assessment of the benefits of the investment chapter will be affected by the manner in which it is implemented.

Equally quickly, I will mention government procurement. Our IT sector members have welcomed the agreement because, particularly for the small-medium IT industry and also for the environmental services industry, the government procurement market in the United States is a very valuable one from which we have been excluded to date. However, our analysis is increasingly telling us, I suppose, three things. Firstly, it is harder to access that market than we first thought. Having US government permission to access it is a big achievement, but it is not enough to deliver a new market access opportunity for any Australian company. Working through the federal acquisitions register is a very complex process and our members have been talking to US attorneys.

Basically, the market is smaller and harder to access than we first thought. You hear lots of estimates of the market being worth over $US200 billion. About two per cent of that is currently accessed by foreign firms, 75 per cent of which goes to Canadian companies, so the bit that might be accessible to Australian companies is going to be small, difficult and very costly to access. We have been analysing this and we are concerned about the domestic impact of removing selective tendering and single source tendering. It is going to be quite burdensome for industry as well as government in Australia to implement the new regulations. Nevertheless, the chapter on government procurement is one area where we have said that we can see some positive benefits.

I would like to mention telecoms, if I may, very briefly. This is outside my personal expertise, but there are experts in this area in our membership and on the board. In essence, our view is that the government has come out of this very nobly. It is a kind of noble stalemate. There were some very negative and worrying outcomes that could have emerged from this chapter, consistent with

the line the US was pushing, and the government has largely resisted those. The Australian telecoms users in particular are pleased that we did not have a horrible outcome. We did not make much forward progress either. All the hard issues are left for Geneva, for the WTO, and we hope that our position in Geneva has been preserved by language in the chapter which agrees to disagree on the definition of value added services. We have a small concern about that. We will be very vigilant about that but, in essence, we did not push the US forward. Basically, Australian telcos cannot invest in the US because of the regulatory chaos in the US. We did not make the investment climate for Australian telcos any better, but nor did we do ourselves any damage. I think that is worth saying because the telcos area is a particularly complex one.

I would add only very briefly that the government has claimed that this agreement is all about services and investment. That has very publicly been part of the government's description of the benefits of this agreement. The modelling which was done by the CIE in advance of the negotiations actually assumed a two per cent productivity growth in the services sector. Our membership was concerned about that assumption. It was a straight assumption that there would be a two per cent gain. We have been concerned that the new modelling should incorporate some revision to the assumptions in the model. We understand that, in fact, there has been no change in the model, but at least it has been made more transparent that this assumption exists. We are not happy about an assumption that our sector will gain automatically. We have been trying to look at it analytically.

You will detect, from the comments I have made, that in general our membership feels the FTA is largely benign. Positive press releases have been put out by the Australian Computer Society and by IBSA, both of which are members. Some of our members are happy enough and feel it is benign and irrelevant enough, but there is no positive enthusiasm to match the real concern of some of our other members in the audiovisual and cultural sectors. We have a number of members in those areas—the Music Council, the Film Commission and the Australia Council, for example. I am not covering those areas.

CHAIR—We have heard from the Music Council, for example, and some of those other groups.

Ms Drake-Brockman—I just really wish to say that some of our members are unhappy. Most of the other members see it as largely benign, but are working away at how to gain from the benefits, particularly in the government procurement chapter.

Senator MARSHALL—Is there a revision of the assumption that it is too high or too low or—

Ms Drake-Brockman—There should not be any assumption. If the modelling is to determine the impact on the services sector, you should not assume that there is a two per cent positive product. You should not make an assumption; you should model it.

Senator MARSHALL—Are you saying it is a two per cent per annum productivity growth? I am just not familiar with that aspect of the model.

Ms Drake-Brockman—I have not reread closely the modelling data before coming today, but in essence it is quite clear that the model has in it an assumption of two per cent—I think—per

annum productivity growth in three-quarters of the economy. Economists in this country, and the government likewise, have largely ignored the services sectors. It is for this same reason that we are a new organisation. We have seen ourselves as a country of farmers and miners, with a bit of manufacturing, and the services sectors are new in terms of public profile. But the roundtable is not happy with this economic modelling that simply assumes that there will be a gain.

