COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia-United States Free Trade Agreement

THURSDAY, 6 MAY 2004

SYDNEY

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to:
http://parlinfoweb.aph.gov.au

JOINT COMMITTEE ON TREATIES

Thursday, 6 May 2004

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

Senators and members in attendance: Senator Mason, Senator Santoro, Senator Stephens, Senator Tchen, Mr Ciobo, Mr Evans, Mr King, Dr Southcott, 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 9.00 a.m.

WYLIE, Dr Brenton Russell, National Blood Products Manager, Australian Red Cross Blood Service

ACTING CHAIR (Mr Wilkie)—I declare open this meeting of the Joint Standing Committee on Treaties. The public hearing today in Sydney is the ninth 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 MP, on 9 March 2004. It was advertised on the committee's web site on 10 March and advertised in the *Australian* 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 presiding officers of the parliaments, as well as to a list of people who have expressed an interest in being kept up to date with the committee's activity via email bulletin. To date, over 170 submissions have been received. Submissions are available from the committee's web site. Details are available from the committee secretariat.

I welcome our first witness today. On behalf of the committee, I would like to thank you for appearing today to give evidence. Although the committee does not require you to give evidence under oath, I should advise you that the hearings today 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 contempt of parliament. I now invite you to make an opening statement.

Dr Wylie—First of all, I would like to thank the committee for the opportunity to speak with you today. The Australian Red Cross Blood Service welcome this initial opportunity to provide our views on matters of national interest in the free trade agreement process. Our major interest lies in the side letter on blood plasma products, which forms part of the Government Procurement chapter of the agreement. The side letter raises a number of issues relevant to the collection of blood plasma, its fractionation, the supply of plasma products to the Australian community and the relationship of these to Australia's longstanding policy of national self-sufficiency in blood and blood products. These issues are of significant concern to the community and to the maintenance of the high standards of care in the Australian health system.

In particular, the Australian Red Cross Blood Service wish to emphasise the importance of ensuring the ongoing safety and security of Australia's supply of blood and plasma products, as well as support for our volunteer donors. As stated in our written submission, we believe this can best be achieved through ongoing and enhanced support of a national policy of self-sufficiency in blood and blood products as far as this is practicable, given local and global circumstances in the blood industry. I am happy to answer any questions the committee may have.

ACTING CHAIR—Dr Wylie, what is the main concern of the Red Cross regarding the side letter?

Dr Wylie—The main issue from the point of view of the Australian Red Cross Blood Service is that self-sufficiency is our current national policy. It is a goal that has been established by the World Health Assembly, it is a goal that has been reaffirmed by the European Union and it is of interest to the community, in that the community, through 500,000 volunteer donors, participates

in it on every collecting day of the year. If we were to sacrifice this current goal, it would be very hard to re-establish and re-achieve our position. It is a goal that is sought by many countries around the globe but achieved by very few.

ACTING CHAIR—Do you believe that the current arrangements in the free trade agreement side letter jeopardise that position? If so, in what way?

Dr Wylie—Our view is that the arrangements need to be taken in the context of self-sufficiency and considered very carefully. As an organisation, we recognise that the goal of total self-sufficiency in plasma products is difficult to achieve. We recognise that it is very important for this country to have appropriate contingency arrangements for plasma products and that there is a role in seeking such products, where necessary, from overseas. We seek to bring to the attention of the committee, however, that if we were to completely open the market it would have issues for our self-sufficiency. If we were to open it to the extent that our position of self-sufficiency were wound back and that goal were no longer able to be achieved, that would have implications for Australia. It has the particular implication that, should anything happen to the source of product that was making up that gap, we would have great difficulty and would need significant resourcing in a short period of time to re-establish our position.

Senator MASON—Dr Wylie, how precisely might that goal of national self-sufficiency in blood and plasma products be affected by the side letter? You have answered the chair's question, but could you give me an example of how the free trade agreement might affect the goal of self-sufficiency.

Dr Wylie—I think this goes to one of the crucial issues—that in many parts of the world, there is no blood supply. In many parts of the world, blood supply is obtained at any cost. In many parts of the world, plasma is essentially regarded as a commodity to be traded. In the Australian context, historically we have had the Australian Red Cross Blood Service. It is a community activity which many Australians participate in. At the end of the day, a purely economic model may have consequences outside, or not strictly in keeping with, the cultural and community aspects of the service as it exists in Australia.

Senator MASON—I understand. It concerns the volunteer aspect—that when people give blood in Australia they do not get paid for it; they give it as a community service. Doesn't that happen in other countries?

Dr Wylie—Another important point is that yes, we have a volunteer system in Australia. It is something that our organisation is very proud of, and I think I speak for the community in that regard. I mentioned earlier that there is a role in having appropriate contingency arrangements, and these would, by necessity, be international in nature. I think it is important to recognise that, if we were to import significant quantities from other countries, those countries by definition must have a surplus to their own requirements. There are ways to achieve that, but one of the ways that the majority of countries are able to achieve a surplus of plasma for export is by paying their donors.

Senator MASON—So your concern is that it would affect the cultural and volunteer aspect of Australian blood supplies, as opposed to any health concerns, for example, that you might have with checking blood for diseases?

Dr Wylie—Each of those concerns exists. I think the cultural concerns exist. It is clear, and I think I need to recognise before the committee, that, with current inactivation procedures, at this point in time even products in the plasma industry collected from paid donors have a very high level of safety. I think that needs to be put on the record. However, Australia is an island and we are relatively protected from a number of events that occur overseas. If you look into the future, it is difficult to predict what the next infectious agent will be that enters the blood supply anywhere in the world. In particular, it is even more difficult to predict what the characteristics of that agent may be, what may be needed to keep it out of the blood supply and what may need to be done to blood and blood products to render them safe. If we were to rely to a great extent on it and the international source developed a problem then, as I stated earlier, if we were not in a position of near self-sufficiency, we would be vulnerable.

Senator MASON—So, just to summarise it in a line, you are saying that the free trade agreement may introduce some fiscal or mercantile concerns that could disrupt the volunteer and cultural aspects of the Australian blood donor program.

Dr Wylie—It has the potential to do that. We have also discussed the economic aspect. We have discussed briefly the risk of infectious diseases. I have mentioned relative independence from variations in the world market in terms of supply problems externally. There is the issue, which this committee would be well aware of, of trade deficits and trade balance. At the end of the day, if we are to continue to pursue our longstanding policy of national self-sufficiency, there is also the potential for us to develop our own surplus in some products. To briefly explain that: if we collect plasma in sufficient quantities to meet our needs for the product that is in shortest supply then, from that same plasma, we can generate other products which could be of benefit to the world.

Senator MASON—Is it possible that, if we have a surplus of blood products that are drawn from the community, we could have an export industry? Is it possible?

Dr Wylie—I think that that is a sensitive issue for the government to consider. In particular, it is an issue for the newly established National Blood Authority to consider with governments. There are a number of ways that any potential surplus of that nature could be handled. One, of course, is as part of an aid program.

Senator MASON—Thank you very much.

Senator STEPHENS—Dr Wylie, I am looking at your submission. Could you explain to me a little more about the issue that you raise about fractionation and the comment that you make on page 7 of your submission about Australia's proposal to undertake a review of its arrangements for the supply of blood fractionation services by no later than 2007. Can you explain to me what the implications of that might be for Australia's industry.

Dr Wylie—Certainly. First of all, I should reiterate that, while we do not perform the fractionation ourselves in Australia at the current time, we are a key player. We are the collector of the blood that delivers the plasma to the fractionator, we receive the products back and we distribute those products. We have pointed out in our written submission that there are a number of advantages to having fractionation capacity domestically. They include logistic issues and the ability to segregate our plasma—in fact, we even segregate our plasma currently from that of

New Zealand. We are able to enjoy a situation currently where our fractionation needs are totally met.

The Australian Red Cross Blood Service are not making a statement about what the outcome of future deliberations on fractionation should be, but we do point out the current advantages of the domestic fractionation service that we have. As the key supplier of plasma and the ultimate distributor of the products, we believe that it is essential for us to be closely engaged in the decision-making process which is fundamental to the supply of blood products in Australia.

Senator STEPHENS—Have you been part of the discussions to date?

Dr Wylie—Not to this point in time.

Senator STEPHENS—Not yet?

Dr Wylie—No.

Senator STEPHENS—I have a question about the second part of your submission, where you are talking about the national interest on page 9. Can you explain to me whether Australia meets a higher standard in terms of its screening of plasma and blood products, given the potential risks that you identify at the bottom of page 9 of your submission—that is, the fact that the US has already had a case of BSE and has been a source of the West Nile virus.

Dr Wylie—Australia obviously enjoys a very high standard of testing and supply of plasma in Australia. We have a very strong regulator in the Therapeutic Goods Administration. It is certainly clear that any supply of other products must pass the regulatory requirements of the Therapeutic Goods Administration, and we are satisfied with that process. I think the critical point of the question you are asking really goes back to the issue of contingency. If Australia is largely self-sufficient and something happens within our blood supply—an agent—then we are able, through appropriately established contingency arrangements, to access the world market to replenish and maintain our supply. If we have left a position of self-sufficiency and we are reliant on an overseas market and something happens in that market and that supply, then our contingency situation is very difficult to solve. There is the recent example of BSE—mad cow disease—and new variant CJD, with its impact in the UK and its potential impact in any country. I am not suggesting to this committee that the US currently have a problem, but they have had a case. It simply highlights the potential for agents to enter blood supplies and plasma supplies anywhere on the globe.

ACTING CHAIR—I noticed that they had another case on Tuesday.

Senator TCHEN—Dr Wylie, am I right to think that the position of the Red Cross in your submission is essentially to highlight some of the concerns that you have, rather than oppose the FTA as such?

Dr Wylie—We believe that the issues and concerns that we have raised go to some very legitimate issues, which, if not taken into account in the execution of any agreement, could have impacts which need to be very carefully weighed up before moving forward.

Senator TCHEN—As I said, you just wish to highlight something that you think potentially might be an omission?

Dr Wylie—Yes. We reiterate that we accept that it is important for this country to have access to, and have the ability to have, appropriate contingency arrangements. By necessity, that includes access to world markets. But there is a difference between those contingency arrangements and our current policy of pursuing national self-sufficiency.

Mr MARTYN EVANS—Dr Wylie, I noticed from recent reports in some of the literature that the US is currently undertaking in the field some phase 3 clinical trials on artificial blood products and treating some accident victims with artificial blood products on a random basis. How do you see the evolution of that market? Past trials in this area have failed, as we know. The fact that they are trying again in this area and are taking it to the stage of what amounts to phase 3 clinical trials presumes that there is some renewed attempt at this and therefore some renewed faith in the latest version. One assumes that they will get there some day. How do you see that impacting on this area? Obviously it would create a much wider commercial market in these kinds of products if any of these trials ever get to a successful conclusion.

Dr Wylie—The development of artificial blood has been one of the holy grails. The endeavours that researchers around the world are undertaking are supported by everyone who has an interest in treating patients, ourselves included. There have been great difficulties, and I think it remains at this point in time a holy grail. In the foreseeable future, it is difficult to envisage products being readily available to the market, although I do agree that at some point in the future they will be.

One of the points I would raise is that the availability of these products may or may not have an impact on the need for products derived from blood donors. The reason I say that—and just to give a quick example—is that, when used in the field, the battlefield or in other places, they may enable people who would die at the scene to survive longer and then have the opportunity and need for blood products, whereas they would not now survive long enough to have that need. So, in some circumstances, it could actually increase the need for and use of our products. Certainly in terms of the foreseeable future, the record shows that our need for volunteer blood donors and for the blood supply has increased every year and continues to increase every year. The need for plasma has increased every year and continues to increase every year. Looking forward, for the foreseeable future that trend will continue.

Mr MARTYN EVANS—Thank you.

Senator SANTORO—Just to clarify a couple of quick points, do we currently, as individual Australians or in a corporate sense, have the legal ability to export—to sell, blood products or plasma? If another country advertised its need for blood, would I as an Australian citizen be able to offer blood?

Dr Wylie—No, you would not, and the Australian Red Cross Blood Service is not able to export. Export is, I think very appropriately, closely controlled by the regulator, the Therapeutic Goods Administration, as I mentioned earlier, and also by appropriate government bodies—the National Blood Authority, and other mechanisms. If we were to develop surplus products, the mechanism by which we could assist the world in whatever way would need to be carefully

established and discussed, with appropriate mechanisms being set up between all the appropriate bodies involved.

Senator SANTORO—So at the moment, if another country asks a country such as Australia for blood products to help in a crisis or whatever the situation might be, how do we deal with that request?

Dr Wylie—It is usually received by us, the Australian Red Cross Blood Service, and that request is passed on to government—in this day and age that would be to the National Blood Authority—and discussion would need to be held at government level as to our ability to supply. On rare occasions that actually does occur, but the final decision to send or to be able to support an international request rests with government.

Senator SANTORO—So that decision needs to be made at a ministerial level? Is there a law that governs the conditions for satisfying such a request?

Dr Wylie—It is illegal to sell blood. At the end of the day a decision needs to be made between the regulator and the National Blood Authority for any blood to go offshore.

Senator SANTORO—So under the proposed FTA could you reiterate again the technical concerns that you would have? Compared to the conditions that apply now in terms of accrediting and testing the product before it goes overseas, what do you think would be different under the FTA in terms of the scientific aspects of testing and accrediting?

Dr Wylie—I would hope that for any imported product, as a contingency or under any other circumstance, there would be no difference because we would make the assumption that the Therapeutic Goods Administration, as the regulator which registers therapeutic goods for use in Australia, would apply equal standards—and I am confident that they would—to any product entering the Australian market. Our concern would go more towards future impacts on the plasma supply in any other part of the globe.

Senator SANTORO—That again—just to make it clear in my mind—is based on a fear or a concern that you may have that some Australians, if they were given a choice between donating voluntarily or selling their blood, would perhaps opt to sell it?

Dr Wylie—In any community there would be people who would look at this from somewhat different perspectives. The Australian system, which was really derived in its current format in World War II, is entirely based on volunteer, non-remunerated blood donations. It is a system we are very proud of. I believe the community is very proud of it and we should treasure it. Very few countries in the world have been able to achieve the position that we have established today through a voluntary, non-remunerated system. They either pay donors or they use relatives or coerce people to donate blood, usually at the last minute, to save someone's life.

Senator SANTORO—Presumably, though, if a profit were to be made or a pecuniary consideration were introduced under the implementation of an FTA, it is conceivable that you would get extra people donating blood as a result of the profit motive?

Dr Wylie—I think the best answer I can give to that question is that the plasma collection industry in a number of countries, and the USA is one of them, pays donors for the collection of their plasma. They would argue that the products are very safe and I think the evidence supports that. They select their donors very carefully and they are pedigreed donors, even though they do receive remuneration. The products they generate from that plasma do enjoy very high levels of safety. But, at the end of the day, within the Australian system we do have a voluntary blood donor system.

ACTING CHAIR—Obviously the service does a great job. Would you be concerned that, if there was competition, you might not be able to continue to provide that service?

Dr Wylie—I think our concern is more to do with sufficiency—self-sufficiency—and public expectation as blood donors and we have some concern about economics versus the Australian blood donor system and the collection system as we have it in Australia. It is a service with a strong cultural and historical base. We have 500,000 people registered as blood donors donating not just in the big cities but also in towns on mobiles right around the country. My experience in dealing with communities, regional centres and towns is that they are very affiliated with their blood service. They regard it as a very important service. They also highly value their right to be able to donate blood.

Mr KING—Thank you for your excellent submission. Also, of course, I am sure that everyone around this table acknowledges the tremendous work that you do and your organisation does. Currently, does the US have a voluntary non-remunerative blood donor system—the same as ours?

Dr Wylie—I think it may be worth explaining the US system in a little more detail. Certainly, the collection of whole blood in the United States is voluntary. Sitting alongside the voluntary system is what we call the fractionation industry, where organisations collect plasma from remunerated donors and that plasma is turned into blood plasma products. So the US has these two systems sitting alongside each other. In fact, as I said, their whole blood system is voluntary.

Mr KING—You have read the side letter on blood plasma products?

Dr Wylie—I have.

Mr KING—Am I correct in understanding that, so long as you get the assurance that you have referred to in your executive summary, that is your main concern?

Dr Wylie—Our concern is the policy of self-sufficiency—and that due regard is taken when any decisions are made that could have the consequence of departing from that position.

Mr KING—So what changes if any would you like to see either in that side letter or in the FTA draft?

Dr Wylie—What we would like to see is consideration and reaffirmation of the policy of national self-sufficiency. We would like to be engaged in the process of establishing appropriate fractionation procedures and systems for the supply of blood and plasma products in Australia.

Mr KING—Is there any suggestion of any threat to the operation or work of the National Blood Authority as a result of entering into the FTA?

Dr Wylie—I do not believe so. The National Blood Authority is a statutory authority. It was established on 1 July last year and its advent was very much welcomed by the Australian Red Cross Blood Service. It gave the Australian system an opportunity to bring the collective government system together through a single authority with which we were able to negotiate and establish Australia's needs moving forward. So I do not believe there is a threat. I would reiterate that we welcomed the advent of that organisation and we look forward to working very closely with it.

Mr WILKIE—In terms of Australia's ability to provide enough products for its own use, when we were going out to the airport at Brisbane yesterday I noticed that there were big neon signs that said, 'Critical shortages of plasma,' and called for people to come and give blood. Do we live in a constant situation where we have a shortage of product in Australia?

Dr Wylie—No blood service operates in the world without appealing for blood and blood donors. The majority of our donor base are regular donors—around 90 per cent—but we, like any other service around the world, need to appeal.

Mr KING—You would like a lot of people with their arms out continuously!

Dr Wylie—I think that comment is correct. At the end of the day, Australia has been almost completely self-sufficient for plasma products. We are certainly self-sufficient for the fresh products—the red cells, the platelets and the plasma used in hospitals. There have been times where we have had to import products to supplement our supply. We recognise that, and it goes to the very contingency issue that I was speaking of earlier. So we are very largely self-sufficient for blood products in Australia. Do we have a capacity moving forward to increase the plasma import? You might note—and we have mentioned it in our submission in the executive summary—that over the last three years we have had a plasma increase in terms of input of 22 per cent, which is very significant, and with the assistance of the National Blood Authority, of governments and, of course, of the community we will be able to collect increasing amounts of plasma going forward.

CHAIR—As there are no further questions, I thank you very much for your attendance before the committee.

Dr Wylie—Thank you very much.

CHAIR—I call our next witness.

[9.32 a.m.]

JEFFRIESS, Mr Brian Charles, President, Tuna Boat Owners Association of Australia

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

Mr Jeffriess—I have a short statement. I am here representing both the boats which catch the tuna, which is largely canned in Australia, and the only cannery in Australia—Port Lincoln Tuna Processors. We strongly support this agreement for reasons that will become obvious. Port Lincoln Tuna Processors, which is our main interest in terms of this agreement, is the largest private employer on Eyre Peninsula—if not in rural South Australia. It totally depends on its competitive position globally. Since the proposed introduction of the Thailand-Australia free trade agreement we have no tariff protection: the previous five per cent tariff on important canned tuna will be abolished in terms of Thailand, who are the dominant world exporter of canned tuna.

We have been trying for two decades to get the United States to move on its own tariff, which is 35 per cent against Australian product. The United States has a whole range of bilateral agreements with competitors of ours—not Thailand, but Uruguay and Mexico in particular. We waited through the Uruguay round, we made representations through that round and we made representations at the current Doha round, but it did not appear likely at all that they would move.

