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JOINT STANDING COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Tuesday, 4 May 2004

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

Senators and members in attendance: Senators Bartlett, Kirk, Marshall, Mason and Tchen and Mr Adams, 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 9.06 a.m.

DAVIS, Mr Lee, Senior Economist, Centre for International Economics

STOECKEL, Dr Andrew, Executive Director, Centre for International Economics

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. Today's hearing in Canberra is the seventh public hearing of the committee's review 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. It was advertised on the committee's web site on 10 March and 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, 180 submissions have been received and are available from the committee's web site. Details are available from the committee secretariat. The committee has heard evidence in Sydney, Melbourne, Hobart, Adelaide and Perth. Yesterday the committee began its hearings in Canberra, and evidence in Brisbane will be heard tomorrow and in Sydney on Thursday. The committee will hold a further public hearing in Canberra on 14 May.

To commence the day's proceedings I welcome representatives from the Centre for International Economics. On behalf of the committee I 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. I invite you to make some introductory remarks before we proceed to questions.

Dr Stoeckel—I thank the committee for inviting us to appear. With me is one of the brains behind the study that we did, Lee Davis. I take it you have a copy of the study we have undertaken on behalf of DFAT. There are a couple of points I will go through quickly before we get into the main findings of the study. Firstly, all the changes that are here are changes from baseline. That means the change from what you would expect to see otherwise. So, if there is a plus, that means it is greater than otherwise would be the case. That is not to say that something would increase, because, if there were a down-trend in some industry or whatever anyway, it would result in a change.

Next, our study is based on industry case studies—they are in chapter 9—and incorporates comments from industry and other stakeholders. The industries in the analysis basically cover all major sectors of the economy. Another issue that is often a point of confusion is that this is an economic report; it is not accounting. There are a lot of accounting identities in this study in the modelling exercises, but at the heart of an assessment like this is the behaviour of people: people change their behaviour in response to changed incentives. If we take off tariffs and do this and that—change prices—people behave differently, and there is legitimate professional debate about just how responsive people are to changed incentives. This is where you get all these economist jokes: on the one hand this, and on the other hand that, and so on. But within the bounds, the right way to represent that legitimate debate is by sensitivity analysis.

I will be referring you to chart 3 as we go through. If you look at chart 3 now, you can see that it could be quite feasible to come up with ranges between $1 billion and $7 billion per annum 20 years out. But you can see from the shape of the graph where we think the most likely annual effect from the agreement might be in 20 years time. To get that sort of profile, we have basically done tens of thousands of simulations covering the full range of parameters and assumptions that you could believe. Another point is that we have presented the results in chart 2 in the components. Different people have different views on, say, the effects of investment liberalisation or dynamic productivity as a result of trade liberalisation and so on. By separating those different components, people who say, 'I don't really believe those numbers,' can simply leave them out if they so wish.

To quantify these effects, we have used two frameworks. One is a broad macro-economic framework, developed by Professor Warwick McKibbin and Peter Wilcoxson, called the G-cubed model. This framework has a fully-fledged financial sector integrated with a real sector of the economy. It has borrowing and lending behaviour, money, bonds and so on. Because it can track a dynamic path, we use it to trace the effects over time. The problem so far is that that model has only 12 sectors, and we would like to drill down and get a bit more detail about industries to answer questions such as what happens to beef and so forth. So we have also used the GTAP model, which is basically a real model. It has no financial sector and no borrowing and lending behaviour, and it presents a snapshot at a disaggregated level.

Very quickly, I will highlight some of the major findings. As I said, the agreement has effects over time, so some barriers to trade are phased out over two decades, as you know. Also, there is some investment liberalisation. But any extra investment does not occur all on day one in the real world; it occurs over time. That is why you get this time profile and why there is no one annual number that fully represents the real impact of the agreement. Sure, the media like to get an annual number; it makes it very simple. But the most important chart in our report, really, is chart 2. They say a picture is worth a thousand words. Chart 2 is reporting GNP. People are not used to reporting GNP. When the budget comes out next week, people will be talking about GDP growth being expected to be this et cetera. But GNP takes accounts of payments to foreigners and earnings from abroad by Australians, so it is a better measure of welfare, particularly when you have investment. Investment comes in and is going to add to activity in this country but not all of that gain is ours. We have to share a little of the reward with foreigners, and so GNP is a better measure.

The right way to represent the full gain to Australia from the profile of benefits in chart 2 is the discounted present value, which is in chart 5. That is also a very important chart. If you like, you could take that $52.5 billion gain over 20 years and derive, crudely, an annual discounted present value equivalent. You divide that figure by 20, and so the average annual effect is $2.6 billion. The media, of course, will focus on the GDP maximum, which rises to $6 billion but effects start smaller. On average, around $2 to $3 billion per annum is a good representation of those gains. The other point I would like to draw attention to is the importance of quantification. As I note in the last paragraph of the study:

... 'Quantification clarifies things that qualitative results leave fuzzy'.

The point about these quantitative results is that they are contestable and they will be contested; they already have been. That is a good thing. That generates the debate et cetera. It allows us to

sharpen exactly where the point of difference is. We can ask: if you disagree with this—and that is fine—where is the point of difference and what do we learn?

Even in this quantification, there are still some parts that we could not really get a handle on—in fact very few economists do. One is on the effects of bindings on services. Under the agreement, a lot of our services trade is now bound and so forth. We have also achieved a greater certainty of the investment climate within the United States. For Australian investors investing in America, that investment climate is now more certain. We have not got a handle on that either.

Let me turn to investment. On chart 2 you can see that investment makes the biggest contribution to overall welfare. That reflects the fact that under the agreement we have agreed to lift the threshold on US investments in non-sensitive sectors in Australia from $50 million to $800 million before seeking regulatory approval. By taking those investment barriers off, we basically lower the cost of capital in Australia; we give ourselves greater access to lower cost capital. That would be very controversial. Because it is so big, that is going to generate the greatest number of eyebrows being raised. In our report, we go through an intuitive explanation of why economies are very sensitive to the cost of capital. For example, in the Asian crisis, there was a change in the risk premium of about 500 basis points and countries like Indonesia and so on had a 40 per cent drop in GDP. Countries are very sensitive to changes in the cost of capital.

Also, this is a very complicated model with millions of equations. We have heard some commentary that this is just a 'back of the envelope calculation'. Because these models are difficult for a lot of lay people to get a handle on, we often do a back of the envelope calculation. We say, 'Crudely what sort of number could we expect?' We go through it, and in appendix C we have presented a very intuitive explanation of why you could expect to see such a big gain. There is very little published on the gains from investment liberalisation; there is very little analysis of that. It is terribly difficult.

I will try to give a more intuitive explanation of why this investment can be so important. Firstly, the OECD reports on investment barriers around the world. Figure 4.1 on page 26 highlights the foreign direct investment restrictions in OECD countries. It uses Productivity Commission methodology, which is an advance on the World Bank's methodology, for measuring the barriers to investment. In chart 4.1, you can see that Australia is down there with Turkey and Mexico, with pretty restrictive barriers to foreign investment. Look how far away we are from the United Kingdom. The United Kingdom is way over there on the left; it is probably one of the most open economies to foreign investment. So what we have done is take away part of those restrictions. We have liberalised those on a bilateral basis so far with the United States. A decision before the government is whether to make those changes on a MFN, or most favoured nation, basis because (a) there are gains for Australia doing that and (b) it is in our interests to do so and is practically far simpler.

We know that investment restrictions matter. We know that, when economies around the world have opened up and removed restrictions on foreign investment, that has had a powerful positive influence on the economy. In here we have tried to work our way through. There is very little known on that and we have put in a very modest five basis point reduction in the equity risk premium—which is 0.05 percentage points—yet it still has this very large effect, because it affects the cost of capital throughout the economy. We have represented again a whole range of those input assumptions there. So if you think, 'These restrictions don't really do much,' then

you go to chart 3—as I mentioned before, which is that sensitivity analysis—and that would put you towards the left-hand end. Other people could argue, 'We think these are terribly important,' so they might be on the right-hand end of it.

The other area that is sort of important is in terms of the benefits to employment, which is another key focus. People always talk about jobs and so forth. You probably need to go to chart 6.7. What usually happens in an employment market is that the gains to workers come in two forms: one is extra employment and the other is higher real wages. You can see in chart 6.7 that what we normally observe in an economy is that real wages are sticky: when things are going good, it takes a while before wages build up. In the interim before they build up what happens is that there is additional employment. Initially, a lot of the gains come through additional employment and then gradually real wages pick up. Eventually, the additional employment that the economy goes back to, 20 years down the track, will be its natural rate of full employment—where it was to start with; back to baseline. But real wages would be permanently higher and, as we have indicated in the chart, at around 1.4 per cent above what they would otherwise be. That is how the gains are distributed over time between, first of all, employment growth and then, later on, higher real wages. Why don't I leave it there because I am sure you have a heap of questions. I have probably taken enough of your time.

CHAIR—Thank you very much. In charts 1 and 2 and looking 10 years out, we have a figure of about 0.7 per cent or $6 billion for the increase in GDP and $5.6 billion for the increase in GNP. What is it if we break down those three components: trade liberalisation, dynamic productivity improvement and investment liberalisation?

Dr Stoeckel—Lee might have those numbers. Crudely, you could eyeball those at 2015—

Mr Davis—I think trade liberalisation is $1 billion.

Dr Stoeckel—Yes, trade is about $1 billion. What was dynamic, Lee? Do you have that?

Mr Davis—I thought we actually did have that. Merchandise is $1 billion.

Dr Stoeckel—Roughly, investment would be something like three and dynamic productivity would be something like a quarter.

CHAIR—Three plus one plus a quarter is less than six.

Dr Stoeckel—That is a rough calculation; I was reading from the graph.

CHAIR—You are eyeballing it. Do you have those figures?

Dr Stoeckel—Yes, they are certainly in the model. We have been accused of having too many numbers in there, as it is.

CHAIR—It would be helpful to have the actual figures. In chart 3, looking at this with the sensitivity analysis, the most commonly occurring number would be about $3 billion. Is the $6 billion a weighted average?

Dr Stoeckel—No, the $6 billion is an annual figure basically at 10 years out. Why 10 years? Everyone thinks in terms of a decade and so forth. Again, if you focused on the 20-year figure, people would say that it is in the never-never, that it is giving gains way in the future. The best way to represent gains is to report what happens every year. They start small, they grow and they reach that peak at about $6 billion. Chart 3 is showing things 20 years out. Chart 3 is reporting sensitivity analysis more akin to the right-hand side of that chart 2—that is after all liberalisation, because it takes 18 years for the beef effects and so forth to work through. It waits for all effects and that is what it shows. As I indicated on the net present value in chart 5, the sum of that 20-year gain, if you like, is roughly $60 billion. If you divide that by 20, crudely, you have an average annual equivalent of $3 billion. But that disguises a lot of information, I think, because things start small, grow, get big and then settle down at some higher level in time.

CHAIR—Thank you.

Mr WILKIE—You have suggested that the bulk of the benefits to Australia of the proposed US FTA come from easier investment flows between the two countries. I want to quote a recent current issues brief from the Parliamentary Library and get some feedback from that. It says:

> However, it would appear that the Australian Government was not able to win any concessions for Australian investment in the US, or at least none that it thought worthy of announcing. That may seem unfortunate given the problems experienced by foreign investors in the US. For example, the European Commission (EC) publishes an annual report on US barriers to trade and investment. In that report the EC has expressed concern about 'the current significant restrictions to foreign investment.'

Therefore, wouldn't the benefits here actually accrue to the US?

Dr Stoeckel—The benefits are to us. By increasing the cost of capital over and above what we could borrow, that has a deleterious effect on us. There are gains in the investment climate in America—Lee might want to add to that. You can see in chart 4.1 on page 26 where the United States does have some barriers to foreign direct investment in the United States. Australia was able to win some concessions on increasing the certainty of the investment climate within the United States, but we have not measured those here. What we are measuring here is specifically the gains to us from reducing our own barriers to foreign direct investment.

Mr WILKIE—We have not looked at concessions from the US in the analysis?

Dr Stoeckel—No, we have not as yet.

Mr Davis—The only change in terms of Australian investment in the US is greater certainty so that the US cannot bias against Australian investment and so forth—non-nationalistic types of treatment. That includes greater legal protection and avenues for recourse if the US government say, 'We are going to take back this factory you have just built' and so forth. So there is greater certainty, but we were not able to get an estimate of how that benefits Australians investing in the US. To the extent that Australia is able to invest more easily in the US, that will firstly benefit the US in the same way as US investment in Australia benefits Australians. But it will also increase Australia's gross national product because we will invest in the US, the US has to pay for the servicing of the debt that we have invested and so forth, and there will be greater gross national product in Australia. But we were not able to get a handle on the benefits to

Australian investors in the US. All we could really get a value for was the loan of the equity risk premium for investment in Australia.

Mr WILKIE—On the basis of the figures in your report, a reduction of six basis points leads to an increase in GDP of about—

Dr Stoeckel—Five basis points.

Mr WILKIE—Okay. It leads to about 0.4 per cent of GDP. On that basis, the last two interest rate increases by the Reserve Bank should have lowered GDP by 3.3 per cent; although another couple of movements like that and the GDP is down 6.7 per cent. Is GDP really that sensitive to interest rates?

Dr Stoeckel—No, it is sensitive to risk and changes in the risk premium. It is not as sensitive to nominal interest rates. When you change the risk premium, you are changing the difference in return between equities and a risk-free investment such as bonds. That difference is what people are sensitive to. We observe around the world that, when the equity risk premium changes, there are enormous changes in GDP. You can run through simulations of the September 11 terrorist attacks in America, and you can see the big changes in the equity risk premium in the United States. You can trace that through directly to very large falls in GDP.

Mr WILKIE—So it is not specifically linked to interest rates.

Dr Stoeckel—No, it is not specifically linked to the level of nominal interest rates. It is a reward for risk, basically. If you reduce risk, it is like a free lunch. It is the closest thing economists can get to a free lunch. If you can make the climate more friendly to investment and certainty, then you are reducing risk. That is a different kettle of fish from changing a 'one-off' nominal interest rate, which is really the price of time—the privilege for borrowing and lending, which is a different animal.

Mr WILKIE—Yesterday, the Cattle Council of Australia informed us of an analysis they had commissioned from your organisation. Why was that assessment not included in the analysis that you reported to government?

Dr Stoeckel—That assessment was undertaken for the Cattle Council and it did not incorporate the effects on other sectors, so it was basically a partial result. In the economic modelling game, basically everything else is held constant, but the whole purpose of this agreement is to change everything else—the price of dairy cows, milk and so forth. The right analysis to do is through a more general framework—what we call an economy wide, general equilibrium assessment—so that if beef expands it has to do so at the expense of dairying, wheat or wool. You cannot produce more of everything. There are limits on how much land there is, how many people there are and so forth, and we take formal account of that, otherwise you tend to get too big a gain. That was a bit double-dutch, but—

Mr WILKIE—I understand that, but you have quoted a couple of case studies in the report. Dairy and beef are a couple of them, but there are no figures in there.

Dr Stoeckel—The numbers for beef are reported in chapter 7 under 'bovine meat products' and 'bovine cattle' in the table on the impact on the different sectors. We are reporting the numbers for that industry through those two industries. That is where they are, but it is the same analysis. We have used the same inputs in terms of working out what the barrier removal is for the beef industry. Some of the words in the case study and in the description of the effects on the beef industry are the same as those used for the MLA analysis. Does that help you?

Mr WILKIE—Yes.

Senator MASON—Regarding table 3 in your submission, you say:

> ... the most probable range of estimates indicates that there is a 95 per cent chance the extra welfare of Australians could lie between $1.1 billion and $7.4 billion per annum in 20 years time once all liberalisation and effects have worked through.

In terms of the modelling—and I know nothing about economic modelling—you say underneath table 3:

> *Data source*: CIE calculations based on GTAP and G-Cubed modelling simulations.

What does that mean?

Dr Stoeckel—That means we were in this unpleasant world where we had to use two frameworks. We used the GTAP model because it can handle and print out a probability distribution of the range of different assumptions of behaviour that people will respond to—economists call them 'elasticities'—in the model. If people believe that Australia has a lot of market power in world markets, we can reflect that. If some people think we do not have any market power in world markets, such as our experience with the wool industry when we tried to withhold a wool price and it came to disaster because we did not have the market power we thought we had, we can reflect that too. One model can print them out automatically. It is in-built in the software. The other model does not have that facility, and we have to work our way through that. So we have added those two results. In an ideal world, we would use a G-cubed model with the financial sector and real sector at 50 or 60 sectors of disaggregation. We are not yet there. That is the ideal world we are pushing to, and we will probably be there in six months time. But that animal does not exist, so we have had to use two frameworks.

Senator MASON—I understand that. Your conclusions are very important within the context of this debate. My final questions are about the modelling and the outcomes that you have prophesied here. Is that the subject of much professional debate? Is this a standard modelling procedure or, if we go to another economist, will we get another entire set of data? How definitive is your data?

Dr Stoeckel—If you went to 10,000 economists and did it 10,000 times, we think you would get a range of estimates—something like what is in chart 3.

Senator MASON—Okay.

Dr Stoeckel—There are people who do not even believe in economy-wide models, and some people do not even believe in quantitative analysis—that you can even quantify these things. But, in mainstream economics, the GTAP model is the most common, widely used framework around the world. It will be used by the World Bank, OECD and so forth, because it is very common. As I said, though, it has no borrowing or lending—think about a banking sector and what they do—it has no financial sector specified, it has no time in it and it has no expectations. So with the other framework, by measuring time, we can formally account for these. The G-cubed framework is a step up and an advance on that because it incorporates a financial sector. You know intuitively how much activity goes on out there in the financial sector, and that would not be passing the real test—it would not be going on—if it were not doing something. It is not happening there for fun. You have to take account of that.

Senator MASON—So this modelling is sufficiently definitive?

Dr Stoeckel—If there is a difference, we can trace it down. Remember, there was a difference in the first study that we put out and there was a difference in some work that the ACIL Tasman group had done but, with that, we could pin it down to just one parameter—to a difference in a view of the world about one set of elasticities. If it is so crucial, that says, 'Maybe that is where we need to go and do some more research,' and we will move forward. This time, we have taken the parameters that ACIL Tasman used, thousands more and everything in between to generate that chart 3. So we have tried to honestly report what that spectrum may be like. Different people will come up with different answers, but I suspect most of them will be between $1 billion and $7 billion.

Senator MARSHALL—I only got your report last night, so I have not had time to do it justice. If I ask you something that is very obvious, just point me to the relevant part in the report. Your first study on this assumed full access to all markets immediately, and what we got was something considerably different. This report still paints a fairly reasonable comparison to the outcomes of your first report. How did you get the first report so wrong, then—or is it this one?

Dr Stoeckel—There is a series of unders and overs—where we did better and where we did worse—and I will also draw your attention to diagram 4 in the summary, which highlights the differences between last time and this time. In that first report, let me just correct you on one thing, if I might. We did not assume an immediate reduction in tariffs; we assumed a five-year phase-in. In fact, what we achieved under this agreement was an immediate reduction in quite a considerable number of tariffs, so we did a lot better on that score. We did not do as well, though, on others.

Let us talk about, say, beef, which has an 18-year phase-in. In that first report, we only calculated the gain from the five-year reduction of the in-quota tariff—a very small in-quota tariff. We did not attribute any gain from expanding the quota or reducing the over-quota tariff. Why? Because Australia was not fulfilling its quota at the time and, on the advice of the meat and livestock association, it did not look as if we would fill that quota. But then a few things happened. One was that unexpectedly we hit 50c to the US dollar, so we became super competitive in America. Secondly, Japan had an outbreak of mad cow disease, so Japan stopped buying, which made America the most attractive market for beef. So we hit the quota and then it

started to bite. At the time we attributed no gain to that—and, remember, beef is our single biggest item of merchandise trade with America.

Senator MARSHALL—So, to summarise it, in the second study, you actually factored in those new market conditions as an ongoing, permanent situation?

Dr Stoeckel—Yes, we factored in those new market conditions.

CHAIR—So, with the agreement and the abolition of the in-quota tariff from day one, there was more liberalisation in the beef area than you had posited in the initial CIE study?

Dr Stoeckel—Correct, there is more. In addition, we now have some liberalisation of the over-quota tariff. So beef liberalisation is much greater than we had in the previous study. Going back to the question that you asked, there were some unders and there were some overs—where we have done better and where we have not done as well. The obvious one of course was sugar.

Senator MARSHALL—I think your study said that that was worth 25 per cent of all the—

Dr Stoeckel—That was 25 per cent of the exports. In hindsight, we should have reported that figure, but we did not know we were not going to get anything on sugar. That refers to the export earnings, which is different from value added. GDP is value added. It is not exports with exports; you also have to take into account all the costs, imports and so on to produce those exports. The GDP figure is much less than that $400 million export figure for sugar in our first study. I do not know whether that was not in our first study and I do not know where that came from, but you have to be careful about adding apples and oranges in these things.

Senator MARSHALL—Yes. I think it is important that we try to clarify some of these things. There does seem to be a significant difference between the assumptions that were made in the first study and the actual outcome.

Dr Stoeckel—That is one. Remember at the start I used the word ‘baseline’. As it turned out, our economy has performed a lot better than we had anticipated three years ago. We have been growing at four per cent. The economy is a lot bigger than otherwise would have been the case. So the same percentage change on a bigger economy is worth more and our prospects look better than they did back in 2001.

Senator MARSHALL—I am not an economist, but the logic of that means that, if our economy was actually going backwards, we would say that, potentially, this is not a good agreement.

Dr Stoeckel—No, it would still be a good agreement, but it might be worth very little. If our economy shrank to half, you would have to shrink that $6 billion by half. If suddenly our GDP shrank to half, it would change that base. That is why we do not have that number that you asked for in relation to that $6 billion. We would have to look at the baseline, go back to the model and dig out what our guess would be for GDP in Australia in 10 years time—which is about three per cent per annum higher.

Senator MARSHALL—A lot of commentators are saying that these sorts of studies are really irrelevant to the opportunities that free trade agreements create and we should not get sidetracked by or hung up on them. I do note that some of those commentators were actually relying on your original study in the first place. Maybe they were not expecting such a positive outcome in your second report, so they were trying to get in early and say that it does not matter. I might be asking the wrong person, but what is your view about the importance of these studies in evaluating the whole outcome and potential benefits to our society?

Dr Stoeckel—I think they are crucial. Australia is one of the top performing economies in the OECD area. We are one of the few economies that has unilaterally liberalised our tariffs. If you look at the description from the Chairman of the Productivity Commission, covering that whole period over the last decade or so, you see that both sides of parliament have backed that. How did all that happen? It happened because of this quantification and debate led by the Productivity Commission. The value of this is that it clarifies where the gains and losses are, and you get more sensible decisions as a result. I would say that Australia is far more economically literate than, for example, America. As of today, I still have not seen any analysis within America of the costs and benefits of the agreement. Have you seen any analysis put out by the American government?

Senator MARSHALL—No, but I have seen a lot of statements and so on, which is one of the things that I do want to ask you about. There will obviously be a number of other studies done, and you indicated earlier that some of them will disagree with some of your outcomes. So they would have equal weight and we should look at all those models and studies.

Dr Stoeckel—Yes, you should. If the difference matters enormously, try to trace it down to see where the difference is, come and ask us again what we think of that and then ask what makes intuitive sense to you.

Senator MARSHALL—Yes. Is it like financial counselling: you should always get a second opinion?

Dr Stoeckel—I totally agree with that.

Senator MARSHALL—There has been a lot of discussion—

CHAIR—Senator Marshall, others also have questions to ask.

Senator MARSHALL—This is a fairly crucial area. Are we going to have this group back again?

CHAIR—You have asked a number of questions. Perhaps if we give some of the others who have not asked any questions yet an opportunity to do so, and then if you want to ask further questions later that is fine.

Senator MARSHALL—Well, I do.

Senator TCHEN—Thank you, Mr Chair. I have only two or three questions. Dr Stoeckel, like Senator Mason, I am not an economist either, let alone an expert on econometrics. I am not

going to ask you a great deal about how you operate your models, but yesterday we heard evidence from Professor Ross Garnaut, who was critical of your modelling results on two issues particularly. The first one was in relation to the exclusion of various issues, such as the potential effects on political economics, international trade policy and so on. Professor Garnaut acknowledged that these are probably non-quantifiable factors, but he had specific criticisms or comments about your modelling results. Could you respond to those?

Dr Stoeckel—Okay.