CHAIR—Thank you very much. It sounds as though, within your organisation, there are a whole range of views.

Ms Drake-Brockman—That is right.

CHAIR—I think that point has been well made. I thank you very much for your attendance before the committee today.

Ms Drake-Brockman—May I table some documents here today?

CHAIR—Certainly.

Ms Drake-Brockman—I can give them to your secretary. I am going to table our media releases from the time the FTA was announced, and our newsletters since the FTA was announced, which give some indication of the analysis I have put forward.

CHAIR—Thank you very much. Will you provide a copy of your speaking notes from today?

Ms Drake-Brockman—Yes. I will do it electronically tomorrow.

CHAIR—That would be great. Is it the wish of the committee to accept, as an exhibit to the inquiry, the documents tabled by Ms Drake-Brockman? There being no objection, it is so resolved.

[3.50 p.m.]

CILENTO, Ms Melinda, Chief Economist, Business Council of Australia

MARSDEN, Ms Freya Verity, Director Policy, Business Council of Australia

CHAIR—On behalf of the committee I would like to thank you for appearing to give evidence today. 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 Marsden—I would like to make a few comments to start with. We are very pleased to have this opportunity to give evidence in front of the Joint Standing Committee on Treaties. This is a very important agreement and an historic occasion. The BCA, as you are probably aware, represent 100 of Australia's leading companies. We are very interested in economic growth and the long-term wellbeing of Australians. We believe that trade and greater, closer global integration will offer excellent opportunities for Australia in the future and this is an important initial step in the right direction. I should clarify that the BCA are very interested in multilateral negotiations and believe that that is the best way of addressing trade issues and getting the greatest gains globally. However, we believe that bilateral negotiations provide a very important step and an important plank in liberalising trade throughout the world and that regional agreements are also important and play an important role in that.

The BCA support the WTO process, but we have been very supportive of the US free trade agreement and the opportunities which it provides. We should also say that we are very well aware that the US free trade agreement provides great potential benefits for Australia, but what it will really come down to is how our companies actually take advantage of that. Ms Jane Drake-Brockman was discussing government procurement, for instance. It will be very important that Australian business works closely with government and other consultants to work out the best ways of taking advantage of these new opportunities.

The other thing that I think is important to note is the timing issue. This is obviously a time when we have two major elections going on. There is a temptation, not only in Australia but also in the US, to just put this off and move away from this opportunity. We would discourage that. We believe that the environment is right now and that, although it is not absolutely perfect all the way through, the gains that the negotiating team over there have made and what they have achieved is very solid. It will provide us with good opportunities for the future and a foot in the door for other future gains. We believe that, if these opportunities are delayed now, we may not get another chance. We also note that there have been extensive bilateral agreements, not only in the world in general but particularly in the US. In a way, we could easily lose our place in the queue and that would lose us opportunities overall. To date we note that, in trade overall in terms of multilateral trade agreements, extensive trade—close to half of international trade—is now liberalised through bilateral agreements.

The other thing that I would like to note is what will actually happen if we miss this opportunity now and do not take the bull by the horns, if the US also just sidesteps the issue until after the election and the opportunity comes and goes. The United States is our No. 1 trading partner. It is the world's largest importer and the world's largest investor. Crucially for Australia, the US is the world's leader in technology, science, innovation, research and development. It is this area that is particularly crucial for us because it creates these dynamic benefits which closer integration with this economy can bring.

Economic integration with such an economy is vital for Australia's growth now because of its investment, its greater access to significant markets, Australia's ability to take advantage of this technology transfer and also our ability to learn from systems for expanding our own innovation, our own research and development and technology. Failure therefore to conclude this agreement now could place us in a very difficult position. This includes potential jobs forfeited and access to the rapidly growing sectors in the US economy, loss of competitive position and loss of position in the queue in terms of bilaterals and in terms of technological integration and that opportunity right now.