This is a very sensitive subject in the United States. They have an ongoing commitment, they feel, particularly to American Samoa. The canning of tuna is the dominant industry in that area and has particular powerful interests in the US Senate. Frankly, in terms of access to the United States for canned tuna, we did not think this agreement could happen. Canned tuna around the world is a highly protected industry, particularly in regard to the major markets—the United States and the European Union. It is not as if the United States in this case would be worried about Australian product. We would be operating in a particular sector of the market which the Americans tend to ignore. But the Americans are currently negotiating a bilateral trade agreement with Thailand and, because of the precedent this creates for that agreement, it appeared likely that the Americans would not concede to Australia on this agreement. So we certainly welcome it.

The last point I want to make is that we would operate only in the American premium market. We produce a premium product in Australia from the only remaining cannery. It has 40 per cent of the Australian market and obviously imports have the other 60 per cent. In Australia we can operate in the volume market, but not in the United States—we would operate in the premium market there. The United States is by far the biggest import market in the world. We would need only a minor share of that market to actually have a major increase in our own production

volume. That significantly improves our competitiveness not just in exports but also in the Australian market itself.

The last point I would like to make is that our competitiveness in the canning market depends largely on our local catch of the particular tuna species which goes into canning. We currently catch that species out of Port Lincoln. Our boats operate in Western Australia and on the east coast of Australia. The capital investment in these boats that is required to catch this particular fish is very large. Each boat can cost between $15 million and $20 million. Because of the large investment required it really needs to be underpinned by a significant increase in the volume of the current cannery to get that kind of volume. Access to the United States and, if we can achieve it in the future, the European Union will provide that incentive.

For those many reasons we have waited a long time, and in our view this is a once-in-a-generation opportunity to get access to the largest market in the world, from which we are currently excluded. Particularly damaging to us is that the United States, as I said, has a whole series of bilateral agreements, either current or pending, with our competitors and we just cannot be competitive at that tariff level against that kind of competition. So this agreement is extremely important to the whole viability of Port Lincoln Tuna Processors in the future, which, as I said, has 300 direct employees alone, aside from its direct impact on Eyre Peninsula.

CHAIR—Were you involved in any consultations or in the negotiations themselves?

Mr Jeffriess—We made our view very clear to the government from the early period. We made it clear before an FTA with the United States was even contemplated that our future was to get the kind of volume that we could get out of those markets. So we have been continually involved from the point of view of making our position very clear to the government. As I said, the United States did not appear likely to even bend on this issue, let alone agree to an early abolition of the total tariff, until the last minute. The best we could have hoped for, we thought, was a phasing down of the tariff, which would have been a problem for us.

CHAIR—Do you currently export any canned tuna to the United States?

Mr Jeffriess—No. The 35 per cent tariff is just prohibitive.

Mr WILKIE—When does the tariff come off?

Mr Jeffriess—This particular tariff would come off from day one, when the agreement is introduced.

Mr WILKIE—So you believe that we could move into that market?

Mr Jeffriess—It is not an easy market. It has certain accreditation requirements. Frankly, we did not think that this agreement would eventuate and the best we could expect was a seven-year phasing-down of the tariff. We have done the type of work required to get into that market but it is a difficult market. It requires a substantial amount of time-consuming and costly accreditation of your product. That is not a non-tariff barrier; it is simply the reality of the American market. It would not happen on day one, but since the agreement was announced we have been besieged by people who are interested in taking our product.

Mr WILKIE—Would our product be competitive on a price basis without the tariff?

Mr Jeffriess—In the premium sector of the market, we would have a significant competitive advantage over other product, partly because we are residue free. There is a concern in the United States about the current canned tuna they eat, which is largely based on a tuna called albacore. Albacore has a high level of mercury, whereas we can a particular tuna that has very low levels, if not negligible levels, of mercury.

Mr MARTYN EVANS—Could you explain what the premium product is? When you say 'premium product', do you mean for children's lunches? What is the premium product?

Mr Jeffriess—First of all, the tuna we can commands a premium in itself. Secondly, we make a high value added product called Tempters, which we developed globally in Port Lincoln. It is a mixture of vegetables and high-quality tuna. We actually use vegetables rather than flavouring. That has a particular appeal in the United States, particularly in California and the north-east. I am not understating the difficulty of establishing that in the market. Our dilemma is whether we establish it through our own brand or use an existing American brand name. Those are the issues that we are addressing at the moment.

Mr MARTYN EVANS—It is a lunch product—I have bought that and it is a small can of lunch type tuna.

Mr Jeffriess—Yes, that is correct. It has significant appeal in the United States, particularly out of boutique stores. That product is not available in the United States. Our long-term future in that market would depend on the outcome of the United States-Thailand free trade agreement, of course. They are highly competitive in that product. But even if they achieve the same outcome that is proposed for the Australia-United States agreement, we would still be confident that we could be competitive, because of the quality and the residue-free nature of the Australian product.

Senator TCHEN—On the second page of your submission, you describe the Port Lincoln Tuna Processors as a company 'owned by a number of traditional Port Lincoln tuna operators'. Do you mean that they are longstanding or do you mean that they are Aboriginal?

Mr Jeffriess—They are longstanding. They are mostly first-generation Croatians who came to Australia 30 or 40 years ago and established the Australian tuna industry as it is. The company is a large-scale exporter of over a quarter of a million dollars in itself. There are other products, and the cannery is another part of its operation. I emphasise that this is the only cannery left in Australia; five have exited in the last decade and a half. They are a very competitive group of people, but, frankly, employing 300 direct employees in a large regional area is a challenge every day.

Senator TCHEN—In your submission, you said:

On the relative merits of multilateral and bilateral agreements—everyone agrees that multilateral arrangements can deliver a wider range of benefits ... However, we note that in our case, we have waited decades for the Uruguay and Doha Rounds to deliver, and they have not. In the meantime, numerous finalised and pending bilateral agreements have advantaged our competitors.

Can you enlarge on the last sentence? Can you tell the committee which bilateral agreements have advantaged your competitors, and in what way?

Mr Jeffriess—Two of our major competitors in that market are Ecuador and Mexico, and they of course currently have free trade agreements with the United States. Those agreements are generally at zero tariff. There is no way that we can be competitive even in the premium market against that kind of competition. The reality is that around the world bilateral agreements are emerging at a very rapid pace. New Zealand now has an in-principle agreement with China, and we will have an agreement with China. There is no use complaining about these things; you have to move on. It is a dream world to say that, in Australia's case, we should hold up the development of bilateral agreements and await the outcome of the multilateral agreements. We have fought hard right throughout the Kennedy Round—which some would remember—let alone the Uruguay and Doha rounds. There was no indication of any movement from the United States in those areas.

In a bilateral agreement, obviously it is much more difficult to negotiate a reduction in subsidies et cetera, whether it be for fishing activity or canning, and multilateral rounds are far superior in that area. But in our view—and not just in our case but in a whole range of other cases—Australia just cannot afford to stand around and wait for the uncertain results of the multilateral round and ignore the reality of what is happening around the world with bilateral agreements.

Senator TCHEN—What is the actual size of the Australian tuna export market?

Mr Jeffriess—In our case, in our farmed product, which is a very high quality product of another species, we export about a quarter of a billion dollars a year. We expect that to be about half a billion dollars in about five or six years. But that is mostly to Japan. We export a small amount to the United States because that demand is only starting to grow in the United States, and that is with a zero tariff. So in that area we are highly competitive even with Mexico. In Japan, where the tariff is 3½ per cent, we are highly competitive. In the canned market, which is a totally different market, of course, we are confident that with zero tariff in the United States in the premium market, we can be highly competitive.

Mr MARTYN EVANS—There is some potential for that to grow to the United States, isn't there—particularly for the farm market in California and the West Coast, I would have thought.

Mr Jeffriess—Yes. We have a problem in that we own a lot of the farms in Mexico as well, so technically we are competing against ourselves. Mexico obviously has a comparative advantage in particular seasons. There are certain times of the year that we fill that market in the United States, but it is not a replacement market for Japan, which is the dominant global market for high-quality sashimi.

Senator TCHEN—Can you give us some idea of the potential size of this export market growth? You say that it is a quarter of a billion dollars now and that you are looking forward to half a billion—

Mr Jeffriess—That is in another species which we export. We operate in the breadth of the tuna species. We already have duty-free access to the United States in that particular product, but

in the canned market, which is a different, lower-priced market, the tariff is 35 per cent. We are just not competitive at that level, against Mexico and Uruguay particularly—neither is Thailand, which is the dominant global producer. But, as I said, the United States and Thailand are currently engaged in free trade agreement negotiations, and there is no doubt in the American Senate that canned tuna will arguably be the most sensitive issue being negotiated in that agreement. It is a highly political issue in the United States, and that is why we were pleasantly surprised that the proposed agreement, in this case, had such a positive outcome.

Senator STEPHENS—Thank you for your submission. You make an important point about the contribution that the industry makes to the South Australian economy. Mr Evans will probably pick up on that issue. I want to go to the issue of fishing stocks: what your industry's expectation about its capacity for growth is, and whether or not fished stocks are an issue for your industry in South Australia.

Mr Jeffriess—They are always an issue. We employ in total, aside from the cannery, over 2,000 direct employees. It is a huge challenge every day as to how you meet the global challenges that are emerging. Those stocks are our foundation. That is why the kind of publicity that we get about southern bluefin tuna stocks is an issue. We have different opinions on that. The fishermen have the opinion that the stocks are in strong, healthy condition. I have the opinion that the jury is still out on that, and some of the scientists have another opinion.

The issue is: what are the scientific facts as we know them? The scientific facts are that in some cases tuna stocks are very strong. For example, with regard to the stock which is canned, which is called skipjack tuna in our case, all the scientific opinion—and no-one argues with it—is that that is a very healthy stock. It is a species which spawns every day and spawns prolifically. There is no doubt about that. I think the reference to tuna stocks is to what is called the southern bluefin tuna stock, which is the foundation of our farmed exports and our major business. In my opinion the jury is still out on that issue. But to talk about extinction, as people have talked this week, is nonsense, and people know that. That is the disappointing thing. As an industry you wonder each day how much of your time you should spend in the media and in other places responding to those types of comments.

Senator STEPHENS—You are talking about the canned product. That would be an increase in your skipjack tuna.

Mr Jeffriess—That is correct.

Senator STEPHENS—You talked about having a quarter of a billion dollars worth of exports now and what your expectations are. So your industry is confident that there is the capacity for your projected growth to have stocks.

Mr Jeffriess—The quarter of a billion refers to the southern bluefin tuna, which is covered by a strict quota. As I said, my belief is that the jury is still out on the health of that stock. We are covered, as are Japan, Taiwan, Korea, New Zealand and the catch globally, by a strict quota control—and so we should be. The only potential to increase our exports there—which I expect to double in that period—is just better productivity out of the fish we catch. We catch the fish live. We tow it into farms in Port Lincoln and grow it for four to six months. There is tremendous potential. We developed the global technology in that business, but we are only

virgins in terms of what we know about the fish: its ability to grow and our ability to market it better et cetera. According to the global scientific authority called the South Pacific Commission, there is no doubt that the skipjack tuna stock is in a very healthy condition. I believe that, if you put enough pressure on any fish stock, at the end of the day they will come under tremendous pressure. So at some stage in the longer term we will have to be careful with that stock. Methods or management systems are being developed already to address that issue. We do not see any difficulty with that stock at all, but with other stocks, yes, there is an issue that needs to be addressed and is being addressed.

Senator STEPHENS—Has the tuna fishing industry as a whole considered the agreement in terms of biosecurity issues? Are there any impacts on your industry to do with AQIS quarantine issues?

Mr Jeffriess—No, not at all. We deal with AQIS and Biosecurity Australia weekly on other issues. They have a high level of scientific integrity and, when they come to conclusions after considered thought, we have a high level of respect for those conclusions. There is no indication that this agreement provides any sort of biosecurity issues. The committees that are going to be set up under this agreement are, in my view, discussion groups. They certainly will not provide any threat to Australia's scientific approach to biosecurity issues.

Mr WILKIE—In relation to that issue of quarantine, are there any diseases of tuna overseas that could be a threat to our stock?

Mr Jeffriess—None that are known. We do a lot of research on potential latent diseases. The CSIRO do substantial contracted work for us on what is called cell line work, where you can identify through the growth of cell lines from the tuna whether there is any disease threat. Because tuna is a highly migratory, fast-moving animal, at this stage disease is unknown either in the wild or in the farms. But you never know, and you have to pre-empt that by doing the work now rather than waiting for an event. But certainly there is no threat from the United States. That is not even an issue.

Mr WILKIE—You mentioned that you catch the tuna and tow them into the farms. How do you do that? I ask out of curiosity, really.

Mr Jeffriess—That is a technology invented in Port Lincoln itself in 1990. We trap the fish in large nets. The idea is that this type of tuna has to travel its body length per second to survive—to wash enough water over its gills. So quietening the tuna and keeping them without panic is really the technique, and then there is the technique of towing them in and weighting the net so it does not billow, which, again, would cause panic and kill the tuna. It is something that was deep in the Croatian mind. They developed the technology; it has now been exported all over the world to our competitors, fortunately or unfortunately, and we have to live with that every day. But Port Lincoln is still far ahead of the rest of the world in the development of that technology because it is evolving all the time.

Mr WILKIE—Can I say that you are probably the first organisation that has not come before the committee saying that they asked for something and were very disappointed because, whilst they might have achieved a little bit, they achieved nowhere near what they were asking for out

of the agreement. I think this is the first organisation we have had come before us that actually did not ask for something and achieved a benefit.

Mr Jeffriess—We got more.

Mr WILKIE—Yes, you have actually got something that you were not even looking for, so that is a bit of a bonus for tuna boat owners, I would think.

Mr Jeffriess—We have a very strong view to not accept government money under any circumstances. This industry was in receivership in the late eighties; people's lives were falling in pieces in front of them—first generation immigrants who had worked for 30 or 40 years to build up their businesses and their families—and even then we did not ask for one dollar of government money. Governments have a difficult job. We understand the American issues on this particular agreement and, as I say, the precedent it creates for Thailand, but we have certain views on certain interest groups which have that view. Now that the Thailand-Australia free trade agreement is a reality and our very small five per cent tariff protection on canned tuna disappears, you have to move on. Businesses fail because they put all their efforts into whingeing to governments rather than making their business more efficient and not because of the opening up of global trade, which is inevitable anyway.

Thailand is in the same situation: the world centre of tuna canning will move to mainland China and away from Thailand. The Thais, to their great credit, are already anticipating that. They are establishing operations in the new Eastern European members of the EU et cetera. You have just got to be ahead of the game. People who whinge and complain to governments all the time put all their efforts into that rather than making a more efficient product and making sure their existing employees keep a job.

Mr WILKIE—You mentioned that tuna fisheries are quite a sensitive political issue in the United States. How strong is the tuna lobby in the United States? I believe one of the reasons that we did not get sugar through is that, obviously, the sugar industry in the United States carries such a sway with government that there is no way they were going to allow a free trade agreement to negotiate sugar. How strong is the tuna lobby in the US?

Mr Jeffriess—In many ways the 'Associated States', including American Samoa, are more powerful than the Florida sugar lobby. We have had a lot of experience in that area. I cannot anticipate or know in detail what the sugar lobby in Australia has done, let alone the NFF itself, which has done a first-class job on this agreement, I believe, at the bottom line. If you have a competitor in those countries and they have that kind of political clout, then you have to get with those groups and work it through over a period. We are in this business for decades. We are doing things in Port Lincoln to train people for 2050. You have to think in those terms, so therefore just working through, as we have with the Japanese on our other products over a long period to make them feel comfortable with us, is the art. If you expect results in five minutes and you build up expectations which could not have been delivered anyway—no matter what the power of the Florida lobby in the sugar case—then you are either in a giant game of bluff with government or you do not know the game.

Mr WILKIE—What reaction to this agreement has there been from the tuna lobby in the US?

Mr Jeffriess—It is not our competition that worries them—we will operate in the premium end of the market, and we personally know these people very well and they feel comfortable with us; it is the precedent that this creates for the current Thailand-United States free trade agreement. The Thais are heavily dependent on canned tuna exports. The Samoan lobby particularly and the Puerto Rican lobby have a lot of power in the Senate. They do not want the Thais to have the kind of access that we now have. But the precedent has been created and that pending agreement has opened a door for Thailand in canned tuna. That is the reason that I am personally quite surprised that the Americans agreed to the abolition of the tariff on the Australian product from day one. They are not so much concerned about the 3,000 or 4,000 tonnes that we will get; they are concerned about the precedent it creates for that agreement.

Mr WILKIE—I suppose where I am coming from on that is, if that lobby is as strong as you suggest, what likely impact might that have on legislation passing through the United States Congress to bring the treaty into force?

Mr Jeffriess—I do not think that canned tuna is going to make a big difference. We know those groups very well. That is really what it is about. If you take a long-term view, then part of your long-term portfolio of activity is to work with those competitive groups and, over time, make them feel comfortable with you. For example, in the Japanese high-quality market—not the canned market but the raw product that we export—our biggest competitor is the Japanese tuna industry. They have a very powerful lobby group whom we have worked with for 20 years. They do not like our competition, but because we are personally together in a lot of other activities it works. That is the only way to do business with lobby groups like the Florida lobby group. I can speak on it from my long experience, and other groups may not have had that advantage. I am not being critical; I am just saying that there is a way to at least give yourself a way of resolving those problems. It is not all that hard.

Mr WILKIE—Thank you very much.

CHAIR—Mr Jeffriess, thank you for your attendance before the committee today.

[10.04 a.m.]

MORRIS, Mr Scot Neil Stewart, Director, International Relations, Australasian Performing Rights Association and Australasian Mechanical Copyright Owners Society

CHAIR—Welcome. On behalf of the committee I thank you for appearing before the committee to give evidence today. The secretariat will forward a copy of the proof transcript of evidence as soon as it becomes available. 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 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. Would you like to make some introductory remarks before we proceed to questions?

Mr Morris—I would like to give a brief introduction to the constituency that I represent. APRA is a non-profit collecting society that was established in 1926 and represents over 33,000 individual composers, lyricists and copyright owners in musical works, and music publishers as well. AMCOS is also a non-profit organisation which is controlled by music publishers. It administers certain reproduction rights on behalf of those publishers. APRA administers communication to the public rights; that is, broadcast, public performance and cable rights.

We thank the committee for this opportunity to be heard on this very important agreement. The agreement has many provisions which we believe will impact quite positively on our members' rights and the administration of those rights. But there are also concerns that we share with other members of the Australian Coalition for Cultural Diversity, of which we are a member. I think many other members of that coalition have already addressed the committee, so I will not go into detail now, but I am happy to take any questions on content provisions as they relate to musical works and questions of Australian identity and cultural development.

On balance, we believe that the agreement has a lot to offer our members, in particular the copyright chapter, which has certain provisions relating to piracy and enforcement that follow, we think, suggestions that were made in the CLRC report and *Cracking down on copycats*. We also believe that it is important that a legislative scheme be introduced for Internet service provider liability and notice and takedown provisions, so we support the provisions in the free trade agreement which relate to that activity.