Senator TCHEN—As you explained to Senator Mason, you used two models—the GTAP and the G-cubed models—in tandem to enable you to get a better outcome. Professor Garnaut actually agreed with that. However, he said that the results of the GTAP model, beyond the calculation of trade creation and trade diversion, depend on the credibility of the G-cubed results.

Dr Stoeckel—I have not seen his specific comments. If he had them written down, we could go through them and analyse them, and I could respond to them. I do not understand the basis of the question really because that relies on the GTAP analysis. The GTAP analysis, with many more sectors and being more disaggregated, is able to capture that effect of trade creation and trade diversion. You lose a lot when you go to a more aggregated model, as I explained. We do not have the ideal framework out there at the moment. The ideal one would be a G-cubed type of framework at 50-sector detail, at the disaggregated level of GTAP. In relation to these other points you made on the political economy of free trade agreements—

Senator TCHEN—That is fine. I accept they are non-quantifiable. This is a quantitative model.

Dr Stoeckel—It is, but I will alert you to the fact that on page 21 we have a section on the political economy of FTAs. We have looked at this issue of the political economy, and there are bigger effects that you need to think about. The main point there is that, yes, we gain an awful lot from the multilateral trading system. It is the only real way to get at this vexed issue of agricultural subsidies. You cannot really reduce subsidies on a bilateral basis, because if America take off a cotton subsidy they do so for all the African exporters and everyone else. They cannot do it preferentially and so on. So the only way to resolve a lot of those issues is in the multilateral system. That is the first and best way.

Bilateral free trade agreements in our view are really a symptom of the decline in multilateralism, which is unfortunate. The decline in multilateralism is a big problem for us, and you see it all the time in the stalled Doha Round of trade talks. Remember that those agricultural negotiations started at the end of 1999 by law. In fact, I could argue that they started in 1996, because that is when all countries that agreed signed on the dotted line and said, ‘Let’s have another round of agricultural negotiations, which must start by the end of 1999-early 2000.’ So already we are four years into it, and we have had more than that. We have nearly eight years of knowledge and we have got nowhere.

Senator TCHEN—What you are basically telling us is that Professor Garnaut probably misunderstood your use of the two models.

Dr Stoeckel—I am not sure.

Senator TCHEN—He seems to believe that your GTAP model depends on your G-cubed model output as an input.

Dr Stoeckel—No. We can allow for investment in the GTAP model and for expansion of that. We have looked at the results from the G-cubed model and what is happening in investment and capital growth, and also tried to allow for that effect in the GTAP model. That is not a big issue that you need to worry about.

Senator TCHEN—He says that your assessment that abolishing the requirements of FIRB will gain around $4 billion is not credible.

Dr Stoeckel—He is entitled to his opinion. Again, we basically start from the premise that Australia has these restrictions. Using OECD calculations and based on Productivity Commission methodology, we look like we are very restrictive. If those restrictions do not matter at all, why do we have them? Why don't we get rid of them all? If they do not do anything, what are they there for? The answer is, of course, that they are politically sensitive. Foreign investment is politically sensitive. We did a study a couple of years ago called *Trojan horse or more horsepower?* on that very point. I could certainly send you a copy of that study. It is like a flashing red light: 'Don't invest in Australia, because it is politically sensitive and governments and politicians can change their rules.' It must be costing us something.

At the conference which was run by Alan Oxley, after the agreement was signed, people from the finance sector and everyone else said, 'It's a positive move.' The trouble is that anyone can say it is positive, but how positive? Is it big or is it little? So we have tried to work our way through it and put down, chapter and verse, how we derived it. You could spend a year on that bit of analysis alone. I think we should have that debate. I think economists have been remiss in that we have been looking under the wrong spot. We should have been looking at this investment issue and we have been concentrating on other issues. We are not focusing on what is important to this nation. Hence the comment in the last paragraph of the summary.

Senator TCHEN—Thank you.

Mr WILKIE—Simply on that, you are saying that you could look at it for a year to really work out whether you are right or wrong on whether the foreign investment impact is as big as it is, and you are talking about 60 per cent of the gains coming from that. It makes it fairly rubbery if you are saying that you could look at it for a year to determine whether it had any impact or not.

Dr Stoeckel—Sure, and I accept all that, but there is some effect there. You then look at what is a reasonable bound there. Let us be very conservative. What could it be, and so on? You could leave that whole number out and say, 'Suppose there was no effect?' I think that is wrong. Equally it is so important that someone who says there is no effect is pretty sure and pretty convincing about how they got to that answer, too. Zero is also a number. Ask them to write down carefully and clearly how they derived no effect. Given the fact that we are very restrictive compared to most other OECD countries, how come there is no effect?

Mr ADAMS—I do not think anyone is saying that—not that I know of. They were your words, weren't they? You said you could look at it for a year.

Dr Stoeckel—Economists have been debating the elasticities. We could fill a room with the studies on most things.

Mr ADAMS—You certainly could.

Dr Stoeckel—But over time we move forward. Like any scientific discipline, we progress.

Mr ADAMS—Your figures say that 60 per cent of the pluses are in the liberalisation of investment and in the regulatory cooperation that we will have. How did you measure that out to ten years from 2004? How do we get the increase in investment? Why do they turn up here? Is that based on a figure of some sort put into the model?

Dr Stoeckel—No. It is based on the fact that it is more attractive to invest in Australia.

Mr ADAMS—How do you get to that?

Dr Stoeckel—If it rained steadily for the next 10 years it would be more attractive to invest in Australian agriculture. That is like what we are measuring.

Mr ADAMS—How do you get to that? Is it based on the investment pattern of the last 20 years?

Dr Stoeckel—No. It is based on measures of the equity risk premium differences between Australia and the United States. If we are restricting investment unnecessarily then because we have limited ourselves we would expect that the return on assets would be higher in Australia than otherwise would be the case. What you need to do—and this is why I made that remark about it maybe taking a year to do—is go through and look at a whole range of different equivalent style of assets to look at the differences in returns. Then you would have to allow for a whole lot of other factors, such as culture or idiosyncrasies.

Mr ADAMS—When you look at what the investment would be going into, if we have these enormous amounts of money—which is what your model is based on—invested in Australia there must be a whole range of things out there that would absorb money. Therefore, we would have more ports and we would have more mining and whatever.

Dr Stoeckel—Correct; across the board—

Mr ADAMS—Is there a model that tells us—

Dr Stoeckel—And the sector that does very well is construction. You can view the construction industry as inputs to investment. If you are going to invest and expand, you have to put a new building on or a new shed et cetera. That is what occurs.

Mr ADAMS—So there is growth and usually something has to drive that?

Dr Stoeckel—It is infrastructure.

Mr ADAMS—Infrastructure is slowing down, as I understand it, in Australia. But I guess if there is an influx of money that will encourage people to live in or use these buildings while people are constructing things. I still find it difficult to see how 60 per cent of the growth and the beneficial aspects of this trade agreement will be in an enormous increase in the amounts of money that come into Australia to help us grow our economy.

Dr Stoeckel—It will not be an enormous increase in the amount of money. It is a pretty big economy now. We should get that clear. It is like a 1.6 per cent increase in the amount of investment. That is at a maximum.

Mr ADAMS—So 1.6?

Dr Stoeckel—Yes, 1.6 per cent. So you need to look at chart 6.1. It is the investment liberalisation component in chart 6.1 on page 73. The investment liberalisation component is about 1.5 per cent from 10 years out. That is basically saying that investment in Australia, if it runs at 20 per cent per annum, will rise to 21.5 per cent per annum. That is a very small effect.

Part of that big gain in investment is relative to the merchandise trade. The gain in merchandise trade is small. People say, 'That's pretty small. What's this?' It is small because we are already free. If we had already got rid of all barriers and had free trade, that gain would be zero. We cannot get any freer than free trade. I look at that small number from trade and I think, 'Terrific,' because it indicates the progress we have made as a nation in getting our trade barriers down. Everyone in this room and this country is richer as a result.

Mr ADAMS—Of course we are. But, if that is the case and we get that 60 per cent—in your figures—for the benefit of our GDP from this investment liberalisation, shouldn't we be racing up to Japan and down to England and the UK?

Dr Stoeckel—We should be.

Mr ADAMS—We could get more money in here from them.

Dr Stoeckel—Sure. It is not for me to—

Mr ADAMS—We would have 10 per cent growth.

Dr Stoeckel—We would have a lot of growth. We would not have 10 per cent, because the margins of investment—

Mr ADAMS—Your figures are magical.

Dr Stoeckel—No, because America is the largest investor now—

Mr ADAMS—I thought it was 25 per cent for England and the UK.

Dr Stoeckel—and the money is highly arbitraged around the world. Japanese money or English money goes to America and then American money comes back here et cetera. They work on very fine margins in the financial sector. There would not be a huge increase, but there would be an increase. We would be better off opening up our borders. Other countries are doing that now. At the moment, money is pouring into China. They are building plants, factories and everything there. You have to go earlier. You get the lion's share; you get the first mover advantage.

Mr ADAMS—I understand that.

Dr Stoeckel—This is probably costing us a lot. Point to the number of studies and the number of debates we have had on foreign investment restrictions in the last year. We are not there. I think we have been remiss in not focusing on that aspect, and we ought to focus on it.

Mr ADAMS—I understand that, the way the world is going, when you invest you have to have some of your own people in there and joint-venturing and whatever. We have got a bit knocked back on that because the Americans said they did not want to deal with the people issues. They said immigration is an issue for immigration, not one to be addressed through the freeing up of business visas. We have got a bit knocked back on that. There are some reasons for that.

Dr Stoeckel—Lee might want to add something on the framework that is there, the movement of people, degree recognition and so forth. That is an aspect of that whole services agreement—we have set up frameworks for the ongoing discussion of these. You could go back and have a look at our experience. We do not have many free trade agreements of any length. The longest one has been with New Zealand. When we negotiated that it was accelerated in terms of the relaxation, and it has become deeper and more integrated as time has gone by. They have done their own recent assessment, which is not a public document as far as I know. They have shown that integration begets more integration; that is one of the conclusions of the assessment that the New Zealand government has undertaken recently. It is still not in the public domain.

Mr ADAMS—The people flow is very important to that.

Dr Stoeckel—People flow is very important.

Mr ADAMS—I think they have found that, yes.

Mr Davis—People flow is important for two reasons. As you would be aware, under the agreements proposed, a US company does not have to have ex-Australians on the board of directors, and there are no other technical or professional requirements. There are two issues there. One is that with a greater US influx of potentially the world's best or most competitive directors and products we get what is called dynamic productivity. That is what has led to that small wedge in dynamic productivity gains. That is essentially the transfer of technical know-how. The Australian companies face more competition, they respond and that sort of thing.

But under the agreement the movement of professional persons—I think it is called—has not actually been pinned down. 'This will definitely go ahead' has not been said. There is a framework or an agreement in place to work on it. Using CER as the example of what has

happened in the past on these issues of movement of professional persons, that was not initially there, but now it has been put in place, it has been accelerated. We took the view that the movement of professional persons, degree recognition, qualification recognition and so forth would go ahead, which gives us a slight improvement in the productivity of the Australian service sector. Because services are 70 per cent of the economy, that flows through and has quite substantial effects on the economy.

Just on the wider services, we were very conservative in what we did in the modelling. We only looked at the movement of professional persons, recognition and so forth. There are a number of frameworks and agreements put in place for more financial cooperation, more liberal air services et cetera. They may well go ahead but we do not know to what extent. They have been left out of the study. So, in terms of services, we have been quite conservative in what we have actually looked at. If there were a seventh degree of freedom open skies policy in aviation then we might expect airfares in Australia to fall. If there were greater financial cooperation—on which we have a case study in chapter 9—we could expect benefits there. However, because we do not know what may come out of those agreements or working groups, they have not been put into the analysis. In that regard, we have been quite conservative in terms of the services liberalisation, just restricting it to movement of engineers, accountants, lawyers and so forth.

Mr WILKIE—You were saying that you factored in that transfer of professionals. To what extent did you include that?

Mr Davis—Following Productivity Commission methodology on the way it is typically done, a calculation is established on what would happen to the productivity or efficiency improvements in the Australian sector of the economy where that liberalisation has occurred. So we have looked at Productivity Commission methodology and adapted that to fit the circumstances that are in the agreement. It is typically done through two avenues. Firstly, you can say—

Mr WILKIE—I will explain why I am asking that, because, really, the agreement did not give us any additional transfer of professionals across the sector at all.

Mr Davis—No, that is what I was referring to. We said: 'What has happened in the past? What has Australia's, or the world's, past experience been in this area?' Recognition of professional people, degrees et cetera is typically the first cab off the rank and it has, to our knowledge, gone ahead. It happened with CER.

Dr Stoeckel—It is an easy one to do.

Mr Davis—That is right. Whereas, with regard to financial services, we really do not know what would or could happen here in 10 or 15 years time.

Mr WILKIE—Under the agreement, we did not actually achieve recognition of qualifications or easier access into the US because we did not sort out the visa issues.

Dr Stoeckel—We have a framework to agree on that. Again, there, we are looking at the most likely outcome that we expect. Lee, what is the component that is the change from professional?

Mr Davis—I think it is 0.2 per cent.

Mr WILKIE—I just want to go back to the case studies. I know you have said that you really need to look at the agreement as a whole, but I notice at table 7.5, for example, we have got a breakdown of different sectors. I am curious, because beef and dairy are very important parts of the agreement. I am looking at table 7.5 on page 93, where you have quoted specific figures in relation to certain sectors. My question really goes back to the case studies themselves. Although dairy is supposed to be one of the best sectors in terms of benefits from the FTA, on page 103 your own report states:

For dairy products, AUSFTA falls short of the preferred outcome for the Australian dairy industry. It does not allow for a transition to free access to the US market.

It is saying it is a little bit limited. What I want to know, then, is: have you done any analysis of the impact of the FTA on beef and dairy?

Dr Stoeckel—Yes, we have. However, the analysis here is confined to the economy-wide framework. We have done some analysis for the meat and livestock association, MLA, on the beef industry. Again, we have used that as input here for our modelling exercise in this particular case.

Mr WILKIE—Looking at the case studies, you have said that you really need to look at different industries just to have a definitive judgement about the impact of the FTA on various industries and so you have quoted those cases. I would have thought that if you had done the figures they would have been included in that case study.

Dr Stoeckel—We have not gone specifically through dairy and added it up by state, or whatever. Largely we were looking at the case studies as putting a bit of description around what we might expect to see and where we might expect the changes to occur. In dairy, for example, we show how many people are employed in the dairy industry, to give people a feel for that; where most of the dairy exports originate from—Victoria and Tasmania and some of the other key dairy parts; and which other areas will get a lot of that gain.

Mr WILKIE—It was quite disappointing for the beef sector. Obviously the Cattle Council are not very happy. They are talking about a figure of $1 a beast over the life of the agreement, or maybe one extra beast sold per year per producer. So I am surprised that the figures are not included in that case study. Were the figures actually in any of the draft reports?

Dr Stoeckel—No. We never had any of those figures on the case studies. We did not use the case studies for that. We used them largely to talk to the industry and as input in determining what sort of shock we would give in, say, the beef industry. Let us take the beef industry as a good example. We are not filling the quota at the moment.

Mr WILKIE—We have for the last two years.

Dr Stoeckel—No, we are not filling it at the moment.

Mr WILKIE—They gave evidence yesterday that we have met the quota for the last two years and are likely to be matching it in the future.

Dr Stoeckel—We are certainly likely to hit that quota in the future, but we are not meeting it at the moment because, when our dollar is up at 80c, we are not competitive. All our lean beef trimmings go over to America and are minced with the fattier trimmings and so on from the American product to make the ideal hamburger. A lot of our beef is lean beef for the hamburger trade, which is very important. When our dollar was at 80c—it has now come back to 71.9c—they were grinding forequarters in America for hamburger beef because Australian beef was an expensive product. On top of that, America had one case of mad cow disease. That temporarily shut them out of the Japanese market, and they are still shut out of it. So we have gone gang busters selling product to Japan and we have found the going harder in America. We have switched it around. So whether the quota binds us or not depends crucially on the state of the world beef market for the next 18 years. We have done that analysis for the meat people and we have described it in our report. The quota will bind us, particularly in 2005-05, because America is starting to eat a lot more beef again. America has got on to the low-carb, high-protein diet and they are eating more beef. So it is going to matter, and we have said in our report just how much it is going to matter.

Mr WILKIE—We have heard that before. I am sure that the Meat and Livestock Council and the Cattle Council said yesterday that they had met the quota for the last two years. So we need to look at that.

Mr ADAMS—A cow for each producer?

Mr WILKIE—Yes, but we will get back to that some other time. I have a lot of questions I would like to ask you about the evidence given yesterday by Professor Garnaut. Unfortunately we do not have the transcript of that and probably will not get it until later today. I would like to be able to analyse that and ask you some further questions, so I hope we will be able to get you back at some point to go through some of those queries. We are running a little short of time now, so I will hand over to Senator Marshall.

Senator MARSHALL—I have a lot of questions to ask you too, so I hope we can arrange for you to come back. But I now want to talk about jobs. Being from Victoria, I have an interest in looking at the manufacturing base and the textile, clothing and footwear base, which are very important to the social wellbeing of our community. I was hoping there would be a much more detailed study—maybe there is and, if so, you could point me to it—of where there may be actual job losses or contractions of industries, particularly in those two sectors, and what that might mean.

I also was given the impression by DFAT in an earlier meeting we had with them that you would be asked to do some work not assuming full employment so that we could get a better picture of actual job impacts in those industries and the regions because, again, some of that regional employment—particularly in Victoria—is crucial, as it is in some other states too. So could you tell me what you have done in terms of employment and whether you think that might satisfy it? I cannot actually see what it says here.

Mr ADAMS—I think DFAT did say that they were going to ask you to do some work in that area.

Senator MARSHALL—The transcript is not public yet, is it?

CHAIR—No.

Senator MARSHALL—I had a long discussion with DFAT and they clearly understood what I was looking for from your report. They confirmed that they would in fact be asking you to do that work.

Dr Stoeckel—If you are after very detailed sectoral, regional effects then we probably need to go back and use yet a third framework—the domestic Monash ORANI model, which is the same class and type as GTAP but just not global and does not pick up any switching effects and so forth. That would give you even more details on those employment effects. First of all, we have described what we think will happen to aggregate employment, as I indicated on chart 6.7, and I walked you through that, and also in terms of the GTAP modelling, which assumes full employment because it is 20 years, and who knows what the labour market is going to be like in 20 years. That is the most typical closure of that model 20 years out—full employment. Those results are reported for what happened to employment in table 7.2 on page 85. So we have given what happens to the amount of employment in labour and what happens to the wage rate because of the full employment assumption—remembering those numbers in table 7.2 are for the merchandise and services trade liberalisation.

Senator MARSHALL—Is that all you were asked to do?

Dr Stoeckel—We were asked to report on employment effects, output effects, and to bring it down to a regional level, use case studies to try to describe those effects and report on the effects on the states, which is in table 7.5.

Senator MARSHALL—Were you asked to do as much as you can on employment effects and impacts?

Dr Stoeckel—Pretty well. We had a bit of local range. I do not know.

Senator MARSHALL—I think you indicated that you could have done more if you were asked to do it.

Dr Stoeckel—To be able to do more, and to take it down further so it is more disaggregated, you have to go to very specific modelling. You would have to go through specific industries. It would be very good to go through, for example, the textile industry and specifically what might happen and how the industry might adjust. You have to get much more detailed than you do with these aggregative models.

Senator MARSHALL—The department had indicated to me clearly that that is what they have asked you to do, but that is not the case. It is fine in one aspect to look at the overall economies of this, but people who may have a very narrow or low skills base who work in a regional area of high unemployment are not going to walk into another job the next day. The

government is throwing incredible amounts of money—and I am not saying unjustifiably so—into the sugar industry because they missed out. What are the impacts on other people in our economy? Are they going to get similar treatment if they miss out? Is no work is being done to indicate where that is going to take place I am disappointed because I thought DFAT indicated that that was what you were asked to do.

Dr Stoeckel—At this stage, the work that has been done has indicated—

Senator MARSHALL—Are you in a position to do that work if you were asked to, or are other people? Would the Productivity Commission be better placed to do that sort of work?

Dr Stoeckel—That Monash model would be the best framework, where you can allow for different labour sectors. Lee, how many different labour sectors does it have?

Mr Davis—I think it has eight labour sectors—eight types of labour.

Dr Stoeckel—You can have highly skilled, unskilled and so forth. You can track it down to the skills matrix, so it is much more detailed. You can get much more information about those aspects. The pluses and minuses in table 7.2 indicate where we might see the gains and losses in employment across the economy from what we know at the moment.

Mr Davis—So you could say, for example, that the motor vehicle industry looks like it is going to expand by 0.2 of a per cent. Given that it is mostly concentrated in Victoria, that is when the employment effects would be felt in terms of expansion and uptake of labour. Similarly, if textiles, clothing and footwear is concentrated in Victoria, and that sector looks like it is contracting, then maybe you could expect job losses in that sector as well. But this a very back-of-the-envelope approach. As Andy was saying, looking at this table to get those sort of numbers, you would need to got to a much more detailed model that has more sectors and greater types of labour than GTAP has to come to a conclusion.

CHAIR—Thank you very much for your attendance before the committee today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available.

Mr WILKIE—Just out of curiosity, would you be available to come back at a later date?

Dr Stoeckel—Depending on our availability, yes. I have to travel overseas—

Mr WILKIE—We are probably talking around the 14th.

CHAIR—We will get the secretariat to liaise with you on that.

[10.20 a.m.]

CLARKE, Dr Roger, Principal, Xamax Consultancy Pty Ltd

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?

Dr Clarke—My background is in the commerce disciplines. I have 25 years in industry, with 10 years in the middle of that in academe. I have a number of professional, industry and community association affiliations. I am chair of the ministerial company owned by the nine jurisdictions. I bring a variety of perspectives to the submission I am making to you, but this is a personal submission as principal of my consulting company.

My submission is, in some ways, a complement to that which Dr Stoeckel and Mr Davis have just provided to you. I am addressing impacts of the FTA on the information industries. Dr Stoeckel appears to have overlooked or ignored them, or felt that they were far too awkward to be amenable to econometric analysis. My submission to you is that this is an extremely important set of industries. It is a growth industry that is at dire risk as a result of threat of chapter 17, the intellectual property chapter, of the free trade agreement.

The summary that I have provided in section 2 on page 2 of my original submission points out that the changes that the US government is seeking to impose on Australia through that chapter would be to the significant advantage of copyright owners and patent owners, but these are overwhelmingly corporations that are domiciled in the USA. While I understand the motivation for a free trade agreement, the risk in the information industries is that these burgeoning industries are being held to ransom in the interests of a range of other traditional industries. The Australian economy and Australian society would be disadvantaged in a number of ways in the event that parliament saw fit to make the changes sought by America.

I will highlight a couple of the key points on the way through the submission. The first is that the justification for intellectual property laws often appears to be argued from the viewpoint of morality, individual worth or the benefits to revenue or profits of individual business enterprises. That is not the appropriate analysis, and it is not the appropriate justification that should be pursued. The fact is that copyright, patent and other intellectual property laws are substantial interventions into free market operation. They have substantial negative impacts, and they can only be justified if it can be shown that the economy as a whole will work better with the particular intellectual property arrangements in place. The mechanism whereby that arises is through innovation. It is only through demonstrated positive impact on innovation that intellectual property laws can be justified.

The changes that are being proposed here misunderstand the nature of innovation in the information industries. I stress once again that I am not talking here about building better chemical plants; I am talking about the nature of information industries, particularly in the

digital era that we are now a good decade into. In the information industries—variously, the software industries, the content industries, interactive multimedia games and entertainment and so forth—progress is seldom of a big bang nature. It is almost always of a cumulative nature—small steps—with an interdependence between different segments and sectors of the economy. I put it at one point in my submission as: not standing on the shoulders of giants but lots of busy elves rushing around the forest floor, drawing ideas from one another. Cross-fertilisation extends to drawing ideas from your suppliers, drawing ideas from your customers, drawing ideas from your competitors and includes putting up with these furry people called consultants, students and university types and, indeed, the people who leave your employ and go to somebody else's and vice versa. All of that cross-fertilisation is crucial to innovation in the information industries. Innovation does not work on the basis of vast organisations mobilising vast quantities of capital in order to achieve sudden, massive breakthroughs. I remind you once again that I am talking about the information industries here.

I took the liberty of analysing the submissions to your committee which have been made by a variety of organisations with concerns about the information industries. I believe that you may have been given a supplementary submission. I sent one on the weekend—my apologies for the lateness of it. I would be very appreciative if you were prepared to accept these two additional documents. The first one summarises the key submissions to your committee and highlights the way in which libraries, universities, governments, public interest organisations and elements of the software and interactive media industries have expressed enormous concern. These, of course, I did not have access to when I wrote my submission. I felt it worth summarising their words. It is noteworthy that the industry associations, which are dominated by American owned corporations and take their instructions from overseas, submitted in support of chapter 17 and nobody else did.