You have already heard from Ms Brockman about some of the benefits for the service industry. Overall that is basically talking about equal treatment with other foreign nationals. It also ensures that the US does not get to go backwards on us, so in future the US cannot actually backtrack or tighten or increase trade restrictions on areas such as services. We agree there could have been some greater market access there, but in fact the legal issues there are strong and it will definitely benefit the service sector. The service sector is a very important one for Australia. It is an area where most new jobs are created, so it is vital overall.

In manufacturing we are looking at duty-free access from day one for over 97 per cent of Australia's manufacturing exports. This is a very large and growing sector for Australia and is also very important. Investment is also very important for Australia. The increased inflows of capital to Australia will assist us with our economic growth in providing greater access to capital.

I will talk briefly about the frameworks that you have heard about. These are not gains for now but they are gains for the future. Although they are gains for the future, we should not underestimate their importance. There are three key areas which would not have the potential to be provided through multilateral organisations such as the WTO. That includes the promotion of mutual recognition of professional services, as you heard about earlier, which is very important. So, although it is not ideal and we have not got there yet, at least we have a framework in which we can move forward. We have that foot in the door.

On the closer integration of financial sectors, similarly there is a committee that is going to be established which has to report within two years. There are many areas in the financial sectors where we can achieve greater gains. These are gains for the future, but again it is a foot in the door. In other areas such as general red tape and removing of the non-tariff barriers such as standards and technical regulations, as we bring tariffs down it becomes clearer that there is a whole range of technical standards and regulations that block our companies doing well in the US. These are just as effective blockers of trade as tariffs are. We now have a system where we can move forward. For these reasons the BCA supports this agreement. We think it is something that will help growth and help potential growth in the future and provide us with opportunities

for greater integration with the global economy and with the largest economy in the world. That is all I have to say for the moment.

CHAIR—Thank you very much for that. Do you want to add anything, Ms Cilento?

Ms Cilento—I have nothing to add.

CHAIR—There is already a certain amount on the public record from the Business Council of Australia and from your president, Mr Hugh Morgan. Also I understand you are part of the AUSTA coalition. We heard from Alan Oxley this morning. I ask that the Business Council also consider making a submission to the inquiry.

Ms Marsden—We have; we have made a submission.

CHAIR—I am sorry, yes. We authorised it yesterday. Unfortunately, I do not have it in front of me. You mentioned government procurement, technology advantages of the United States and the timing of the entry into force—that is all very important—and the services as well. What about, for example, the reduction of tariffs in the mineral area—is that important for your members?

Ms Cilento—Yes, it is. We are obviously supportive of all forms of liberalisation. Our membership is quite broad. We have a number of significant mining companies which are very pleased to see any improvement in market access. So I think that is a clear yes.

Ms Marsden—I think you will find the Minerals Council has been a very strong advocate of this for precisely that reason.

CHAIR—Yes. We have a submission from them as well.

Mr WILKIE—I have a question which is opposite to that which the chair has asked a number of other organisations. What negatives do you see in the agreement?

Ms Marsden—I think this agreement provides threats and opportunities.

Mr WILKIE—What are the threats?

Ms Marsden—The threats are similar to the opportunities, in fact. Whatever we gain for our companies in the US, we have the same sorts of competition threats back in Australia. But, unlike most US companies, we already have low tariffs in a range of areas. We are a well-positioned and highly competitive economy, so we are in a very strong position to take on the US and win in this.

Mr WILKIE—So you do not have any specific examples of where Australian companies are worse off under this agreement?

Ms Marsden—I cannot think of anywhere where we are worse off. I think there are areas where we would have liked more.

Mr WILKIE—Sugar, for example?

CHAIR—They are not worse off.

Ms Marsden—They are not worse off; that is exactly right. We would have liked to have seen greater benefits in agriculture. However, we believe, given the political circumstances at the time, that our negotiating team actually got the best deal that was possible and that the gains for a number of very key sectors for the Australian economy, including services, the investment sector and manufacturing, are substantial and should not have been delayed.