On the extension of duration of copyright, we support the extension of copyright to bring us in line with our major trading partners, in particular the United States and the European Union. That is important for several reasons, not only for owners of copyright, who will then be able to benefit from the extended period in those other territories, but also it will assist users in some ways, because having different terms in other countries provides considerable practical difficulties in rights clearances in a cross-border environment. Of course, digital services now are becoming more and more borderless. Therefore, for example, if someone set up a digital music delivery system here in Australia, there may be works that are not protected under Australian copyright law because of the shorter period of duration but would be protected in other recipient countries such as the European Union and the United States. At the moment, as

there is no owner or representative in this territory, the person who establishes this business will not be able to approach a local owner to obtain worldwide clearance for that service but will have to identify and seek out individual copyright holders in all those different territories where the extended period actually applies.

So I think from the user perspective as well as from an owner perspective the extension of duration of copyright and harmonisation with our major trading partners is the significant benefit that we will get under this agreement. APRA, together with other copyright holders interests, commissioned an independent study by Allen Consulting Group. I think the committee has that. It discusses the costs and benefits of extension of duration of copyright. I would appreciate questions on any specific aspects.

CHAIR—I would like to clarify what you would like to happen to works which have gone out of copyright—works which fall in the 50 to 70 year category. What is your proposal there? I am not quite clear on that.

Mr Morris—The agreement as it is will not revive copyright in any works that already fall within the public domain. From a practical point of view, this is probably the best result because there are some practical difficulties involved in the revival of copyright. There are several other situations, even in this territory, where copyright has been revived in certain works. The question of the rights of third parties who have relied on the non-copyright status of certain works, and the question of who owns the rights in the revived works, can be quite complicated. With the harmonisation of copyright duration in Europe there were examples of this happening in the United Kingdom where copyright was revived in certain work. But as I understand it, the current agreement does not provide for the revival of copyright, so some of those difficulties will be avoided.

CHAIR—We have had a number of submissions on the copyright term extension and on the IP chapter more generally, and these are available on our web site. An argument has been put to us that we have taken the copyright term that the United States has—which is quite a new development in the United States; it is about six years old—but we do not have anything counterbalancing it, like the fair use provisions that the United States has. Do you have any comment on that?

Mr Morris—I think the extension of duration not only takes the US provision but also those of all the countries of the EU, including the enlarged membership of the EU, as well as many other territories around the world. I think we listed certain of those countries in our submission. They also form part of that Allen Consulting Group review. Therefore, we are harmonising not just with the US but, probably more importantly, with the European Union. For music exports, for example, I think our larger market would be the European Union and specifically the United Kingdom. Of course, in those territories there is no American doctrine of fair use.

We believe the doctrine of fair use is quite vague and that it may require litigation to determine the boundaries of fair use. We support the existing fair dealing exceptions, the educational provisions and the exceptions as they currently are in the act. We believe that users of copyright material that falls within those categories can rely on those exceptions and have access to copyright work. I think the debate about the extension of copyright is sometimes clouded and somewhat emotional when some users say we will have no access to information.

Copyright only protects the expression of works; the information in the work is of course available to be used freely. There are also educational provisions which allow educational institutions access to copyright material upon payment of equitable remuneration.

The thing to also note about the extension of copyright is that the benefits will only accrue to a limited number of works. There are only certain works that will have popularity after such a long time. These tend to be sort of iconic works, if you like: to give some Australian examples, the works of Albert Namatjira in the visual arts, and for music it would be Percy Granger and Alfred Hill. These composers are about to fall into the public domain. They are works often that are more serious in nature, I suppose, and which also during the course of their existing copyright did not—like, for example, a pop hit by Kylie Minogue—earn significant amounts during a short period of time and then fall into—

Senator MASON—Some people might say Kylie Minogue is very serious.

Mr Morris—Oh, she is very serious. I do not want to take away anything from her. There is certainly serious money involved, but I am just not sure whether some of her hits will still be sought out 75 years from now. I am not sure; it could be so.

CHAIR—That is the APRA position: that the fair use provision is not required in Australia.

Mr Morris—That is right.

CHAIR—With the exceptions for educational use, we have had a submission from the Australian vice-chancellors saying that the universities across Australia pay about $20 million a year in copyright. How do the education exceptions work?

Mr Morris—In terms of the blanket provisions, there are two statutory schemes, one that relates to copying of print material—and the Copyright Agency Ltd administers the rights as agent for copyright holders on their behalf—and also the copying off air of broadcasts, both television and radio. Screenrights is the authorised collecting society for those rights. Basically, that gives educational institutions the right to make copies for educational purposes upon payment of equitable remuneration. That remuneration is usually determined by reference to the Copyright Tribunal, through negotiation with the organisation and the AVCC. APRA and AMCOS also have in place blanket licences with educational institutions. One relates to the use of musical works in terms of performance in those institutions and another is for the photocopying of sheet music on behalf of our music publisher members.

Mr WILKIE—You mentioned cultural exception and supported people who are suggesting the need to keep Australian content. If you weighed up the two—copyright versus cultural exception—which one do you think was the most important?

Mr Morris—That is a very difficult question. Our position is that we support all of the initiatives with respect to copyright that are in the free trade agreement but we also, representing all Australian composers and songwriters—and in particular film and television composers, who are a very important part of our membership—share the concerns that have been expressed by the ACCD. We believe that the government should remain completely unfettered in terms of its ability to intervene to correct any market failures to ensure that Australian audiences have access

to Australian voices. That is particularly so in terms of music, as well as audiovisual material. Music makes a very important contribution to any audiovisual material.

Mr WILKIE—So you believe the concerns that they have raised are valid?

Mr Morris—Very.

CHAIR—This is an important issue because we have the draft text of the treaty in front of us and we have to make our recommendation as to whether it should enter into force or not. What is APRA's view? Do you have an 'on balance' view?

Mr Morris—APRA's view, on balance, is that we support the agreement because of the improvements to the copyright system. We are primarily an organisation that administers copyright rights on behalf of our members. However, we recognise also that we have a voice on behalf the 33,000 composers and publishers that we represent.

CHAIR—In terms of the section which relates to broadcasting and audiovisual services—the multichannel free-to-air commercial television broadcasting services—do you support that?

Mr Morris—We do not support any standstill provision, I suppose. Because the future is very uncertain, particularly in terms of the digital services that will be developed, what the business models will be and how those services will be structured, we think it is fairly hard to constrain ourselves now without really knowing what form those services will take. For example, in the multichannel environment there will be channels that are solely devoted to music videos, and of course we would very strongly say that the Australian government should have the right to intervene and impose mechanisms that ensure that Australian audiences get to see and hear Australian music.

CHAIR—But on the free-to-air analog system and on digital up to three channels, it is the existing quotas that we have now. Do you agree?

Mr Morris—That is right.

CHAIR—In pay TV it is 10 per cent and maybe up to 20 per cent, if 10 per cent is not enough.

Mr Morris—Of expenditure. That is quite a different type of intervention because, as I think has been pointed out in previous submissions by the Media, Entertainment and Arts Alliance and the ACCD, 10 per cent of expenditure would probably relate to only three per cent of actual content on the relevant channel. Our submission is that we do not think we should be fettered by setting these limits. In particular, I suppose the ratchet provisions mean that if there are some steps to liberalisation then they cannot be reviewed. In terms of, for example, commercial radio, currently a code operates between Commercial Radio Australia and the industry, but in the future there may be such a large change to the commercial radio environment, in terms of ownership and where play lists and formats are formulated, that government intervention may be needed. Other countries have much higher levels of local content quotas for commercial radio—for example, France and Canada. I think the Music Council of Australia, of which we are also a member, made submissions on this point.

CHAIR—Could I also ask for your opinion on the section on interactive audio and video services, which says:

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

Mr Morris—Certainly. In other submissions attention has been drawn to the difficulties of that definition, in terms of possible future delivery mechanisms, and the distinction that is made between interactive video and digital products in the e-commerce chapter. I think there may be some problems with clarity in terms of what services will come within that definition that may be subject to the existing intervention and the digital products that will be liberalised under the agreement.

Mr MARTYN EVANS—I have a question in relation to the extension of the period from 50 years to 70 years plus life. I can understand the argument—in the context of digital technology particularly and the wide applicability of the need for content and the like—why we might contemplate the extension of the period and harmonisation with our trading partners. I suppose the question also arises: why should it be retrospective? As you said, we are not contemplating the extension for those that have already fallen off the perch, so to speak, of the gap between 50 years and 70 years. But for those who created the content, with an expectation of a 50-year period, should they now profit from an arbitrary extension to 70 years or should it only apply to those works created under the new regime? Should one get an arbitrary extension to an existing work?

Mr Morris—Certainly that is an interesting point. I think that point was also raised in the US case—the Eldred case. From our perspective, we believe that existing works that are still in copyright should benefit from the extra 20 years. This is for a number of reasons. I think that digital technology and new delivery platforms have substantially altered the balance of interests between copyright owners and users. Now users can reproduce copyright material very easily and also distribute it quite easily. There is concern in the industry about ways that we can continue to ensure that the copyright system provides its underlying rationale, which is to remunerate and give incentives to people not only to create but also to invest in the creation and dissemination of that product.

That extension of the 20 years will now give incentives to record companies and publishers, for example, to make available back-catalogue works which now might not be available because of the cost of reproducing physical articles and distributing them in the marketplace. Digital delivery will allow those catalogues to be made available much more easily. Therefore, I think you can see that giving property rights for an extended period in that back-catalogue stuff will give incentive to copyright owners to make them available.

In one of their articles Landes and Posner, two economists from the University of Chicago, were discussing creation from the public domain. An example was that of a book publisher that invested in researching out-of-print and out-of-publication works that were also out of copyright in order to remarket them. It was speculated that the investment they made would be lost because, once they identified a market and did the marketing spend to ensure that there was a

market for those out-of-copyright works, other publishers would jump on the coat-tails of that investment and republish the work. So in effect it would be unfair competition.

I think from the perspective of economists, having ownership in property means that those properties are then, if you like, subject to good husbandry in the marketplace. Film companies will act to restore old stock, for example, and record companies and publishers will revive works that have not hitherto been economically viable to republish. An example of the diversity that is given from having copyright protection for a longer term is that of the works of Giuseppe Verdi. After Verdi's works went into the public domain in the United States, the only investment that record companies would make, in terms of manufacturing and distributing copies of the works, was in the most popular works. Some items from his lesser known and perhaps more interesting catalogue were then not available commercially because they were not economically viable. In terms of diversity and copyright, we believe that there are definite benefits, not only for creators in terms of giving them further ability to negotiate economic returns from the extended period but also for the users of copyright material and those that distribute that copyright material.

Mr MARTYN EVANS—As to the digital distribution mechanism, parliament is also being invited—and has already undertaken, in significant cases—to impose much greater penalties and make it much more difficult, quite rightly, to copy or unlawfully distribute these things. We are being asked under this agreement to make it illegal to have a digital cracking device, and the penalties are horrendous. As part of this deal, parliament is making it very difficult to crack, distribute or unlawfully possess digital copies, all of which is quite right, and is protecting IP.

We are also being asked to retrospectively extend the copyright period. All of that is part of that package. A 20-year extension of copyright is a cost to consumers, for those who are buying copyright material, and it affects people who put things on copyright when they had no expectation that there would be 20 more years to profit from it. The whole idea is that you create something original and profit from it for a period of 50 years plus life and it then falls into the public domain. Like a generic drug, you will profit from it for a period, then there will be generic copies. So it might be reasonable that someone would then use one of those works. For example, very famous classical composers have been dead for hundreds of years. Even under the lifetime plus 70 years rule, they have been dead for hundreds of years, and their works are still available. I can still buy CDs of very famous composers who have been dead for hundreds of years. There is still an incentive, clearly, to put their works on CDs.

Mr Morris—Certainly, and there are also incentives that are provided by the copyright given to the record producer in terms of engaging the orchestra and marketing the production even though the underlying work may be in the public domain.

Mr MARTYN EVANS—It is the retrospectivity element that I am questioning. I am not questioning the protection of the IP. That is all legitimate. We have to move in these directions. Unlawful copying of digital works is clearly wrong, and the technology provides that scope, which we should prohibit. I am not saying that harmonisation is wrong. You make a good case for harmonising with our major markets. The only element I am asking about is the fact that people who put works in copyright with the expectation that it will last 50 years will now get 70. What is their quid pro quo for that extra 20 years?

Mr Morris—I think the extra 20 years means that it is a stronger copyright regime. Those investing in the restoration and dissemination of those copyright works in new media and new delivery platforms still have an incentive to do that with respect to their back catalogue. The important thing is that there is no revival of copyrights that have fallen into the public domain. For example, Bela Bartok has fallen into the public domain. His son is still alive and does not get the benefit from copyright exploitation of his father's works in this territory but does in all of our other major trading partners. So the harmonisation aspect is very important. I think also that that extra benefit of 20 years is not very great. The Allen Consulting Group analysis of the relative costs and benefits, calculating the present future value of that extra 20 years, showed that it is actually a very small amount. There are only a few works that will benefit. But, as you are aware, publishers and record companies invest in many different copyrights and only a few are successful and, if you like, subsidise the investment in all of the other copyright material. We think that, because of the cross-border nature of the copyright industry as we go into the digital future, it is important that we harmonise closer and closer with our major trading partners.

Senator TCHEN—Mr Morris, I appreciate that you have already indicated to the chair that, on balance, you support this free trade agreement rather than oppose it, but I would still like to bring you back to the issue of cultural diversity and cultural exceptions. In your submission you said that the Australian government 'should have insisted on a "cultural exception" as in the Australia-Singapore Free Trade Agreement'. I must confess that I did not pay a great deal of attention to that particular aspect of the Australia-Singapore free trade agreement at that time, but I am under the impression that the inclusion of that was at the insistence of the Singapore government rather than the Australian government.

Mr Morris—I am not sure about that. I was under the impression that it was actually the Australian government that, in the annex, retained the freedom to introduce provisions to protect our cultural identity in broadcasts.

Senator TCHEN—I think we should check on that. You also say that you support the position of the Australian Coalition for Cultural Diversity and then you say that you believe it is crucial that the government should retain its ability to intervene in and regulate, to preserve and foster, the promotion of Australian voices and culture in our media. Again, the emphasis of the evidence given to us by the ACCD is actually on Australian government funding of Australian content rather than regulatory intervention as such. Are you concerned about funding or are you more concerned about the ability to regulate?

Mr Morris—My understanding of the ACCD position is that it is all types of intervention—quotas, funding and subsidies. We believe that any mechanism may be important to correct market failure. Because of the nature of the Australian market and, in particular, its relationship with the United States, which is, I suppose, the greatest producer and exporter of copyright and entertainment products, we are very careful about how in the future we are able to intervene. It may be that there are other mechanisms that could be required: for example, delivery of e-cinema via satellite—there may be some provisions relating to having the Australian catalogue included in such services that are received here in Australia to ensure that Australian audiences still have the possibility of seeing and hearing Australian voices, which of course we believe is fundamental to the development of Australian cultural identity and to the export of that image of what Australia is to the rest of the world.

Senator TCHEN—So, to clarify, if public funding of Australian content were not affected by this FTA, would you be less concerned?

Mr Morris—It is not the funding aspect per se; I think that is one aspect and I think the music industry probably is less subsidised and funded than perhaps the audiovisual industry because of the economics in terms of costs of production. Of other provisions, I think subsidies are probably the more expensive way of supporting Australian production of audiovisual product, but local content quotas, expenditure quotas and other mechanisms may be more targeted and more effective, particularly in relation to new services that may be developed.

Senator TCHEN—What is your view of Australian voices and culture? I must tell you I asked the same question of the ACCD because I was a little concerned that their presentation, up to the time I asked the question, tended to be characterised by Australian culture as typified by *McLeod's Daughters*, whereas the strongest character of Australian culture now is diverse and multisourced in character.

Mr Morris—Certainly. We understand cultural diversity to represent what Australia is and what it will become in terms of its cultural mix and the diverse voices that make up Australia. In terms of our representation, for example from a music perspective, we represent all different types of music, from serious composers to composers of music like Charlie Chan to pop princesses like Kylie Minogue and the more dark musical forces that emanated from Melbourne and Berlin such as Nick Cave. I think there is a very broad representation of what Australian identity is and what Australian identity is when it is projected internationally. It is very important also—and people travelling also know this—that apart from our sporting identities it is probably our actors and musicians that identify us as Australian and what values we have.

Senator TCHEN—Given its diversity, doesn't it make it more difficult for government action to preserve and foster it? Kylie Minogue, for example, is essentially an international voice rather than an Australian voice.

Mr Morris—She is an international voice, I agree. I think she does embody some aspects of Australian culture, however, just as Nick Cave does. Diversity is the important thing. With regard to commercial radio, concerns have been expressed in the United Kingdom about agglomeration of commercial radio stations where centralised playlists and formats are devised, which makes it much more difficult to get other types of music and voices heard. We acknowledge the importance of SBS and the ABC, in particular, in ensuring that there is diversity, which then flows over in some ways, I suppose, to the commercial sector. We understand cultural diversity to mean the diverse expression of Australian identity.

Senator TCHEN—My point was, actually, that with such diversity and variety it is very difficult, in a prescriptive manner, for government to preserve and foster such culture, because the culture is changing and growing all the time. The examples that you have given us about France and Canada—and, I am sure, Japan as well—involve very distinctive monocultures. In Canada's case, they have a preoccupation with preserving the duality of their mainstream culture, of course, and the French belief that the French culture is pre-eminent in the world is well known. I am sure it is the same for the Japanese. But in the case of Australian culture as such it would be very hard to prescribe it.

Mr Morris—Canada is a very interesting situation because yes, they do have Quebec, which is French-speaking, but the local content provisions are broader than just French-speaking issues. Of course, language is a natural barrier in ensuring local content quota. But one of the prime reasons for Canada insisting on those local content quotas is not to be swamped by the American product, which has such vast resources behind it in terms of marketing and distribution channels. Because Canada is an Anglophone society predominantly, like Australia, there is a risk that local culture could be overwhelmed by market forces and the power of the marketing dollar and the distribution channels that the US has.

Senator TCHEN—Thank you.

Mr CIOBO—I took account of the comments you made earlier about the extension of copyright protection. It is interesting, because I was at a function last evening where this issue came up. Concern was expressed about additional costs as a consequence of the extension of that copyright period to life plus 70. I noted that in your submission you said that you do not see there being a significant cost associated with that extension and that the benefits of harmonisation outweigh any additional costs. I also noted the comments you made about the net present value of that extension and it being quite small. Would you mind clarifying how you see it operating. If there is such a minor additional benefit flowing back to the artist and such a minor additional cost incurred by the users of copyright, what then is the actual benefit that flows which you see as outweighing those associated costs?

Mr Morris—In terms of blanket licensing, for example, or the statutory licensing that is relied on by educational institutions and so on, we have not done an analysis of the works that fall in the 50 to 70 period and will get the extra benefit and of what the costs will be. But in terms of a blanket licence that, for example, APRA would issue over the world's repertoire of music, we would anticipate that the old works used would form a very small proportion of that.

We acknowledge that, in other circumstances, there may be costs. The costs discussed in the Allen Consulting Group paper include the costs of tracing the owners of copyright. I think those tracing costs will become smaller by virtue of the existence of copyright collecting societies, which maintain ownership information about active copyright works. In that regard, it may be easier for users to contact the copyright owners and clear their rights. Also, as I explained earlier, for any Australian production of a work that may still be in copyright in foreign territories, clearance would still have to be obtained, so it would be much more efficient and cheaper to have the rights cleared here in Australia. I do not know whether I have wholly answered your question.

Mr CIOBO—You have answered it indirectly. Are you confining your comments on the costs and benefits associated with copyright to the industry in which you operate, or to copyright per se—for software licensing and all those types of things as well?