I should also stress that, although copyright has tended to be the focus in most of the discussions, patent has also been an issue. There is an attempt by the US government to impose extensions to patent law in Australia as well, which will also be to the serious detriment of the information industries, particularly the e-commerce and e-business arenas. I would like to draw attention in particular to the open source software industry, which is a rapidly growing segment of the information industries. This is attacked by some organisations, notably Microsoft, as though it were socialist and anticapitalist. It is not; it is based on solid economics. It is an alternative usage of copyright laws—simple straightforward copyright laws of the kind that we have had for several centuries.

Open source software does not depend upon these massive extensions which the major old information industry corporations in the United States feel that they need in order to survive. The open source software industry would be seriously harmed in the event that chapter 17 were to be implemented. There are also some impacts I would like to draw attention to in relation to open content. By open content, I mean approaches not to software but to information in its many different forms being made available, once again, through copyright licenses but with much more liberal terms attached to those licenses than old-fashioned proprietary approaches. Once again, there are several ways in which the society and the polity in Australia can be constrained as a result of their manoeuvres in here.

The second of the papers in my supplementary submission that I should draw attention to is a paper on the economics of innovation in the information industries, co-authored with an

academic at the University of Queensland. I have actually prepared that to submit to the Senate committee. It has been a paper long in gestation which I only just managed to get finished at the weekend; my apologies for the lateness. It fills out many of the arguments in the submission to you.

CHAIR—Thank you very much for your submission. With regard to the copyright term extension from 50 to 70 years, what percentage of materials would that actually affect, in your opinion?

Dr Clarke—Not a lot of software just yet. From the software segment of the information industry's perspective, it is vacuous because the value of software exists for a relatively short period. In the content industries, it can have a dramatic effect for a couple of reasons. One is that it benefits very few individuals; it benefits large corporations which have substantial holdings of existing copyright materials. Of course, it does not stimulate the generation of more content, because the people, the authors, are by definition dead.

CHAIR—I understand the arguments. What I am asking is: what percentage of material does this actually impact upon?

Dr Clarke—I am sorry, but I do not have an accurate answer to that. Unlike the econometricians of this world, I do not pretend that I can generate numbers from nowhere. It is extremely hard. That is a really hard question, and I agree it would be great if we could get an answer to it. The information industries, the content based industries, have certainly felt that they are in dire danger of losing access to a lot of material that would have become available in the near future or, quite possibly, that has already become available but would go back into copyright. But I am sorry; I cannot answer about quantities.

CHAIR—The CIE report says that it is understood that material that is in the public domain and is between the 50- and 70-year periods will not go back into copyright. Is that your understanding?

Dr Clarke—It would be interesting to know where they got that understanding from. I did see that paragraph. I am not aware of any definitive statement. In my dealings with the Department of Foreign Affairs and Trade in relation to this matter, they have been extremely vague and they have primarily depended upon the flexibility of language in chapter 17 to enable them to attempt to fend off criticisms of its impacts. So I am quite surprised that the centre should have been so confident, but it would be a marginal improvement if they were right.

CHAIR—What do you think about the scheme for immunity of Internet service providers from potential copyright infringement in return for compliance with a scheme for the removal of allegedly infringing material on their networks?

Dr Clarke—I have not looked at this in detail this time around. I looked at it in previous years. I suggest that Peter Coroneos, the executive director of IIA, would be a much better person to ask. I was on a podium with him a couple of nights ago in Sydney, and it appears to me that the IIA has some significant concerns. Put briefly, while the digital agenda amendments which went through some time ago in Australia are fairly strong—and I believe, on the basis of my analysis, too strong and excessive—they are much more balanced than the DMCA equivalent

in the United States. The import of the DMCA equivalent provisions to Australia would further imbalance the power relationship between little elves innovating around the forest floor and large, established corporations.

Mr WILKIE—You mentioned how important the industry is. We have had submissions in Melbourne and Adelaide where people have pointed out the importance of the sector. In fact, someone stated that it is probably one of the fastest growing areas and is likely to contribute enormously to the Australian economy in the future, so it is very important that we get this right. You feel, obviously, that the arrangements currently in place could put the industry at threat?

Dr Clarke—I certainly do. A great deal of the innovation and the bright new ideas in the various information industries always come from small organisations. That is logical, because large organisations involve necessarily more bureaucracy, more constraints, more layers and more people having to sign things off, whereas smaller organisations can be fleet of foot. They can have mad ideas, and those mad ideas represent progress in these new industries. The scale of the industry is a lot bigger than it was when I joined it 35 years ago. It is still not achieving the kind of scale that the beef industry, the wheat industry or the iron ore industry is achieving for Australia in exports—although quite possibly, in some cases, it is in employment. But its growth rates continue. It is very important to us in a clever country as we are—not just as we aspire to be, but as we are—that we stay on these growth industries and sustain them.

CHAIR—You have gone through the submissions. We have had a submission from the Copyright Agency and we heard from them in Sydney—maybe they did not have a submission, but they certainly appeared at a public hearing in Sydney. They said then that the amount of material that would be affected by the 50 to 70 rule was very small; I think they talked about 0.02 per cent of stuff that was copied in libraries. Also, the Australian Information Industries Association appeared before us and talked about IP and they were supportive of chapter 17 of the US free trade agreement.

Dr Clarke—I have not seen the CAL submission. I may have missed it.

CHAIR—Sorry, my mistake. There was no submission; it was only in the public hearing.

Dr Clarke—I have not yet looked at their evidence in *Hansard*. I must say that I paid very little attention to the 50 plus 20 provision in here. My analysis looked at that and said, 'Yes, that's a negative,' but I was focused on much bigger negatives than the 50 plus 20. I do not know about 0.02 per cent—that sounds rather small—but I have little doubt that a large amount of currently in-copyright material is copied in public libraries. That is a fair comment from CAL.

Where the AIIA are concerned, when I made my comment earlier in relation to the list of submissions, the AIIA are here. The AIIA are in the list of associations beholden to US interests, down at the end of the list. I have had discussions with them. My company has been a member of AIIA over the years as a member of the industry, but they are heavily dominated by large, primarily US-owned corporations. Small Australian corporations do not make quite as much impact on their policy formation.

Mr ADAMS—Maybe you could check that 0.02 per cent figure, which is dominating the minds of several members of this committee, and we might get another figure on the record if

there is one. That 0.02 figure may be taken from some obscure thing like an economist's point of view. I wanted to ask about the larger corporations. How will they benefit? Would it be financially?

Dr Clarke—Yes, a very substantial financial gain. The 50 plus 20 extension is normally called the Disney law by Americans. Basically, every time Mickey Mouse approaches the end of a copyright period, an extension is made. There is a fair chance it will be 50 plus 20 plus 20 in due course in the United States. It provides the Disney Company and copyright owners generally with the opportunity to sustain their substantial revenue streams because they have a monopoly. While ever people can be encouraged to like the things that the organisation manufactures, the price that can be charged for those kinds of monopoly goods and services is very high. It is unrelated to cost. It is related purely to what the market will bear.

Quite a lot of people still appear to like Mickey Mouse things, so it is an enormous benefit to these old information industry corporations, as I call them, because they are in a position to resist innovation, to live for a long time off their cash cows, as management consultants call them—that is, the segments of their business which continue to produce super profits. It also stultifies their own innovation because they do not need to do it and, because they are being granted so many powers, particularly under the American laws, they are in a position to stultify other people's innovation as well. So it is a multi-headed hydra that is damaging innovation.

Mr ADAMS—So if someone came up with Mickey Mouse but in a slightly different form, they would never get it up because the Walt Disney Company would not let them.

Dr Clarke—It would cost them a lot of money.

Mr ADAMS—It is the stifling of the new ideas that are coming on. We are saying that 50 years should be enough. Thank you.

Senator MASON—Dr Clarke, is it true that the information industry in the United States is a large, significant and growing part of their economy?

Dr Clarke—I have not looked at the figures. I would be astonished if it were not true, but I have not looked at the figures.

Senator MASON—Is the information industry in the United States one of the most dynamic in the world?

Dr Clarke—That is probably right.

Senator MASON—Yet you are claiming that the legal regime that governs that industry—one of the most dynamic industries in the world—somehow restricts or stifles innovation.

Dr Clarke—Yes, enormously.

Senator MASON—Let me go to a specific example. On page 5 of your submission you say:

Process patents are an especial concern. Since the Carter Administration, patents have been an explicit weapon of U.S. international competitive strategy. The U.S. Patents & Trademarks Office (USPTO) has lowered the threshold of innovation required of a patent application to the point that almost anything is approved. The 'contribution' can now be a minor and obvious refinement, it may relate to a mere 'business process rather than an 'industrial process', and even vague generic claims are accepted.

I am not an expert in this area, Dr Clarke—so help me. Doesn't that work both ways? To my mind, you are quite right that someone could claim a patent on a process that may have been an obvious and minor refinement. But, on the other hand, if you are talking about busy elves and building on each other, surely that works the other way as well. In other words, if Senator Tchen develops a process and I just refine that a bit and I put a patent on that and I claim my intellectual property and then there is a minor refinement to that put on by the chair, we all have patents and we all build on each other. That strikes me as perhaps conducive to progress and innovation rather than the opposite.

Dr Clarke—You will not get the opportunity to do that innovation for another 16 years to 20 years, because Senator Tchen, following the normal logic of US corporations, will not let you do what you want to do—he is in a position to block it. Further down in that section towards—

Senator MASON—I did not mean to misrepresent you; it was just the way I read it.

Dr Clarke—The problem is that each of the organisations that claims patents is in a position to challenge the organisations who are trying to innovate. That is what they actively do. The dominant usage of patents by organisations is as a strategic manoeuvre.

Senator MASON—I accept that.

Dr Clarke—One particular client of mine—an innovative Australian company—that I did some consultancy work for 10 years ago and that I subsequently had to do some expert witness work for in a patents case, has described patents as being 'a worthless must-have'. As an innovator he is trying to get on and innovate and get his product to market and he has been held up mercilessly by, in this particular case, a French patent owner in the smart cards arena. He has had to build himself a little library of patents that he owns so that he can counter-threaten people who own patents who try to threaten him. This is a standard pattern that is arising now. Organisations in the United States which are innovative have tribes of lawyers employed fighting off all the patent and copyright cases that are being brought against their innovative manoeuvres. This is not a constructive way for industry to go in the United States—and certainly not here.

Senator MASON—So would you say that there should be a higher threshold for development of patents?

Dr Clarke—We should firstly have the original threshold without the progressive whittling away of the threshold which has occurred as a result of US national strategic purpose.

Senator MASON—But how can we then make those small incremental steps? If you are talking about small incremental steps from the busy elves, surely you need a low threshold?

Dr Clarke—No. I do not believe that the busy elves should be able to get patents for the things that they do. Let me give you an example. An American patent attorney, a little while back, teaching his 10-year-old son how to file a patent, put together something that his son would understand, which was how to swing on a swing. He put a proper patent application together. To show his son how you submitted it, he submitted it. It was knocked back, but the explanation as to why it was knocked back showed him that he could actually get a patent. He showed his son how to amend the original patent application. What he actually did was amend it to wiggling sideways on the swing instead of swinging forward on the swing. He got the patent approved. Even he, as a patent attorney who lives off this kind of thing, thought it is absolutely ridiculous that that is the level it is being whittled down to.

The busy elves on the floor do not need that kind of protection and should not be given that kind of protection. They should get on and innovate and get their products out to market so that people can use them. This is the problem. American strategic advantage has driven this. Since the Carter administration the objective of the US government has been to advantage with respect to the rest of the world the country that has the most dynamic and inventive collection of scientists and engineers. We should not be playing the game of advantaging the US.

Senator MASON—But, if you have a legal system that has protected and nurtured the most dynamic information systems in the world, surely it is a success?

Dr Clarke—If we look at Dr Stoeckel's model, we can see that there are probably about another 20 factors that go to the making of the enormous dynamism and success of the United States economy. Just looking at one particular element of how it works is not going to give you the answers.

Senator MASON—But it must be an important part. Protection of property rights and investment to develop new technologies is critical for innovation, surely?

Dr Clarke—Let me suggest to you that the United States is facing the cusp of change right now. They are facing threats from all manner of competitors because there are lots of other busy elves around the place. When Japan, Korea and China get together to develop an open source operating system to replace Microsoft's operating system, that represents a very substantial threat to the American way of life and the Americans do not like it. In the event that America does not loosen up and enable its own open source providers to continue to innovate actively, America is going to be seeing a turnaround in years to come.

Senator MASON—You may well be right, but that operates both ways. If there is a new operating system and it cuts out Microsoft, that might be right. But if that patent is not protected then once again the advantage to the developers is nil or very little. These things operate both ways. Unless you protect the cost of investment for new technology, people will not invest.

Dr Clarke—That depends on a number of assumptions which I have addressed in the paper that I have just provided as a supplementary submission. Only under certain circumstances is that true. It has to do with things like the scale of the investment and the length of time of the investment. In the case of the information industries, it is nothing like the same scale as oil refineries or minerals extraction. The inhibitors to innovation at the moment in the information

industry have far less to do with those factors and far more to do with lawyers getting in the way of innovation. That is because of the patent and copyright ramping-up that has been going on.

Senator MASON—So lawyers are getting in the way of the elves?

Dr Clarke—Yes.

Mr WILKIE—It sounds like there is going to be an enormous transfer of lawyers going back and forward. There is huge potential there!

CHAIR—Dr Clarke, I would like to thank you very much for your attendance before the committee today and also for your submission. I require a resolution to authorise submissions 181 to 188 on the list that has been circulated, including submission 188, which is the ATSIS submission from Wayne Gibbons, their chief executive. Mr Wilkie has moved that and it is seconded by Senator Kirk. As all are in favour, that is so resolved.

[10.49 a.m.]

CHIAM, Ms Madelaine Sophie, Research Fellow and Lecturer, Centre for International and Public Law, Australian National University

CHAIR—Welcome. 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 proceedings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Ms Chiam—I do, thank you, Chair. First, thank you for the opportunity to address the committee today. I am speaking about quite a small aspect of the agreement but an important one, I think: investor-state dispute resolution. I first became interested in this issue when I was doing a master's in international law at the University of Toronto in Canada, where investor-state dispute resolution is a very live and controversial issue under the NAFTA, as you would be aware. I followed the negotiations of the Singapore-Australia and US-Australia free trade agreements, and I have recently written an article that is being published by the Federation Press in its Law and Policy Paper series, if you are interested, called 'That's Freedom: Australia and Free Trade Agreements', which explores some of these issues in a little bit more depth.

In my opinion the article of the Australia-US free trade agreement on investor-state dispute resolution, article 11.16, lacks clarity, and I thought it was important to make a submission to this inquiry after reading what I considered to be inaccurate descriptions of the effect of that article in documents that have been produced, like the national interest analysis. If you look at the wording of article 11.16 it is clear that, while it does not include direct investor-state dispute resolution, it does enshrine a trigger mechanism which allows that dispute resolution to occur. Therefore, the crucial question is determining when this trigger will apply.

I have set out in my written submission a number of ambiguities in the wording of article 11.16 that in my opinion make it very difficult to work out exactly when the mechanism for establishing investor-state dispute resolution will be triggered. I now want to give one example of how the ambiguities in language might play out in reality and then suggest a couple of ways that this could be dealt with either before or after Australia becomes bound by the agreement. The wording that triggers the ability to seek investor-state dispute resolution is:

… there has been a change in circumstances affecting the settlement of disputes …

One of the problems with this wording, as you are no doubt aware, is that it is not clear what kind of change in circumstances is required and, in particular, whether it has to be a wholesale structural transformation within Australian governance in general or if it is enough to have a change that affects only one investor.

I want to illustrate this problem by taking the facts of a case that was decided under NAFTA investor-state dispute resolution, called the Metalclad case. Metalclad is a US corporation that

had received permission from the Mexican federal government to construct a hazardous waste facility in a particular state. After beginning construction, Metalclad was informed that it also needed a municipal permit to build on that land. Metalclad applied for the municipal permit and continued construction, pending the outcome of that decision. Metalclad was eventually denied the municipal permit, by which time it had completed construction of its facility. Metalclad then filed a claim under chapter 11 of NAFTA—the investment chapter—alleging breaches of its substantive rights. Part of the way through the hearing of Metalclad's claim, the governor of the state in which the facility had been built issued a decree declaring the land in question a special ecological zone, which effectively prevented any further use of the facility by Metalclad. As a side issue, the arbitral tribunal ultimately found in favour of Metalclad and ordered Mexico to pay compensation of nearly $US17 million.

So, in the scenario that I have presented, under the language in the Australia-US free trade agreement I think there are at least three possible ways of determining whether or not a change of circumstances affecting the settlement of disputes has occurred. First, it could be argued that requiring Metalclad to obtain the municipal permit, when Metalclad's understanding was that it needed only federal permits for the construction, was a change in circumstances for Metalclad: it affected the settlement of disputes by giving rise to a dispute in the first place. Second, it could be argued that the issuing of the decree by the state governor that rezoned the land on which Metalclad had constructed its facility was a change of circumstances and that it affected the ongoing investment dispute between Metalclad and Mexico. Third, it could be argued that there was no change of circumstances at all in this case because all of Mexico's actions affected only one investor, Metalclad, and thus there was no wider impact on the general settlement of disputes under the investment chapter.

It is my opinion that, on the current wording of article 11.16, all three of these positions would be legitimate and this level of uncertainty about when an investor would be entitled to seek investor-state dispute resolution is not prudent in any agreement. One further problem with article 11.16 is the absence of a time clause. In the investment chapter under NAFTA, there is a clause that stipulates that investors must make their claims within three years of having knowledge of the alleged breach. Under article 11.16 there is no parallel time stipulation. Obviously, the mechanism is different, but it does lead to the possibility that claims could be raised any number of years after the alleged damage has occurred.

If the committee decides to recommend that greater clarity be given to the meaning of article 11.16, there are at least two ways it could be done without requiring renegotiation of the text of the treaty. Firstly, before the agreement is binding, the Australian and US governments could issue a side letter confirming their understanding of the meaning of this article—and I note in this respect that there are 27 side letters to the agreement anyway, so this possibility is open. Secondly, after the agreement is binding, the parties could use the mechanism of the joint committee that is to be set up under chapter 21, which is the general dispute resolution chapter. The joint committee is empowered under article 21.1(2)(e) to issue interpretations of the agreement and it could then issue an interpretation in relation to article 11.16.

I realise that clarifying the meaning of one article in a 2,000 page document may seem less significant than some of the matters that the committee has been listening to, but it is precisely the unintended consequences of treaty language in the investment protections of the NAFTA that have given rise to so much controversy in the US, Canada and Mexico. If Australia wants to be

sure of the consequences of its own version of this particular section, it must establish certainty in the meaning of the article.

CHAIR—Thank you very much for your submission and also for your evidence today. I think your submission is the first one we have had dealing specifically with the investor-state issue. Thank you for your suggestions as well, because they are practical. First of all, I have asked why the United States has investor-state mechanisms in its trade agreements. My understanding is that, generally, it is to protect its companies in developing countries, which may not have as robust legal systems. Is that a fair statement?

Ms Chiam—That is a fair statement.

CHAIR—As I understand it, there was also a debate in the United States about whether they should pursue an investor-state mechanism with Australia. Are you aware of that?

Ms Chiam—I am not aware of the details of the debate. I am aware that something occurred.

CHAIR—The United States were pushing for investor-state mechanisms. The guide to the agreement that was produced by DFAT, which says more than article 11.16, states:

> In recognition of the Parties' open economic environments and shared legal traditions, and the confidence of investors in the fairness and integrity of their respective legal systems, the Investment Chapter does not establish an investor-state dispute settlement mechanism. Article 11.16 provides that the Parties may consider establishing such a procedure to hear a claim by an investor, if there is a change in these circumstances regarding the Parties' economic and legal environments.

This is more than what is said in the agreement. I have taken it as questioning why they have investor-state mechanisms and asking what it actually says. In the Mexican case that you mentioned, there would be the opportunity for an American company to take that to a state court, a federal court, the High Court or whatever.

Ms Chiam—Do you mean in Mexico?

CHAIR—No, in Australia. It is the same sorts of circumstances. If that happened in Australia, they would have legal redress.

Ms Chiam—In some circumstances they may. I think that is right, but it is difficult to say that they would definitely have redress. The thing that has been revealing for most parties under the NAFTA is that it has given companies grounds to make arguments that they would not have and did not have on the basis of the domestic law—even in Canada, for example.

CHAIR—That is an interesting point. Has the investor-state mechanism been used between the United States and Canada?

Ms Chiam—Yes, and between Canada and the United States, not just Mexico. There are a number of ongoing arbitrations under the NAFTA, and there have been at least 20 or so decisions in the history of the agreement. They argue on the basis of a number of the substantive clauses that are mirrored in this. For example, article 11.2 of the Australia free trade agreement regarding the national treatment protection; article 11.3; minimum standard of treatment; article

11.5; and article 11.7, expropriation—they are the major bases on which companies have brought claims.

Mr WILKIE—I think you have made some very valid points, and we need to follow this up with DFAT.

Senator MARSHALL—I think that is right. I thought DFAT indicated very clearly to us that these things were in fact not possible under these clauses, but you seem to construct quite a powerful argument to say that they can occur. Regarding the sorts of things going on between Canada and the US, I think there is a case with the United Parcel Service.

Ms Chiam—Yes.

Senator MARSHALL—There is also a case about exporting water.

Ms Chiam—There may be; I am not sure. There has certainly been a few about the export of environmental waste between the two.

Senator MARSHALL—In terms of those issues, which were clearly covered by the domestic rights of either or both countries, and the ability of that clause to impose trade standards as opposed to what people might consider to be good public interest standards, are you saying that this potentially leads to that sort of scenario under this provision?

Ms Chiam—It does not allow it to occur directly. Under the NAFTA there is an agreement: companies can simply bring a claim against a state. There is a procedure that they have to follow, but it is direct and it exists. Under this agreement it does not. It does not establish a direct right but it does establish a series of steps that may occur which would give rise to that right ultimately. The steps are undertaken if a change of circumstances has occurred, and, as I have pointed out, it is not clear what that means, so it could be quite a minor change of circumstances. Actually, on that one point, with respect to DFAT's statement that it is the political and economic change—

Senator MARSHALL—Economic and legal environments.

Ms Chiam—Economic and legal environments. That is Australia's understanding of the application of that clause, obviously, and it does not represent agreement between Australia and the United States as to the understanding of that clause. Ultimately, if there were disagreement about the meaning of the clause, that statement—'under law of treaties'—would not carry much weight. That might be something worth raising with DFAT as well.

The first step is the change of circumstances. Then, if this change of circumstances is considered to have occurred—whatever it is—and, say, Australia considers that an Australian investor has been injured in the US in some way, then it can raise with the US that the company—let's call it 'Zanex'—be able to bring a claim against the US government. On my reading of the wording, party A requests consultations with party B with respect to arbitration and, once requested—once the consultations with respect to arbitration have occurred—both parties enter into them with a view towards allowing the investor-state arbitration to occur and

establishing procedures for its conduct. So this article does not preclude investor-state dispute resolution; it just puts a few barriers in its way

Senator MARSHALL—The investor-state clause was politically sensitive, clearly. Is this a way of having one without having one?

Ms Chiam—I think it is certainly a way of allowing for the possibility of having one further down the track as the relationship between the parties continues, yes—absolutely.

Senator KIRK—Thank you very much for your submission. As my colleagues have said, I think it does raise some very important issues. I wonder whether you have seen in any other agreements—obviously not in the NAFTA—similar provisions such as this that you need to satisfy certain conditions before this takes place? Have you seen this anywhere else and, if so, where and how has it operated?

Ms Chiam—I had a look in preparation for today and I did not find similar wording anywhere else, which is not to say that it does not exist. I did a scan through the WTO agreements, through standard investment treaties that the US and Australia have and through a range of other trade agreements, and I did not find anything similar, for precisely the reasons that the Chair pointed out, which is that in most cases investment treaties are between developed and developing countries and so there is this need for certainty for the investors. So, in fact, this is quite unusual. It may be that they have taken a model from somewhere and I just did not find it.

Senator KIRK—Thank you.

CHAIR—As I understand the United States position, they normally have investor-state in all their agreements and they did push very hard on this one, although it was not really clear why it would be necessary in this case. As you pointed out, there are only a handful of free trade agreements between developed countries. We have one with New Zealand; we do not have investor-state there, but in the ones with Singapore and Thailand we do. Is there anything further you wish to add?