Mr WILKIE—In terms of services, we have heard from most professional bodies today and in other evidence the suggestion that they already had access. They could actually tender for services. The problems were more with visa access and also qualification recognition, which has not been recognised in the agreement, except to say that we will have some continued discussions about qualifications. There is nothing in the agreement that actually does anything to sort out those problems. What additional access do we have to services?

Ms Marsden—As Ms Drake-Brockman has already pointed out, we do not have additional market access but what we do have is frameworks for improving a range of areas. We believe that is a foot in the door, an important gain and above what we would have got through, say, the WTO process.

Mr WILKIE—The recognition there is that we have not actually achieved anything really, except an agreement to have further dialogue.

Ms Cilento—To add to that, I think the movement of people and cross-recognition are very important issues and they are ones which we were disappointed not to see advanced further than they were. However, our strong view has been that the processes put in place are in fact very important and provide an opportunity for us to continue to push forward with these. And that is an opportunity that was not there beforehand.

Mr WILKIE—But, in terms of visa access, there is no additional opportunity. There is absolutely nothing that has been granted there. That was achieved in other agreements, but in the US-Australia arrangements we achieved absolutely zip.

Ms Cilento—I think we need to be realistic about the environment in which this agreement was being struck. The reality is that we pushed very hard on this and made it very clear that this is an important issue. It is one which will continue to be progressed and addressed by the Business Council here in Australia and by the government.

Mr WILKIE—In your submission you made the point that it should be a national objective to allow for that liberalisation of movement of people and business personnel. But we did not get it, did we?

Ms Marsden—No, we did not. But I think that is a case of the politics of the time, with terrorism playing a part. It is something that we are going to go on pushing for. The fact that we have had this agreement negotiated at this stage means that that issue has been highlighted, and

those sorts of things alone are significant benefits. These issues are now being discussed more openly and being pushed forward, and we are very keen to see them go forward.

CHAIR—I think this is an important issue. If we were to look at where the Australia-New Zealand Closer Economic Relations Trade Agreement was in 1983 and at where it is now, I suspect we would find there have been incremental changes across all of these things, including mutual recognition of professional qualifications and so on. We will obviously be asking the department about this, but, with all of the extra things that are in the services area—frameworks, discussion groups and financial services—do you think there is an opportunity to see perhaps not as quick an increase as we have had with a close, very similar neighbour like New Zealand but some incremental changes on the services side?

Ms Marsden—Yes, I think that is true. A number of frameworks are officially set up in side letters in the agreement, and they have official standing. Within these frameworks, these committees have to report back within set time lines. It is important for business to interact with that and put pressure on the Australian government to keep certain things on the agenda. It is also important for us to highlight where we have problems, where the red tape is actually causing issues. But there are processes there, which we believe is a very good start. We would have liked very solid commitments, but we believe that this is a good start and that it is ahead of what we would have got from the WTO process.

Mr WILKIE—Ms Drake-Brockman made some comments, which you have quoted. In relation to services, I think the summary was that many of their members believe that the agreement is benign—so they actually achieve nothing out of it—and there is no enthusiasm in many circles of the membership. So, in the overall context, from what they have said, they are not really better off.

Ms Marsden—We believe the agreement provides benefits for Australia's economy overall.

Mr WILKIE—What I was quoting there was specifically to do with the services sector.

Ms Marsden—Our view is that there are systems from which we will get benefits in the future and from which our members believe there will be benefits.

Mr WILKIE—Has the Business Council done any economic modelling? You are saying that the economy will be better off overall, but what are you basing that on? Has any real economic benefit analysis been undertaken?

Ms Marsden—We are looking at the academic research that is being undertaken for closer global integration overall, we are looking at the fact that we are dealing with the world's largest economy and largest investor, and we are looking at the opportunities.

Mr WILKIE—Often a small economy's greatest threat is its biggest competitor, and, as you would know, that would happen with any business. What modelling have you done to demonstrate that we are better off? It is fine to make that statement, but I want to know what you are basing it on.