Mr Morris—Principally I am coming from the perspective of a representative of music copyright owners. With regard to software, even though under the act it is protected as a literary work, a lot of the value of computer programs will not last for the period it is envisaged the extension would encompass. Therefore, I think it would be fairly meaningless from the point of view of a lot of software developers. But from the point of view of music, visual arts, literary works and things like that, there are certain iconic works that should be protected for a longer

period not only to ensure that there are slightly greater incentives for the creation of those works but also, as I have mentioned, because investment in the dissemination and repackaging of those works is still very important.

Mr CIOBO—I note that you are a member of the ACCD. Representatives of the ACCD have appeared before the committee as witnesses. I had some concerns about their position on a couple of things, so I would like to explore your thoughts on them. Firstly, with respect to emerging technologies and products in the marketplace, how do you envisage protecting, for example, local content on the Internet, which increasingly looks like it will be the environment in which new products will emerge? A couple of times I have asked, in a jovial sense: does one in every four web sites you visit have to be Australian hosted? In what ways do you expect a government to seek to regulate something as free as the Internet?

Mr Morris—I am not sure about all the possible mechanisms of intervention in the future, and I am also not sure of all the new delivery platforms and business models that will be adopted. There have been theories about mandating that catalogue space, shelf space, or things like that, on broad services be reserved for Australian content, for example. But it is true that the Internet does provide a different paradigm in terms of presenting products to consumers. I suppose our concern, and that expressed by the ACCD, is that we should not be hampered by any trade agreement in terms of developing new mechanisms to respond to developing services.

Mr CIOBO—You speak about, for example, cataloguing on web sites, and that argument was raised by the ACCD. There is nothing in this agreement that prevents or precludes an ISP or indeed a web site such as ninemsn from putting an Australian catalogue on their web sites, is there?

Mr Morris—There is nothing that prevents them from doing it, no.

Mr CIOBO—Your concern is that we cannot mandate that to happen.

Mr Morris—That is right.

Mr CIOBO—But this is entirely the point, isn't it? If at the end of the day Australian product is not of the sort that people are seeking, is there really any point in a government mandating such a thing when in fact all you are achieving, in my view, is having a small group of elites feeling good about themselves that there is an Australian catalogue there which does not have broad commercial appeal? Shouldn't our emphasis be on making sure that we develop an industry that does have broad appeal so that, instead of forcing people to have an Australian catalogue on their web sites, they in fact choose to have an Australian catalogue on their web sites?

Mr Morris—We believe that there is a systemic market failure in terms of particular audiovisual product and broadcasting, comparing our market to the United States, and that is why to date there have been mechanisms to ensure that Australian content is available to Australian audiences. We believe that it has been necessary for governments to intervene to ensure that those products do have Australian content and that investment is made in Australian content, because market forces alone will not provide that result.

Mr CIOBO—What is the systemic failure to which you refer?

Mr Morris—I think these examples may have been given by the ACCD. In terms of production costs, in America you can spend, I think, $1 million on a half-hour episode. The costs of investment will be recouped and profits made within the American industry. That material can then be exported to Australia at a cost that is a lot smaller, say $20,000 or $30,000. However, Australian industry would invest, say, $250,000 in the production of a half-hour episode, and the economics involved in that mean that, without any requirement to show Australian product, a broadcaster will of course choose to expend $20,000 rather than $250,000.

Mr CIOBO—I have had exposure to these arguments across a number of industries and I would highlight another industry, the games industry. To me, that is not dissimilar to film, TV or music. They are all creative industries. Australia has had significant success in the games industry. The difference is that they take the view that it is a global marketplace and on that basis produce content that will have broad commercial appeal across an English-speaking marketplace. Why is it then not possible for the Australian cultural industries to develop an attitude that says, 'We are broadcasting and producing for an international marketplace; it must have broad appeal in order for it to be commercially successful'? Then, once we have got a commercially successful and sustainable industry, we look at diverting X percentage of funds into those feelgood stories, those Australian stories with Australian voices that we hear so much about, because it is done on a commercial footing. Don't we really have to make a decision about whether we want a commercially sustainable industry versus a small industry that Australians can feel good about, and let us stop pretending we are interested in having an industry and let us say that we need to have X tens of millions or hundreds of millions of dollars a year from the government as a subsidy to keep this thing bubbling along?

Mr Morris—The Australian creative industries acknowledge that we operate in a global environment. Some of our balance of trade figures have been improving slightly from music and some audiovisual. Some audiovisual costs are recouped by European sales, for example.

I think that broadcasting per se—and that is what I am talking about in terms of the mechanisms that are in place to ensure the fostering of a cultural identity—is slightly different to the games industry. I think broadcasting and the MEAA put in submissions about the number of hours that Australian households watch television in particular time slots. Australian content subquotas support the production of more expensive genres such as drama and children's, which are also subject to market failure in terms of cost of production. Without those subquotas, Australians will not get to see that local content on television, which is a very pervasive medium. Licences are granted on certain conditions, and some of those conditions are to give effect to the government policy of ensuring a viable cultural identity that is fostered through our broadcast industries. We believe that that is an important and fundamental role of the government.

Mr CIOBO—Your industry, the music industry, is a living example—more so, I would say, than film and TV—of exactly what you touched upon, which is the fact that you have produced, in a number of instances, commercial artists that have significant international appeal. Why can't that same formula be replicated in the film and television industry?

Mr Morris—Because the costs of production are much greater.

Mr CIOBO—But are they? I am told that runaway productions come to Australia because our costs are significantly lower. I understand your point about dumping; that is a separate issue. Fundamentally, we still come back to the fact that if, in the same way that you produce music artists, we can produce film and TV that have broad international appeal then we will be able to export that as an industry, won't we?

Mr Morris—I think we do. I think there is export of Australian television and film—to a limited extent.

Senator MASON—The economies of scale are the problem rather than the cost. Mr Ciobo is saying that it is cheaper to produce shows in Australia, but you are saying that it may be cheaper to produce them here than in the United States but the economies of scale are much larger in the United States. That is the point.

Mr CIOBO—That is why we have to have an international marketplace as our market, not just the domestic marketplace.

Mr Morris—The investment that is made in half an hour of local drama is probably greater than the investment in the production of a CD, for example. So the economics are slightly different. In particular, we are focusing on questions such as content regulation for audiovisual material, because our membership also forms a significant creative and economic contribution to those audiovisual products. I suppose that is where my focus is in terms of supporting the ACCD. That is why we believe that their points are quite important.

Mr CIOBO—I appreciate your arguments. I guess that I philosophically still struggle with the notion that we are going to build a strong, successful industry by having protectionist barriers. That is all.

Mr Morris—We do not view them as protectionist barriers but rather as an intervention because of the market failure, because of the structure of the international broadcasting industry and production industry.

Mr CIOBO—It is not a lack of appeal. Thank you.

ACTING CHAIR—Mr Morris, I have some questions relating back to your primary interest, which is copyright for audiovisual material—and I suppose it would also affect films. I want to make the comment, following on from what Mr Ciobo said, that we took evidence here that suggested that, while you might be able to produce an audio tape for reasonable production costs and compete internationally, when it comes to doing something like a television production which would cost about $500,000 an hour to produce, you are competing with an American product that would cost a million dollars an hour to produce and would be wholly paid for by selling it to the American market. They then dump it here to make a few dollars, whereas we would not get the $500,000 just from the Australian market; we have to try to export it just to break even. You are really comparing apples to oranges; it is a totally different arrangement that comes in the area of TV production costs.

Getting back to copyright, do you think that this agreement in any way deals with the problem where, for example, people put out web sites where they have songs that people can access and

download onto a CD very easily? I think that is also happening now in the area of popular movies. Does this in any way, shape or form deal with that as an issue? In the past, people have been able to make tapes of records, for example, which has been a problem but not an enormous problem. But I can see the issue of having a virtual master copy of an audio recording that anybody can access and burn if they have a computer being a major problem in the future, because they bypass copyright completely by creating their own albums.

Mr Morris—Certainly. I think digital technology has done that in giving users very easy access to copyright materials and easy access to make those works available and distributed on a worldwide basis. This has always been the concern of copyright holders: the balance effectively has been altered due to digital delivery techniques. I think this agreement does have certain provisions which go to helping copyright holders have the confidence to develop new online business models that will ensure that their economic rights are protected. I am referring specifically to the provisions which would require rules to be set down as to Internet service provider liability and how they will cooperate with copyright owners in dealing with people who are using their services to infringe copyright, and it also relates to the provisions strengthening criminal prosecution and questions of procedures such as the presumptions and reviewing possibly the question of how to assess damages for copyright holders taking action against infringers. So we believe that strengthening those provisions is very important because of the change of balance in copyright law at the moment and people's ability to engage much more easily in piracy of copyright material through digital means.

Mr WILKIE—I can agree with what you are saying; I just wonder whether the measures that are introduced here will be effective in trying to combat that piracy problem. When you have a situation where anybody with a computer connected to the Internet can virtually bypass record stores and stores selling CDs and DVDs and just download their own, I would have thought that it creates enormous problems in the future for people who have copyright.

Mr Morris—Certainly.

Mr WILKIE—Do these proposed changes have an effective mechanism of dealing with that or is it really just trying to put a band-aid on an enormous cut?

Mr Morris—It is an enormous cut and I do not think the proposals provide all the answers. You are correct: digital rights management information will become more important in the future in terms of the way that copyrights are administered in the online environment and technological protection measures will also be very important for copyright holders in ensuring that there is some control on subsequent reuse of product that is delivered with authorisation to users. As we see new delivery forms being delivered—for example, now we have iTunes, which allows sound recordings to be delivered digitally to consumers upon payment of a fee—those provisions in the free trade agreement will assist copyright holders in having more confidence in developing these business models, will ensure that there is a transition from the existing distribution of physical product that to date has been one of the principal forms of remuneration under copyright for the record industry, for example, and will then move into the online environment. So, yes, we do support those. We think that the provisions relating to ISP liability, for example, do not really address issues such as peer to peer file exchanges that are unauthorised by the copyright holder, but this is a very difficult problem to solve and we hope that in the implementation legislation we can look at ways that may assist copyright holders in addressing this problem.

Mr WILKIE—Thank you.

CHAIR—Are there any further questions?

Mr Morris—I have one final comment. We believe that our music and audiovisual products are different from any other product, that it is really important for Australia to have a cultural identity and that it is a really important role of government to intervene. I think we do distinguish our product from tuna, for example.

CHAIR—Are they different to books and newspapers?

Mr Morris—I suppose that, in some ways, they are different to books and newspapers. But books and newspapers also are very influential in terms of the fostering of cultural identity and ideas. I think music expresses it in a different way, but books and newspapers are also part of our cultural industry.

Senator MASON—You seem nearly to have a hierarchy. We have talked about Game Boy and Nintendo. Everyone can make games to fit into computer games, but they have virtually no cultural identity necessarily.

Mr Morris—I think they may.

Senator MASON—They may have some, but there is a hierarchy, isn't there? Are you saying that perhaps Australian books have a higher cultural purchase and that broadcasting has more, or do they all have the same cultural purchase?

Mr Morris—I think that certain works have different cultural purposes and different values in terms of fostering identity and there is a commercial scale as well. But I would not judge or put any different values on things.

Senator MASON—So a computer game, in your view, could have the same cultural purchase for this nation that a painting might have?

Mr Morris—Perhaps not, I would suggest. It depends—

Senator MASON—So there is a cultural hierarchy—

Mr Morris—what the painting is and—

Senator SANTORO—It depends on content, doesn't it?

Mr Morris—Yes, I think so.

Senator MASON—But that was Mr Ciobo's point, wasn't it?

Mr CIOBO—All I said was—

CHAIR—I am just wondering where this line of questioning is going.

Senator MASON—It is interesting. We are making distinctions based on cultural hierarchy.

CHAIR—I am just not sure how that helps the current inquiry.

Mr WILKIE—Brett is getting fairly argumentative and we were due to finish with this witness at 11 o'clock.

Mr CIOBO—This is not argumentative. In my view, to summarise for Mr Morris, we have two separate issues. One issue is trade policy and its impact on cultural identity. I guess the question that I would raise is whether the appropriate policy tool to govern cultural identity is one of restricting trade, or should we actually allow trade and then look at investing resources in a more appropriate and efficient way to promote cultural identity? That, for me, is the argument.

Senator MASON—Do you want protection for producing computer games as much as you want it for producing broadcasting? It is a fair question.

Mr Morris—I think from a copyright perspective they should all be protected. However, in fostering cultural identity and debate, perhaps other products may have more of an impact on the cultural and intellectual life of the nation.

Senator MASON—And are they the ones that perhaps the government should have a greater part in protecting?

Mr Morris—Possibly, in terms of broadcast, in ensuring that there are Australian children's programs.

Senator MASON—Or in promoting?

Mr Morris—Yes, possibly.

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

[11.10 a.m.]

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

CHAIR—Welcome. On behalf of the committee I thank you for appearing to give evidence today. The secretariat will forward to you a copy of the proof transcript of the evidence as soon as it becomes available. 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 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. Would you like to make some introductory remarks before we proceed to questions?

Mr B. Smith—Thank you. FASTS, the Federation of Australian Scientific and Technological Societies, is the peak representative body of 60,000 scientists and technologists in Australia. The federation is probably well known to most of you here on the committee, as it is the organiser of Science Meets Parliament, which has been going for five years and is a highly successful event getting parliamentarians and scientists talking together. The president of FASTS is also a member of PMSEIC, the Prime Minister's Science, Engineering and Innovation Council. We do not have a formal position on the FTA per se—whether to sign or not to sign—but we would like to bring to your attention a couple of issues in the FTA that are of concern to science and to scientists and technologists.

The first thing I would like to address is chapter 7 of the agreement, which goes to sanitary and phytosanitary measures. FASTS believes that good science is a necessary condition of good policy, import risk assessment and regulation of sanitary measures. I am sure that everyone on the committee would be well aware of the risks posed by invasive species and introduced diseases. They can be highly destructive of commercial crops and the environment. The cane toad is a bit of an icon in that area and phylloxera, for instance, has done enormous damage to vineyards over the last century in Australia.

To date Australia's quarantine practices have been conservative and have been generally very effective in minimising damage from invasive species. There has been considerable benefit to Australia from that and it has given considerable market advantage to our agricultural and aquacultural producers in the global market. But increasing flows of people, goods and services, as well as climate change, reduced investment in education and research—and particular disciplines that inform quarantine such as parasitology—and changes that have increased the resistance of diseases to chemical treatment are all growing risks for Australia's environment and its commercial agriculture. The important point I want to raise is that the importance of good science underpinning quarantine is increasing. While there has been considerable research over the decades in many of these areas, climate change in particular is increasing the necessity of that. The risk is getting higher, not lower. Due to climate change, assumptions about risk that might be valid today could well change quite rapidly in a matter of years, as different rainfalls and different relative humidities change the distribution of different reproductive vectors of various diseases, viruses and invasive species.

Chapter 7 in the draft free trade agreement essentially creates a bureaucratic structure to discuss sanitary measures in respect of trade. It does this by creating two committees—a fairly general committee and then a standing technical working group. The objectives of both of those committees go to protecting animal, human or plant life and to facilitating trade between the parties. So we would say that there is a potential internal conflict of interest between the two broad objectives of both parties.

You would be well aware that for many years US agribusiness has claimed vociferously that Australia has used quarantine measures as a barrier on trade. They—and indeed other countries—have been quite vigorous in trying to get Australia to relax its quarantine regime. FASTS's view is that this new structure would seem to shift a concession to the US in this matter. I draw your attention to the comment of the American Farm Bureau Federation in their press release of 10 March 2004. Their analysis of the FTA is that it will provide US food exporters with an increase of $150 million to $200 million a year, provided that Australia changes the sanitary and phytosanitary rules. So the American producers see this agreement as being a relaxation. Our concern about the committees is exacerbated because there is no mandate or requirement for independent scientific personnel to be involved in either committee.

The real issue from our perspective, I guess, is: what is the confidence in the lead Australian agency if the parliament decides to ratify the agreement? That means we need to look carefully at the capacity and the confidence in the lead Australian agency, which is Biosecurity Australia. As the committee may be aware, the confidence the agricultural sector and the relevant scientists who do analysis in the area have in Biosecurity Australia has been diminishing over time, primarily due to concerns that trade is becoming inappropriately prioritised over the scientific analysis of risk. There have been many debates in the public domain recently—over pineapples, durian, Atlantic salmon down in Tasmania, apples, pig meat, and, most recently, bananas. The way Biosecurity has handled risk in all those areas has raised concerns in the science, agribusiness and agricultural sectors.

More specifically, the concerns we have go to Biosecurity Australia's increasing emphasis on 'least trade restrictive approaches'—that is WTO language, for those not familiar with it. This doctrine, if you will, is seen to be starting to undermine the science base of the policy. Biosecurity is pushing itself toward being a trade agency as distinct from a quarantine agency, if you will. There is a balance, clearly, but we are saying the balance is being shifted.

We are aware of attempts by Biosecurity Australia representatives to direct the IRA teams—that is, the import risk assessment teams—towards facilitating trade. It is a standard practice that when a question is raised on, for instance, apples, an IRA, which will include independent scientific analysts, will have a look at the data and the risk. That will be chaired by someone from Biosecurity Australia, and in the briefings what we are getting from the various participants is that Biosecurity Australia is directing those committees to think more about the trade aspects—rather than the scientific assessment of the risk of whatever issue is at hand. There are also concerns about inadequate record keeping, which specifically goes to the current banana assessment, and scientific errors in Biosecurity Australia's modelling and data, which goes to the pork and banana issues in recent times.

There is an awful lot of information in the public domain about those concerns, and FASTS would like to draw the committee's attention in particular to the current Senate inquiry into the

risk analysis of bananas, which is a very worthy inquiry—and I see the senators are agreeing vigorously. Our final point on that, given what we consider to be very good grounds for concern about Biosecurity's approach, is that, if the FTA were to be ratified, we would strongly urge the government to reform Biosecurity Australia. Indeed, we would say that the evidence and concerns that are available now warrant reform of Biosecurity Australia, independently of the FTA. That is our first broad concern.

I would also like to make some comments on the IP provisions in chapter 17. There seem to be quite a lot of potential adjustments to the intellectual property regime—most of those, of course, in the copyright area. On patents it is a bit difficult to analyse what will happen, but I will get to that in a minute. As a background, patents are very important for the innovation process. They are crucial for giving incentive so that firms can develop and commercialise intellectual property with some surety. It is very important that we have good thresholds of patentability and good protection of patents. The other side of that, of course, is that patents can also be a constraint on research. Patents are about a balance of the various interests, as indeed all intellectual property is.

FASTS has a very strong view that patents should never be permissible for factual scientific information. In terms of current international debates, that is particularly relevant concerning genes and gene sequences. I am sure the committee is well aware of the international debates—particularly in the EU, including the UK, at the moment, as well as Australia—about the ethics and the scientific issues associated with the patenting of genes and gene sequences. I have to say that I am not aware of any jurisdiction around the world that allows for the patenting of genes and gene sequences per se. They go to what is isolable, or purified, and can then be manipulated—so it is not the genes in the animal or the human body per se. So we are talking about a more fine-grained argument than just genes and gene sequences. I think it is fair to say that there is considerable concern internationally—and not just in the research community—that the US approach is out of balance and has been aggressively promoting the rights, capacities and scope of patent owners at the expense of consumers, users and other researchers.