Ms Chiam—No.

CHAIR—Thank you very much for raising that issue and for your practical suggestions.

Ms Chiam—Thank you.

[11.06 a.m.]

McKELLAR, Mr Andrew, Director, Government Policy, Federal Chamber of Automotive Industries

STURROCK, Mr Peter, Chief Executive, Federal Chamber of Automotive Industries

CHAIR—Welcome. On behalf of the committee, I 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?

Mr Sturrock—Yes. Good morning, all. As I indicated in our submission to the committee, the Federal Chamber of Automotive Industries is the peak organisation representing vehicle manufacturers and importers of all major brands of passenger cars, four-wheel drives, light commercial vehicles and motorcycles in Australia. Perhaps I should preface my comments today by acknowledging that the FCAI and many of our individual member companies have been very closely consulted throughout the process of negotiation leading up to this agreement.

Australia's lead negotiator, Stephen Deady, and his team are to be congratulated for their professionalism and responsiveness throughout the process. I think it also needs to be acknowledged that the Minister for Trade and the government have been responsive to the views expressed by the industry during these consultations. This has been reflected in the final outcome of the agreement. The finalisation of this agreement with the United States comes at a time when the Australian automotive industry is enjoying a period of unrivalled success. Over recent years, the industry has enjoyed strong growth in sales boosted by the underlying strength of the Australian economy, strong vehicle affordability and a supportive policy environment.

Last year, the Australian industry achieved record sales of just under 910,000 units. We are on track to break our record again this year. The industry has also become one of Australia's outstanding export success stories over the past decade. Last year, the industry exports of vehicles amounted to more than 118,000 units, with total automotive exports hovering around the $5 billion mark for the third year in a row.

The United States is already one of our most significant automotive trading partners. In 2003 the two-way trade between Australia and the United States in automotive products was worth almost $3 billion. Exports of parts and vehicles to the United States have peaked at more than $1 billion in these last few years. In particular, Australian vehicle exporters have enjoyed some considerable success in the US market. In recent years, Mitsubishi has exported significant quantities of the Magna and Diamante to the US. More recently, Holden has begun exporting the Monaro coupe, badged as a Pontiac GTO. While these vehicles, as passenger cars, only face a 2.5 per cent tariff on entry into the US, the elimination of this duty under this agreement will offer a modest but immediate benefit.

It is significant to note that the US has eliminated the 25 per cent tariff on light trucks as part of this agreement. Until now, this has been a significant but prohibitive barrier to trade. Its removal presents a new area of opportunity for the Australian manufacturers of utility vehicles, and it remains to be seen whether this will yield a new source of exports to the United States in the future.

On the other side of the coin, Australia currently imports around $2.2 billion a year in automotive products from the United States. As I noted in our submission, sports utility and four-wheel-drive vehicles account for a significant proportion of the number of vehicle imports from the US—around 8,000 to 10,000 units per year. Passenger cars amount to a much smaller share of imports—currently around 500 to 800 units per year. Given that the SUV and four-wheel drives currently enter at a five per cent tariff, and given the phasing arrangements that have been agreed for passenger cars, it is open to question whether there will be significant additional incentive to import such vehicles from the United States in the near term.

In summary, as I have indicated in our submission, FCAI has long recognised that bilateral trade agreements of the kind envisaged with the United States can form a very legitimate part of an appropriate and balanced trade policy. For such agreements to be contemplated, they should support Australia's overall trade policy objectives and result in a proportionate strengthening of market access arrangements for Australian exporters in return for increased access to our Australian market. I believe that this agreement meets both of these conditions.

The FTA is consistent with the requirements of the WTO in relation to such regional trade agreements. Indeed, by WTO standards it is arguably a very comprehensive agreement. It complements Australia's multilateral trade efforts and our efforts to secure closer trading relations with other key trading partners, particularly in the Asia-Pacific region, and it delivers tangible improvements in market access for Australian exporters to the United States across a wide range of industry sectors, including our automotive industry. Indeed, the agreement will eliminate more than 97 per cent of US industrial tariffs, excluding TCF, upon entry into force.

From the standpoint of the Australian automotive industry as a whole, we believe that this agreement offers significant opportunities to automotive exporters. The United States has offered to remove all tariffs on automotive products upon entry into force. Equally, we have acknowledged that the agreement will bring with it some additional competitive challenges. Under the terms of the agreement, imports of vehicles and parts will receive preferential access to the Australian market. It remains to be seen what impact this will have, although I should note that by 2010 the maximum margin of preference will be no more than five per cent.

As with any such preferential agreement, it has to be considered that the pattern of benefits and costs will not be uniform for all participants in the industry. For some, the benefits will be significant and immediate. For others, there will be the challenge of an additional level of competition. On balance, though, it is our view that the proposed agreement is consistent with Australia's broad trade policy objectives and does secure reciprocal market access gains for Australian exporters. We believe the agreement between the Australian government and the United States government should be honoured, and we urge this committee to support implementation of the agreement and to recommend passage of the necessary enabling legislation.

Mr Chairman, with your indulgence I ask that my colleague Mr Andrew McKellar also make some brief comments on the implications of the market access provisions and rules of origin arrangements for the Australian car industry.

Mr McKellar—In the interests of the committee's time, I will focus my comments on the rules of origin issues. Mr Sturrock has already very adequately covered the market access provisions as they impact on the Australian automotive industry. To some extent, if the market access provisions and the tariff arrangements within the agreement are their flesh and blood, the rules of origin are the bones and sinews that give the whole agreement some added structure. The rules of origin which are to apply under this proposed agreement are certainly a key area of interest for the Australian automotive industry. The rules of origin represent a significant departure from those which have been adopted in other preferential agreements which Australia has entered into, particularly under the longstanding Australia-New Zealand closer economic relations trade agreement, or CER, and the more recent Singapore-Australia Free Trade Agreement.

The rules of origin for most manufactured goods have been based on two key requirements: that the last process of manufacture must have occurred within the free trade area and that at least 50 per cent of the allowable cost of manufacture—or ex-factory cost, as it is sometimes described—must represent qualifying expenditure for origin to be conferred. In contrast, the rules of origin in this agreement are based on different criteria which can vary from product to product or from tariff item to tariff item. In most instances in this agreement there is a requirement that items have undergone a change in tariff classification from one heading or related group of tariff headings to a completely different heading. For some items the agreement also provides that origin may be conferred if a minimum level of regional value content is achieved. In most instances regional content is measured on the basis of so-called transaction value of the product calculated using one of two methods—either a build-down approach in which the value of non-originating materials is subtracted from the final value or a build-up method in which the value of originating inputs is added up and calculated as a proportion of the final value of the goods.

It is significant to note that in this agreement, though, for a range of key automotive products—vehicles, engines, chassis, car bodies and significant automotive components—an alternative approach to calculating regional value content is used: a net cost method. Net cost was used in the NAFTA. It is very similar in practice to the ex-factory cost method which has been adopted by Australia in its other key bilateral agreement, so there is certainly some familiarity in the industry with the arrangements used in net cost. In principle the net cost approach is quite similar, as I say, to the CER and SAFTA ex-factory cost approach. The main differences appear to be that net cost includes some non-factory related general and administrative costs and that it excludes some other items, including royalties, whereas ex-factory cost measures currently do not.

To summarise the general industry view on the rules of origin under this agreement, we were very closely consulted throughout the process of negotiations on the rules of origin. There was in-depth discussion with both individual companies and the negotiating parties, and also within the chamber through its processes, on the rules of origin that were to be adopted for the agreement. We have had the opportunity to consider the draft text of the agreement and the rules of origin that are provided in the relevant chapter there, and it has been agreed within the

industry that there is satisfaction—that they are workable and that they provide a realistic basis for the determination of origin, particularly for automotive products where that is concerned. That concludes my comments.

CHAIR—In your submission you say:

> ... it has to be considered that the pattern of benefits and costs will not be evenly distributed across all participants in the industry.

We have had submissions from Ford and Holden, and they have been very up-front about the benefits of the US FTA. What is the feeling of the other two manufacturers, Toyota and Mitsubishi?

Mr Sturrock—It is very clear that in any circumstances there are different business plans for each company. We are not party to the details of their particular business plans. Obviously the individual submissions to you by the companies have described a number of elements of those particular business plans. I think there is recognition that the US FTA, as it is described, does provide a number of challenges for the Japanese based companies or companies with Japanese sourced products. That is nothing we would necessarily believe to be unusual or a surprise, given the scope of such a potential agreement. The particular companies that you have identified have had discussions with DFAT directly and with the ministers generally about their concerns or anxieties. They relate to particular issues of long-term strategy for the corporations. I think it is useful to note that, broadly, the corporations at head office level, as brands in worldwide trading circumstances, are supportive of overall WTO type free trade arrangements. The individual circumstances, region to region and country to country, become another matter and, as I said, are wedded to the particular business plans of those organisations and those subsidiary companies.

CHAIR—Are you saying that Ford and Holden are very supportive and Toyota and Mitsubishi are more neutral?

Mr Sturrock—I think it is fair to report that I come to you as the head of a body reflecting the industry view as a collective. Individual companies have put forward submissions, as you have identified, and will make comments directly to you. That should be the normal process. It would be unfair of me to specifically get into detail on behalf of individual companies other than to say that the important aspect should be noted—that is, that the submission, our discussions with DFAT and ministers on behalf of industry have had the sign-off of all the board members, who basically are the CEOs of the varying companies, the vehicle manufacturers and a range of importers.

CHAIR—Have you done your own modelling of the impact of the free trade agreement for the automotive industry?

Mr Sturrock—Not specifically. We have had discussions at the CEO level amongst the various members, both manufacturers and importers, over a period of some time. We have looked at individual circumstances and we have taken a view, as a result of those discussions, that it does provide positive, long-term benefits for the industry, as we have described in our submission. That is the position we have agreed upon.

CHAIR—Have you had a chance to look at the CIE report that was released on Friday?

Mr Sturrock—We have looked at that briefly. Again, we do not believe that it is appropriate for us to comment in detail on their particular modelling of findings other than to note that they have reached a positive conclusion in terms of the automotive industry's impact.

CHAIR—The information I have here is that the impact on the sector will be a 0.2 per cent increase in output, a 7.8 per cent increase in exports and a 2.5 per cent increase in imports. If that were so, that would be a positive for the industry.

Mr Sturrock—We think that we should be cautious about taking too closely the particular modelling outcomes or assumptions but rather take a wider view, as we have done amongst the companies and the CEOs over the past few months. We believe that it does provide long-term benefit to the industry, through the removal of those various tariffs. The fundamental issue is that it provides us with better market access to the US than we currently enjoy. That is specifically in the area of light commercial vehicles, as we have identified.

CHAIR—The CIE report also said—I have not seen it elsewhere—that it was the opinion of the FCAI and the FAPM that American passenger motor vehicles and Australian passenger motor vehicles are not good substitutes.

Mr Sturrock—I think the market circumstances are very different between the US and Australia, as we have seen in the US for some years. We build and sell a different type of vehicle here than you generally see in the US. As a personal view, the US market is probably quite unique compared to some other markets of the world, such as Japan or Western Europe, for example—those other major areas. But that said, they are quite different and the styles and uses of vehicles are quite different. For example, in the US we have a market which is fundamentally half dominated by trucks. The other half is passenger vehicles. That is quite unusual by any other comparison.

Mr WILKIE—You talked about the rules of origin. Do you think the current arrangements will lead to a diversion of our sources of imports for parts, say from Asia to the US?

Mr McKellar—The issue of trade diversion is very hard to assess at this stage in terms of sources of parts. It is true to say that there will be an immediate benefit to some vehicle manufacturers who currently source components there for their vehicles. That will be a cost saving as a result of the reduction in the tariff that they currently pay. It is fair to note that all the manufacturers have a high local content in terms of the vehicles that they produce here currently. Quite frankly, I would be surprised if there were a change away from that in the long term. They will continue to source significant proportions of their components locally for supply chain security reasons and others. In terms of convenience, that is always going to be the case.

There are some companies that import more from the US versus other sources and there are others that gain more from elsewhere. There may be some opportunities among some of those manufacturers that currently source elsewhere in the region to look at the US as a source. There will be a preferential tariff advantage from doing so but we would be cautious about adopting the interpretation that it is going to result in significant volumes of diversion of trade. It is probably unlikely in the short term, remembering that as we move towards 2010 the actual preferential

margin, whether it is on components or vehicles, under this agreement for automotive products will diminish back to a maximum of five per cent.

In that context, it is a relatively narrow margin of preference, one that is probably unlikely to fundamentally drive sourcing decisions in the long term when there are so many other factors that come into play, whether they are security of supply, exchange rate considerations, other cost factors, productivity or model compatibility and so on. Those factors in the long term are much more important.

The other thing that needs to be taken into account is the fact that we do have other agreements on foot, notably with Thailand in the immediate short term. More recently there was the very positive news from ASEAN economic ministers that they would be prepared to contemplate reopening the dialogue with Australia on the prospect of stronger economic linkages there and a possible agreement in AFTA. We also then have to look at the work that is under way with China and where that might lead. There are so many factors out there that are going to come into play over the next decade which could swamp any short-term analysis that one might want to make as to what the trade diversion risks or prospects might be as a result of this agreement.

Mr WILKIE—We heard evidence from Holden, in Melbourne, that suggested that if the Monaro takes off over there—as the Pontiac—instead of those vehicles being manufactured in Australia, the plant will be duplicated in the US and the Monaro will be made there. Holden made the point that they are a worldwide company, a global company, and they would manufacture wherever they believed they could get the best result. We have talked about opportunities in the light commercial vehicle area. My concern is the same as with the Monaro. If the light commercial vehicles were to take off in the United States and were very popular, the chances are that they would end up being manufactured there rather than in Australia. What is your understanding of that?

Mr Sturrock—Very simply, these corporations are worldwide corporations building certain products in certain regions, and Australia has become, as far as General Motors is concerned—as publicly stated by them—an important regional manufacturer of niche type products for this region. The success of the Monaro back into the US is very heartening. The issue of long-term decisions about where particular products are built, in which plants, is one for the corporation generally at board level, in relation to its long-term strategic planning. I think it is fair to say that you could never be certain that things would remain exactly as they were forever, and there are always potentially changing circumstances. However, it would be our view that it is most unlikely, particularly in the short-term—over a decade or thereabouts—that there would be any serious consideration in terms of moving production of a particular model, as you have just described in the instance of, say, Monaro or the light commercials.

Again, it is a decision for the corporation and it is a comment for Holden; it is not specifically for the FCAI to comment on their particular business plans. That is my assessment of the issue as we sit here today. I think it would be most unlikely. If you took that particular example to the extreme and said, ‘If things are popular in the US, why don’t we build everything in the US?’ clearly that would not be the case, clearly it does not happen today, and clearly corporations do build product elsewhere in the world for the US market—as they do for other markets. I could not imagine, from a practical viewpoint, that would be the issue.

Mr WILKIE—Would you be concerned if they were looking at doing that?

Mr Sturrock—I think anyone would be concerned if they were taking production to the US from Australia. You would then be looking to potentially send product back to Australia from the US for that particular model. To take your example a little further, if you picked up light commercial production and took it to the US—a vehicle which has the platform of a Commodore or a Falcon—those particular vehicles are not built in the US and are not sold in the US, and it is unlikely that they would be in the future. They are built here. The utility is a derivative of the passenger vehicle—

Mr WILKIE—That could be said of the Monaro, but they are still looking at moving that offshore.

Mr Sturrock—I do not know whether or not that is true. It would surprise me if it were, frankly. As I said, the corporation builds product in particular regions for various world markets, and that is the way the industry is moving. I do not imagine it would be a considerable short-term risk, but I repeat: it is really for GM and Holden to comment on that situation more so than for us to be definitive about what we would believe to be the circumstances.

Senator MARSHALL—They did comment, and they actually indicated that it was a very likely income.

CHAIR—I do not think that is what they said.

Mr ADAMS—He has a right to make that assessment.

CHAIR—I think if you are going to put words into the mouths of people, perhaps you could just quote from the transcript.

Senator MARSHALL—I do not have the transcript in front of me. Maybe you would care to look at it. I actually asked the questions, and I think that I fairly clearly understand the answers that were given. The comments about the Monaro, if it takes off and is successful, were that production would be moved to the US. Those comments were made by a very senior GM executive, and it was put to Holden. You can read the transcript; I do not try to put words into their mouths. My recollection is that they very clearly indicated that, yes, it is a globalised company and those are matters that will be taken and determined at that level. They certainly did not try to dispute in any way, but confirmed, what the senior executive had said.

Mr McKellar—I would like to add a comment on this issue—and we have reviewed the transcript of that discussion. I think an additional point which is relevant to the committee's consideration of this issue is whether or not such a development, as a theoretical possibility, is more likely or less likely as a result of a free trade agreement between Australia and the United States. I think it would be our contention, at least in the short term, that such a development would be less likely. It needs to be borne in mind that the tariff on entry into the United States is being removed or eliminated, as part of this agreement, on the agreement's entry into force. That, of course, makes it more attractive to locate production of the Monaro in Australia, versus the US, because the costs of doing trade with and of export into the US are reduced, rather than increasing the tariff into the US, which may arguably make it more attractive to locate

production there, versus Australia. So I think that is a relevant consideration for the committee: what is the impact of this agreement on such a theoretical possibility? And I think we would contend that it actually makes Australia, in this context, a more attractive location for production and investment of the kind that has been undertaken with the Monaro.

CHAIR—I just want to make the point that, if we are going to be using comments that have been given in the public hearing, the onus is on members to actually use a quotation or whatever, because—

Mr ADAMS—I do not think there is anything in the standing orders to say that at all, Chair.

CHAIR—I have not finished yet. The comment was made that it was extremely likely that this would happen. I do not remember that being said. Did you have a follow-up question?

Senator MARSHALL—I take on board what you have said, Chair, but it is not something that you have rigorously applied throughout the course of these hearings either. If we are going to have some consistency, it should be applied consistently. I have just had a look at the transcript, and maybe those exact words that I used were not accurate, but I think the meaning was very clear, and I do not think I have misrepresented what was said in the transcript. But that is for others to judge, I suppose.

Mr Sturrock, isn't the issue the economies of scale? It is a fairly low-protection industry anyway, in trade between these two countries. Aren't we always going to be at a significant disadvantage because of the economies of scale in this industry?

Mr Sturrock—Our future in manufacturing of automotive products in Australia is a strong domestic market, complemented by export opportunities around the world to give you that additional volume—that additional economy of scale. The industry has been focusing on that, particularly over the past five or six years since the previous iteration of the government's automotive policies was announced. That, together with the investment by the corporations and the determination to find those export markets, has now given the opportunity whereby about one-third of locally manufactured vehicles and other componentry are exported. That has added substantially to that particular volume, and that means, as we have local sourcing of a lot of those engine and vehicle components, that that boosts that particular manufacturing sector quite considerably. The industry has a target of raising exports to one-half of local manufactured volume by the end of the decade.

In global terms, the Australian manufactured volume is tiny—350,000 units or thereabouts of vehicles and so on—and, with our manufacturing plants, in terms of the relationship to other parts of the world such as Asia, Japan, Europe and North America, you would find it difficult to justify the continuation of that manufacturing base. However, the industry has taken the decision, in response to government policy initiatives and encouragement, that it can build small-run, flexible model unit runs for niche markets both in Australia and overseas.

We have built on the success of recent years in terms of quality of build, efficiency of manufacturing, the cost base of manufacturing and, indeed, the R&D development and technical support to those models. That has been the success of the industry over the past five to seven years. It is the very future of manufacturing in Australia as far as the automotive industry is

concerned, and that is why this particular market access opportunity is very important to us and why we are very supportive of the general trade policies in terms of our trading arrangements with our Asian partners and others around the world.

Senator MARSHALL—I certainly want this industry to be incredibly successful. It impacts particularly in Victoria, and tens of thousands if not hundreds of thousands of people feel the flow-on effects. That is why I am very keen to ensure that there is no disadvantage in these sorts of agreements for that industry. In your submission you talk about the scheduled $12,000 duty on import of used passenger vehicles being eliminated. Then you say that that will not be a problem because we are going to implement more rigorous safety requirements and legislate accordingly. Won't that purely be seen as a trade-restrictive response?

Mr Sturrock—I might ask my colleague Mr McKellar to answer that one.

Mr McKellar—The point is to be made in any event that Australia has in place currently a thing called the Motor Vehicle Standards Act, which regulates standards in Australia. It provides for such things as the Australian design rules and it provides for arrangements for the importation of vehicles. That sets out the standards that vehicles must meet in terms of safety, emissions, antitheft and so on if they are to be imported into Australia. There are some provisions within the regulations under that act which allow for special consideration for the importation of vehicles that may not fully comply with the regulations, particularly used vehicles. Those regulations are in place across the board. They are not affected by this agreement.

I think the point that was being made is that regardless of the $12,000 special duty, which I have to say has never been applied or collected in any instance, there is a provision in the customs regulations which provides an exception to that duty if you have in place an approval under the terms of the Motor Vehicle Standards Act or those regulations. If you have an approval and you meet the criteria to bring in a used vehicle because it meets the conditions that are required, you can do that already and not pay the $12,000 tariff. All that this agreement does is continue to apply those arrangements while removing that $12,000 special tariff on a bilateral basis from the customs tariff provisions. In practice, it has no real impact.

We will continue to see used vehicles that come in from the United States having to meet the requirements under the Motor Vehicle Standards Act—that is the case whether they come from the United States, whether they come from Japan or whether they come from somewhere else. I think in that regard we do not have any concern per se that this agreement is likely to result in the risk that there will be a significant influx of used vehicles coming from the United States.

Senator MARSHALL—You say in your submission that provided these amended arrangements prove to be effective when talking about the changed regulations—

Mr McKellar—That is correct. The reason for that particular comment is that, with the operation of the regulations under the Motor Vehicle Standards Act, there has been a change, then a loophole has emerged and then there has been a need to cover the loophole, so further amendments were introduced. We have gone through an extended period of review of the MVSA, dating back to 1997. Most recently some amendments to that act were put through—in

2002, I think. We have seen that the particular amendments that went through then have been effective to date.

More recently one issue that has emerged is the marked increase in the importation of used vehicles 15 years and older, so it is possible that a new loophole is emerging. That issue is currently being reviewed by the Department of Transport and Regional Services, and we will see what happens down the track as to what they might recommend for future regulation. So the comment that we make is a cautionary note—that is, we need to be sure that the Motor Vehicle Standards Act regulations are effective, but I think that is a question which is entirely separate from the provisions of this agreement. There is nothing in this agreement that would in any way undermine the operation of those regulations.

Mr ADAMS—We are bringing down the current tariff of 15 per cent by five per cent next year and then I think by a further five per cent in 2010, so that the tariff will be five per cent. What effect would that have on, say, Honda's importing into Australia from the United States instead of from Japan?

Mr Sturrock—The passenger vehicle tariff from January 2005 will be 10 per cent. With this agreement there will be a preferential rate of 1½ to two per cent to US sourced products versus other sourced products. That difference remains, and that is known as a preference. That is certainly an arithmetic opportunity. There are a number of issues in terms of sourcing, exchange rates and other matters, but that is literally the position, and our members understand that and appreciate that issue.

Mr ADAMS—I appreciate that cars manufactured at the Honda plants in America are more expensive than Japanese cars and that they are not importing them now because of that tariff. I want to make the point that there could be a change in that direction. I guess it will not make any difference to the numbers for us, but that is something that could occur, couldn't it? It could be a rearrangement of from where Honda sources its vehicles into Australia.

Mr Sturrock—That is true. Prima facie it is correct but, as I say, you do have issues in terms of sourcing of the vehicle, exchange rates, freight and all manner of things—even perhaps the particular build quality of the vehicle in the US versus the build quality in other parts of the world. It is not purely and simply the tariff in total isolation. There are a number of factors. Whilst the general passenger rate will be 10 per cent, the potential US rate will be a little lower than that, as is described in the table. The companies would be taking a long-term view as to where they source their vehicles. For example, you would not simply source out of a plant for a year or two to take advantage of a particular opportunity. They take a much longer term view than that.

CHAIR—Thank you very much for your attendance before the committee today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available.

Proceedings suspended from 11.48 a.m. to 11.58 a.m.

RAWSON, Mr Robert Norman, Director Safety and Health, and Assistant Director Trade Policy, Minerals Council of Australia

CHAIR—Welcome. On behalf of the committee I thank you for appearing to give evidence today. Although the committee does not require you to give evidence under oath, I 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 Rawson—I do.

CHAIR—Please proceed.