Ms Cilento—We have not undertaken any of our own individual modelling. However, the assessment we would make of the modelling that has been done is that, if anything, it provides the lowest best guess of the benefits. The reality is that these trade agreements, as they are called, are about closer, deeper integration with other economies. The US economy is large but it is also very dynamic. Some of the benefits that flow from information technology and innovation are gained from being able to participate in that economy, and they dissipate over a distance. Because we will be able to more deeply integrate into that economy, we will develop and derive dynamic benefits as a result. The ability to model that is very difficult. Our view is that those dynamic benefits that stem from deeper integration, from harmonisation and from some of the legal things—which sound very boring and dull and are almost impossible to model—will be positive and will multiply over time. My sense is that, if you look back after 10 years at any of the estimates of what a trade agreement would bring, it would be very clear that those benefits would be significant and that they would be significantly larger than had been estimated in the first instance.

Mr ADAMS—Do you have the information from 10 years back? Is there anything to prove that? You are constantly saying, 'We are going to get there and it is wonderful,' but that is pie in the sky; there is nothing for the people to see where the pluses are. You talk about looking at something that happened 10 years ago, but have you done anything on what happened 10 years ago?

Ms Cilento—Looking at the progress of trade liberalisation that Australia has embarked upon over the last 10 or 15 years, the initial reaction has always been that we are not going to be able to compete and that we are going to lose market share and not be able to explore new opportunities and the like. Yet the reality is that trade has grown, we have increased market share in important markets with which we have liberalised, and we have created new jobs for jobs that have been lost. It is our strong view that that has been a key plank in Australia's economic performance over the last 15 years, which has been remarkable.

Senator MARSHALL—When the Productivity Commission studied 18 existing preferential trade agreements it did not indicate any of those things.

Ms Cilento—The issue with preferential trade agreements is the risk of trade diversion. My recollection is that the Productivity Commission's report was fairly heavily caveated in terms of the ability to measure many of these things. My understanding of its work is that the lower the tariff levels are to start with, the less likelihood there is for trade diversion. As Ms Marsden said at the outset, we are in no way trying to argue that a bilateral deal is preferable to a multilateral deal in any way, shape or form; but we are being pragmatic about what we see as the capacity to derive significant gains through the multilateral process at this point in time. It is our view that, on that basis, the bilateral deal provides significant benefits for Australia. We believe that the bulk of those benefits are quite difficult to model and put a dollar sum on because they are dynamic, and that is part of the problem with the increasing complexities of innovation and IT and all those types of things and, indeed, the services sector. But it is our position that, given that we are starting from a position with relatively low protection, there are benefits to be had from this preferential deal. It is a deal that is consistent with the WTO and the GATT framework and we think it is positive for Australia.

Mr WILKIE—At the end of the day a free trade agreement may have been great. But we did not get a free trade agreement; we ended up with a trade agreement. Is that the view of the Business Council? It is the view of many economists.

Ms Cilento—Our view is that we ended up with positive outcomes.

Mr WILKIE—Given all its barriers would you call it a free trade agreement, or is it a trade agreement?

Ms Cilento—We think it is a free trade agreement. We think it is an agreement that achieves significant gains across a comprehensive front.

Mr WILKIE—Even though you would argue economically that there should not be any barriers to trade and there are a lot in this agreement.

Ms Cilento—We would love to see a world with no barriers to trade but we are also pretty pragmatic about the capacity to achieve gains, and we think it does that: it gives us more momentum on free trade and delivers positive benefits to Australia and Australian businesses.

Mr KING—You identify those positive benefits as more potential than actual, and I think you use the phrase 'foot in the door' in relation to several service industries and other areas of business activity. You also identify a process which will occur in the next couple of years. I am more interested in knowing precisely what the Business Council of Australia is doing to identify those opportunities for various business sectors in the coming years so that Australian business is not left behind in the inevitable, but important, competition that will occur.

Ms Marsden—That is a very important issue. It is not something that we have taken head-on at this stage, but we are very aware that what we are dealing with are potential benefits and that business needs to take a very proactive stance in addressing these types of competition issues. The Business Council has established a new task force, which deals with trade and international relations. That task force will look at a range of issues, including the opportunities from the US free trade agreement and also opportunities from other bilaterals or potential bilaterals such as China.