That is the background to a very important issue. It is not clear to us whether the FTA makes any impact on that argument at all. As I initially indicated, there clearly need to be some changes on copyright. In the patents provisions, there are some changes to enforcement and some changes that go to pharmaceuticals, which I do not wish to deal with. DFAT recently suggested in a briefing we had with them that there be no fundamental changes to Australian patent law, other than to the specific examples I mentioned—enforcement and pharmaceuticals—because they believe that all the provisions are largely consistent with the current Patents Act. We are not so sure that is right. There seem to be in the FTA some implicit—or even, indeed, explicit—changes to the current arrangements. I draw your attention to the brief discussion in our paper about definitions. Implicit in the FTA provisions will be a broader definition of what is patentable in any invention. Some of the exclusions that exist in the current patents law appear to have been removed. What the consequences of that may be, I cannot say. It may well be that it makes no particular difference. There does appear to be a change in the scope of the patents, and there are a couple of other potential changes that I have noted in the report.

Probably the key issue that concerned us in the various discussions about patents—and, indeed, about intellectual property in its entirety—was what the government describes as closer harmonisation between American and Australian law. The problem is that we are not sure what

harmonisation might mean in this context. Intellectual property rules and laws operate at a variety of levels: there is obviously the black letter law in legislation; there is how the courts interpret it—through case law, over time; and there are the practices of the patent officers themselves. So their administration operates at a variety of levels. The concern there is that in the US the belief is that the more liberal approach to the patenting of isolable genes and gene sequences is being driven by the patents office itself in its interpretation of the US law. If harmonisation in this context means that the Australian patent office will have a similar approach to the US patent office, that will potentially have some consequences. But we cannot be definitive about it; this is speculative. We are just drawing to your attention the fact that we do not know what harmonisation might mean in this context.

As a final comment on the patent section, I am sure the committee is well aware that the Australian Law Reform Commission is looking at gene patenting and its implications for health. This is something that arose from the stem cell debate of a couple of years ago. FASTS considers the ALRC to be a highly credible organisation—their reviews are thorough and comprehensive. Our concern is that nothing in the FTA should pre-empt or constrain possible outcomes from the ALRC inquiries on gene patenting. With that, I conclude my comments.

CHAIR—Thank you very much. First of all, on the sanitary and phytosanitary measures, in the guide to the agreement produced by the Department of Foreign Affairs and Trade it says:

> In the SPS chapter, which comprises four articles and an annex, Australia and the United States reaffirm that decisions on matters affecting quarantine and food safety will continue to be made on the basis of scientific assessments of the risks involved in the commercial movement of animals and plants and their products.

I would have thought that sounded pretty good from the point of view of your organisation.

Mr B. Smith—It sounds good. The other side of the coin is that the purpose is to facilitate trade and how is the balance going to operate? Our concern is that there is implied slippage and that the lead agency from Australia's point of view has been shifting in its interpretations and its direction. It is speculative here—I understand that—but our concern is that those shifts create risks in a broad quarantine environment where risk is increasing independent of this.

CHAIR—But if the risk assessments are done on the basis of good science—sound science—you will be happy with that?

Mr B. Smith—If they are not overridden, if they are not tampered with, sure. That is a nontrivial statement too, to the extent that in a recent case—I think it was the pork one—risk assessments were done where probability thresholds were reduced from 95 per cent to 50 per cent for instance. That is an example of good science being undermined by slippage.

CHAIR—We have had evidence from a number of peak industry groups in the agricultural area, including the National Farmers Federation, and it is their belief that there is no undermining of quarantine measures at all and the risk assessments will continue to be done on the basis of good science.

Mr B. Smith—I have not read the NFF submission. I am aware of other peak bodies who would disagree.

CHAIR—Such as?

Mr B. Smith—I am sure you will find that the pork producers and banana growers would have a different view. That is based on their comments to the Senate inquiries. I am not aware whether they put a submission to this one.

CHAIR—I see. I will have to have a look at that, because I think we need to separate these. People may have concerns about Biosecurity Australia, and that is a domestic issue, a separate issue. We are talking about the Australia-US free trade agreement. Representing your organisation, do you see anything wrong with the committee on sanitary and phytosanitary matters and also the standing working group on animal and plant health?

Mr B. Smith—We see a problem with the standing working group in that there is no mandate for any scientist or independent scientist to be on it.

Senator SANTORO—But does that mean that they would be automatically excluded?

Mr B. Smith—Of course not. I would assume that in practice some scientists—whether independent scientists or employees of a government department—would be involved. But the fact is that it is not mandated, and that is a concern. If you like, there is not enough detail. Can I go back to your comment about Biosecurity Australia being a separate issue. It is certainly an issue in its own right in terms of what is happening but it is not a separate issue to the FTA to the extent that in the agreement it is specified as Australia's lead agency. It is the co-chair.

CHAIR—Clearly. But we are not a committee that is here to fix any problems with Biosecurity Australia; there are other committees to do that.

Mr B. Smith—You are here to examine the consequences of the FTA, and biosecurity is part of the agreement, so I would have thought that was in the committee's purview.

CHAIR—Okay. If there are scientists involved in the standing working group on animal and plant health, and it would seem to follow that that would be essential, would FASTS be happy with that?

Mr B. Smith—We would have to look at the practices. It is all well and good to have scientists on it, but if the advice is being overridden or ignored then that raises problems. Certainly having scientists on that second committee is not a sufficient condition that our concerns would be fixed. In and of itself that is not enough to eliminate concerns.

Mr WILKIE—One of the peak bodies that did raise problems with quarantine was the Apple and Pear Growers Association of Australia, who were particularly concerned about fire blight and what might happen to the industry if that entered Australia. They were concerned that the quarantine arrangements may not be stringent enough.

Mr B. Smith—I have not read their submission to the inquiry, but I have seen submissions on other matters from that organisation.

Mr WILKIE—It was a generic comment that if quarantine or the sorts of restrictions that we have in place are watered down in any way, shape or form it might mean that there would be less stringent requirements in place, which could lead to exotic diseases and pests entering Australia.

Mr B. Smith—That is right.

Mr WILKIE—That is what I think you are saying. It is the same sort of problem.

Mr B. Smith—That is it.

Mr WILKIE—We need to make sure we are mindful of that.

Mr B. Smith—Bear in mind that there are different ways that an invasive species or disease can enter the country. What this committee goes to is commercial trade. It has no bearing at all on individual tourists and so forth. This committee is only looking at one aspect of it. But the broad threat from fire blight is such that if it got established in Australia, especially in Tasmania—there is a good premium for their product in the global market—it would be devastating. In the short term, depending on the virulence of the outbreak, you would be talking about the destruction of perhaps the whole industry. It is a very major threat.

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

Senator TCHEN—Thank you for your evidence. I appreciate what you have said, particularly about the scientific approach to decision making and consideration. As you said, the consideration of the balance of evidence is fundamental to the scientific approach to things. But also there is another element to that: the rigorous testing of evidence. I also appreciate that scientists and technologists are human as well, so sometimes they might leave the second aspect in a secondary position. I wanted to check with you some of the issues you have raised with us, particularly the ones about the FTA provisions.

On page 2 of your submission, in a discussion about chapter 7, the SPS provision—sanitary and phytosanitary measures—you quoted the DFAT guide to the agreement and you said:

FASTS is not so confident that this is so—

In other words, it is not confident that the DFAT guide is correct when it states:

Nothing in the chapter undermines the right of either party to determine the level of protection it considers appropriate.

Then you go on to say:

The objectives of Chapter 7 go explicitly to resolving trade issues 'and thereby expand trade opportunities'.

The objectives of chapter 7 actually are:

... to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities ...

I draw your attention to the fact that it explicitly states as a priority that it is to protect human, animal and plant life and health. That is the first priority; the first item explicitly stated. The second item that is explicitly stated is the one about enhancing the parties' implementation of the SPS agreement. It is only at the third item—and then not the first part of the third item either—that it refers to resolving trade issues and so on. Shouldn't you have actually said that it explicitly states that its purpose is to protect human, animal and plant life and health?

Mr B. Smith—It is a semantic point, if you like. The numbering you gave then is yours.

Senator TCHEN—No, they are there in order. One assumes that the most important issue gets mentioned first.

Mr B. Smith—That is an assumption, as you say. I would have thought that all of them are regarded as equally a part of it. I would not have put it as hierarchically as you have.

Senator TCHEN—All right. If we mention them together, why didn't you say that the objectives also explicitly say that the purpose is to protect human, animal and plant life and health?

Mr B. Smith—We are obviously leading to the key argument, which is the conflict. We did not see it necessary to restate it.

Senator TCHEN—Do you understand that this is a trade agreement and therefore the matter of trade must be mentioned?

Mr B. Smith—Of course. That is the point I made before.

Senator TCHEN—So there is nothing sinister about that.

Mr B. Smith—I understand that. That is the point I made before. This is a balance. This is your area of trade-off.

Senator TCHEN—Your entire argument seems to based on the fact that trade issues are mentioned in here, whereas you have just agreed with me that, because this is a trade agreement, trade issues are a subject that should be mentioned.

Mr B. Smith—At no point have we suggested that trade should not be a point of discussion. The purpose of these committees is to deal with the issue of the intersection of quarantine and trade. That is not disputed; at no point have we said these committees should not deal with trade.

Senator TCHEN—I am not suggesting that you should not have expressed concern that trade issues are mentioned; I am asking whether you are preoccupied with raising your concerns about this particular matter, whereas you are ignoring the evidence on other matters.

Mr B. Smith—The issue is—and this is certainly the American farmers' understanding of it—that this agreement implies a shift in the current conservative Australian quarantine practices, moving the science towards the trade. That is the implicit direction of the intersection. That is the understanding of the other party to this agreement, the US.

Senator TCHEN—I am not an expert in this area, but my understanding is that, in the past, the reason the WTO agreements—GATT, GATS and so on—always had an emphasis on 'least trade restrictive practices' is because certain nations, and I do not know whether Australia is one of them, have used quarantine as an alternative tariff measure.

Mr B. Smith—I understand that. The Americans explicitly say that they regard Australia as using quarantine as a trade barrier.

Senator TCHEN—So don't you agree that that is an issue that needs to be addressed in a free trade agreement?

Mr B. Smith—Yes.

Senator TCHEN—So again I say to you that there is nothing sinister in chapter 7, where trade issues are specifically mentioned.

Mr B. Smith—We have not stated that it is sinister that trade is in there.

Senator TCHEN—But you do highlight it as a concern.

Mr B. Smith—Our concern is that quarantine will potentially be undermined at that intersection.

Senator TCHEN—I understand that. In the following chapter, referring to the general committee, you expressed concern that the committee is required to balance two priorities. Isn't that something that scientific and technical communities are constantly being called upon to balance in their work?

Mr B. Smith—Of course it is.

Senator TCHEN—So why is it a particular concern that the committee is required to balance these issues?

Mr B. Smith—What we were leading to in that discussion was Biosecurity Australia, because that is the lead agency. Our concern is about the potential conflict with both committees. The key issue then is: given that we are potentially in conflict, how robust is the leading Australian agency and how confident are people in it? At no point have we said that trade should not be an element of this. The direction of our argument is about the robustness and appropriateness of Biosecurity Australia's practices.

Senator TCHEN—As the chair has already indicated to you, the issue of biosecurity is not part of this free trade agreement—although, as you said, Biosecurity Australia is nominated as the lead agency and therefore it should be part of it. The credibility of Biosecurity Australia is a fundamental issue in any case, whether it is related to this free trade agreement or not, and therefore it is a separate issue from this free trade agreement.

Mr B. Smith—It is not a separate issue for two reasons: firstly, Biosecurity Australia, as the lead agency, is part of the agreement; secondly, parliament—and presumably this committee—is

looking at the net benefits, net costs and so on. So it is absolutely relevant to the discussion about the FTA in terms of the possible consequences.

Senator TCHEN—Was the evidence you spoke of that was presented to the Senate inquiry into import risk analysis disputed or undisputed?

Mr B. Smith—In terms of the science?

Senator TCHEN—Yes.

Mr B. Smith—Of course it is disputed. This is an ongoing process. The hearings have not been completed.

Senator TCHEN—Thank you.

Senator SANTORO—A lot of questions that I was going to ask have actually been asked by Senator Tchen, but I might ask them in a different way. I might get a bit more clarity at least to satisfy myself in terms of Mr Smith's submission. I assume that you are pretty concerned about the statement made by the American Farm Bureau Federation, particularly the phrase:

...after that nation—

that is, Australia—

removes non-tariff trade barriers, particularly in the area of sanitary/phytosanitary rules.

You are obviously concerned about that?

Mr B. Smith—I am using that example as illustrative of the US belief that they have had a win.

Senator SANTORO—That is precisely the point that I want to draw out of you. It is only their belief; it is not a stated objective of the Australian government or part of any agreement that the Australian parliament is entering into that there is going to be the removal of non-tariff trade barriers, particularly in those two areas. I am submitting this to you as being particularly the case if protecting human, animal or plant life is still one of the objectives.

Mr B. Smith—We are talking about a balance. The concern is that the balance may go more to liberalising the risk analysis, and that has huge potential consequences for Australia if a disease comes in. That is the broad concern. It is relevant that the Americans think it is a win, given that they have constantly accused Australia of using quarantine as a trade barrier.

Senator SANTORO—Let me first of all say that I commend your attempt to entrench balance in this process. What I think Senator Tchen was suggesting, and what I am suggesting, is that there is no hard evidence that the Australian government is not going to insist that that balance in fact be part of the process that drives the implementation of the free trade agreement. It seems to me that your concern is—and I would submit that it must be, because you have

actually included it in your submission—a statement made by the American Farm Bureau Federation, which is only their opinion. You stated that.

Mr B. Smith—Sure, and it is illustrative.

Senator SANTORO—How many other Australian organisations who supported the free trade agreement process and the draft agreement that we have before us are out there claiming a win for their industry sector? The American Farm Bureau Federation will beat its chest and promote their achievement as part of the negotiating process.

Mr B. Smith—I understand that, and Mr Zoellick has made similar comments too.

Senator SANTORO—Precisely.

Mr B. Smith—So it is consistent. That was an illustrative example. I can provide other examples of a similar assessment from US interests.

Senator SANTORO—When you talk about intrinsic conflict, I just do not see it, particularly when you look at the objectives of the general committee, which talks about striking a balance between protecting human, animal and plant life and facilitating trade between the parties, and when you look at the objectives of the technical working group. I see the key word that you quote there, and I am asking if you see it? That word is 'resolve': 'resolving specific bilateral animal and plant health matters with a view to facilitating trade.' Obviously if you do not resolve those issues, trade will not be facilitated.

Mr B. Smith—Yes, but if you have an instrument where you are talking about trade-offs as another way of looking at the resolution that can have consequences. One of the concerns, for instance, with the Atlantic salmon issue was that it was not just one product. The idea was that, if you changed your quotas on beef or whatever—I do not recall the details; there was a bit of a basket between Canada and Australia being discussed—then there would be a bit of give here and a bit of take there. Once you are talking about that, particularly if you have normative values in your organisation about needing to facilitate trade, you have the potential to damage or undervalue the scientific evidence. Of course it is speculative, and I take your point that it is not the government's intention, which is why our submission—

Senator SANTORO—I am at the receiving end of endless media releases from the minister responsible for Customs and AQIS, Chris Ellison. I am at the receiving end of about two or three a week announcing a further tightening up of quarantine laws or a further tightening up of border protection. I am talking about risk of exotic diseases and pests.

Mr B. Smith—As I said to you before, there is a whole raft of particular ones. This just goes to the commercial trade. You can tighten up over here with tourism and that does not make the slightest bit of difference in terms of the instrument here.

Senator SANTORO—But the government is very concerned about the important risks associated with commercial trade. They are the sorts of announcements I am referring to from Senator Ellison. Mr Chairman, I wanted to draw out from our witness why he expressed concerns—

CHAIR—Are you happy you have done that?

Senator SANTORO—I would like to hear from the witness whether he is able and prepared to state that there is really no empirical evidence to suggest that there is any intention on the part of the government to remove non-tariff trade barriers, particularly in the area of sanitary and phytosanitary rules, ignoring the imperative of protecting animal and human life, just to facilitate trade. There is no evidence, is there?

Mr B. Smith—The relevant issue is how, if this is to be ratified, it will work in practice. We are talking about four pages of words which are highly generalised. You are right, there is nothing in the words on the page which say that the Australian government wishes to denigrate or downgrade—

Senator SANTORO—It would be commercial madness to do otherwise.

Mr B. Smith—I understand that, but there are pressures involved in negotiations, as we are well aware. How it will work in practice is going to be the issue, and that is why we go back to that concern that the lead agency has had a shift in practice over the last three or four years. This is not new; this is the point of the evidence to the various examinations of the IRAs. That shift is already occurring towards a more liberal approach on facilitating trade, including downgrading of risk assessment.

Mr CIOBO—The senators who have just spoken have essentially touched upon what it was I wanted to ask. In terms of preliminary comments, I think it would be fair to say that all members of this committee take the view that these types of decisions do need to be made on good science and most, if not all, of the witnesses that we have had with interests in these areas have made the same comments. I do not think there is any disagreement with that principle. I guess the point that Senators Tchen and Santoro were raising and the assertion I would make to you is that the concerns that you have raised would in practical effect come about only through the exercise of bad faith by the Australian government. I go further. You raised the notion that there is no mandating of an independent scientific expert on the review committees. Again, the only case that I could foresee where that would occur would be through the exercise of bad faith by the Australian government. I see absolutely no rationale at all to say, 'Yes, it is not mandated,' because why the hell would any Australian government do it? Why would they omit the best resources available and the best people available from a committee like that unless they were acting in bad faith? I am interested in your response to that.

Mr B. Smith—When you are talking about potential multiple trade-offs—we will put your three ag products on the line and we will put another three others over there and we will work out a basket of measures—then the pragmatics of that sort of approach could well end up in the risk assessment of one element being downgraded. What we are talking about is the pragmatics, the dynamics, of what is on the table—

Mr CIOBO—Politics.

Mr B. Smith—Politics, in the two parties sitting down and saying, 'I've got an issue with this, you've got an issue with that: how are we going to work it all out?'

Mr CIOBO—So your concern is that, to cite a hypothetical, in order to get more pork into the US, we are going to allow our apple industry to be ruined by fire blight. That is a hypothetical obviously; I accept that.

Mr B. Smith—Yes, that is the sort of scenario where the conflict of interest I referred to could come into play.

Mr CIOBO—What prevents that from taking place now?

Mr B. Smith—We do not have a bilateral agreement with the US.

Mr CIOBO—That does not preclude—

Mr B. Smith—The IRAs have been contentious—with apples and fire blight and New Zealand, for instance. That is a process that has been dragging on for three or four years. In that period, Biosecurity Australia has come out of AQIS as, in effect, a sub-agency. So there has been an administrative change. We have had a three- or four-year delay in getting the IRA, where the trajectory of change in biosecurity has become apparent. So, if you like, we are still living on a conservative approach based on good science. The issue is whether that is in the process for what you have in mind.

Mr CIOBO—That is still predicated by the policy direction of government. In terms of legal frameworks, there is nothing to prevent it at the moment, is there? Your response to me is predicated on an assertion about what government policy and direction has been. It is not a legal safeguard; it is just government policy.

Mr B. Smith—Yes, and administrative practices, which I accept.

Mr CIOBO—That is effectively my point. I think you would understand that there is no difference under the FTA in this regard at all—is there? Your concern still pertains to government policy directions, rather than to the legal checks and balances, which are omitted now.

Mr B. Smith—Yes.