Mr Rawson—Thank you, Chair. Basically I will touch on the key points in our submission—this will be quite a brief introduction—which are that the minerals industry has been a major contributor to the Australian economy, and there are some facts and figures outlined in the submission to support that. From the Minerals Council perspective, the prospects for continued growth look very good. In particular, the industrial and economic growth in the emerging economies of China and India will contribute to that. But international competitiveness is critical—in fact, essential—to this future growth, and what that means is access to global markets, access to capital, access to professional expertise and access to technology.

The MCA is a strong advocate of trade and investment liberalisation and believes that Australians are much better off as a result of Australia's commitment to trade liberalisation, which has essentially been through reduced tariffs and increased productivity over recent decades. The MCA supports a comprehensive approach to trade liberalisation, through the reduction of tariffs and non-tariff barriers and reducing subsidised competition. As for foreign investment policy, clearly access to global capital markets is vital to the minerals sector. Basically, our capital markets are not sufficiently large to attract the capital needed for most major projects, and competition for investment is fairly vigorous around the globe.

In this context the MCA made a submission about investment to the Department of Foreign Affairs and Trade during the negotiation of this agreement. It advocated a number of specific provisions, such as the legal right to national treatment for foreign investment, the retention of but increase in the threshold for Foreign Investment Review Board scrutiny, and no prescribed conditions in the agreement for non-trade matters like the environment and labour. With regard to environment and labour policies, the MCA opposes the use of trade agreements to achieve non-trade outcomes, assuming that these matters are better dealt with through other mechanisms.

The MCA consider the general benefits of the US-Australia free trade agreement to include things such as the broadening and strengthening of the bilateral relationship; the removal of restrictions on goods, services and capital; and the expansion of the two-way trade and investment, which is quite clearly something that is almost on a par now—Australian investment in the US is only slightly less than US investment in Australia.

We concluded our submission with some specific benefits to the minerals industry and discussed five key things: enhancement of Australia's attractiveness as an investment destination; the expectation of flow-on effects to other major trading partners—in particular, we mentioned China, Japan and India; the elimination of tariffs; the enhanced potential of Australian mining technology and services; and, once again, the fact that the agreement should not have any specific trade restrictions in relation to environment, labour and other non-trade objectives.

In conclusion, the Minerals Council felt that Australians would be unambiguously better off under the free trade agreement with the US, as it would lead to deeper integration with the US economy, the most significant economy in the world, and strengthen the trade and investment relationship. The MCA would support ratification of this agreement.

CHAIR—Thank you very much.

Senator MARSHALL—Is this submission on behalf of all your member companies?

Mr Rawson—It was put in on behalf of the council, and our membership represents 85 per cent of Australian mineral production. Yes, it was put in on behalf of the total membership.

Senator MARSHALL—Are we able to get a list of your members?

Mr Rawson—It is on our web site; it is up there now.

Senator MARSHALL—Okay. So, when the MCA say they support the right to organise and bargain collectively, you are saying that on behalf of all your member companies?

Mr Rawson—We do not have a specific say in individual enterprise arrangements. They are very much matters for individual companies to determine. On industrial relations matters, such as workplace bargaining, the primary role for the minerals sector is taken by AMMA, the Australian Mines and Metals Association.

Senator MARSHALL—Sure. But I thought you did indicate that this submission was on behalf of all the companies, so I just wanted to clarify that.

Mr Rawson—That particular issue, bargaining, is very much a matter for individual enterprises and companies and sometimes individual sites.

Senator MARSHALL—All right. Are there any other parts of the submission that are not on behalf of all the companies?

Mr Rawson—Not to my knowledge.

Mr ADAMS—You were very keen on the flow of more capital that could add to changes to the mining industry. We have had some difficulties there with people flow. There is nothing in this agreement that allows us to have freer business visa arrangements. There were reasons for that, but do you have any comments on that? How would that affect your members' companies?

Mr Rawson—Probably one of the significant disappointments for the minerals industry was that there were not any provisions to enhance the mobility of personnel, particularly professional personnel. That is a two-way street, of course, because a lot of Australians, as you know, already work overseas in the minerals industry. But it is a global market, and it would be very important for their credentials and qualifications to be recognised. The only thing I could say there is that this agreement would not be a static agreement. We would hope that, under the provisions for further consultation between Australia and the US, that would be one of the first things that there would be a focus on. I can understand in the present environment of security and so forth that there may have been some underlying reasons for not including it at this time. But we believe that there are benefits both ways from enhancing that, and that is something we would like to see added at some point in the future.

Mr ADAMS—And what about technology? How do you think that will enhance the industry here?

Mr Rawson—The technology is a very important thing, because there is a lot of investment in technology development in the United States. A country like Australia does benefit from a lot of the R&D effort that is undertaken in a place like the US. The Australian mining, technology and service sector has done extremely well in the markets in which it has operated. It has tended to focus in Indonesia, Africa and Chile, and it has done extremely well. As you are probably aware, 60 per cent of the software that is used in the mining industry globally is in fact provided by Australian mining and technology services. But we are aware that there is significant potential to enhance that by Australian companies entering into partnerships with US companies, sharing and capitalising on some of those technological developments. The mining industry is not such a big industry in the United States, but the United States does invest in the minerals industry in other countries and sometimes those investments are predicated on the use of US technology. If there can be partnerships, where Australia can work with US partners, then we would also perhaps benefit from some of that. Essentially, the scope is as large as people's imagination and innovation allow it to be. We think there are a lot of opportunities there, and technology is one of them.

Mr ADAMS—Again, the people flow issue in joint venturing—in that sharing of technologies et cetera—is a pretty crucial thing, isn't it?

Mr Rawson—It is. We have seen benefits with enhanced people flow even at the student level. Because of the excellent courses that are run in the mining sector in Australia, we would have American students wanting to participate in them. But the delivery of education is going through a huge transformation. I have seen people sitting in classrooms in the University of New South Wales or elsewhere where the lecturer might actually be delivering his lecture from London. It is becoming a very small world, and technology is enabling us to benefit from that. I think Australia's skill and expertise have the potential to give benefit. We can learn from them and they can learn from us.

CHAIR—Thank you.

Mr WILKIE—The submission talks about how we would be more attractive if we removed some of the Foreign Investment Review Board provisions on investment. Can you cite any

examples of where the US has in the past been barred from investing in the mining sector in Australia as a result of these provisions?

Mr Rawson—To my knowledge, to date there have been no problems in attracting investment. What we are saying, though, is that the changes being proposed provide greater certainty to the sector. The increasing of the threshold was something that we considered quite important. The $50 million figure was rather low. It basically meant that every project went before the committee and essentially they were all endorsed. But at no stage has the Minerals Council suggested that we did not need the Foreign Investment Review Board. We thought it was important to retain that capacity in case there were issues of national significance or where something was in the national interest. But we did call for an increase in that threshold. In fact, the increase we asked for was less than what has actually been included, and we are quite satisfied with that. Does that answer your question?

Mr WILKIE—That is fine. The mining sector obviously needs enormous amounts of investment to proceed with some of the big projects. The Centre for International Economics has based its analysis of increased benefits to Australia on 60 per cent of foreign investment coming from the US. Given that no projects have been prevented from being invested in, or developed, in the past, and if people are investing in big-ticket items like mining anyway, I wonder how accurate that assessment is.

Mr Rawson—I suppose what you could say is that the agreement would raise the profile of Australia as an attractive place to invest. Given that the US government has identified Australia as a country they want to conclude an agreement with, there would probably be a lot of investors in the US who had not heard of Australia who may think that is quite interesting. There are also the potential flow-on effects, which is a point we make in our submission. We expect and hope that the increased threshold for the Foreign Investment Review Board would flow on to investors from other countries such as Japan.

Senator MASON—In the minerals industry, has there long been a distinction between raw materials and manufactured—refined—minerals in terms of the capacity to export them without being beholden to tariffs? For example, is there a big distinction between steel, on the one hand, and iron ore on the other?

Mr Rawson—Looking at the stats that we have included, not much of the raw material goes to the United States. Generally speaking, in other markets, the more refined the product, the higher the tariff. That is a standard thing. But it is primarily the refined metals that are going to the United States market—aluminium, steel, refined copper and so on. So it has not been an issue. Those tariffs have been relatively low. Five per cent would be a high tariff; they are somewhere between one and five per cent, so it is not significant. You have seen the figures that essentially show that the export of Australian minerals and processed metals to the US is about one per cent of Australia's exports of those products, compared to China, to which currently about 16 per cent of our exports are directed. The US market is not large; it is all important, but the impact would not be significant.

Senator MASON—Speaking historically, going back just a short time, there was an issue with BHP Steel, wasn't there? You processed materials and a tariff, or a quota perhaps, was

placed on that, and in a one-off arrangement the United States relented and allowed that material in. Is that right?

Mr Rawson—That is right. There were safeguards measures. I might just point out that BHP Steel, as such, since the splitting of those operations, is not a member of the Minerals Council of Australia; it is part of the Australian Industries Group because the material is considered to be processed material. We are dealing more with the production of the raw material and the primary processing. The point still remains that, yes, there were what the US calls 'safeguards provisions' imposed. Our view was that the losers in that exercise were in fact the American consumers because it essentially propped up the inefficient steel industries in the US and it delayed the potential reform of those industries which would have improved their efficiency.

Senator MASON—There are always losers in a country with high protection laws. The losers are always the consumers in the country.

CHAIR—How did you feel about the process of consultation during the negotiations?

Mr Rawson—From our perspective it was extremely good. There were ample opportunities to put our views forward. There were many meetings held at the Department of Foreign Affairs and Trade throughout the process. There was the opportunity to put in formal submissions and there were regular consultations with all stakeholders throughout the process and we were very much included in those discussions. We felt that we had a good handle on where things were throughout the process—

CHAIR—That is great.

Mr Rawson—subject to any confidentiality, of course, that was not shared with us at the time.

CHAIR—Thank you for that. Is there anything further you would like to add?

Mr Rawson—No, I think we have covered it pretty well.

CHAIR—We have your submission as well. Thank you very much for appearing before the committee today.

Mr Rawson—Thank you very much for the opportunity to appear. I very much appreciate it.

Proceedings suspended from 12.18 p.m. to 1.32 p.m.

RIMMER, Dr Matthew Rhys, (Private capacity)

CHAIR—Welcome. On behalf of the committee I thank you for appearing to give evidence today. Do you have any comments to make about the capacity in which you appear today?

Dr Rimmer—I am a lecturer at the Faculty of Law at the Australian National University, and I am appearing in a personal capacity.

CHAIR—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?

Dr Rimmer—I am an intellectual property lawyer with a PhD in copyright law and I have been quite interested over the years in the debates about copyright term in particular. Firstly, I would like to give you a bit of background of the historical debate about copyright law and the extension of the copyright term. Secondly, I will focus upon the problems with the wonderfully named Sonny Bono Copyright Term Extension Act 1998. Thirdly, I would like to challenge the myth that Australia engaging in a copyright term extension will lead to some sort of international harmonisation. Fourthly, I will look at some of the economic studies dealing with the costs of the copyright term extension. In particular, I would like to make some comments about the submissions of the Copyright Agency Ltd and the economic study that was done of the impact of the free trade agreement in relation to intellectual property. Finally, I will emphasise some of the cultural costs associated with the free trade agreement. Also, I am quite happy to respond to any questions about the intellectual property chapter, dealing with the copyright law, patent law and trademark law.

The first modern copyright statute was the Statute of Anne in 1710. This modern piece of the legislation in the United Kingdom was designed for the encouragement of learning. Essentially, it was designed to provide some private rewards for copyright owners in return for a wider dissemination of public information. It did two really important things. First of all, it codified copyright law in terms of the statute. Prior to that, it had been subject to perpetual protection under common law through Crown privileges. Second of all, it provided some sort of temporal limitation upon copyright law. The early Statute of Anne essentially put time limits on the period of protection provided to copyright owners. Ever since that particular statute was enacted, there has been a great deal of debate over the copyright term and extending the duration of the copyright term.

Historically, some of the very early battles involved English publishers suing Scottish publishers, who were flooding the market with books that had come into the public domain. Essentially, the English publishers argued that the Statute of Anne did not dissolve the perpetual common law copyright. They argued that perpetual common law copyright still existed; therefore, they could stop the Scottish publishers undercutting them in the British bookselling market. The very important case of Donaldson v. Beckett found that the Statute of Anne trumped the old perpetual common law copyright. That is a bit of historical background into the origins

of copyright law and the important place in which temporal limitation has been attached to copyright law and codified it in terms of the statute.

Copyright owners have been very concerned about their material entering the public domain and their losing the ability to exploit that copyright material. They have a great deal of economic incentive to lobby governments to try to extend the copyright term to get further protection. There have been a number of interesting attempts over the years to try to do this. For instance, in the United Kingdom the *Peter Pan* estate managed to get the British parliament to provide perpetual protection for the works of *Peter Pan,* even though the copyright had expired.

I first became interested in the debate over the copyright term when I was doing my PhD. I was looking at the impact of the European duration directive, which is the first kind of copyright term extension, which the United States then followed. I was interviewing Jane Scott, who was the producer of the film *Shine*, which won an Academy Award for the great Australian actor Geoffrey Rush. The problem that she had in relation to this particular extension of the copyright term was that the film relies heavily on the works of Rachmaninoff. Essentially, the works have come back into copyright protection with the copyright term extension. It caused a great deal of commercial concern on her part in having to seek permission to use the works of Rachmaninoff.

In 1998 the United States enacted the Sonny Bono Copyright Term Extension Act. The arguments for extending the copyright term were in terms of trying to harmonise with the European Union. One of the main advocates for this piece of legislation was Sonny Bono, of Sonny and Cher fame. He argued that he would like perpetual copyright protection, but he had been told that that was unconstitutional so, instead, he tried to argue that there should be copyright protection for the life of the author plus 70 years, and different terms in relation to works made for hire.

The main lobbyist for this piece of legislation was the Motion Picture Association of America, which has been incredibly influential in the formation of the United States domestic copyright law and foreign policy. Jack Valenti, in particular, was one of the main advocates for the copyright term extension. The Sonny Bono Copyright Term Extension Act has been incredibly controversial in the United States. It has been the subject of three constitutional challenges against the validity of the legislation: Eldred v. Ashcroft, Golan v. Ashcroft, and Kahle v. Ashcroft. In addition, there is also a bill before the United States Congress, called the Public Domain Enhancement Bill, which tries to deal with some of the problems created by the Sonny Bono Copyright Term Extension Act.

The first of those cases, Eldred v. Ashcroft, went to the Supreme Court of the United States. The majority of the Supreme Court of the United States upheld the validity of that legislation. Essentially, there were arguments that the legislation was invalid because it went beyond the constitutional power dealing with intellectual property, which has an explicit reference to limited times in the United States. There were also concerns about its impact on the first amendment in terms of freedom of speech.

There are still two challenges on foot against the Sonny Bono Copyright Term Extension Act. One deals with the retrospective nature of the legislation. That is the Golan case. Another action, taken by Kahle, deals with the removal of formalities that also took place with the copyright

term extension act. I would submit that, as a model, the Sonny Bono Copyright Term Extension Act is not a particularly good one to follow.

I would now like to deal with some of the arguments that have been raised around the need for Australia to follow the United States in terms of its copyright term extension. Back in December 2003, Mark Vaile and Daryl Williams, the Minister for Trade and the former Attorney-General, were arguing in the course of the discussions that Australia should not agree to a copyright term extension, and they made comments to this effect both in the *Australian Financial Review* and in the *Sydney Morning Herald*. They stressed that Australia was a net importer of copyright materials and that they believed there would be serious impact upon the Australian economy if they agreed to a copyright term extension. However, in the intervening period—somewhere between December and February—the Australian government changed its mind in relation to the copyright term extension and agreed to a version of a copyright term extension. Philip Ruddock, who then became Attorney-General, in trying to justify the copyright term extension, essentially argued that there was a need for Australia to follow the copyright term extension. He said:

> Australia generally does not advocate higher standards of intellectual property protection than those determined internationally. However, it is sometimes in Australia's interest not to lag behind emerging standards of important trading countries. It is clear that an international standard is emerging amongst our major trading partners for a longer copyright term.

I would like to contest some of the statements that are made about there being international harmonisation with respect to the copyright term. A very important point to make first of all is that under major multilateral agreements, like the Berne convention dealing with copyright and the TRIPS agreement under the World Trade Organisation, countries are only obliged to provide copyright protection for the life of the author plus 50 years. NAFTA, the North American Free Trade Agreement, has a similar standard. For instance, at the moment, Canada, has copyright protection for the life of the author plus 50 years. You are able to provide additional protection under such multilateral agreements—that is, you can go above that standard—but you cannot go below that standard, except for certain difficult categories of work. There are sometimes anomalous categories that have different terms of protection. So, in terms of our obligations under the major international trading agreements, Australia does not have to extend the copyright term to life of the author plus 70 years.

What about the argument about an emerging international standard? I think it is very important to remember that there are a whole range of interesting areas in intellectual property in which Australia has not been willing to follow emerging standards. For instance, the right of resale has been in existence in France since World War I. Australia still does not have a system for the right of resale. Australia has not yet enacted sui generis protection of traditional knowledge. It has not enacted sui generis protection of data base laws. It has not yet provided for comprehensive performance rights. In a whole range of other areas, Australia has not been following emerging international standards. By contrast, it has been waiting for there to be some sort of multilateral agreement before enacting legislation to follow that. So it is quite anomalous for Australia to take this particular area and say that we are going to pass enabling legislation to allow for a copyright term extension.

Another important exercise is to compare the proposal for copyright term extension in Australia with the laws of the United States and the European Union. The argument that is put by

copyright organisations like the Copyright Agency Ltd and the Motion Picture Association of America is that you will reduce transaction costs by trade harmonisation in copyright laws around the world. If you look at the proposal and what the United States law is, you see that there are a number of important discrepancies in the way in which duration will be dealt with.

The first important discrepancy is that the European Union and the United States engage in a retrospective extension of the copyright term. There is a table at the back of my submission that goes through some of these points, so it would be worth having a look at to work out for yourselves whether it will be easy to deal with some of these issues. The important point on retrospectivity is that the United States started providing copyright protection for works from 1928 onwards. They passed that law in 1998. It was retrospective, so material that was in the public domain went back into copyright protection. By contrast, Australia is engaging in a prospective extension of the copyright term. So, if the legislation comes into force next year, in 2005, that will mean that only those works from 1955 onwards will gain protection where the author died after 1955. In the period between 1928 and 1954, there will be an important difference in whether or not the material will be in the public domain. I remind you of Jane Scott and her case with *Shine*. *Shine* had international distribution. If she tried to do a similar film with Rachmaninoff's work, she would need to get permission to use the copyright in other countries but would not in Australia in terms of the duration. So there is an important difference in the period of protection.

A second important difference is the way in which the United States deals with what are known as works made for hire. Works made for hire is a very strange doctrine which deals with works made in an employment context. Essentially, it provides different terms of protection for works that have been made by employees. In the United States, one of the significant things that the Sonny Bono Copyright Term Extension Act did was extend the period of protection to the lesser of 95 years from publication or 120 years from creation. That is a very significant category of copyright works which will have a different period of protection.

By contrast, the European Union has no doctrine of works made for hire, and it seems from the consultations that Australia will not provide additional protection for works made in respect of employment. There are also a number of areas in which Australia has a different stance on protection in terms of duration from the United States. There will be different standards on anonymous copyright works, unpublished copyright works and also performers' rights and moral rights. The United States has been somewhat of a latecomer to international agreements dealing with intellectual property. It only agreed to the Berne convention back in the 1980s. There are a number of areas which it is still quite hostile to. The United States, especially Hollywood, is very opposed to creators getting moral rights and performers' rights because it fears that would interfere with the ability of United States companies to exploit those works. That is quite significantly different. Australia provides recognition for moral rights, and the Australian government has promised that it will provide comprehensive performers' rights protection. The international harmonisation will be quite different in duration of protection terms.

CHAIR—Thank you very much for your submission, which I think does really highlight the issues. It is an excellent submission. With regard to copyright term extension, you mentioned Einstein's work. Aren't those works already in the public domain? What is the status of the copyright for Einstein's scientific works?

Dr Rimmer—They are still subject to copyright protection. When I looked at the web site, I saw that Princeton University had ownership of the copyrighted works. They allow certain kinds of uses of the works, but they want permission and royalties in relation to others. I guess it really depends upon which country you are in and on what date the author died. It could be a work in which you take it from the life of the author plus 70 years or, if it comes from publication, it might be a different date. Einstein is a clear example. For instance, if someone in Australia died after 1955, that material would be subject to copyright protection for another 20 years.

CHAIR—Let us consider the case of *Shine*—and you mentioned the composer Rachmaninoff. The situation in 1996, if I get it right, was that *Shine* was subject to copyright in the UK and Europe because of the 70 year extension but, at that stage, it would not have been subject to copyright in the United States and Australia. Is that how it works?

Dr Rimmer—Essentially, in Australia it entered into the public domain in 1943, when Rachmaninoff died. In relation to the United Kingdom, because it was retrospective, it came back into protection. The same would apply in the United States.

CHAIR—That is an important issue. What is the status of things that have been in the public domain? Do they stay in the public domain, or do they go back into copyright? I am referring to works in that 50- to 70-year period.

Dr Rimmer—They would enter into the intellectual commons. Essentially, you would not need to seek permission to use material that has fallen into the public domain and you would not need to pay any royalties in relation to the material. So it would be free to be used and you would not need to ask permission from the old copyright owner or pay any royalties to them. That would be the significance of it. There have been a few anomalous cases, such as those I talked about before with the United Kingdom's parliament trying to provide protection for *Peter Pan*, but those sorts of actions would be quite dubious in terms of constitutional law or the validity of those laws.

CHAIR—If Australia does ratify the agreement the copyright term will be going from 50 years to 70 years. What about the status of something where there has been, say, 60 years after the death of the author or 60 years after production? Does that revert to copyright?

Dr Rimmer—No, that would stay in the public domain. Initially, the press release was quite ambiguous about what the government had actually done in relation to the copyright term extension. It was not until later that it was revealed that it was a prospective extension of the copyright term. Most people who had been following it had the understanding from December that there would not be a copyright term extension at all. Perhaps that element of the copyright term extension needs to be more widely communicated.

Senator MARSHALL—I will not say I know a lot about this, but we have had a lot of submissions on this particular subject. I want to see if you can put it in perspective for me. A lot of people argue that there are so many economic benefits to the overall agreement that this is a small and insignificant part, yet we have a lot of submissions on it. Does it really matter?

Dr Rimmer—Yes, I think it does really matter. In relation to the debate over the economic impact of the copyright term extension under the free trade agreement, going back to first

principles the Hilmer competition committee essentially said that if you are going to make changes to intellectual property and put restrictions upon the ability of people to compete you have to show an overwhelming public interest. That is the kind of criteria that you have to evaluate these sorts of decisions against. It is not good enough to say that it is very hard to quantify; you actually have to show some sort of compelling public benefit. Going to some of the economic evidence: firstly, it is very important to remember that the economist Henry Ergas and the intellectual property professor Jill McKeough undertook a wide-ranging competition review of Australia's intellectual property laws and said there was no compelling economic evidence for there to be a copyright term extension. The Copyright Agency Ltd, and other collecting societies, could not put forward any evidence to satisfy them of that case.

What is more, Henry Ergas and Jill McKeough argued that if Australia were going to go down that path there needed to be an independent economic inquiry to evaluate the impact of such a change. Unfortunately, those recommendations by the government's Intellectual Property and Competition Review Committee were not followed. The key economic document dealing with the copyright term extension is that amicus brief and the Eldred against Ashcroft case by a number of eminent economists. It would be worth while to have a look at that for a moment. This was a submission by people like Ken Arrow, James Buchanan, Ronald Coase, Milton Friedman—Nobel Prize winners in economics—and a range of other economists. In their conclusion they said:

Comparing the main economic benefits and costs of the CTEA—

the copyright term extension act—

it is difficult to understand term extension for both existing and new works as an efficiency enhancing measure ... Term extension for new works induces new costs and benefits that are too small in present value terms to have much economic effect. As a policy to promote consumer welfare, the CTEA fares even worse, given the large transfer of resources from consumers to copyright holders.

A number of the Australian studies that have dealt with the extension of the copyright term have not really grasped a very important part of this amicus brief. The really important part of this brief deals with the extra transaction costs in relation to copyright works. The amicus brief says:

... a new creator must negotiate with a large number of previous copyright holders, often for minimal uses of their works. When copyright holders are numerous, it is costly to negotiate and reach agreements with all of them. One result is a "tragedy of the anti-commons": when too many parties have actual or potential vetoes on the creation of an economically valuable object, that object will tend to be under-produced.