CHAIR—Are companies like Westfield and Lend Lease, which have significant American investment, members of the BCA?

Ms Cilento—One of them is. Many of our members would have activities in the US and obviously would be closely integrated with the US in many ways. We are certainly getting that sort of input from members. Obviously they are the largest companies in Australia. They account for roughly 30 per cent of our exports. They are certainly very experienced in accessing international markets.

CHAIR—There being no further questions, I thank you very much for your submission and for appearing before the committee today.

[4.15 p.m.]

TERRY, Ms Alison Sara, Executive Director, Corporate Affairs, Holden Ltd

CHAIR—I would like to welcome Ms Terry from Holden. 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 Terry—Yes. Firstly, I would like to apologise for not submitting our written submission in the time available. I have hard copies with me and we plan to email it to the secretariat first thing in the morning.

CHAIR—We might accept that document as a submission to the inquiry. That is moved by Senator Marshall and seconded by Mr King. There being no objection, that is so resolved. We will circulate it so we have it in front of us as well. Please continue with your introductory remarks.

Ms Terry—Good afternoon and thank you very much for the opportunity to appear before the committee today. At the outset, I would like to state that Holden has been supportive of the government's efforts to increase market access for Australia's automotive industry through bilateral trade agreements, most recently with Singapore, Thailand and now the United States. For Holden, market access is critical for our future success, as it underpins our aspirations to grow through increased exports. As I will further outline today, we support the outcomes of the negotiations on the US free trade agreement and see this, firstly, as beneficial for the Australian economy overall as well as providing significant opportunity for the Australian automotive industry, including both vehicles and components.

By way of background for those on the committee who may not be familiar with Holden's operations, we currently employ approximately 9,200 people, mainly in Victoria and South Australia, and we manufacture vehicles and engines for sale in both domestic and export markets. Last year, we produced approximately 153,000 vehicles at our facility in Elizabeth, South Australia, and about 134,000 Family II four-cylinder engines at our Fishermans Bend operations here in Victoria. We have also started production at our new global V6 engine plant and in 2003 produced 2,500 engines. That plant moves into volume production this year. We also import vehicles for sale in the domestic market, with our total sales last year being just over 175,000 vehicles in what was a record Australian market of about 910,000 vehicles.

In terms of exports, we have increased our export activity quite significantly. In 1998, we exported about 3,000 vehicles, which was essentially to New Zealand. Last year, our vehicle exports exceeded 36,000, and we expect that they will exceed 50,000 this year. As most people will probably be aware, this is our first full year of exports of the Holden Monaro as Pontiac

GT0s to the United States, which was quite a significant export program in our history. So we have certainly evolved over the last few years to a company that is much more global in its outlook and its operations.

In 2002, Holden exports contributed $1.1 billion to the balance of trade, and we see this increasing substantially with the full production from the V6 plant as well as our ongoing US and other export programs. Our current export markets include the Middle East, the United States and New Zealand, with lower volume exports to Brazil, South Africa and some of the ASEAN markets. The most recent program announced was the export of our long wheel base vehicles—the Statesman and Caprice—into Korea.

Looking at the Australian automotive industry, our main competitive challenge lies in the fact that our market here is very small by global standards. Although we have experienced record sales and all of the industry commentators are predicting another record year, it is still small in the overall scheme of things. Historically, we have had limited access to global markets, which has meant that it has been difficult to grow purely by relying on the domestic market. To put it into context, of every 1,000 vehicles built around the world, only seven vehicles are produced in Australia.

As opportunities are limited, we are becoming increasingly reliant on export markets for growth. Trade barriers are being progressively removed, and Australia is now among the most exposed in the developed world. I should clarify that. I think the committee members would be aware that from 1 January 2005 the tariff will drop to 10 per cent and further tariff phase-downs are scheduled for five years after that. While the local manufacturers' share of the domestic market has been declining as tariffs have declined, the industry has actually restructured and become more competitive by creating opportunities for growth through export. Of course, market access to the large economies, whether they be developed or developing, is crucial to keep that growth going. The US is currently the largest automotive market in the world, and we believe the free trade agreement provides opportunities for the Australian automotive industry to grow by taking advantage of that.