Senator STEPHENS—Mr Smith, I have two questions. I would firstly like to ask you about the point you made in your submission about intellectual property and patents. You made some comments about your interpretation of the Patents Act 1990. I think it is very important that the ALRC are looking at gene patenting and human health. We will await their report in June with interest. Do you have concerns around the patenting issues for veterinary science—livestock—or plant technology?

Mr B. Smith—Yes.

Senator STEPHENS—Are you able to provide some details about some of that: Could you perhaps take that question on notice?

Mr B. Smith—Yes.

Senator STEPHENS—My second question goes to the last part of your submission, where you raised the issue of mobility. You might like to elaborate on how the constraint on labour mobility impacts on the scientific community.

Mr B. Smith—A growth area that the government and indeed all parties are keen on looking at in some form or another is developing innovation—R&D firms going to global markets. There is a consensus there. The point is that the FTA does not add anything; it just does not resolve it. Under US immigration laws it can be very difficult for Australian business people to get over to the US to help their company get established, and they might need to be there for a couple of years. That is a constraint on Australian firms exporting our products.

Senator STEPHENS—Is there the same kind of restriction on US scientists working over here?

Mr B. Smith—There are two different issues here. There are not constraints on scientists; we are talking about business people. Academic scientists working in universities and so on are fine; that is a separate thing. Our concern is explicitly about the scientists working within industry—within businesses—who are trying to get into global markets.

Senator STEPHENS—I take your point. Thank you.

Senator MASON—Mr Smith, my colleagues have very competently analysed your submission and asked questions about it. I want to ask about an issue which your submission only touches on in passing: investment. There is a large section about it in the FTA. Do you have any comments to make about that?

Mr B. Smith—We have not examined the chapter in detail. I suppose I could make some general comments that might be of interest to the committee, as a background. First of all, there has been a marked shift globally in how intellectual property has been developed over time. The olden days, if you will, of the big multinational corporations each having their own R&D departments, as Telecom, for instance, now Telstra, used to do, have gone. The global approach is that large companies now more and more are looking to buy intellectual property through buying up small firms, SMEs. There is a mergers and acquisitions approach, rather than an internal R&D approach. That is a generalisation: you can still come up with big companies that have their own R& D, but there is a trend.

That is interesting in the context that, if you are going to be freeing up the opportunities for purchase of Australian firms, then, given that change in global practice, in its generality, there is a potential consequence that Australian R&D will be bought up. Now at the moment the threshold, I believe, is $50 million and this will increase it to $800 million. How far an R& D intensive company has developed is a bit of an issue. Let me come back to that—I will sidetrack for a minute. One of the real problems in the Australian innovation system is a lack of venture capital and a lack of investment. That lack is at every stage. It is at the preseed funding stage, the early development stage, the stage of taking it through to commercialisation and then the stage of expanding productive services into global markets, and at each step the amount of money required is greater and greater. That is another general comment.

Coming back to the issue from which I sidetracked: a consequence of relaxing the threshold from $50 million to $800 million without going through FIRB is that there is a potential that we will lose Australian R&D which is in the process of commercialisation. So there is a question about whether a national interest provision still works there. I cannot say how many companies are in that. The vast bulk of Australian companies are SMEs—95 per cent or whatever it is—and I cannot say how many of them are over $50 million. You would need data there. But, given that global change in the way R&D is developed, that is something the committee might like to seek advice on—whether this provision exposes R&D intensive Australian start-ups in some way where we are going to lose that IP without a proper thing. I am sorry that I do not have data to support the numbers.

Senator MASON—We could go on with this, Chair, but I think perhaps we ought to leave it there, unless you have anything specific, Mr Smith.

CHAIR—Thank you very much, Senator Mason.

Mr MARTYN EVANS—Just briefly, I wanted to indicate, Mr Smith, that I have a slightly different take on your comments to those of some of my colleagues, because I believe you raise legitimate concerns about what might potentially flow from some of the provisions in relation to biosecurity and in relation to patents. You were not making the point that you actually saw these definitively flowing from these areas; you were making the point that they were potential concerns if the Australian government and parliament did not act to prevent them from occurring—that, while the free trade agreement, as envisaged, did not actually prescribe these adverse consequences, it had the potential to see them flow, if steps were not taken to ensure that they did not flow. Indeed, we can use this as an opportunity, if the committee makes the right recommendations—from the kinds of concerns that you have raised here—to ensure that the correct steps are taken to in fact have trade enhancing outcomes and positive outcomes on the biosecurity side and the patents side.

Would it not be a correct conclusion to draw from your submission that, if the committee made the right recommendations to enhance scientific involvement on those committees and to enhance the correct legislative provisions that we would have to have flow from the patents side of things—if those conclusions were drawn by the committee and the right recommendations were made by this committee—and if those recommendations were adopted by the government and the parliament and put into practice on those committees and in the patent law amendments that might have to flow in harmonisation, then in fact we could have a win-win scenario out of this, enhancing both trade and biosecurity and patent law? Is that a reasonable interpretation, as an alternative to what some of my colleagues might have drawn from your submission?

Mr B. Smith—Sure. I think we made it clear that our comments were speculative. Everyone's comments are necessarily speculative at the moment because we do not know what the wording of the legislation to enact might be et cetera, so everyone must make a guess. But it is correct that we have concerns. If they are addressed, and addressed seriously, that would minimise the potential negative consequences that we have alerted the committee to. That does not mean, for instance, that we would therefore support the signing of the FTA—there are so many other areas that the committee would need to weigh up. That is why we do not have a position. I would not like people to think that our position is 'sign, if you fix these two bits'. That is not what our comments come to.

Mr MARTYN EVANS—No. I am just looking at the fact that you are not advocating a negative or a positive view in this context; you are warning that, if one engages in the correct scientific input into the biosecurity provisions then it would be possible under these scenarios—with the right science and the right engagement—to ensure that you do not have to have a negative outcome in that context. You can ensure, through the right science and with the right safeguards, that that is looked after. Or, if you fail to engage in the right science and you allow trade to predominate while ignoring science, of course you would have a negative outcome. So depending on the recommendations one adopts out of the committee and depending on whether the government takes those into account, one could have a positive win situation or a negative lose situation in these things.

Mr B. Smith—Absolutely.

Mr MARTYN EVANS—So you are not advocating one or the other; you are just drawing our attention to the fact that one sees two possible outcomes here. If you adopt the positive it can be a win, and if you look at the negative it can be a loss.

Mr B. Smith—That is a very good exposition which I am very happy with.

CHAIR—Thank you very much, Mr Smith.

Mr B. Smith—Thank you.

[12.02 p.m.]

BAUME, Mr Michael E., AO (Private capacity)

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

Mr Baume—I am here before the committee in a personal capacity, although I was Australia's Consul-General in New York for a considerable time while efforts were being made to get this free trade agreement under way.

CHAIR—On behalf of the committee, I thank you for appearing before the committee to give evidence today. The secretariat will forward to you a copy of the proof transcript of evidence as soon as it becomes available. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and as such 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. I invite you to make some brief introductory remarks before we proceed to questions.

Mr Baume—I would like to make some brief introductory remarks, especially as, I regret to say, my submission arrived at the committee fairly late yesterday and obviously there has not been time for it to get around. So there are a couple of points out of the general submission that I would like to make in my statement.

My appearance before this committee stems from my role when Consul-General in New York from 1996 to 2001 in joining with the Australian Ambassador to the United States of America, Mr Michael Thawley, in generating widespread corporate support in the US for the concept of an Australia-US free trade agreement. I should add that in my official capacity I had several meetings with US pharmaceutical companies, including Pfizer, which is headquartered in New York. I am patron of the American Australian Association in New York and received the medal of the US Foreign Policy Association—the only other Australian recipient of which is the Prime Minister, John Howard—for my role in improving Australia-US relations. I was a foundation member of the Australia-US parliamentary friendship group during my 20-odd years as a federal parliamentarian in both the House of Representatives and the Senate.

My appearance here also emerges from my deep involvement with the arts in Australia, having been shadow minister for the arts as a member of the Senate, and a member of the council of the National Gallery of Australia. I am still a director and trustee of the American Friends of the National Gallery of Australia. I am on the council of the Sydney Symphony Orchestra and I have been involved as a patron of the Bell Shakespeare Co.

My concerns rest on what I consider to be at best a misguided and at worst a dishonest campaign against the proposed free trade agreement which appears to rely more on ideological and political agendas than on the evidence of the words and spirit of the agreement. The nature of much of the evidence presented to this committee and the concurrent Senate committee

reinforces this impression. The great bulk of it rests on the same polemic stated over and over again, as if frequency of ill-founded assertions gives them some added substance. As a result, I want to focus my appearance here on challenging much of the evidence presented against the FTA in the areas of the arts and health. In that context, recent articles that I have written for the *Australian Financial Review* would, I hope, be able to form part of my formal submission. I have brought them here. I give the dates in my submission.

In particular, my submission deals with overseas evidence that demolishes the unsubstantiated claim by arts lobbyists that Australian drama will be forced off TV screens by a collapse in the revenue of free-to-air TV under pressure from a doubling of pay TV audiences to match the US proportion of 50 per cent. There is just one section of my submission dealing with that and I would like to read it because it is central to much of my evidence. It says:

The main case against the FTA [from the arts community] rests on the unsubstantiated assertion by arts activists to this committee that the prospect of a doubling of Australian pay-TV audiences from the present 25 per cent of homes to the US level of 50 per cent would result in such a loss of advertising revenue as to make it uneconomic for free-to-air to maintain their 55 per cent Australian content, with the result that the Australian government would have to lower it, massively damaging Australian drama. One arts witness did concede to your committee that this may not happen for 20 years ("free-to-air TV will be the paradigm for the next 20 years").

The impact of pay-TV on free-to-air is an issue that is subject to detailed analysis by the major finance houses in both the US and Australia. There is no available evidence from their studies that I have been able to find that supports what is, in effect, no more than a badly informed guess by arts activists that free-to-air faces this economic crisis in Australia.

One such Australia-US study—

and, by the way, it is available to the committee; I would imagine all of these would be available to the committee if you approached any of the major finance houses, which have all done intensive studies on this issue—

recently reported:

"US evidence suggests free-to-air ad revenues and costs per thousand [viewers] (CPM) have grown at a rate of 6 per cent compound since 1980. This is in the face of non-premium (ie non pay-for-view) TV penetration increasing to 85 percent in the same period. The UK experience shows us that since 1992 [free-to-air] ad revenues have grown at 3.6 per cent compound while CPMs have grown at 5.3 per cent. Both cases illustrate that despite pay-TV taking away [free-to-air] audiences, advertisers are still willing to place an above-CPI rate of growth on CPMs. We expect this revenue growth to be maintained".

Of two studies conducted in the US and the UK, the US one showed that the continued growth in US [free-to-air] advertising revenues has been despite Pay-TV not only picking up all the 34 per cent population rise since 1980 but also taking away 8 per cent of what was then the [free-to-air]audience. The UK one showed that since the introduction of pay-TV in 1989, the expected reduction in [free-to-air] advertising revenues simply did not happen.

And for Australian [free-to-air], the Australian study predicted a continuation of the last eight years' 3.7 per cent compound growth in advertising revenues.

I quote from the study:

Although pay-TV has been in Australia since 1992 and the internet since 1997, the resultant fragmentation of audience has not caused advertising revenues for [free-to-air] networks to fall.

My submission continues:

It found a drop from 29.5 per cent ... in commercial [free-to-air] prime-time viewers from 1995 to 2003 despite a rise in potential viewers from 11.78 million to 13.41 million, with the difference being made up by pay-TV with no net leakage of audience from TV to other media such as the internet.

The reason given in these studies for [free-to-air] revenues to keep rising despite falling viewer numbers is that as audiences fragment to pay-TV (most of the 40-odd Australian pay-TV channels get less than one percent of the TV viewing audience and are only useful for modest niche advertising) "the value of a given large audience goes up" and advertisers pay a premium in order to access the mass audiences that are only available on [free-to-air]. As a result, US pay-TV gets only 10 per cent of the advertising dollar despite having 50 percent of the TV audience. In addition, pay-TV stations may feel buyer resistance to excessive advertising levels that are accepted when viewers are not paying for the service.

My own understanding of that market from reading American sources is that the advertising cake, which has been growing anyway, has altered substantially against newspapers and in favour of television, particularly as so many newspapers appear to be suffering—and many have been closing down, of course, over this period—from the advent of 24-hour pay TV news services.

CHAIR—Before you go on—we have done 10 minutes on the opening statement—

Mr Baume—I am sorry. I had no idea.

CHAIR—How much longer is your opening statement?

Mr Baume—About three paragraphs.

CHAIR—Okay.

Mr Baume—I might also say—and I have not put this in my basic submission—that the combined submission of the Australian Writers Guild, the Australian Screen Directors Association and the Screen Producers Association of Australia to this Senate select committee rests its case on four key points, all of which appear to be totally wrong. The first point is that the Australian government, in terms of this agreement, has constrained its ability to act by:

... agreeing to stand still and roll back of Australian content regulation on commercial television ...

That is, of course, patently untrue. There is an increase of Australian content, as was shown before this committee in response to Mr Ciobo's questioning, when an admission was eventually made after about six questions.

The second point was about accepting progressively lower targets for Australian content in pay television and new media. That is also patently false as there is a capacity for the levels of Australian protection to be increased under the free trade agreement. It says:

... failing to isolate cultural agencies such as the Film Finance Corporation, the Australian Film Commission, the Australian Broadcasting Corporation and the Special Broadcasting Service from the operation of the agreement, potentially allowing the US government to challenge the validity of their operations ...

That, I am advised by the government on the basis of legal advice, is total nonsense. It would seem to me that if that is a key element of a submission by an arts lobby group then it would have been useful for them to have demonstrated the legal basis on which they make that extraordinary claim.

The final point they make concerns agreeing to internationally controversial definitions of e-commerce and digital products. That would also require some fairly substantial legal advice because in fact it appears on the surface to be absolute nonsense.

My final point is that in many of the arts and health submissions before your committee there was a heavy anti-American bias evident, indicating an agenda which had little to do with the merit or otherwise of the specifics of this agreement.

CHAIR—Thank you very much, especially for the evidence you have presented on free-to-air television in other countries, which has certainly clarified those issues for me. I needed some more evidence on that.

Mr Baume—Could I add that I understand that, if the committee wished, it could contact all those finance houses. All of the American ones are represented here, like JP Morgan, Morgan Stanley, Goldman Sachs and so on, and I am certain they would be prepared to provide you with whatever research studies they have.

CHAIR—We will follow that up.

Mr WILKIE—We do not have your submission in front of us. It would have been nice to ask questions on that. I will ask you some questions about your position when you were Consul General and how it related to granting visas for American professionals who were coming into Australia. You have talked about a lot of corporations which operate here. What sorts of procedures would be put in place if an American professional were wanting to come and work in Australia?

Mr Baume—I have to say that fortunately I had a consul working under me. My main role as Consul General was a diplomatic role. It is a role where my main task was to promote Australia's general interests in the financial centre of New York. I might say that the clear instructions I had when going to New York were that I should not involve myself in the consular matters unless there was a question relating to the nature of the relationship between the two of us. There were some instances where questions relating to Americans working in Australia did become significant, particularly in the tax area. I involved myself in policy issues relating to it but, in terms of the normal granting of visas, it was not an issue that I took great interest in. In fact, Andrew Peacock was sent to Washington and I was sent to New York for a very specific reason, which was that a perception had grown in the United States, right or wrong, that Australia's thrust into Asia under the previous government had been at the expense of our traditional relationships, particularly with the United States. By sending two of his colleagues to those two

key posts, the Prime Minister hoped to correct that impression, and I think Peacock and I were successful in changing that perception.

CHAIR—Before we go on with questions, I require a resolution that will take these three articles from the *Australian Financial Review* by Michael Baume as an exhibit to the inquiry. There being no objection, it is so resolved.

Mr WILKIE—Just to follow on, obviously if there had been an issue with American professionals entering Australia to work you would have been made aware of it. Were you ever made aware of issues where American professionals had trouble getting into Australia?

Mr Baume—From New York I did not have any problems. There were some problems relating to a bank in Boston, which was part of my area, but that, as I recall, was easily resolved. As I mentioned, the only pressing problem that I ever had to deal with related to the taxing of American expatriates in Australia if they stayed here for longer than the statutory period.

Mr WILKIE—Would you be concerned if an environment existed whereby American professionals coming to work in Australia were getting reasonably quick access to visas while Australian professionals going to the US had to wait up to two years to get a visa to work in the same industry?

Mr Baume—I did not come across any instances of Australian professionals having that kind of difficulty in the US—particularly in New York, where several thousand Australians are working in the finance industry, many of them in very senior roles. In fact, the evidence suggests that Australians have very little difficulty not only in taking professional jobs in the US but in rising to the top of icon corporations. In recent years Australians have gone to America to run icon companies like Ford, Philip Morris—they are the world's second biggest food company, which is an interesting role for them—Coca Cola and Campbell Soup Co., and I think the No. 3 person in Merrill Lynch at the moment is an Australian. So I must admit that I am not aware of the problem that seems to be concerning you. I have certainly seen no evidence of it from my end but, as Consul-General in New York, I probably would not have been expected to. All I saw was an immense flow of Australians into professional roles in the United States.

Mr WILKIE—I suppose that in your position in the US you would only have seen them as they came in, because the process of visa applications would be dealt with in Australia.

Mr Baume—And there were many of them.

Mr WILKIE—We have had a lot of people putting forward submissions, particularly in the professional area, who have said that we have a real problem in this agreement, as Australians have had to wait up to two years to get visas, albeit then getting into the US to work. There have also been extreme problems with professional qualifications not being recognised and having to be dealt with on a state-by-state basis. Of course, that is always going to be difficult, given the number of states in the US. In other treaties and free trade agreements that the US has put in place, the visa issue has been addressed, but specifically in this so-called free trade agreement with Australia it has not been addressed.

Mr Baume—I am not sure on what grounds the people who have made these submissions were held up for two years. But I must say I have been overwhelmed by the willingness to assist in the US. By the way, it is not a State Department issue but an INS issue, and there is an immense gulf between those two American departments. The State Department seems to spend a lot of its time apologising to us for the activities of the INS—particularly at airports, I might say.

My second son, Nicholas, is the Chief Curator of the Institute of Contemporary Art in Boston. He was admitted under a special visa for those with qualifications of a high order, or whatever it is. He had been a curator of contemporary art at the Museum of Contemporary Art in Australia, so he had clear qualifications. In a sense, the Americans do a little of what Australia does: if you have qualifications that are needed in Australia, we are keen to let you in. The Americans do the same, except that they are probably under more pressure than we are in terms of people wanting to come and work in America. My only concern about their approach is that it is racist; it is based on quotas per country, a policy which we do not adopt. If I have one criticism emerging from my period in the United States, it is that kind of approach to immigration; I just do not like the atmospherics of it.

Senator MASON—There are many questions I could ask, Mr Baume, but one issue you raised in your opening comments was that of pharmaceuticals. You mentioned that just in passing. That has certainly been an issue the committee has had to address and has heard much evidence about, both over the last couple of days particularly, in Brisbane, and also in Canberra. I have just noticed in one of your articles that we have just received as an exhibit before the committee that you talk about there being a scare campaign. Why do you think that the concerns that have been raised about pharmaceutical benefits—the fact that pharmaceuticals may rise in cost, the fact that the imposition of market forces on pharmaceuticals may undermine the social aspect of the PBS—is a scare campaign? It is a very important issue, of course, for this committee.