That is a really important point, which I do not think has been picked up by Copyright Agency Ltd in their submission or even in the Centre for International Economics study dealing with the impact of the copyright term extension. One of the big complaints with the copyright term extension in the United States was that it created this large class of what are called 'orphaned works'. Orphaned works are copyright works where it is impossible to find out who the copyright owner is because of the long lapse in time, the corporation has gone bankrupt or has been taken over.

It is very hard to locate the copyright owners of particular materials that may no longer have any commercial life but nonetheless you are unable to do anything with them, because it is very hard to gain permission. This is a really big problem, and it will be an especially big problem in Australia because Australia has a lower standard of originality than the United States. In Australia you only need skill and labour to get copyright protection; in the United States you need a creative spark to get copyright protection. So, in Australia, a much wider range of things will get copyright protection. The Federal Court of Australia held that the *White Pages* and the *Yellow Pages* had sufficient creativity to be the subject of copyright protection.

It means that, on a very wide range of material, you will need to negotiate copyright permission, and you might need to obtain royalties or pay royalties in respect of those works. That means that there will be a much higher range of transaction costs in dealing with those sorts of works. This will have a particular impact upon cultural institutions who are trying to digitise material—for instance, the ABC is trying to digitise some of the early television broadcasts and radio broadcasts. The problem that it will face is that, for another 20 years, it will have to track down who might be the owners of this particular material. It will have a significant impact upon the ability to engage in archiving work.

Similarly ScreenSound is engaged in archiving and preserving copyright work. For 20 years material will not fall into the public domain, which will inhibit ScreenSound's ability to preserve that important Australian cultural material for posterity. That is the real problem with the copyright term extension. A few works will still be exploited, because they have been very well managed by big corporations. A large number of works will not be commercially exploited but will lie there and will not be able to be reused until you can get permission or until they fall into the public domain.

Justice Breyer, a dissenting judge in the Eldred Supreme Court case, talked about intellectual purgatory. He said there will be works that will not be in the public domain and will not be commercially exploited. That is the real problem that I have in terms of some of the economic impacts of this material. It is something that the Copyright Agency Ltd do not deal with in their submission to this committee. They say, 'Well, there's only going to be a small percentage of works that we deal with in which there will be money paid in relation to that.' That is not true, because anyone wanting to use any of those other 99 per cent of works will have to seek permission, pay royalties or use that material and face the threat of possible litigation if the copyright owner turns up. I think that is a very significant impact.

Senator BARTLETT—You focused very heavily on copyright term, and obviously you feel that is a very significant area. Is it fair to say in summary that you think this extension is a restriction on competition?

Dr Rimmer—It is a restriction on competition, yes.

Senator BARTLETT—There are a lot of other changes to copyright, IP et cetera in the agreement. I know that in your introduction you referred us to other submissions. Are you able to put a view about whether there are other positive changes in some of the copyright proposals, particularly in terms of signing up to TRIPS and linking ourselves to that sort of international regime?

Dr Rimmer—Sure. In terms of the changes to copyright in the agreement, I guess there are about five important changes. Australia has to ratify the copyright treaties put forward by WIPO, it has to adopt a copyright term extension and it has to adopt aspects of the Digital Millennium Copyright Act. Most notably, it has to adopt much tougher technological protection measures, and it also has to adopt a United States safe harbours scheme for Internet service providers. In addition, it has to provide for wider civil and criminal penalties.

The things that are not included in the agreement are most interesting. The United States actually has a whole range of measures to look after users that have not been included in this agreement—most notably originality, which I talked about before. There is no change to the standard of originality. The defence of fair dealing for Australia is much more limited than the open-ended defence of fair use in the United States, and that is really important. For instance, in the United States there was a parody of *Gone with the Wind* by a black author called Alice Randall, called *The Wind Done Gone*. The Mitchell estate sued her for copyright infringement. She was able to argue that she was protected by the defence of fair use, because she was engaged in criticism and comment upon the *Gone with the Wind* book.

In Australia, you would not be able to raise the defence of fair dealing because it is much more limited. You have to fit into particular categories. There is no protection for transformative uses. There is no protection for time shifting. Time shifting comes from a decision of the Supreme Court of United States dealing with VCRs. It means that you can tape programs while you are out at the parliament and then come home and watch them, and that is legal under United States law. It is not legal under Australian law. That is also the case for what is sometimes called space shifting, in terms of things like iPods.

So really it is quite strange, if you look at the agreement. Australia has adopted all the harsher measures of the Sonny Bono Copyright Term Extension Act and the Digital Millennium Copyright Act without any of the good features of the United States regime. I think the purpose of this is really twofold. It allows the United States government to lock in and entrench the very controversial pieces of legislation that they got through congress. There is huge debate at the moment over the Digital Millennium Copyright Act and the Sonny Bono Copyright Term Extension Act. By including them in free trade agreements, they can then say, 'Well, we can't change our laws in relation to copyright term and digital copyright, otherwise we'll be violating these free trade agreements.' It also gives the United States government greater scope to provide stronger copyright protection under domestic law.

From Australia's perspective, it is quite strange. The Copyright Amendment (Digital Agenda) Act 2000, which was passed by this parliament, provides a very strong regime, I think, for copyright owners. It provides quite tough protection of technological protection measures, about which it should be said that there will be debate before the High Court in October, in the Sony against Stevens case, over the definition of technological protection measures. The ACCC is involved in that case because they are concerned, essentially, about copyright owners engaging in a regional division of material by devices like mod chips. Essentially, parallel importation laws were lifted, but copyright owners have been relying upon things like technological protection measures to do the same thing and divide up markets, so you have regional DVDs and you cannot play a DVD from North America in Australia, and it is the same in relation to computer programs. That is a significant change in Australian law.

For Internet service providers, it will mean a quite dramatic shift, I think, in the way in which Australia has approached this. Under the Copyright Amendment (Digital Agenda) Act 2000 there were general principles dealing with authorisation of copyright infringement, with the scope for industry codes of conduct. Essentially, ISPs and copyright owners would form an agreement to work out what they would need to do if there were copyright infringements on the networks. That was very important for Telstra and the other telecommunications carriers and Internet service providers. Before the digital agenda act, Telstra was being sued by copyright owners over their having copyright music on hold and having copyright material upon their network.

The US scheme is a very prescriptive take down and notice scheme. In the United States there have been hundreds of subpoenas launched by copyright owners against Internet service providers, like Verizon, trying to get details of individual subscribers so they can then sue them. It seems to me there is much less protection under that scheme for telecommunications carriers and Internet service providers and it places a much greater administrative and bureaucratic burden upon them to police what happens upon their networks and take action in relation to any copyright infringement that might be happening upon those networks.

CHAIR—If the parliament does ratify the free trade agreement, have you given any thought to possible ways within the domestic sphere that we could ameliorate the impacts of the copyright term extension? You have mentioned the fair use provisions in the United States.

Dr Rimmer—If Australia did extend the copyright term, I guess there are a number of measures that you would need to think about, including high standard of originality—the Feist decision in the United States—and an open-ended defence of fair use. Also, I think there needs to be serious consideration of the Public Domain Enhancement Bill that is before the US Congress at the moment. Essentially, that is meant to deal with what are known as 'orphaned works'. After, I think, 50 years of publication copyright owners have to pay a nominal fee to keep getting copyright protection. So, the bill proposes some sort of registration system. The effect of that is to ensure that material that is not being commercially exploited would fall into the public domain. That is quite controversial. The United States copyright owners are not particularly keen on it, but the defenders of the public domain, like Lawrence Lessig, have been arguing that you need some measure to deal with those works that are in intellectual purgatory.

Those are some measures, I guess, to try to deal with the copyright term extension. Having said that, I should say that the United States does have a tough standard of originality, it does have a very open-ended defence of fair use and yet there is still huge controversy over the copyright term extension. Those measures alone will put us in a similar position as the United States, but it will not necessarily solve some of those problems flowing from the copyright term extension.

Senator BARTLETT—You mentioned performance copyright before as one area that the US does not actually have as part of its regime. Is the adoption of that not part of the FTA then?

Dr Rimmer—The provisions dealing with performers' rights in the FTA are very interesting. Article 17.4.1(b) deals with the protection of performers, in respect of their performances. I will just give you a bit of a history about the debate over performers' rights. The European Union provides full and comprehensive protection for performers. Australia provides very weak protection for performers at the moment. Essentially, performers only have the ability to fix their

work in a sound recording or a film. They do not have economic rights or moral rights. The Attorney-General's Department in Australia had a report back in 1997, a discussion paper, suggesting that Australia should have comprehensive performers' rights. The government, when I last heard, was going to introduce legislation last year to deal with performers' rights, but nothing has happened with that so I am not sure of its status.

The United States is much more keen on protecting performers' rights with a very strange doctrine that is known as the right of publicity, which has been used to protect famous identities and personalities, like Bette Midler, Elvis and so forth. The problem with that regime of protection is that it is very dependent upon you having a reputation in the first place. It is a star system. If you do not have that reputation you will not get protection in relation to the right of publicity, which is really a state based system in places like California. The United States has been bitterly resisting the performers' rights in audiovisual performances in the World Intellectual Property Organisation, and they have been busy trying to sabotage attempts by the European Union to provide for comprehensive protection.

Similarly, in relation to moral rights, Australia in 2000 provided for comprehensive protection of moral rights, such as the moral right of attribution and the moral right of integrity. The European Union has much stronger protection of moral rights. In some places it is perpetual protection, out of a natural rights tradition, and in other places it is just for the term of economic rights. By contrast, the United States has a very pathetic piece of legislation that deals just with visual artists, providing protection for the term of their life, which is very weak indeed.

I think it is very important because it means that creators have very limited rights in taking on those people who distribute copyright works. There is a slippage between authorship and ownership. That is very important when it comes to the copyright term extension because, normally, artists assign copyright in their works in order for them to be exhibited or to be turned into a film, and they do not have any economic rights remaining in that work; nor do they have any royalties flowing back. The real beneficiaries of those sorts of changes are the ones who assume copyright ownership, and that is why organisations like the Motion Picture Association of America are so keen on something like the copyright term extension, because it allows them an additional 20 years of protection.

Mr ADAMS—The other group that came before us argued that it is only 0.02 per cent. You say that that is a pretty poor argument and you have given us some very good evidence this afternoon that it is a broader issue than just that. I think we also heard evidence today that the membership of that group probably goes to some of the groups that you have said benefit greatly from a longer extension. For the public interest, would you comment in relation to that?

Dr Rimmer—I guess copyright owners have presented three studies dealing with the economic impacts of the copyright term extension. I think all of them are a bit embarrassed because they do not want to take on the eminent Nobel laureate in economics in their amicus brief, most notably the Allens Consulting report that was put forward by the Copyright Agency Ltd. It is a very weak report. It has not engaged in any independent economic analysis of its own; essentially, it just relies upon an old 1998 US study. It does not make any distinction between prospective or retrospective terms, and it also emphasises that one of the main benefits of the copyright term extension is that copyright owners will not have to spend so much money

lobbying governments to change these laws. So they thought that was one of the positive benefits.

The Centre for International Economics, as part of their study, touched briefly on the intellectual property chapter. Unfortunately, I think they have not really had time to quantify any of the impacts of the intellectual property agreement. If you go through their chapter dealing with intellectual property, which I have here, essentially in relation to the copyright term extension they note that 'in the absence of robust data on the average economic life of creative works we are not able to estimate the extent of the additional costs consumers may incur in producing existing works'. And they make similar comments about the other changes in relation to technological protection measures, Internet service providers and criminal and civil penalties. This is a real problem with this study and the way in which it deals with intellectual property, because it assumes that it is just difficult to quantify these sorts of subjects. In the past, government committees have been able to undertake wide-ranging empirical economic research, most notably in relation to parallel importation. The government commissioned quite interesting empirical research in relation to parallel importation.

Mr ADAMS—Do you know who did that report?

Dr Rimmer—It was attached as part of the Ergas committee report on intellectual property and competition. I think they commissioned a New Zealand group to research that particular subject. From my perspective, Henry Ergas was right: what was needed was for a thorough empirical economic analysis of the impacts of the copyright term extension to have been done before we started discussing these issues as part of the free trade agreement. The problem with trying to deal with it now is that that poor centre has a terribly short time frame in which to deal with these issues and they have no particular expertise in copyright law and intellectual property law. For instance, in the study there are references to beginners' guides to copyright law by the Australian Copyright Council. Really, they are not in a very good position to estimate the economic impact of the changes made to the intellectual property provisions.

Mr ADAMS—But the whole thing is between $1.7 billion and $7.6 billion, so that is the gap.

Dr Rimmer—I think the changes that have been made to intellectual property are quite significant. For instance, I was talking before about technological protection measures, which have much similar effects to parallel importation in terms of what might happen if copyright owners are able to use those provisions effectively. Also, there are important kinds of costs associated with things like evergreening of the patent term. It is not quite an extension of the patent term. That has happened in the past. Essentially, they are indirect measures. They keep out generic manufacturers of pharmaceutical drugs.

Senator MASON—Dr Rimmer, I congratulate you on your submission. This committee is blessed with often great submissions from the ANU law school.

CHAIR—Aren't you a graduate of that law school?

Senator MASON—I happen to be.

Mr WILKIE—There are apparently some not so good ones as well!

Senator MASON—The first question Senator Bartlett asked you—perhaps Senator Bartlett is a latter-day convert to Professor Friedman himself—was in relation to the extension of copyright being an infringement on competition or restraint of trade. But, surely, any copyright protection is an infringement, is it not?

Dr Rimmer—It is important to think about the design of intellectual property laws. When you look at the interaction between intellectual property and competition law, it takes place on two levels: how you design the intellectual property laws and the operation of the Trade Practices Act. The Trade Practices Act has only a very limited operation in relation to intellectual property. The Ergas committee looked at questions of how you design the intellectual property system in a way as to promote competition policy. One of the things they emphasised was that it is not particularly good for competition to have such an extensive copyright term.

Another thing that is related to that is that it is important to remember that this particular copyright term extension will not be the end of things. The United States trade representative talks in his paper on what happened in the free trade agreement about the need to push Australia for further term extensions in the future. Peter Jaszi, a professor at Washington University, talked about the copyright term extension really being perpetual copyright on an instalment plan. So, in another 20 years, we will all be here again talking about the efforts of Australia to try to harmonise with the Mexican standard of protection for the life of the author plus 100 years. I fully expect further attempts by US industry to push for higher levels of protection in relation to the term of protection.

Senator MASON—I just want to nail this down, and it should not take too long. Many submissions before this committee—and, indeed, before other committees in relation to copyright that I have served on—go along the lines that we should make all this knowledge available to everyone. For example, intellectual property in relation to drugs for HIV should be made available and there should be no copyright protection, because people are dying. That has an apparent appeal, I understand that, but of course there are costs when that happens as well. Obviously you have to protect investment costs, otherwise people will not produce the drugs in the first place. It is a great popular cry to say, 'Everything should be available to everyone because it is wonderful,' but you are not arguing that.

Dr Rimmer—No.

Senator MASON—Yours is a rather more sophisticated argument. You are arguing in fact that the economic benefits to not only the community and the public as a whole who may benefit from using these goods but also, indeed, the copyright holder are quite minuscule. In other words, when you compare the minuscule advantage to the copyright holder with the benefit to the public overall there is no comparison. That is your argument in a nutshell, is it not?

Dr Rimmer—Yes. I do not believe that copyright law or any other intellectual property law should be abolished.

Senator MASON—But some people do. They come here and say that it is an outrage.

Dr Rimmer—I do think, though, that they should be designed in such a way as to promote competition policy. The Hilmer report was very good in terms of looking at the steps you should

go through in evaluating changes to intellectual property. That process should be followed. If you do not follow that process you could have situations in which quite anticompetitive strategies will be taken up by companies. Really, the few beneficiaries will be companies like Disney, which is very concerned about the bear of little brain, Winnie the Pooh, coming into copyright protection, and Mickey Mouse. Those two important pieces of real estate earn them billions of dollars each year.

That is not the same for a whole range of other copyright works which will not have that kind of commercial life. But there will be a few companies that will be able to engage in media streaming, which Dr Simone Murray talks about. These are companies who have their main product then secondary merchandise such as books, films, music and spin-off products. They are able to reinvent those products over a long period of time. So there will be only a select few companies and estates that will be able to exploit their copyright works in those ways.

Mr ADAMS—Who has the gumnuts—the Australian gumnuts?

CHAIR—Are you talking about Snugglepot and Cuddlepie?

Dr Rimmer—I am not sure about that.

CHAIR—It was written by May Gibbs. There is a trust, I think.

Mr ADAMS—The gumnuts are Australia's equivalent, aren't they?

Dr Rimmer—Yes. Essentially, it creates a dead poet's society. It creates these keepers of the flame that look after these copyright works. There have been some very interesting pieces of litigation in Sydney recently. Company B put on a very innovative production of *Waiting for Godot* with music. The estate threatened to sue them. I doubt that the Beckett estate will let Company B do another production for a very long time. There have been similar problems with Bertolt Brecht's estate. It is ironic, given what a socialist he was, that his estate should be so tough in laying down conditions on how works should be performed and what royalties they charge in relation to those works. That has been a big problem in the United States. That link with the author disappears once their grandchildren start to control it. You can have a situation in Australia like that of Albert Namatjira, who died in the 1950s, I think. His estate was taken up by the Northern Territory government and they assigned the whole copyright to Artarmon Galleries. The extension of the copyright term will benefit Artarmon Galleries but no royalties will flow back to Namatjira's family. So that is another important problem with the term extension.

Senator TCHEN—You have been talking about the comparison between the American standard and the Australian standard. The American standard is far more generous in terms of the right of the owner of the copyright, who is not necessarily the person who created the article. How does that compare with the rest of the world—with Europe, for example?

Dr Rimmer—Essentially, most countries conform with the Berne convention and the TRIPS agreement—

Senator TCHEN—That is life plus 50?

Dr Rimmer—Yes, that is the life of the author plus 50 years. The European Union, as part of the duration directive, had widely differing terms. They raised it to 70 years. The United States raised it to 70 years, although it is different for works made for hire. A lot of countries in the Asia-Pacific region, like New Zealand, Indonesia and such countries have life of the author plus 50 years. Canada is an interesting example. As next-door neighbour to the United States, it has hotly resisted the extension of the copyright term. The copyright protection there is life of the author plus 50 years. The Canadian parliament has recently rejected the Lucy Maud Montgomery bill, which was to increase the protection of unpublished works. Lucy Maud Montgomery wrote *Anne of Green Gables*, which is a great Canadian export. So Canada is an interesting contrast. It is a similar country to Australia in terms of its size and uses of information. It is a member of NAFTA, nonetheless it has not decided to extend the copyright term in line with the United States. Indeed, it has hotly resisted it.

Senator TCHEN—But the European Union, which is the other major player apart from the United States, has raised it to life plus 70.

Dr Rimmer—Yes. I think the important thing to remember about the European Union is that it does not entirely harmonise with the United States. On many of those things that I talked about before, it does not have any special protection for works made for hire. It provides quite strong protection for performance rights and moral rights. So it is really quite partial harmonisation in terms of how the two schemes coincide with one another.

Senator TCHEN—Thank you, Dr Rimmer.

CHAIR—Thank you for appearing before the committee today.

[2.26 p.m.]

NICHOLSON, Ms Jennefer, Executive Director, Australian Library and Information Association

ORMONDE, Ms Colette, Research and Copyright Adviser, Australian Library and Information Association

WOODBERRY, Mrs Evelyn, Deputy President, Council of Australian University Librarians

CHAIR—Welcome. On behalf of the committee I would like to thank you for appearing before the committee 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 Nicholson—The Australian Library and Information Association—ALIA—the national body for the library and information services sector, appreciates the opportunity to appear before this committee and to do so with our colleague from the Council of Australian University Librarians—CAUL—Eve Woodberry, who is also our nominated Australian representative on the International Federation of Library Associations and Institutions Committee on Copyright and other Legal Matters. Dr Matthew Rimmer is a member of our Copyright and Intellectual Property Committee, so it is nice that we are following his evidence.

We are here today representing the Australian library and information services sector and all Australians who use these services. This includes 10.7 million users of public library services and one million university students and staff. Our interests are not commercial, as there will be no commercial gain or benefit to libraries, and our commentary is purely in support of equitable access to information for all Australians. We seek to retain the balance of interests of copyrights holders and users that is currently in the Copyright Act and that was carefully preserved in the digital agenda amendments. The FTA expands protection for rights holders and so our interest is in retaining the balance for access to information. There are models for doing this—for example, through the extension of the fair-use provisions, which have not been picked up in the FTA, and the Canadian free trade agreement with the US.

A further issue is the additional costs due to the copyright term extension, from the current death of creator plus 50 years to death of creator plus 70 years. Because of the term extension, users will have to pay for a further 20 years to copyright owners who are predominantly overseas publishers. Australia is, of course, a net importer of copyright by a long way. Increased costs include increased costs for collecting agency statutory licences for universities and schools and in voluntary licences such as those held by government departments and, of course, costs for the so-called orphaned works.

On copyright term extension there has yet to be a clear identification of benefits to rights holders other than the major corporations, and we draw on the CIE, the AEI-Brookings and the Allen Consulting reports in this. However, these reports also indicate that there will be increased costs to users and that the term will contribute to the shackling of creativity. We note that the United States has a history of extending its copyright term and we are not convinced that it will remain at 70 years. We also do not support the harmonisation argument, as harmonisation is not applied consistently. Further, to minimise increased costs it is essential that the Australian government not commit to the copyright term extension being retrospective, and we do not believe that this is clearly stated in the agreement. We believe that, as these areas currently stand in the FTA, they are not in the national interest and that further consideration needs to be given to mechanisms for restoring balance. Thank you.

CHAIR—If Australia is to ratify the free trade agreement, what measures, in your opinion, would reduce the impact of the changes in chapter 17?

Mrs Woodberry—I think that Matthew touched on this when you were talking to him—that is, the fact that the actual free trade agreement at the moment has gone very much onto the protection side of the measures. The libraries, of course, are very interested, and the users are as well in the fair use measure as one that we are particularly interested in. Speaking from the point of view of the university librarians, when you look at the information that comes from America on their fair use it is very different to our fair dealing. If you were to go down the track of extending the Australian fair dealing to approximate the fair use of the US act, which includes copying for education, you would go some way to addressing some of the issues that are being, I suppose, undermined by increasing the protection through the FTA.

CHAIR—This is really a broader question: in negotiation between Australia and the United States the intellectual property area was one that the Americans wanted to get improved access to while we wanted improved access to things like agriculture and so on. Looking at it in toto do you think we should knock back the free trade agreement based on chapter 17?

Mrs Woodberry—That is a good question. I doubt it. I think it was a surprise to us to find intellectual property in the free trade agreement. It seems to have come in as a secondary issue. It would seem, I suppose, limited to say that we should knock back the entire agreement based on intellectual property. Our view is more that, if it is going to be part of the agreement, we want to get the best that we can both for our producers and for our users. Matthew touched on that when he was saying that, if you are going to publish—whether it be a book or an article; whether you are an academic or just doing it yourself—you will be handed a contract which effectively asks you to sign away your intellectual property to your publisher. Depending on your expertise and your sophistication in negotiation, you will get some income from that. But from the Australian point of view, more often than not what you will do is sign over to publishers your intellectual property rights. Therefore, what is happening within the free trade agreement is that a lot more money that would effectively be staying in, say, the education sector will flow overseas to the publishers for an extra 20 years. It already flows out to the international publishers anyway, and they are not only North American; they are international. So it does not only go to America; it is split into Europe as well.

I doubt that it would be a consideration to hold up the free trade agreement because of the intellectual property side, but I do think that there is room to implement something much more

useful within Australia, especially when Australia has gone to a lot of trouble to get a very good copyright act, which this undermines to a certain extent. It is not harmonising, because what we are being asked to do is take bits out of the US act and put them into the Australian act. It is only a one-way street at the moment and I think there is room to negotiate to make it a two-way street.

Ms Ormonde—I would like to add to that answer. Intellectual property does have an anomalous position in free trade agreements in that it is all about the protection and extension of monopolies. Even if we agree to the extension of the copyright term—and we accept that that is going to happen and that it is unlikely that the Australian parliament will reject that on the basis of what you have just said—there are two responsibilities that we feel that parliament should look at. The first is adjusting the user access to compensate. But the second thing is to look at this from the multilateral position of users as well as owners.