CHAIR—As we have the submission in front of us, we will take it as read. We would be interested in hearing any specific issues for Holden on the Australia-US free trade agreement.

Ms Terry—I can certainly sum up that Holden's position on the free trade agreement has been at three levels. One is that we have taken the view that it will be beneficial for the Australian economy as a whole. If the Australian economy is growing, per capita income will benefit the automotive industry and Holden. We believe there are specific opportunities for vehicle exports to increase and for two-way trade between the US and Australia to increase. We are also confident that for the component industry there ought to be increased opportunities for export into the US market. Overall, we are supportive of the outcome. We think that the tariff outcome in particular was an ambitious one, and we are looking forward to having the agreement come into force.

CHAIR—Thank you. Does the abolition of the 25 per cent tariff on light commercial vehicles into the United States present an opportunity for your company? Is that something that you would look at?

Ms Terry—It certainly presents an opportunity, though there are perhaps a couple of caveats to that. But there has been a fair amount of publicity around Holden utes going into the United States. Obviously with the 25 per cent tariff that simply was not feasible prior to these negotiations. Whether such an export program goes ahead will depend on a whole range of factors. But removal of the tariff takes away an obvious first barrier.

Mr ADAMS—What is your capital base? Where does your capital come from?

Ms Terry—We are a wholly owned subsidiary of General Motors.

Mr ADAMS—So we are putting this Pontiac, which is our Monaro, into the States. It seems to be going well. If that goes well, why will they not build that in the States?

Ms Terry—That is a possibility. What is happening in the global automotive industry at the moment—and this is not confined to General Motors—is that manufacturers are continuing the path towards what we call global platforms, which is where you do not see so many vehicles which are specific to a market as in the past.

Mr ADAMS—Is it moving towards a global car?

Ms Terry—Whether there will ever be a global car remains to be seen, because you still have consumer preferences and specific market demands, but certainly there is every reason for the piece of the car that is not seen by the consumer to be global.

Mr ADAMS—Why would that be?

Ms Terry—Primarily because of reduced cost and global sourcing.

Mr ADAMS—So the vehicle will be cheaper for the consumer?

Ms Terry—Yes.

Mr ADAMS—Did we make 153,000 vehicles last year?

Ms Terry—Yes.

Mr ADAMS—And we imported 175,000 vehicles?

Ms Terry—No. We sold 175,000 vehicles.

Mr ADAMS—Was that with the export component?

Ms Terry—Sorry. We sold 175,000 vehicles in Australia. Our import was, at a guess, about 50,000 to 60,000 vehicles.

Mr ADAMS—Was that the Astra and—

Ms Terry—It was the Barina, the Astra, the European four-cylinder vehicles and the light commercial range, which mainly comes out of Thailand.

Mr ADAMS—Can you get that total figure for us?

Ms Terry—Yes.

Mr ADAMS—I know the Thailand trade agreement has put pressure on components manufacturers. I think it is Holden that is looking at sourcing windscreens out of Thailand. Now there is a free trade agreement there which I think puts 100 jobs at risk in Australia. Do you think much of that will go on if this free trade agreement goes on in its present form?

Ms Terry—Are you talking about the agreement with Thailand?

Mr ADAMS—No, the US one.

Ms Terry—The way that we have looked at this is that there are opportunities in both directions. We may take advantage of global sourcing from a US based supplier, but an Australian supplier can then have access to a bigger market. There are already good examples of Australian component manufacturers selling into the United States even before this agreement.

Mr ADAMS—Regarding the design feature of the cars made in Australia, we do not have the design facilities here, do we?

Ms Terry—Yes, we do.

Mr ADAMS—We design the car right through here?

Ms Terry—Yes. Holden has a beginning-to-end design, validate and engineering capability. We are one of General Motors' design and engineering centres around the world.