Mr Baume—Of course. The thing is that there are some elements of the agreement that, I must say, I would rather have seen different. I do not think there is any suggestion that this agreement is the perfect agreement. But it is certainly, in my view, the best available one, and it brings, in net terms, considerable benefits. But in the pharmaceuticals area it seems to me—and I make this point in the submission—that the themes that are repeated throughout what seem to me to be very agenda laden submissions—and evidence of the free trade agreement critics—is that the FTA will cause not only significant price rises for drugs in Australia but that the fabric of the PBS is being put at risk. That is the essence of their case. This is despite agreement by both the US and Australian officials that the architecture of the PBS is not to be affected by the FTA and denials by Australian officials that the FTA will lead to higher drug prices. What intrigues me is that in what is a presidential election year there is a willingness to enthusiastically embrace every comment made by an American politician that boosts their side of the case and an equal willingness to ignore totally or to dismiss Australian comments in an election year. In other words, there is such an unbalanced approach that it clearly indicates to me that there is an agenda—and that is just one of the things that clearly indicates to me an agenda.

Senator MASON—I am sorry to interrupt, sir, but we received evidence, which was a comment from Senator Kyl, and the tea-leaves were read from that that this was all about the destruction of the system—that pharmaceuticals would increase in price and the PBS would be

undermined. So you are quite right that that was certainly one aspect of it. I am sorry to interrupt.

Mr Baume—That is all right. But I want to say that the main reason for my dismissing this as an agenda issue is that the source of these repeated claims—and you have seen so many submissions and you know how they are repeated; the same things keep being said—appeared to me to be a flawed series of polemics masquerading as research from the left-wing think tank called the Australia Institute. I quote one of their extraordinary 'studies' which claims that drug prices are to double under the FTA. That is absolute nonsense. There is no evidence whatsoever for that. Another source was a set of fanciful hypotheticals by an ANU academic who was also associated with the Australia Institute, although he did not say so in his submission to you, and was a co-author of one of their absurd propositions.

CHAIR—Who was the ANU academic?

Mr Baume—Faunce.

CHAIR—I believe he spoke at the Senate committee on the FTA a couple of days ago.

Mr Baume—He spoke to the Senate committee, not to you—sorry. I have read so many submissions that they are coming out of almost every orifice. The Australia Institute ignored the key elements of the agreement. As well there was an emotional rather than a rational attack by a medical practitioner/academic active in the consumer movement on Australia having links with the US, which he claims has the world's worst public health system. That is the basis of the attack! He does not mention that it is also the world's greatest source of research based breakthrough lifesaving drugs. In other words, none of these submissions mention any benefits at all. There are benefits and costs involved in everything you do.

CHAIR—Sure.

These submissions are so universally antagonistic to the agreement—they see no merit in anything. Even in transparency, which is to the clear benefit of consumers, the attack is consistently against the whole thing. That lack of rationality in the attacks and the fact that all of them seem to depend on the one basic set of sources suggests to me that this is simply an agenda proposition and the more they repeat the fancies the more weight they hope it gives to a committee like this.

Senator MASON—I am happy to stop there but I have more questions. Do we have time, Chair?

CHAIR—You should just be aware that we have another witness.

Senator MASON—That is fine. Thank you, Mr Baume.

CHAIR—We have time for one question from Senator Tchen.

Senator TCHEN—Thank you for your evidence, Mr Baume. I am glad you mentioned your experience in the United States as a diplomatic experience because that means that you have had

an opportunity to look at how the American political system operates. One of the issues which this FTA has raised with us is the issue of timing—whether there is a time constraint and whether it is a matter of urgency. This committee has been told by previous witnesses that in fact there is no time constraint; there is plenty of time to get this work out and, if this particular agreement were not presented to the United States Congress, it could be done later—there is no real urgency. Can you make some comment on that?

Mr Baume—My experience of the American political environment would indicate to me that there is no greater prospect of success through the congress than at present. It would have been better had it been completed last year. I think we are now getting to almost a crisis point, where the need for American congress men and women to appeal to their electorates, and for the President to appeal to his electorate, will see a growth of protectionist rhetoric in the United States the closer you get to the election. That is one of the reasons that it does not bother me when I hear people like Senator Kyl claiming great benefits out of the free trade agreement. In fact, it is to our advantage that Americans are saying that. It is to our advantage that they claim, for example in the arts area, that there are unprecedented benefits to the United States. These unprecedented benefits involve granting Australia the right to increase protection.

The only industry that has been receiving increased protection in what is supposed to be a protection reducing regime is the arts industry. It is true that it is unprecedented that we will have agreed to limit the extent to which we can increase, but the word 'unprecedented' itself, which has been picked up by local activists here, is a very useful word for the Americans to sell this proposition through the congress. The uncertainty that is involved in not doing it now but waiting till the result of the American elections would be that you do not know to what extent the political environment will change. We did see during the Clinton administration that the protectionist lobby was much stronger than under the Republicans in the sense that the Seattle fiasco demonstrated a government unwilling to take on in an effective way the protectionist pressure that always emerges from a country which still has very large isolationist attitudes, where the great bulk of congress men and women do not hold a passport—because America is the greatest country in the world.

So what intrigues me is that at a time when everything is pointed our way and we have this incredible breakthrough—access to the biggest market in the world; access to knowledge, through the working group on pharmaceuticals—which for some incredible reason is somehow seen as sinister; access to this great store of knowledge and this great potential for export; and, of course, access to American military and government supply programs—people with no regard for Australia's best interests are putting their self-interest first and, quite frankly, in some instances putting as their justification whatever representation finance they get for looking after their industry. It seems to me that there is a basic dishonesty running through the great bulk of the attacks on the free trade agreement.

CHAIR—Mr Baume, thank you very much for your attendance before the committee today.

[12.36 p.m.]

McLEAN, Mr Gregory John, Assistant National Secretary, Australian Services Union

CHAIR—Welcome. Before we proceed, I understand that you have a replacement submission.

Mr McLean—Yes, I do. I have a more up-to-date copy of the submission that was provided to you earlier. I understand that it was emailed to your office earlier today.

CHAIR—There being no objection, your replacement submission is authorised as a submission to this inquiry. I thank you for appearing before the committee to give evidence today. The secretariat will forward to you a copy of the proof transcript of evidence as soon as it becomes available. Although the committee does not require you to give evidence under oath, I remind you that these are legal proceedings of the parliament and, as such, 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.

Mr McLean—This week I have been contacted by the various secretaries of my union throughout Australia. We represent around 140,000 members throughout Australia, covering a range of industries. A large slice of that is in public sector utilities and, of course, local government, as outlined in the supplementary document about the ASU that has been provided to you today. For the transcript, I have been asked by my colleagues to note that they have forwarded letters of support. With the committee's indulgence I would like to mention their names. I have received letters of support from the following: Brian Harris, secretary of the USU, the largest union in New South Wales; Sally McManus, executive president of another of our branches in New South Wales, representing mainly the railway industries; Darrell Cochrane, our branch secretary in Victoria; Anne McEwen, our secretary in South Australia; David Smith, one of our secretaries in Queensland; Margaret Dale, from our Far North Queensland branch; Julie Bignell, secretary of another of our branches in Brisbane; and Sean Kelly, our secretary in Tasmania. Those branches cannot be with us today, so they have sent letters to express their moral support.

I would like to draw your attention to the replacement submission provided to you today. It expands upon the original submission and provides additional information, but it does not alter the general thrust of it. We have a series of concerns, and I will go through those very briefly. Firstly, I think that a number of our members and organisations that we find our members working in were concerned with what I would call the rate or process of negotiation of this agreement. I think it has been widely discussed as being—I will not say 'rushed through'—pursued rather quickly and rather vigorously.

Some of our branches and members were also concerned that there was not a paper copy of this document provided but that the only available copies were downloadable from the DFAT web site, even to the extent that it was not downloadable as one document but as a series of documents that took some considerable amount of time. In a previous submission I made to the

Senate committee I outlined to them that it was rather simple for me to download the 500 pages plus the 500-odd pages of attachments but, if I had tried to run that off on my Canon bubble printer at home, it would have taken the best part of a month, I would have thought. So one thing that could be undertaken when documents such as this are negotiated in the future is perhaps that the parliament could look at having paper copies made available for citizens to purchase at a moderate price through government agency outlets or via the mail. I think it would be in the best interests of Australian citizens. I note for the record that I understand all senators were supplied with a two-volume bound copy by the office. I am assuming similar copies may have been made available to members of the House of Reps, but it was not made available to the Australian general public, so perhaps you could take that view on board. It would be appreciated.

Moving through our report, the other issue is that, while the draft document has been negotiated by the Australian and American governments, we note that behind all government agencies there are always organisations across society lobbying for certain undertakings. We note that some of the business interests, community groups and, for that matter, even unions in America may have been availed of more finance and resources to be able to put forward their views and lobby for their causes than similar organisations in Australia. I think some of the work that could perhaps have been done by state governments or community groups may not have been possible due to the lack of resources. I know it is a difficult issue, but it may be one of those issues to think about for the future—that there may be some supplementary advice or assistance provided to community groups and, for that matter, local government or small regional authorities to be able to have input.

I notice that there were around 650 local government authorities throughout Australia, prior to the New South Wales government's recent mergers of some councils, and around 100 Indigenous land councils. So there is a variety of local government authorities that we expect will be covered by this agreement simply because of the outline of organisational structures that would be covered. I understand through reading the agreement that there are provisions that would bind local and state governments—or, predominantly, state governments—and then you would expect a continuous binding of local government authorities in order for some of those state governments to maintain their national competition policy payments. In other words, some local government or state government infrastructure is bound by national competition policy.

In the past my union placed before a previous committee of the Senate a submission in respect of the general agreement on trades and services, and some of our concerns about the GATS agreement are very much mirrored within this agreement. One issue we see as important is the procurement of services for local government. Local government is an agency that is often governed by state government legislation and, depending upon the state you are in, provides a function that is sometimes provided by state government. For example, for regional Queensland, regional New South Wales, regional Tasmania and parts of Victoria water is a function of a local government authority, whereas in South Australia and Western Australia it is a function of the state government. Quite often we can see the provisions of these services being altered from different jurisdictions depending upon their delivery availability. So we express up front some concerns for the water industry.

We also note that national competition policy now requires infrastructure within local government and state government for the provision of, let us say, water, sewerage and treatment plants to no longer be carried out by departments of public works. That is now open for public

tender. That was introduced in the early 1990s and we now see local government's water infrastructure in Australia getting past its use by date in a number of areas and councils being encouraged to expand those operations, to revisit them or to simply provide the services, where they have not been provided before. We expect that with a trade agreement such as this, where it provides for the procurement of services, we may find local government no longer able to say, 'We prefer to use this company because it is locally based.' They could well find that they have to use a company that is not locally based—and not Australian based—in the construction of an infrastructure item. Perhaps also local government may even want to say—

CHAIR—Why would they do that? They would have a choice, presumably.

Mr McLean—The question is whether they would have a choice. Our concern is that under this agreement they may not have a choice. If local government want to go off and build a sewage treatment plant, for instance—on the south coast of New South Wales, in the Bega Valley, for instance, they are building a new structure—then, rather than go and simply build it themselves, because it is a project that goes beyond a certain cost level, they have had to open it up for competition under national competition policy. Now they may find, as part of that national competition policy that there is a company that is expected to say, 'We will generate some jobs in the local area or put some infrastructure in here on a temporary basis.' We feel as though, when build-own-operate private public partnerships and transfer schemes are implemented or introduced, we may find those councils being restricted in the consideration they may want to have for locally grown companies. There are some provisions within the agreement that actually say that you cannot require a company to put a certain job infrastructure or a certain office in a particular location. That is my reading of it. I would have to go back to the exact clause, but I think there are some provisions about the locations that governments can require infrastructure or companies to base—that is, have a local presence.

Within the document there is an outline of resources that need to be made available by the Australian government for communities and regional government to be made aware of the outcomes and their requirements—or the requirements that they must undertake under this trade agreement. We had a question from some of our members saying, 'If there is money being put into this as an educational purpose as an after the fact, what sort of money has been put in as a before the fact to those regional communities to say, "This agreement could impact on you"?' We are not aware of moneys that have been provided by way of education before the fact, but we are aware that the agreement does provide for education after the fact.

We have some concerns in respect of the investment clauses within the document that provide for a reduction in the number of directors of companies that may choose to reside in Australia. This is already happening within the infrastructure in some water industries, notably in South Australia. One of the water companies down there is made up of a large slice of French company directors and one or two Australian directors that form the company. Our reading is that there are clauses within the document that open the door on the number of directors that may need to reside in Australia for a company. We make no comment about a person's nationality, culture or what country they live in, but we do have a concern that, if there is not a component approach or a minimalist approach to the number of directors that must be Australian residents, the sort of culture that a director becomes aware of and the concerns that may be seen as best practice for that business—or the community expectations of general society—may be undermined. In other words, if you are a director and you live in Australia, you have a pretty rough idea of what the

community expects of you, as well as what you need to undertake for your commercial realities. If you are not living in the country, we wonder whether or not you can actually be aware of what the community thinks, unless you have some regular exposure. So that is a concern, and we would ask you to give some consideration to that.

I mentioned the issues of government procurement earlier, and we do see that as having some involvement of regional government and as covering regional government. We know that there is a great deal of concern about how we can encourage more jobs in regional Australia, and I am aware that the House of Representatives has recently completed a series of hearings and that a report has now been issued on cost shifting in local government within Australia. I think that committee pointed out that there are now more moneys from the federal government to local government than from state governments to local government. We have a concern that there are a number of recommendations within that House of Representatives report about how we might beef up local and regional government that may be at odds with the submission and draft document of the USA-Australia free trade agreement. So we would suggest that this committee might like to give consideration to the 18 or so recommendations that have come out of the House of Representatives inquiry into local government cost shifting.

We have another issue—and I am getting towards the end of our areas of concern. I note that within the document there are specific references to the labour clauses. There are references to interagency discussion within the Australian government and the American government. The document talks, I think, of parallel discussions on labour clauses. We would like to think that, in particular, large unions that represent members who are covered by this agreement may be able to have some facilitative means to discuss with their US counterparts these sorts of issues that confront them both. The reason I raised this is that there are corresponding arrangements made within the European Union, as a large trading bloc, for social clause dialogue. If it can be dealt with within the European Union, by way of a number of countries and borders, maybe it is an issue that could be considered by governments negotiating these bilateral trade agreements as well.

Within our submission we also have specific references to water and some specific references to the electricity industry. I think the House of Representatives would be aware that the United Nations recently—I think it was in late 2002—came out with a statement on the availability of water for citizens of the world. It referred to water as not being a commodity that should be there for profit—and I am talking of water supply not for agriculture or major industrial users but for the mums and dads, so to speak. We have some concern about this agreement because it does not exclude water. It excludes water in its current structure and format, but, when we see local government and other governments spending less money on the provision of infrastructure for water services, we question whether or not those water systems in Australia may change in the future and, in a de facto sense, become more embroiled within this draft trade agreement. So we would question whether or not it is a worthwhile consideration for water to be removed from this agreement by being named fully, rather than, as it says in the draft agreement, as just water in its present state.

The final concern we have is the issue of regulation. As governments either divest what some would have called in the past core functions of government to a competitive arrangement or introduce more players into the field, such as in electricity reform—and also in regard to those questions that are starting to arise about Sydney Water's treatment of waste water products and a

company that wants to take it to the ACCC about having access to waste water for another purpose under the national competition policy—we see that regulatory frameworks conducted at a state and sometimes at a local government level are becoming quite important features. We know that there have been some statements—perhaps bullish talk in the lead-up to the GATS discussions—where US energy companies raised concerns in respect of regulatory frameworks being inhibitive to trade. They might be bullish tactics in the form of negotiations, but they do raise the question of the consideration of regulation and where regulatory structures should fit within trade agreements in the future. In other words, if governments cannot legislate other than by way of regulation, these trade agreements probably need to give some consideration to that.

Only two or three years ago I sat in this very parliament for a world parliamentary conference on regulation and regulatory reform. It involved a range of constituencies from the UK, including the Scottish parliament, through to the parliaments of Massachusetts, the Cook Islands and quite a number of other dots on the world. Concern was raised about how governments managed regulatory structures as they continued to divest their functions of central government or allowed greater players into what is a competitive market. So the issue of regulation and regulatory frameworks I think needs to be a consideration within these trade agreements. That is basically our submission. Thank you for listening to me.

CHAIR—Does the ASU have a position on whether Australia should ratify the Australia-United States free trade agreement?

Mr McLean—I think our concern is one of a realistic approach. We are aware of negotiations that take place at a WTO level and the issues that come out of that humble building in Geneva that used to be the ILO headquarters. We are realists in noting that general agreements on trade are going to take place. However, when we see some inconsistent approaches, such as the fact that electricity has been left out of this agreement whereas it was included in the Singapore agreement—and I have not looked closely at the Thai agreement, I must admit—we question how much of this has been rushed through.

A number of our members live throughout Australia. I think in every country town and city in Australia there are members of my union performing community service functions or stamping your ticket as you get on the plane at the airport. We are all over the place. Our members are concerned about the pace at which this agreement has been negotiated. We would like to see some of these issues revisited and greater consideration given. I know the general easy-speak is 'let's say no; let's not let it happen'. What we are saying is that we are opposed to it in its current form. We would like to see some further negotiations take place on it. We are realistic enough to acknowledge that world trade is going to continue and no-one is going to stand in its road. We have a cautionary note on this agreement. We think that perhaps the best idea is to postpone this agreement and look further at some of the issues that we have raised and that no doubt have been raised in the hundreds of submissions that have come before either this committee or the Senate committee.

CHAIR—In article 11.10 of the draft text, which deals with senior management and boards of directors, the second part actually does say:

A Party may require that a majority or less of the board of directors ... of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party ...

It goes on with a proviso. But that suggests to me that Australia does retain that ability to require the majority of a board of directors to be of a particular nationality if that is important to the party.

Mr McLean—I think there are two things with this. Firstly, there is a general application that applies to other directors and other companies. I suppose I question why we are altering this. When the words are 'but', 'maybe' or 'can', that creates a door that persons can walk through as an exemption. The question from my union is: why change it for one particular group? I think that one of the things that we see is that we are going to be dealing with some fairly large companies and organisations. The larger you are, I suppose, the more pressure that you have in the community and in politics or the better your lobbying skills are. We just question whether those opportunities may be seized upon by others to reduce the number of directors or to have fewer or no directors who live in the Australian community. The reason we raise this is that, as I said earlier, we would like to feel that, when these large companies and boards sit down, there is a voice at that table that says: 'I live in Australia. You live somewhere else in the world. There is a bit of a view in the Australian community that this is the fair thing to do.'

We then come down to the Australian ethos of a fair go and some other things that we often say that may not be the right thing to do economically, they may not sometimes be the right thing to do politically, they may not always be the sensible thing to do, but sometimes they are the right thing to do. We would like to feel that when those boards meet and give consideration there is someone who is aware of the views of the Australian community and who can say, 'This is something we do need to think about.' If the rest of the board say no, fine, but at least there is someone there putting forward a view in respect of the Australian community. Who knows how large these companies and boards will get and who knows what services these companies will control for the Australian society in 50 or 100 years time?

CHAIR—Do you believe there is anything in this agreement which does affect the ability of either the federal government or state and territory governments to regulate for the public services for which they are responsible?