Australia has been foremost in deregulating its old industries, in lowering barriers and in participating as a very good citizen in multilateral trade negotiations. In this area, where we are following—apparently—a regime for the shoring up of monopoly and anticompetition, it would be really useful if we thought of talking to other nations, and particularly developed nations that are users of information rather than owners of information, about what common goals we might seek in multilateral trade negotiations in relation to intellectual property, so that we are not seen as constantly being driven by the movie and record industries of America.

Mr WILKIE—It is a pity that in the economic analysis we have not put a dollar figure on what intellectual property is worth because that seems to be all we have been concentrating on in the agreement.

Ms Ormonde—It is quite difficult. I do not blame the various reports for not being able to find a costing of use as part of that economic modelling. One of the concerns about adopting these stricter protections for copyright owners without at the same time looking at access to users is that there is no obligation, as Dr Rimmer commented, on copyright owners to make their product available. This is a huge cost to libraries and to users of information. It can cost you when you are trying to track a copyright owner who is not immediately obvious or one who is. You write to the copyright owner, you seek permission for a nonprofit use and the copyright owner, unless you have some right of access under your legislation, does not have to reply to you, let alone offer the use for sale.

Just a simple example of that is an experience of Richard Tognetti, who is the Director of the Australian Chamber Orchestra. He wrote a piece based on a Bartok suite. It is quite common to use other people's works and interpret them in music, both classical and jazz. In this case, because Bartok was out of copyright in Australia, he was able to do it without permission. It was a very popular piece in Australia, so when the Australian Chamber Orchestra went on their first US tour he included it in his repertoire. However, the extension of the copyright term in the US brought Bartok's music back into copyright, so Richard Tognetti did the obvious: he approached the Bartok estate, which was being administered by Bartok's son, and said, 'We will pay you for the use of this work now it has come back into copyright.' But Bartok's son said no. That was his prerogative; he did not have to give a reason.

If you translate that into libraries and library users seeking permission to use something, there is no obligation on the copyright owner to reply. There is no obligation on them to make available to the public use of their information and, as you extend the protections, both in years or in other ways, access is limited. For example, by assigning first digitisation rights or some other extra power which copyright owners are continuing to seek, or by diminishing the definition of what is a copyright work—which is another thing in the digital environment that they wish to extend—you extend the protections. They wish to contract that definition so that they can apply copyright protection to ever-increasing, and smaller, amounts of works. They call it 'granularity'. All of these issues are important issues for users of information. Libraries do not want to not pay for information; they want to have access to the information. They want their users to have access to the information.

Mrs Woodberry—I will comment on that as well. You were saying it is a pity there are no figures for what we are talking about in this particular context. Getting back to what Dr Rimmer said and the fact that the Ergas committee did recommend that some study be carried out, I found looking at the Centre for International Economics study very interesting, because obviously they had real problems coming to terms with the difference between owners and creators. It was quite interesting to see:

The increase in the term of copyright means that there is additional opportunity for creators to collect revenue.

However, this is extending it to death plus 70 years, so you would wonder how they would collect the revenue. The report goes on:

... the potential extra compensation accrues over a number of years in the future ... With the extended copyright protection the author would be able receive royalties for 100 years—

which is not a lot of use to them. I think that, even though we cannot produce actual figures, you could sit down and look at a study. It would take quite some considerable time but it should not be impossible to do. We know that, under the statutory licence, universities at the current time pay in the tens of millions of dollars each year to be able to use works. That will extend—it is bound to. If we have to pay for copyright works for another 20 years, then the education system, the libraries and the universities will pay. Also, if you are doing a PhD, you want all of the work, all of the information in a particular area. You do not only want the material that is currently in copyright. There is material that has moved out of copyright into the public domain that you have access to. If you extend this out to 70 years, there will be another 20 years of costs added onto that. So it should be quantifiable—difficult but quantifiable.

Senator TCHEN—Can you elaborate on the circumstances in which a library user might need to get permission for copyright use?

Ms Ormonde—Every day there are examples. One of the things that I hope members of parliament pay attention to is the likely impact of the FTA provisions on regional and rural users of information and how important digital information is to those users of information. I will give you a small example. Public libraries in regional areas very much value their local history collections. These are collections of material which are often donated to them. They contain vast copyright problems. For example, the Alice Springs Public Library has collections given to it by Northern Territory residents of material on cyclone Tracy. They include photographs taken by

ordinary people, photocopies of stories in the press, diaries, other personal accounts and government publications. The Alice Springs Public Library wants to digitise this material. It is available for people to physically walk into the library and look at and use under fair dealing provisions but to digitise it the library has to look at the copyright situation of every item in that collection.

I do not know that there can be a simple way of doing that except under some kind of fair use thing. They are not impeding the commercial rights of anybody to publish that material. It is most unlikely that, even for that significant event, somebody is going to come along and say, 'I want to publish all of that material in digital form and make it available to the world.' It is of specific interest to the Northern Territory and perhaps the Australian community, particularly the Alice Springs community. In order to make that available digitally the library has to go though this process of identifying what material is owned in copyright and who are the copyright owners, which is very difficult in the case of photographs. Will they be able to get permission to digitise it? That is a common problem with local history collections in public libraries.

Another problem is where an educational library wants to get a copy of something out of print that is really important. That occasionally happened to me when I was working in the parliament. I worked in the Parliamentary Library here. Of course there is no problem getting material for parliamentarians copied even if it is out of print or commercially available because section 48A enables members of parliament to get any material copied in any amount provided it is done by the Parliamentary Library and in the course of their parliamentary duties. For users outside that network to get access to something that is important but for some reason out of print and cannot be bought is very difficult. It is not legal to copy it. It may be legal to put it in your collection because it is not commercially available at a reasonable price but it is not legal to copy it.

Senator TCHEN—Ms Ormonde, you just described a problem for us which is embedded in the Australian legislation. I understand that in the United States they have a much more freely interpreted public interest usage. Wouldn't it be better if we harmonised it?

Ms Ormonde—We would like the parliament to look at the issue of fair use.

Senator TCHEN—I am right, am I not, that in the United States—

Ms Ormonde—I see: you mean if we harmonise. Yes.

Senator TCHEN—Harmonisation can go both ways.

Ms Ormonde—Yes.

Ms Nicholson—One of the problems we have is that the FTA has picked up one aspect from the US copyright regime but not the other aspects.

Mr ADAMS—That was one of the outcomes.

Ms Nicholson—That is right.

Mr ADAMS—It picked up the restrictive. Would that be correct?

Ms Nicholson—A couple of weeks earlier Minister Vaile said that they were not going to be looking at copyright term extension. It suddenly appeared in there but there has not been enough time to look at the best way for it to be included if it is going to be picked up.

Mr ADAMS—The point that has been made is that some of the American system has been picked up—I think the previous witness's submission also put that point—but it is more the restrictive side of the American system that has been put into this trade agreement.

Ms Nicholson—What we are saying is that it has upset the balance that was—or is—in the Australian legislation, so the balance has now shifted much more towards the rights owners.

Mr ADAMS—To the what? I did not hear your words.

Ms Nicholson—To the copyright holders. So, what we would like the parliament to do is to have a very close look at how that balance could be restored.

Senator TCHEN—Yes, but there is nothing in chapter 17 that actually says that Australia will pick up only the restrictive practices of the United States and not the broad public interest provisions of the US legislation—whereas the United States will not pick up what might be considered the beneficial aspects of the Australian legislation. There is nothing said about that; nothing in chapter 17 provides for that, does it? It is just a concern on your part.

Mrs Woodberry—Yes. All it talks about is harmonisation, but in no way does it say that it is two way.

Senator TCHEN—All right. That is obviously a question that we need to put to the department—whether they are looking into that.

Mr ADAMS—It is an assertion, just like the one that is in the CIE report.

Senator TCHEN—That is not what the department says.

CHAIR—There being no other questions, is there anything further your organisation would like to add?

Senator TCHEN—You demonstrate the power of your submission: we are all silent!

Mrs Woodberry—I think that we have covered it pretty well. Our concern is very much about the user side of the agreement. We are interested in having the harmonisation going both ways. Their locking up of the content for a further 20 years is a concern, and as Dr Rimmer said—I think he explained that extremely well—it is not something that we would like to see come in. The fact that it is not in in all the different countries, only in particular ones, is of concern to us.

Mr ADAMS—You can only see the cost of this as going against the educational institutions and libraries; that money really is just going to flow to large corporations mainly.

Mrs Woodberry—Yes, definitely.

Ms Nicholson—Yes, it will go to major corporations, major publishers and international publishers. As you said, most of the money from the gumnut babies goes to a publisher; it does not go to Nutcote.

Mr ADAMS—It does not go to the individual that actually created the work.

Ms Nicholson—Rarely does it benefit them.

Mr ADAMS—It would be very rare these days, wouldn't it?

Ms Nicholson—Yes.

Mrs Woodberry—And the fact is that there are costs associated with it which we have not been able to quantify but which go to the end user, who is the person who wants the information. The more you lock up the information, the more you are going to end up with haves and have-nots. If you can afford to buy the information, you will be able to get hold of it. If it does not go into the public domain, you are leaving out a lot of people. There is a large cost to education. It is also about the fact that the money does not stay in Australia; it flows overseas.

Ms Ormonde—I think we are also concerned about the overextension of the protection of digital information. Our Copyright Act is based on the principle of technological neutrality. In this agreement there appears to be a push to say that digital information is different. The Copyright Law Review Committee's report on simplification of the Copyright Act mentions fair use and the extension of fair dealing. In their report *Copyright and contract*, their main recommendation was that, where access to material was otherwise legal, licence terms should not take that copyright use away.

Mr ADAMS—I think my concern about a lot of this agreement is that we have probably negotiated from a 'now' position, but the Americans, who are very good at this stuff, have negotiated from the point of view of where an industry will be in five or 10 years time—

Ms Ormonde—That is right.

Mr ADAMS—whether that is beef, dairy products, copyright law or digital—the world going digital. There are some real concerns about that.

Ms Ormonde—Our last point is that we support the Australian Coalition for Cultural Diversity on retaining the ability of future Australian governments to regulate for space for Australian creativity in developing media.

Ms Nicholson—And our cultural heritage.

Mr ADAMS—Thank you.

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

[3.04 p.m.]

CUTBUSH, Mr Gregory Charles, Principal Analyst, ACIL Tasman Pty Ltd

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing before us to give evidence today. In what capacity do you appear?

Mr Cutbush—I appear as a representative of ACIL Tasman Pty Ltd and in my own capacity as an author of some work on this subject.

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 marks before we proceed to questions?

Mr Cutbush—Not really. I have little to say about more recent developments because I have not had time to catch up on—or I have done so only in sketchy form—the report that has been issued by the CIE through DFAT in the last few days. I am here more just to help you in any way I can.

CHAIR—Thank you. In the ACIL report I understand you are generally critical of bilateral free trade agreements as opposed to multilateral trade agreements. Is that a fair comment?

Mr Cutbush—As a professional economist, yes. I am only an economist—I am not in charge of the issues that surround these things. From an economic standpoint there is a long tradition of economists being cautious, if not sceptical, of anything that looks like a preferential trade agreement. It is for the same reasons that I am so in this particular case.

CHAIR—Would that caution extend to the Australia-New Zealand Closer Economic Relations trade agreement?

Mr Cutbush—It would, yes. Even though it is lauded as one of the most successful of all time, there are aspects of it which are of concern that make it difficult to compare with what might have happened otherwise.

CHAIR—I guess this is more on the policy side, but if we are struggling to get liberalisation through the WTO and the Doha Round, which is stalled, what should we do—just keep putting more resources into the Doha Round?

Mr Cutbush—No. I think it is true that Doha was in some trouble before we began involving ourselves in bilaterals. I guess the Uruguay Round results were no great shakes either when it is all boiled down. Just the same, the benefits at stake for Australia are such that we should not lightly turn our backs on the multilateral mechanisms that are in place. Australia has had a role as a leader, in my view, in upholding a freer trade position on agriculture—indeed, in a wider sphere than that—and has represented a point of view that has struck a chord with developing

countries and with other medium-sized exporting countries like ourselves. I think that role should not be threatened lightly. It is not something that is likely to deliver everything, of course, but it is something to be very cautious about cashing in.

Mr ADAMS—Like the Cairns Group, do you mean?

Mr Cutbush—We were leaders of the Cairns Group. Of course, it is called the Cairns Group for that reason. It has not been as active as one might have thought it would be in these last few months. I guess some people have felt we have not had our eye on that ball. I wonder how true that is, but I have certainly heard it said, and by people who were at Cancun in Mexico as well.

Mr ADAMS—I heard that the European Union and the Americans were very pleased they got us into an agreement and away from that group.

Mr Cutbush—It is difficult to say. It is pretty high-stakes chess, I guess, isn't it? It is hard to understand what has really happened from the outside. We will not necessarily know all that until the book is written about those meetings in Cancun and elsewhere. But there is sufficient room for concern that an FTA does distract from our activity in those other spheres.

Mr ADAMS—The original work that was done by the Centre for International Economics showed something like $4 billion-plus. You thought it might be a bit less than that, didn't you?

Mr Cutbush—Indeed. When we picked up the issue a year after they had done the work, we of course looked at their report fairly closely. It is, by most standards, a good report—it is careful, cautiously approached and everything else—

Mr ADAMS—Professional.

Mr Cutbush—but we did not share their view about a couple of assumptions. The particular one that we felt was not warranted was their presumption that the service sector, over and above whatever other protections are written into the model, would have a 0.35 per cent productivity jump in addition. We felt there was not a basis for that assumption and we did not make that in our own model. It is true that we got a small negative result. The result is not really that dissimilar to the CIE's 2001 report, but a lot of attention was drawn to the fact that it was below the line, and I think that formed the basis for our being named as opponents of the FTA most particularly.

Mr ADAMS—It is all about assumptions in the model, isn't it. You put the assumption in that this is going to occur and then you do the work on that assumption. So if the assumption is a bit off kilter or not consistent then you could get a totally different scenario from one assumption to another. Is that correct?

Mr Cutbush—That is true. The assumptions are everything in this case. We did a little work ourselves internally after the controversy began, early in 2003, and checked to see if we could replicate the CIE's results by adopting their assumptions, and we could, by and large. That told us that it was not the models that were different. There is no technical disagreement in that area. It is more to do with the assumptions, in this instance, about investment. Subsequently, new assumptions have been added to the CIE's modelling. In the report released on Friday are results

which show again that basically the model, when run as we ran it, comes out with results that are the same. In table 7.1 of the CIE report released on Friday you will see results which indicate that there is in fact net trade diversion from the agreement as signed. That is the sort of result we were getting ourselves. The difference, of course, is that we did not turn around then and add assumptions which were going to deliver—

Mr ADAMS—Just so that I understand, diversion means that maybe we will be buying or accepting dearer items from the United States. It might be a more expensive item than we would actually get from somewhere else.

Mr Cutbush—That is right.

Mr ADAMS—So there is certainly diversion in this trade agreement.

Mr Cutbush—There is with all preferential agreements. There is nothing surprising about that in relation to preferential agreements. The key thing, of course, is to know how it all pans out. These things are terribly complex. You need big models to answer those sorts of questions in detail, and that is what some of these advanced models are able to do for us.

Mr ADAMS—Thank you very much.

Mr WILKIE—Obviously you have not had a chance to look at the CIE analysis, but have you done any work of your own into the current agreement?

Mr Cutbush—No. The stock answer to that sort of question would be to say that we have been preoccupied with paying work. At ACIL Tasman we have done only a little scoping work for clients on the subject of the signed free trade agreement and we have not had a chance to pursue anything in greater depth. By and large, for example, we have not done more than skim the CIE's work of Friday.

Mr WILKIE—The CIE has found that there is an enormous trade surplus. Of that surplus, 60 per cent is based on the assumption that there will be an enormous inflow of investment from the United States into Australia which would not have happened normally because of the current restrictions. Is that a valid call, do you think? They are saying that the Foreign Investment Review Board would prevent US companies from investing in Australia, and so taking that away means there will be an enormous flood of money coming in. We have heard from a lot of industries, such as mining, that they think it might free things up, but people have been investing here regardless and they have not had any of their applications knocked back in the past. How valid is the assumption that we will get a huge inflow of capital and, in fact, 60 per cent of the benefit?

Mr Cutbush—It certainly warrants closer inspection. I could make a list of issues that one would like to look at more closely in that respect. I expected that you might ask this question and I did have a look at chapter 4 of the CIE's work and also at chapter 11 of the free trade agreement itself, or the draft we have at the moment. The question I would like to ask about what is there is: what has changed and, in particular, does it apply to US investment in new ventures? Annex 1, which has the description of this investment policy change, does not make crystal clear the exact degree to which it applies to new investment. That same vagueness and

ambiguity seems to carry over into the CIE's report. It is not as though the CIE has done anything different from what the annex says has been agreed, but it is also not that clear that their figuring is based on what has actually been agreed. Further, there is scope for differences of opinion about what would be the stimulatory effect of the change in those procedures.

One is conscious, as the CIE says on page 32 of its report, that over the past five years Australia has rejected four out of 2,285 investment proposals, and that is across all sectors, including restricted ones. I guess that includes new investment as well as old investment or investment in old ventures as much as investment in new ventures. It is not as though Australian investment policy has been that obviously restrictive in recent times, although one has to concede, as all good economists would, that probably a number of applications have not be seen because potential investors have been dissuaded from turning up at all.

A question begged by the CIE's work is whether or not the entire time the FIRB has been working against the national interest. As I see it, that would be a fairly large call and is worth considering in depth. Here is an institution which has existed in one form or another for most of the time that this country has existed and I do not think we would want to say lightly that it has been working against the national interest, which possibly is an implication of the sort of thing the CIE is saying.

As I said, would Australia turn around now after what has been agreed and make the relaxation of FIRB rules a most favoured nation thing? In other words, would it extend it to everywhere? And if it did, how could you count that as a US FTA gain? It is probably something that should be done irrespectively, if that is the sort of mood we are in. There are other questions about the modelling. You could ask what the roles are of the McKibbin model—that is, the G-cubed model—and the GTAP models and how they have been used together and separately to generate the result. It is not that clear from quickly reading chapter 4 exactly how each of them have been used and what the technical approach has been. There are a range of questions, but I would not presume to answer them until I had a close look at them, and it is not likely that I will get a chance to do that for quite a while, unless perhaps the committee would be interested in commissioning that sort of investigation.

Mr WILKIE—I would be interested in finding out what the other questions are because the committee may be able to put them to the CIE as well. Do you have a list or is it a set of assumptions you would like followed through?

Mr Cutbush—No, I do not have an exhaustive list because I have not had the detailed examination that one would need, but they mostly concern what I was saying a moment ago to Mr Adams. It is the assumptions that are generated and concocted outside the modelling itself that one is interested in here in this case. I do not think the models themselves are terribly controversial. I think there is an agreement amongst professionals about how they ought to be structured and how they ought to be built. What really counts in this instance—as it did in the earlier period when we were involved in this—is: what is it that justifies a productivity improvement, how might it come about and what could we expect the results to be? That could be said of a productivity improvement or an investment increase—the same as exogenous reasoning, as it is called, is involved in a modelling exercise like this. So that is where I would be concentrating my thinking and examination in the next round.

Mr WILKIE—There have been suggestions made that the Productivity Commission should be engaged to do an exhaustive analysis of the agreement, putting in all of the factors that have emerged. What would be your thoughts regarding that?

Mr Cutbush—I do think that this sort of stuff deserves being reviewed carefully. A 'one shot' go at a study of this nature would not be enough on its own, I do not think, in any circumstance. It is true that this committee and others are reviewing the work and, to some extent, will run some validation, I suppose, of the modelling work that has been undertaken to date. But I do think it requires a deep analysis by professional economists and people who are familiar with modelling, and the Productivity Commission is certainly one of those bodies that can do that. It is not the only body. As I say, we would gladly take the task on for the committee, too, but the commission has had some excellent experience with review of this type of modelling in its recent inquiries into textiles, clothing and footwear, and automotive assistance, for example. It ran workshops and forums on the question of modelling and was able to uncover the truth of the matter in those cases. It would be something similar, I think, that you would have in mind if you were involving the Productivity Commission next time.

Senator TCHEN—Were you the author of ACIL Consulting's 2003 report for rural industries?

Mr Cutbush—I was the main author.

Senator TCHEN—Can you tell us whether in that report you found that the benefit from the FTA is at best finely balanced?

Mr Cutbush—We did, and that was the wording we used.

Senator TCHEN—In your analysis did you look into the impact of investment liberalisation?

Mr Cutbush—No, we did not. At that stage if there was investment liberalisation on the cards it certainly was not something that was being talked about much. It seemed to us too that at that stage you would not have said the FIRB had been terribly active in recent years. It seemed to us a pretty small intervention, if one at all—one that mattered—and we did not care to take any view that additional investment would be stimulated by it. In view of the analysis that others have done since, we might reconsider that, but at the time we did not.

Senator TCHEN—You said to the deputy chair in your discussion that you had some questions about some of the CIE assumptions but that the model is fine.

Mr Cutbush—I think so. The documentation and the standard aspects of it make it pretty robust raw material for this kind of work.

Senator TCHEN—You had issues about some of CIE's assumptions. Is that better characterised that you want clarification or that you think they were wrong?

Mr Cutbush—Earlier when we were looking at productivity improvement that was envisaged by the CIE as occurring in the service sector we were sufficiently sceptical of it to not adopt it ourselves in our own modelling. So I guess one is tarred a little with that brush already in that

one starts with a fairly sceptical view of how all this stuff works. Our scepticism is based on the view too, I should say, that already this economy is pretty open to US involvement, whether you are talking about at senior executive level or at investment level with regard to the taking of equity or the lending of funds. One would not want to be tied to that earlier view but would like to look at all this afresh. It cannot be denied that the CIE report puts on the table a lot of interesting and important evidence about what has been going on in recent years and the sorts of considerations that are important. I am not able to commit us to any view. I am not here with any permission to offer an ACIL Tasman view on what has happened. There are a number of professionals at ACIL Tasman who would be involved in an analysis of this kind who would need to agree on things before we came out with a company view on it. I guess it is just too early for us to be able to say what we conclude on that now.

Senator TCHEN—This morning Dr Stoeckel did say to the committee that there will be a wide range of views on some of the assumptions, and that is to be expected. I have one last question. Do you believe that bilateral trade agreements and multilateral trade agreements are mutually exclusive?

Mr Cutbush—It depends on what you mean. In terms of the priorities for setting a plan and a strategy for what we should do, I think it is best for us to think multilaterally, firstly and for most of the time. I suppose one has to admit that there are bilateral agreements that look very prospective and very inviting. I think it can be said that that may be true of the agreement with Thailand and the agreement with China. It may also be true of something else which has been mooted: an agreement with the whole of ASEAN. But the devil is in the detail. It depends a little on how liberal it really is, or on how similar the two economies are that are thinking of doing a free trade agreement—or a preferential trade agreement, which is what they really should be called. For example, with an economy that is so vastly different from us in its shape and its factor endowments as Thailand, you might think there would be a lot to be gained from involving ourselves in a preferential trade agreement. I do not suppose that is an expectation that would arise if the economy we were thinking of entering into a preferential trade agreement with was a similar economy, because you would not expect much new trade to be generated. That is what it turns on.

On the world scene, we should be trying to see ourselves as a champion of multilateralism. I think that is a policy that will pay dividends. Even if the dividends are slow, they are sure and they lead us to less compromising of our own position than the alternative. It also has to be recognised that in the multilateral world, even though you are talking about negotiations which are generally occurring in international locales, the business of protection is essentially about domestic decision making and domestic transparency, Something this country has managed to achieve over 30 or 40 years is a procedure whereby we review our assistance changes and our protection which has in many ways become the envy of the world. We have a procedure which is safeguarding the national interest in a way that I suppose clear-thinking people in other countries would wish they had. If we can encourage other countries to do that, we might be better off as a country than if we were to approach, in any systematic way, a range of bilateral agreements.

Senator TCHEN—But wouldn't the same benefits of encouraging other people to do the same thing apply to bilateral agreements as well as multilateral agreements?

Mr Cutbush—The trouble is that generically they are different. Generically, a preferential trade agreement is bound to have costs and benefits that throw you into a world of uncertainty. It is because, simply, in an economy such as ours, which is distorted by a number of interventions and policy variables, the only sure-fire way of getting a gain when reforming is to do across-the-board non-discriminatory cuts in protection and assistance. Anything else is a chance, a risky path, a path that has to be investigated anew. It is one to which you need to apply very complex models to understand what is happening, and it may or may not work. It depends.

In summary, I am not poisonously opposed to bilaterals but, like a lot of other economists, I think there is a great deal to be said for sticking to the principles that we know are correct and that we should try and encourage in others. We are not a large player on the world scene and it is important to realise that we cannot influence much of our own future just by trying to be a bully on a trade floor. We are better off seeking to elevate everybody's behaviour into a more multilateral area.