Mr WILKIE—If we go down the path of having a world car and say, for example, the Monaro takes off in the United States and is manufactured there, and given there are no tariffs here and there is a global market, what would prevent Holden moving its entire plant and operation offshore to the US and then exporting the vehicles back to Australia?

Ms Terry—You always have logistics issues. General Motors has invested substantially in the plant in South Australia.

Mr WILKIE—We are talking about the long term.

Ms Terry—With regard to the long term, we believe that we have the capability to manufacture competitively from Australia for export to world markets. Particularly being located where we are in the Asia-Pacific, when you look at industry growth trends you see that all of the growth over the coming decades will be in our neighbouring region, so we are very well located to take advantage of that. We have an excellent skills base and, building on the earlier discussion, we have the design and engineering capability, and we are competitive.

Mr WILKIE—We heard about the amount of overseas trade Holden has. How many of those vehicles actually go to the United States?

Ms Terry—Of the 50,000?

Mr WILKIE—Yes.

Ms Terry—The full-year Pontiac program is approximately 18,000. This year we are expecting to slightly exceed that. We will sell about 23,000 or 24,000 to the Middle East, 5,000 or 6,000 to New Zealand, and the rest to the smaller markets.

Mr WILKIE—I was interested in the US market because that is what we are talking about with this agreement. So it is about 18,000.

Ms Terry—Yes.

Mr WILKIE—Thank you.

Senator MARSHALL—Following on from that, the committee has been told that the head of General Motors North American operations, Mr Bob Lutz, pointed out to the Detroit press that, if the Australian manufactured Monaro achieved sufficient volumes and market acceptability, production would be shifted from Australia back to the US. Is that the case?

Ms Terry—Those comments were made at the New York show, I believe, very recently. It is certainly the case that General Motors operates as a global organisation. The domestic Monaro has always been what we call a niche, brand leader type vehicle. We will sell only between 2,000 and 3,000 domestically this year, obviously with 18,000 going to the United States and small volumes to other markets.

Senator MARSHALL—Would that be considered a sufficient volume in the States to move production? I am just trying to work out what level of exports to the States we need to achieve before we lose the whole export market.

Ms Terry—That is the way things work when you are working as a global operation. General Motors in the United States have a number of brands under which they sell vehicles. Obviously with a 17 million, 19 million, or whatever it is, domestic market, their domestic production would always be far in excess of ours if that decision were made. The view that we have taken is that, when you go into an export program or, indeed, a domestic program, it is only ever for the life of that model, which might be seven years these days for an all-new Commodore, for example. Nothing is forever. We have a manufacturing facility that has a certain capacity. Our business view would be that, if Monaro were to shift production to the United States or wherever, that would then free up capacity for us to manufacture another vehicle which the US or China were not making.

Senator MARSHALL—Which may or may not be acceptable or able to be sold in sufficient quantities.

Ms Terry—That is right. There are no guarantees in our business.

CHAIR—Are there any further questions?

Mr KING—As I understand it, Holden, in the not too recent past, made a commitment about remaining as a manufacturer in Australia. What was that commitment?

Ms Terry—I am not sure.

Mr KING—Was it for 10 years or 15 years?

Ms Terry—I do not think we have ever made that sort of statement definitively. Certainly during the Productivity Commission review last year, we welcomed, along with the rest of the industry, the decade of certainty that the government had committed to. But we are a wholly owned subsidiary of General Motors and, to be honest, that would not be the sort of commitment that Holden would be able to make.

Mr KING—The rules of origin do not appear to cover all automotive component parts. I think you made a comment about that in your statement. Do you know how that came about?

Ms Terry—I am just not sure of the process. One of my colleagues is from our customs group and he is very much the expert on rules of origin. Would you like to take it offline?

CHAIR—We would be happy to take that on notice. Are you happy with that, Mr King?

Mr KING—Yes. That seems to me to be a bit of a chink in the consistency at least in relation to dealing with that problem, which I think you identified as one of the important non-tariff barriers that have been addressed by the FTA. That is all I wanted to ask.

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

Resolved (on motion by **Mr King,** seconded by **Mr Adams**):

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 4.35 p.m.