Senator TCHEN—I do not think we can disagree on that.

Senator MARSHALL—Given the first report, *A Bridge too Far?*, and now that you have had a chance to look at the agreement as it turned out, how far away do you think your original predictions were from reality? I understand that you have not done the academic work on that but do you still stand by the principle and the first report based on what you knew?

Mr Cutbush—I think so. When we saw the version of the agreement—which is still a draft—signed in late February it was not altogether clear what had actually been agreed. There are a number of things that are still in process—the access to procurement systems in the US, for example, is still incomplete I think—but people are working on them. I get the impression that some of the mechanisms switch protection on and off depending on how world prices move for things like beef and horticulture. In other words there are plastic aspects of what has been stated. But that aside, it would be pretty surprising to me if a free trade agreement turned out to be a positive for Australia if it excluded the things where we thought we could gain from obtaining more open access. It turns a little bit on how closed the door is on sugar and beef. I have heard that the dairy result is quite good. I have seen two or three different points of view on that—it depends on who you ask.

An unknown that stands out that I would like to inspect more closely includes the investment story we have been talking about, the investment assumptions that the CIE has made. Also, I would like to think a little more carefully about the procurement gains that might be there. It was a bit of a surprise that they were even on the table. So there are a couple of new things that make me a little less certain than I thought I would be about the outcome in relation to the agreement that has been signed. There are some new things in there that we should be looking at pretty carefully and some things that we had not paid enough attention to earlier but generally speaking—having had the results we had before and given that there have been large exclusions of things that were looking most promising in that set—a net positive result for Australia would come as a bit of a surprise, on the basis of what we have done.

Mr WILKIE—I am disappointed that you have not had a chance to have a really good look at the CIE report. I would have loved to have asked you a lot more questions about that. You have obviously had a bit of a look at it. We had Professor Garnaut here yesterday and he was saying

that he thinks some of the results do not pass the laugh test, which is apparently something that goes around economic circles. He said:

> Before economists are really satisfied with any piece of econometric modelling, they put it through the laugh test. The laugh test is: can someone who knows the real world that is meant to be described by the modelling exercise look at the results and not laugh?

When you first had a look at the report did you laugh?

Mr Cutbush—No. I think that would be terribly—

Mr WILKIE—Unfair?

Mr Cutbush—I was thinking more eyebrow raising.

Mr WILKIE—It did not pass the eyebrow raising test?

Mr Cutbush—You must remember that we are consultants in economics and these people are our rivals. It is important that we take a close look at what they say and ultimately try to understand it because it is the market in which we compete too. There is a natural commercial curiosity about what is going on here. I thought those remarks of Professor Garnaut's were certainly catchy and I suppose rather strong considering. I was not inclined to make quite such a strong statement so early. He must have looked more closely than me to be able to say those things. He has got to be concerned about the reputation of the institution he represents.

Mr WILKIE—I think what he was suggesting overall was that you have one analysis based on a lot of assumptions that he would not agree with and that we would need to get the Productivity Commission to have a very good look at the agreement because it is far too important to rush into it too quickly.

Mr Cutbush—I do think there is plenty of time. I do not think you would have to say that anything needs to be rushed into even early next year, which is, I think, the due date for signing. It could pass whilst you were considering the matter. It is a very important process we are going through. In the past, multilateral and bilateral things have not been subjected to this closeness of analysis. Whilst one might regret that even more analysis has not been done in some ways, at least we are opening up the negotiating outcomes that the Department of Foreign Affairs and Trade have been through to more scrutiny than we have in many years past. This process should be encouraged and we should try to do it thoroughly.

It should be remembered that big inquiries that the Productivity Commission have done in the past have easily extended past a year or a year and a half. The reports they turned out, whether you agree with the conclusions or not, were always valuable pieces of data gathering and thinking which helped inform people the next time any of those industries were looked at. Some of them stand as monuments to analysis and are the envy of the world.

CHAIR—Thank you very much for your attendance before the committee today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available.

Mr Cutbush—Thank you very much. It has been a pleasure to be here.

[3.43 p.m.]

CORISH, Mr Peter, President, National Farmers Federation

FARGHER, Mr Ben, Senior Policy Manager, Trade, National Farmers Federation

CHAIR—Welcome. 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 of Representatives 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 Corish—Yes, I would. Thank you for the opportunity to appear before your committee today. The National Farmers Federation, as the peak national body representing the views of Australian farmers, certainly welcomes this opportunity to discuss this very important trade agreement. NFF has outlined its views in a submission which you have, and I understand you have already heard from several of NFF's commodity member organisations. NFF has been actively working on this agreement for 18 months. We have engaged, because the US is an important market for Australian agricultural export and significant market barriers do exist. As a result of this situation, NFF supported the negotiation of a US FTA conditional on agriculture being at the heart of both the negotiations and the final agreement.

Aside from the outcome on agricultural market access, NFF was also concerned about several other issues. Firstly, NFF was concerned to ensure our science based quarantine system was not compromised as part of the agreement. Secondly, we were concerned to ensure that agreements reached in chapters outside agriculture did not negatively impact on Australian farmers—for example, issues around data protection and the environment. Thirdly, NFF was concerned to ensure that an outcome for agriculture in the World Trade Organisation talks remained the Australian government's number one priority.

In summary, the proposed FTA offers important market access gains for several agricultural industries. However, NFF is disappointed with the negotiated outcome in a number of areas. On the positive side, two-thirds of all agricultural tariffs will be eliminated immediately. This includes tariffs on lamb and horticultural products. It must be noted, however, that many of these tariffs were already low. Nonetheless, free trade into the US for these products is welcomed, and industries can invest with confidence and grow what is a large potential market.

Australian dairy farmers are disappointed that the agreement does not result in free trade in dairy products over time. However, the agreement is seen by the dairy industry as very positive, as it will from the date of implementation triple Australian quota access to the US, with access growing at five per cent per year thereafter. For dairy, the deal will be worth approximately $56 million in year one and result in a farm gate profit of 5c to 7c per kilogram fat equivalent for all milk. This represents an ongoing improvement in farm gate returns of $2,000 to $3,000 per year for a one million litre dairy farm.

Through the removal of tariffs on wheat products, such as flour, cereal products and wheat gluten, there are potential benefits for the Australian grains processing industry. NFF is advised that the US FTA outcome for horticulture is viewed as positive on balance and is certainly supported by Horticulture Australia Ltd.

Despite these benefits, NFF is disappointed with the outcome of US FTA negotiations for a number of reasons. While an additional 70,000 tonnes quota access will be granted for Australian beef, this will accrue over an 18-year transition period, and a permanent safeguard will apply thereafter. NFF is concerned that the existence of a permanent safeguard on beef sets a bad precedent in other bilateral negotiations. Australia's sugar access remains unchanged under the deal. No increase in access was achieved. Australian sugar producers were justifiably disappointed and frustrated by this outcome. The fact that the US FTA is not comprehensive in nature—that is, it does not cover all agricultural products—was one of the most disappointing aspects of the negotiated outcome.

Given these outcomes, our position is as follows: NFF is disappointed with many aspects of the US FTA, and NFF's expectations were clearly not met in a range of areas, particularly with regard to the outcome on sugar and beef. However, on balance, as the market access benefits for several Australian agricultural industries are significant, and as (a) NFF does not believe the US FTA undermines Australia's quarantine system, (b) NFF does not believe negotiated outcomes in chapters outside agriculture negatively impact Australian farmers, and (c) NFF has seen no evidence at this time that the US FTA undermines Australia's ability to gain a favourable outcome in the WTO negotiations, NFF supports the US FTA and believes all political parties should support the agreement through the Australian parliamentary system.

CHAIR—Thank you very much. Firstly, on the quarantine issue, we have found some industry bodies at the state level that have been concerned that there is some weakening of our risk assessments and so on. Have you found anything like that amongst your constituent bodies?

Mr Corish—We have a quarantine task force at NFF. All our member organisations participate in that task force. NFF has certainly sought comments from all our member organisations on that particular issue. While there is still a degree of uncertainty expressed by some organisations, overall there is a view that there will not be an impact on quarantine. In fact, we do not believe there will be a negative impact on our science based import risk assessment process.

CHAIR—So you are happy that the chapter on sanitary and phytosanitary measures says exactly what we think it says, which is that it will be science based and there will be high-level committees that will work to understand the arrangements we each have?

Mr Corish—On the basis of the information we have had available to us, we certainly take that position.

Mr WILKIE—It is an interesting submission. I am curious. There have obviously been comments made recently that what we ended up with was a trade agreement not a free trade agreement. I have heard that in many circles. Would the NFF agree with that?

Mr Corish—We have said that publicly ourselves on several occasions. As we said in our submission and in my opening comments, we were certainly disappointed that the deal was not comprehensive, that sugar was drafted out and that there was minimal benefit for beef and it was over a very long transition time. We were certainly disappointed with many aspects of the agreement.

Mr WILKIE—In my view, the agreement was pushed through very quickly for both a US political agenda and an Australian political agenda. There have been views expressed that, had we had longer to negotiate, we could have sorted out some of the issues that have not been sorted out. Is it the view of the NFF that had the negotiations gone on longer we might have been able to achieve a better outcome for agriculture?

Mr Corish—To the contrary, the impression we received in being part of the negotiations while not being directly involved in the negotiations was that the political climate in the US was changing and there was growing concern about bilateral trade agreements. The Central American free trade agreement had not gone down well, and there was quite a strong negative reaction to that, particularly from the beef and sugar industries in the United States. Our view was that if the negotiations were extended—for example, to after the presidential elections in the US and perhaps after our own elections here in Australia later this year—the chances of a positive outcome may in fact have been less.

Mr WILKIE—In the CIE study they did a number of case studies, and one of them to do with beef. I noticed they did not put any figures in, even though they had done a lot of work for the Cattle Council. Was the NFF surprised that they had not included figures in the report?

Mr Corish—I will ask Mr Fargher to comment on that, because he has certainly had the opportunity to go through the CIE report in more detail than I have.

Mr Fargher—We did see the figures for agriculture in the report in the state by state analysis and in some of the output trade diversion figures. We did of course speak to our commodity members about what benefits they saw, because that is where we were seeking our advice. We were aware that CIE had done some modelling for the cattle industry, so we did note their analysis. I guess with such a cross-sectoral model we never thought that this submission would be about agriculture. We were relying on our commodity members to tell us those figures.

Senator MASON—Thank you both for your submission—in particular you, Mr Fargher. My first question relates to Mr Wilkie's question about the expedition of the negotiation of this treaty. Do you think we were lucky to find a window of opportunity to negotiate this treaty? Is that what you are saying—that in a sense if we had waited longer or gone earlier it could have been worse, but this was the time to do it and, despite the criticisms that you make, we were lucky to get what we did?

Mr Corish—It is probably impossible to say factually whether by delaying the negotiations we would have ended up with a better result than what is currently on the table and perhaps being achieved. Our view was that it was unlikely and that there was a window of opportunity for Australia to negotiate an agreement with the United States. As I said, the political climate in the US was tending to change. There was growing concern about any trade agreements, particularly after announcement of the CAFTA several weeks beforehand. Our view—and it is

only a view—is that it would be more difficult to negotiate a better deal perhaps 12 or 18 months down the track.

Senator MASON—And it is still not over yet, is it? It still has to go through the United States Senate and the rest of it.

Mr Corish—Certainly it has to go through the US congressional system and there are absolutely no guarantees that it will go through that system. It will be interesting to watch from the sidelines what happens as part of that process.

Senator MASON—It will be. I have one last question. In the first paragraph of your submission you say that the NFF believes that we should concentrate our efforts on multilateral liberalisation of trade. I understand why you think that. But do you think that there is any truth to the argument that bilateral agreements—particularly one as major as this—can have a leveraging effect and make broader liberalisation multilaterally more likely?

Mr Corish—I would say that the opposite view has been expressed many times; in fact, I would say that bilateral agreements that did not deliver unimpeded market access would be negative towards the WTO process.

Senator MASON—It sets a standard below free market. Is that what you are saying?

Mr Corish—Yes. That type of comment has been out there, and we were concerned that that may in fact happen, but our concerns have not breathed any life. We have had the opportunity to participate in a Cairns Group farm leaders meeting since the FTA negotiation with the US was completed, and certainly there was no negative comment about the negotiation. In fact, a number of countries represented expressed a degree of interest in how we had gone through the negotiations and how they may do the same thing themselves. So perhaps that is a positive response to your question.

Senator MASON—Yes. Thank you.

Mr WILKIE—In terms of standards for quarantine et cetera, it has just been reported today that they have come across another case of mad cow disease in Texas. I have read a report that suggests that, under the FTA, the bovine spongiform encephalopathy—BSE—testing regime that we are proposing here would be matched with what they have got in the United States. It has been suggested that that sort of harmonisation of the standards might not be in Australia's favour. What would be NFF's response to that?

Mr Corish—Again I might ask Ben to comment on that, because he is much closer to that issue technically. But, before he does, I would say that any dilution of our science based approach to quarantine would not be supported in any shape or form by NFF.

Mr Fargher—Unfortunately, I cannot comment specifically on that case today, because we have not seen that information; although I note that, in listening to the testimony of the Cattle Council and Meat and Livestock Australia yesterday, they did indeed support the letter on BSE. I also note that—as Mr Corish said—we do not see anything in the agreement that would enable these working groups to somehow undermine our import risk assessment process. We have

looked at the text, we have asked our members what they think about the text, and that is their advice to us at this time on quarantine.

Senator MARSHALL—Mr Fargher, I think you appeared before the Senate inquiry into this matter last year.

Mr Fargher—I did.

Senator MARSHALL—We are a long way from what you indicated was your bottom line at that time. The NFF has moved significantly in what their bottom line is. Can you explain to me why?

Mr Fargher—Yes, indeed. Last year I appeared before the Senate committee and I was asked at that time what NFF's policy on the negotiations was, and I articulated the view that NFF was seeking free trade in agriculture. That is what we were seeking and that is what we sought. But I did make it clear at the time that saying what we would finally accept was something I could not do, as it was a hypothetical situation, and that we would come to a decision on that based on the advice of our members. Over the last 18 months we sought free trade in agriculture, we tried to apply maximum political leverage to gain that outcome and then when the negotiated outcome was in front of us we asked our members whether or not the outcome was acceptable. That is how we came to our decision, the decision that Mr Corish articulated. In that regard there is some separation. We are disappointed and we have made that disappointment known publicly.

Senator MARSHALL—How do you decide on your position after asking your members whether you as an organisation are satisfied? How do you do that? I imagine that some of your members must be saying: 'This is an outrage. There is absolutely nothing in it for us. In fact, there could be some disadvantage.' I imagine that others are saying, 'No, it's terrific.' You would have both extremes. How do you formulate a position when you are representing so many diverse interests?

Mr Corish—We do have different views with regard to the value of a trade agreement with the United States, depending on the commodity that the respondent produces. Obviously our dairy members, for example, were quite positively moved to support the trade agreement, whereas our beef members had some reservations. But we do have a trade committee process which allows all the members to debate the issues and allows technical input into the decision-making process. The decision is then made by our executive, which is in effect the board of our organisation. The decision quite clearly, as I hope we have clearly represented today, was that our position would be that while we and particular commodity producers were disappointed with the outcome overall we believe that the net benefits for Australian agriculture are there and may in fact grow in the future. We have agreed to support the trade agreement going through the Australian parliament on that basis.

Senator MARSHALL—Thank you.

CHAIR—There being no further questions, I would like to thank you very much for your attendance before the committee today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Thank you very much.

Mr Fargher—Thank you, Chair.

[4.03 p.m.]

KAUFFMAN, Dr Paul Richard, Manager, Policy Support, Land and Development Group, Aboriginal and Torres Strait Islander Services

STACEY, Mr Brian Robert, National Program Manager, Land and Development Group, Aboriginal and Torres Strait Islander Services

CHAIR—Welcome. 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?

Mr Stacey—I would like to bring it to the attention of the committee that the Aboriginal and Torres Strait Islander Services, which as the committee knows was established on 1 July this financial year to perform the program functions previously carried out by the Aboriginal and Torres Strait Islander Commission, think that the proposed free trade agreement is something of significance to Indigenous people.

With that in mind, ATSIS commissioned some research to examine what issues the proposed free trade agreement would raise for Indigenous people. This research was done by the Australian Centre for Intellectual Property in Agriculture, which, in short, is the business operating name representing a number of academics at Griffith University and at the Australian National University. One expert in particular, Professor Brad Sherman, who is an economist and trade law expert, along with Associate Professor Justice Melbourne, a trade lawyer with North American experience, prepared a report for us on the issues with respect to Indigenous people. We now lodge that report with the committee.

The report was also submitted to the Aboriginal and Torres Strait Islander Commission, which considered it at its December 2003 meeting. The report was also submitted to the government in December last year in order that it would have regard to the issues raised in it when undertaking negotiations at that time with the United States government with respect to the agreement. I am pleased to say that the report we put to the government was given serious consideration and proper attention, and in particular from the ATSIS perspective the government's response was quite positive on the issues raised in the report with respect to the interests of Indigenous people that could be impacted by this agreement.

CHAIR—Thank you very much. We have accepted this report as a submission to the inquiry and it is was put on the web site this morning. The submission is numbered 188. So there was a period of consultation between ATSIS and the negotiating team during the Australia-US free trade agreement negotiations?

Mr Stacey—There were certainly discussions. I do not know whether it is appropriate to characterise them as negotiations, but certainly both Paul and I met with the negotiating team on

a number of occasions over the course of November-December last year and January-February this year to talk about the issues with respect to Indigenous people.

CHAIR—You were interested in having a broad exemption in the Australia-US free trade agreement for Indigenous people. There is not an exemption in the free trade agreement for Indigenous people. Is that correct?

Mr Stacey—I would like to clarify that. It is important to understand that the report we have submitted was done by experts. It argues that, on the basis that free trade agreements such as these normally limit the capacity of the parties to take action outside the agreement with respect to the issues being dealt with in the agreement, it is necessary, given the very disadvantaged position of Indigenous people in Australia, that there be nothing in this agreement that would prevent Australian governments from adopting positive or special measures in order to overcome that disadvantage.

The academics who prepared this report said that, from their point of view, they believed the best way to achieve that result—that is, having nothing in the agreement which would stop the Australian government from adopting whatever measures they considered to be appropriate to protect the interests of Indigenous people—was by a general exemption at the start of the agreement, which would operate something like a principle or a preamble in a constitution.

However, they also said that, if that was not feasible for whatever reason, a second-best option was to have exemptions in the sections in the proposed agreement relating to goods, services and investment to make sure that there was nothing that would stop the government from taking whatever steps it thought necessary into the future. It is the case that there is not a general exemption for Indigenous interests. However, throughout the agreement, in most of the chapters there are special exemptions which enable the government to take whatever action it considers necessary with respect to Indigenous people. I might say that that applies to the US too, of course—that is, both parties are agreeing.

CHAIR—You are satisfied with the text of the agreement from the point of view of your organisation?

Mr Stacey—Well—

Mr WILKIE—You made some suggested changes to the agreement, didn't you?

Mr Stacey—Yes. Firstly, ATSIS's view is that the government has had proper regard to the interests of Indigenous people in finalising this agreement. In particular, they have sought to include in it exemptions such that governments in the future are not stopped from adopting policies, programs or other measures to protect Indigenous people's interests. Secondly, we are comforted by the advice we have received from the Minister for Trade in response to the report to the effect that, in the government's view, there was nothing in that agreement which would stop them from adopting in the future whatever laws, policies or programs they thought were necessary. We have pointed out, however, that they did not put in place a general exemption.

CHAIR—Can I just clarify the status of that with regard to pages 57 and 58? Were these suggestions submitted prior to the conclusion of negotiations?

Mr Stacey—Yes, that is correct. Are you talking about the report itself and the recommendations?

CHAIR—Yes. You are not today saying that these should be put in the agreement? They are not in the agreement now.

Mr Stacey—No, we are not saying that.

Mr WILKIE—Just to clarify that, you have seen the conclusion. You said that you recommended those points on page 58, but you are saying that you are happy that they are not in the agreement?

Dr Kauffman—Pages 7 to 9 of the submission have three columns. The second column is what is in the agreement. The third column is the first preference of ATSIS on the basis of expert legal advice from trade lawyers on the basis of their analysis of NAFTA and the draft of the Australia-United States free trade agreement. As they go into quite detailed explanations in their report, they argue that, to provide full protection for a whole range of eventualities that may occur in the next 10 or 15 years, the third column on pages 7 to 9 of our submission is the preferred option—option A. Option B is what is in the agreement, which is a government policy decision. As Mr Stacey said, the Minister for Trade advised that, in the government's view, that will provide good protection for current special measures for Indigenous people in Australia.

Mr WILKIE—Right, but you did not get everything you asked for?

Dr Kauffman—That is correct.

Mr Stacey—That is correct. Not everything that was in the report that was done by consultants is in the agreement. That is the case.

Senator MARSHALL—Which starts where, by the way? I am still confused, because you have got something that you have told us was actually put to the negotiators but what we have just been talking about is something that actually compares the final outcome to what you wanted and it all seems to be part of the one document. I am just having trouble following which is what.

Dr Kauffman—The complete 100-odd page submission prepared by legal advisers was placed on the ATSIC web site on 6 April. In the document before you we have summarised that into the most relevant 50 pages, to give the committee a record—

Senator MARSHALL—These are those that start at chapter 1?

Dr Kauffman—Yes. The whole text really is in essence presented in pages 7 to 9 of the submission to the joint standing committee, which show the final agreement in the middle column and the advice of our consultants in a tabular form. There are very detailed analyses of North American cases and the Singapore free trade agreement. They look at a range of possible threats or possible eventualities that could occur in the next 10 or 15 years.

Mr WILKIE—I suppose, to paraphrase the end result, you did not get everything you wanted but you can live with the outcome.

Dr Kauffman—Yes, that is correct.

Senator MARSHALL—But that is based on what the government's advice to you is. So you went to the trouble of preparing a very detailed and comprehensive report which raised a whole range of issues, which I must say were obviously necessary to our negotiators, but then you have relied on the outcome being delivered on the basis of what the minister has said. The obvious question is: why haven't you asked the same people who prepared this report to advise you whether the actual exemptions and the wording of the agreement achieved what you needed to achieve?

Dr Kauffman—We are in continuous dialogue with them and, to summarise this morning's phone conversation, their advice is that the pointy ends have been removed from the agreement concerning Indigenous people but they would have suggested—and in fact did suggest—more precise wording in the government procurement and trade in services chapters. They express some concerns as to the investment chapter. In an ideal world, bearing in mind the huge disadvantage of Indigenous people that is spelt out in the full report on the web site, there could have been more comprehensive protections. On the other hand, our understanding is that the government have to weigh that in trying to get an agreement with the United States and balance all interests as they see it.

Senator MARSHALL—Yes, but that is not the point. The government have to make the balance, and obviously they have done so in a whole range of areas, but what you have said is that the government said that all your concerns have been accommodated in the agreement. That has got nothing to do with weighing concerns against something else. It is actually saying that they have been accommodated. I refer to the advice you have got about the pointy ends being taken off but there being a few questions. What does the minister say about that? Does he disagree or agree?

Mr Stacey—I emphasise again that the government, and in particular the minister, has told us that there is nothing in the agreement that will prevent Australian governments from adopting whatever measures are necessary to overcome the disadvantage of Indigenous people. On that basis—and having regard to the fact that while the government did not include a general exemption, it did include specific exemptions in most chapters—we are saying now that we believe this to be a satisfactory outcome.

Senator MARSHALL—I do not want to push it. I am not trying to get you to say something that you do not want to say, but do the people who prepared the report concur with that view?

Mr Stacey—Dr Kauffman has made the point that they think there should be a general exemption, and that some of the specific exemptions may not be clear enough or contain enough detail, so I suppose the answer to that question is that they do not completely agree with it.

Senator MARSHALL—Can you provide that advice to the committee?

Dr Kauffman—Yes, we will.

CHAIR—Thank you very much for your attendance before the committee today. The committee has also received submissions for treaties tabled on 30 March 2004 from the AMA, the Cancer Council, the National Heart Foundation and the Australian Self-Medication Industry. I require that submission Nos. 1 to 3 be received as evidence and authorised for publication. There being no objection, it is so ordered. I also require that a submission from the Australian Vice-Chancellors Committee on the Australian US Free Trade Agreement be received as evidence and authorised for publication. There being no objection, it is so ordered.

Resolved (on motion by **Senator Marshall**, seconded by **Mr Wilkie**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 4.22 p.m.