Mr McLean—I would have to go back into what we put through. I was intending to spend a little bit of time going through our submission before I appeared before you at three o'clock but I did change the timetable. I think there is some reference to regulatory structures within the agreement. Perhaps someone can help me. Our concerns are in a general sense. If they are not mirrored in this document they are exempt, because I understand this is a document which states by way of exclusion; you have to be in there to be excluded. If the regulatory clauses are not strong enough or there is no reference to regulation, I would urge the committee to give consideration to regulatory issues.

CHAIR—Thank you. Mr Wilkie.

Mr WILKIE—Thank you very much for your submission. We received the electronic version of the agreement, as you did, and only members of this committee received one hard copy of the report. Other members of parliament would have had to download their own if they wanted it. It has been suggested that local government needed to be involved more in the agreement. Are you aware of any consultation that went on with local government?

Mr McLean—I am aware that local government did express some fairly strong resolutions at its national forum, the Australian Local Government Association conference, in 2002, when the GATS issue was floating around. I am aware that there has been some discussion with local government but I am not aware of any that has taken place specifically for the USA-Australia free trade agreement. I can tell you that when the GATS matter was being negotiated we urged our branch secretaries, some of those names I read to you earlier, to write off to their local councils expressing concern in respect of GATS and asking those councils to in turn write. I at the time wrote a brief letter to the office of the minister, Mr Vaile, and I received back a 1½-page extremely courteous letter that said, 'A lot of things in your letter I agree with or don't disagree with, but we need to talk.' I place on record my pleasure at that minister inviting me to meet with officers of his department and DFAT for discussion in the minister's office. I was very pleased with that discussion. It was a frank discussion for probably an hour and a half or perhaps a little bit more. DFAT did raise with me at the time that there had been literally hundreds of letters received from local government authorities about trade agreements.

I had gone out and publicly spoken to a number of councils, either in camera or actually on camera at one council at the time, and I know that local government does have concerns about these issues in these areas. I know that when you as a committee deal with these matters you negotiate traditionally with the state governments as the players you will talk to, as they control local government. But bearing in mind that the federal government now provides more funding for local government than state governments do these days, I would urge you as part of your considerations now and in the future to deal with local government specifically and individually. The unanimous report of the House of Representatives, the report I spoke about earlier, calls for local government to be at the table when discussions are taking place between the national government and state government on matters that affect local government. We are expecting more of local government in delivering services in our society. As the population ages, as the population grows and as our community has greater expectations on the standard of living, because that is what is happening, those local government authorities will be expected to deliver more services. I urge this committee and subsequent committees to involve local government more in the discussions.

Mr WILKIE—I could not agree more. I was elected to local government 11 years ago last weekend, and I served for five years. In fact, in previous discussions regarding free trade agreements, I suggested that we really needed to involve the peak bodies of local government far more. So I might be taking that up with the department, to find out what discussions they had with the relevant local government peak bodies.

Mr McLean—That would be very much appreciated.

Mr WILKIE—It has been suggested that the Productivity Commission should have been more involved in looking at the overall impact of the free trade agreement on Australia, and it has been suggested by a number of sources that the current CIE modelling is fatally flawed in a number of areas. Whilst I am not asking you to comment specifically on the CIE's current modelling, I am interested to know whether you think we should have gone further and asked the Productivity Commission to engage in a very comprehensive assessment of the agreement.

Mr McLean—This is the stage at which I claim to be a humble union official instead of an economist! Your question is a very important one. When you get to questions such as this one,

economic modelling is critical, and I think you are right in the suggestions you have made. Yesterday I had the privilege of sitting in on the Senate inquiry on the FTA. I appeared before the committee yesterday afternoon, but I sat in on the roundtable that morning and it was rather interesting to watch the disagreements around the table on economic modelling outcomes. I suggest that it would be well worth your while to have a look at the transcript of the Senate committee hearing yesterday. I agree with your suggestion that there should be a bit more economic modelling on these outcomes. From what I saw yesterday, there seems to be wide concern as to whether this agreement is positive or negative. I had not really thought too much about some of the issues I heard yesterday, which included issues such as whether giving preference to one country for a particular product is going to cause a detriment to another product from another country that you trade a second or third layer commodity with.

Mr WILKIE—Trade diversion.

Mr McLean—Yes. I think that is an important issue as well.

Mr WILKIE—Thank you very much. I would have loved to quote some of the transcript of the evidence we have had from people who were putting forward different theories about economic modelling—but I will not do that to you, Chair.

CHAIR—At annex 1 of the national interest analysis there is a list of the consultations conducted by the department. It includes the Australian Nursing Federation; the ACTU; the AMWU; the AWU; the CPSU; the Media, Entertainment and Arts Alliance; the NTEU; and the National Union of Workers. But it does not include the Australian Services Union, which I would have thought was quite an important union. Is there any reason that you were not involved in the consultations?

Mr McLean—This may have been a consultative forum where those particular unions were present and mine was not. I suggest that would be the only reason for it. However, certainly with respect to the GATS, I have been extremely pleased with the way DFAT has conducted itself, and I have had the opportunity to meet with some of the more senior negotiators and representatives of the department. I might add that, whenever I have gone to their building, they have been extremely courteous and very open when talking to me. In some respects, the people I have talked to within DFAT have given me the impression that they are really pleased with the attention that GATS and other agreements are starting to get across Australian society. Five or 10 years ago, it was not there; people are really starting to think and ask questions. There was no intention on my part or on the part of my union not to have been part of that round of consultation. I suggest that it was merely because we were not present at that forum.

Mr CIOBO—I notice that you advocate we should postpone ratifying this FTA. What do you think would be the implications of that domestically in the US in terms of congress ratifying the FTA?

Mr McLean—I heard the previous witness making some remarks on that very issue. To be honest, I think that the longer you prolong these things the more the other party might want to revisit certain parts of the document and be open to their political pressures. I think the time lines have political pressures in the US and here. But just because there are political pressures, does it

mean we should rush into something when we think we could get a better deal? That is the best statement I can make.

Mr CIOBO—But in dealing with what we are talking about, which is a political will on both sides of the Pacific to have the FTA introduced and the fact that it is broadly agreed by all sides of this debate that there would be significant obstacles at a political level in the United States for the congress to pass this as time wears on, I am asking for your view as to whether or not that would jeopardise the FTA actually being implemented.

Mr McLean—I suppose my question would be: does jeopardising it mean a better outcome or a worse outcome for Australian society? From my point of view and the view of my organisation, we think this agreement could be better and we would like to see it improved. If that means that the political pressure occurring in the US means something hits the brick wall and people have to go back and start again, I suppose that is fair comment. I suppose that what we are saying is that having the axe held to our head to do this now or get caught up in an extra round of political outcomes does not make particular sense to some of the people that I represent. They would rather see some of these issues being readdressed.

Mr CIOBO—The issue before us is: do we gratify this now based on the agreement that we have or do we let it fall by the wayside in the hope that at some point in the future we might get another agreement which might be better than the one we have today? Is that the course that you are advocating we adopt?

Mr McLean—I do not think it is a case of 'might'; I think it is a case of 'will', because these agreements are going to continue to be negotiated in either the GATS round or bilateral trade agreements. I suppose it is a case of what bilateral trade agreements you think you can get up now and what will be the outcomes of those during a particular course until they are maybe taken over by another agreement. These agreements will continue to be negotiated and the agreement we get in five years time or in three years time I assume would be better. Would it be worse? I think probably not.

Mr CIOBO—You do not actually know, do you?

Mr McLean—No, I do not; no-one knows.

Mr CIOBO—So you are basically turning on its head the analogy of 'a bird in the hand is worth two in the bush'? You are basically saying, 'No, that's not the case. We should hold out and wait and see on the chance that we might get something better'?

Mr McLean—I have great faith in the ability of the Australians who are involved in these processes to secure better outcomes if they are given a longer period of time. The general discussion I seem to pick up in the media is that a lot of people think that this issue was rushed into and that the time lines could have been longer to secure better outcomes. The issue you raised about the political extreme that people are trying to avoid is perhaps a very open and true comment. But what I am asking, on balance, is: does hitting that political brick wall mean there will be a good outcome or a bad outcome for Australian society? Those are the questions we have. I am asking you to take on board the issues that I have raised this morning as you as a committee make a decision and recommendation.

Mr CIOBO—So you do not actually have a position on ratification?

Mr McLean—My position is that this document should be slowed down. It should go back and there should be a series of negotiations on the points that my union has raised.

Mr CIOBO—Even if that means jeopardising the FTA getting up?

Mr McLean—Most assuredly.

Mr CIOBO—Thank you.

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

Proceedings suspended from 1.13 p.m. to 1.56 p.m.

SMITH, Mr Wayne Christopher, National Liaison Officer, Australian Conservation Foundation

CHAIR—Welcome. On behalf of the committee, I would like to thank you for appearing to give evidence today. The secretariat will forward you a copy of the proof transcript of evidence as soon as it becomes available. Although the committee does not require you to give evidence under oath, I advise you that the hearings today 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.

Mr W. Smith—Thank you for the opportunity to appear before you. The Australian Conservation Foundation does think that this is a very important hearing. As you may be aware, the Australian Conservation Foundation is one of Australia's leading national environment groups. We have about 60,000 members and supporters around the country. We put in a fairly comprehensive submission to this inquiry. I am obviously keen to explore some of the issues raised in that submission after this brief presentation. It might be useful to highlight some of the key themes from our submission.

The ACF have three major concerns with the proposed free trade agreement between Australia and the United States. Firstly, we are concerned about the process. We are disappointed that, unlike in the United States, the Australian parliament does not have the right to vote on the FTA, and we are disappointed that there is no legislation that sets out the environmental, social and economic objectives of this agreement. Secondly, we are concerned about the environmental impact of the FTA, and we are appalled that there has not been an environmental impact assessment to date. Thirdly, we are deeply concerned about some of the provisions in the investment and services chapters, which we believe leave Australian governments potentially vulnerable to significant compensation payouts if they enact tougher environmental laws. For those three reasons—and I will come back to some of those issues in more detail—the Australian Conservation Foundation oppose this FTA, and we urge the parliament to refuse to pass any enabling legislation required to bring the FTA into effect.

I want to touch briefly on environmental impact. Without an environmental impact assessment it is difficult to assess the direct potential environmental impact of the FTA. Chapter 10 of the recent Centre for International Economics report details specifically, if fairly scantily, the potential environmental impacts of the FTA. It is not an environmental impact assessment. The report admits as much. Page 129 of the Centre for International Economics report states:

> ... this review does not attempt to provide a full-scale quantitative assessment of the consequences of the Agreement on the environment.

Unfortunately, to date we do not have that full-scale quantitative assessment of the consequences of the agreement on the environment. Nonetheless, the Centre for International Economics report has acknowledged that there could be a marginal but unquantified rise in greenhouse pollution arising from increased GDP. This rise in greenhouse pollution would be occurring at the very time that we would need to substantially cut our greenhouse pollution.

The Centre for International Economics also predicts, as you are well aware, that the FTA will deliver an increase of $6.1 billion per annum for Australia's GDP. Leaving aside potential concerns about some of those costings, it is worth thinking about the potential environmental cost of that expansion. The CSIRO has estimated that each dollar increase in GDP requires the consumption of an additional 37 litres of water, an additional three square metres of land disturbance and the burning of an additional 10 megajoules of fossil energy. So the increase in Australia's water consumption, land degradation and energy use from a projected $6.1 billion annual increase in GDP would be substantial and clearly not environmentally sustainable.

I want to be clear here: we are certainly not opposed to increasing Australia's GDP. But on all the evidence an increase in Australia's GDP is nearly always accompanied by increased environmental cost. That is why we need to have a comprehensive environmental impact assessment of this FTA. ACF believe that we can have a healthy environment and a productive economy but we need to have environmental reforms which address our wasteful economy, which protect our forests, which restore our rivers and which cut greenhouse pollution. Our fear is that those environmental reforms will be harder to achieve under this FTA.

I am going to talk briefly about compensation. The FTA appears to oblige the Australian government to pay compensation to US companies if Australian environmental laws expropriate or significantly interfere with their investments. That is article 11.7. This could expose Australian governments to millions or even billions of dollars in compensation payments, forcing them to think twice before introducing tough laws to cut greenhouse pollution or reduce water consumption. I want to be clear: it is not just ACF that is saying this; it is also the view of the New South Wales, Victorian and ACT governments, outlined in their submissions to this inquiry. They are as concerned as we are about the potential economic and environmental impacts of these provisions.

If the compensation issue was not enough, governments will also need to ensure that their environmental laws are not 'more burdensome than necessary'. That is in the services chapter, article 10.7.2. So if you combine the potential for compensation with the need to ensure that the laws are not too burdensome you get what is called regulatory chill: a potential failure to introduce the tough environmental laws that are needed to cut greenhouse pollution and protect our precious rivers and coast.

I want to touch briefly on one other aspect that I do not think has received the attention it deserves in these hearings: the potential liberalisation of our energy and water services and the potential privatisation of our national parks or key park services. The Centre for International Economics report states:

> ... any future liberalisation of services trade made by either country in agreements with other countries will need to be extended automatically to the other.

That means that if the US enter into an FTA with another country—and there are plans for a whole bunch of FTAs for the US—and through that FTA they secure the liberalisation of a service that is not covered in our FTA then that obligation automatically extends to the Australia-US FTA unless the service is exempted.

That is trade liberalisation by stealth. There is no consultation with the Australian parliament; there is no consultation with the Australian people. ACF thinks that the dangerous thing here is that water, energy and biodiversity are not exempt, so there is a real possibility that down the track Australian governments will have to open up, for example, our national parks or maybe our water services to further competition and potentially privatisation. That is not an impossible scenario. The Bush administration has already begun to privatise up to 70 per cent of all jobs in American national parks. It is not impossible that US service providers could seek greater market access—through a revised NAFTA, for example—and then set their sights on Australia. That is an issue that I think is worth exploring for the committee.

In conclusion, I welcome the JSCOT and Senate inquiries. They really are the only opportunity for the community to put their views. The ACF do think it is outrageous that the federal government is considering signing the FTA before these two important committees have actually reported. We believe there are strong environmental reasons for opposing the FTA, and we certainly urge the joint standing committee to form a similar view. We also urge this committee to support new legislation giving parliament an adequate role in approving proposed international trade agreements. That is our key submission, and I am happy to take questions.

CHAIR—Thank you very much for your submission and opening statement. I notice that you have in your submission some comments about chapter 19 on the environment. You basically say that there are not a lot of mechanisms like NAFTA. As I read it, chapter 19 needs to be taken with the other chapters that you have mentioned. You have said that we cannot use environment laws to affect investment and so on, but chapter 19 says that each party is required to enforce its environment laws. In Australia we have Commonwealth, state and territory parliaments that enact environment laws, so why would we need anything else?

Mr W. Smith—It does say that. We have some concerns about the environment chapter. It does not provide some of the provisions that are provided under NAFTA. As you are probably aware, under NAFTA a committee—an independent body—is established which seeks to ensure that the environmental objectives of NAFTA are delivered. There is nothing similar in this chapter. The FTA makes reference to expropriation and to the regulations not being more burdensome than necessary, but this chapter creates that concern. Where is this going in the future? Are state governments in particular going to be looking at this and saying: 'This could be open to challenge. We could be open for compensation'? I think it creates some doubts and is the sort of thing that needs to be explored further.

CHAIR—But any American investment and any American provider of services is going to be subject to Australian environment laws. Is that your reading of it?

Mr W. Smith—Yes, that is right. But the concern about expropriation is that it essentially extends Australia's environmental laws. At the moment, as you know, compensation is provided under the Constitution when there is acquisition of a property. Our view—and we have had advice to this effect—is that the FTA actually extends that, so the compensation relates to not just direct expropriation but also indirect expropriation. It applies to when regulations impact on the company rather than when property is taken from them.

Mr WILKIE—You mentioned earlier that any trade liberalisation by the US with other countries would automatically lead to liberalisation with Australia. Where did you get that from?

Mr W. Smith—That is from the Centre for International Economics report.

Mr WILKIE—Is it contained within the treaty, though?

Mr W. Smith—No. It is from the Centre for International Economics.

Mr WILKIE—So it is a suggestion on their part that that may happen?

Mr W. Smith—That is right. I am not a trade expert, and I would want to get further advice about that. I think it is an issue that you may want to explore with the Department of Foreign Affairs and Trade and the Australian delegation when you meet with them next week. But the advice I have received is that that is the case.

Mr WILKIE—Can you tell me where in their assessment they have made that claim?

Mr W. Smith—Yes. I do not have the page number, but I will find it for you. It was a direct quote. It said:

… any future liberalisation of services trade made by either country in agreements with other countries will need to be extended automatically to the other.

Mr WILKIE—I would appreciate getting that information.

Senator TCHEN—Following on from that, I understand that if America further liberalises its tariff regime under another free trade agreement then it would automatically apply to the Australian free trade agreement.

Mr W. Smith—My understanding is that that relates to any additional services that are entered into in relation to other FTAs.

Senator TCHEN—Do you think that is a bad thing for Australia?

Mr W. Smith—It is not necessarily bad, but you would want to have a process whereby it is not automatically incorporated into the Australia-US FTA. You would want to make sure that the Australian parliament has the opportunity to assess whether or not that is something that is in the national interest.

Senator TCHEN—You said earlier that this is the first opportunity for the ACF to be consulted on this free trade agreement. In their national interest analysis, DFAT actually list the Australian Conservation Foundation as one of the consulted organisations. Is that correct?

Mr W. Smith—Yes, that is correct. This is the first opportunity for the ACF to put our formal views on the text of the agreement following it being tabled. We had two meetings with the Department of Foreign Affairs and Trade and I think we were offered a follow-up meeting. Obviously those meetings were somewhat limited in that they could not tell us exactly what was on the table. We had some useful discussions but I would not say that there were substantial discussions on environmental issues with DFAT.

Senator TCHEN—The text of the agreement became available to this committee I think a week before we started our inquiry.

Mr W. Smith—That is exactly right. Our concern is that this whole process has been rushed to meet an artificial deadline.

Senator TCHEN—You said there are three areas that the ACF is concerned with. I will quickly go through them. The first one is in terms of the process. You said there is a shortcoming in that the Australian parliament does not get to vote on the treaty, but under the Constitution the Australian parliament does not vote on any treaties; we just vote on the legislation necessarily following on from treaties. So there is nothing unusual about that. Secondly, you said there is no legislation on the environment and no EIS. You also said that you expect an unquantified increase in greenhouse gas emissions out of the increase in GNP. But you do understand that Australia is well on track. We have a Kyoto reduction target that we are committed to and any changes in our economic development will have to be within that envelope in any case because Australia has made a commitment to that. Shouldn't you be able to assume that growth in GNP as a consequence of following the FTA would be within the Kyoto target anyway?

Mr W. Smith—I would expect Australia to meet its Kyoto target. There are still some doubts as to whether we actually will, but we will probably get close.

Senator TCHEN—We are on track, I understand.

Mr W. Smith—We are on track—that is the language that obviously the government uses. It is obviously a very generous target. To be perfectly honest, if it were not for the significant controls in land clearing we would not be anywhere near on target. It is really not the federal government that has been delivering those controls on land clearing; it has been the state and territory governments. If you look at other sectors of the community, particularly in relation to transport and energy, there have been significant increases in greenhouse pollution.

Senator TCHEN—This is not the place for us to discuss the greenhouse target, but I think your interpretation of the Kyoto Protocol is probably a little bit one-sided. The reason we have what you call a generous target is that the world community took into account the land clearance contribution.

Mr W. Smith—I have one quick comment to make about greenhouse pollution as it relates to the FTA. It is a reasonable assumption that there will be an increase in greenhouse pollution as a result of the increase in GDP. That may well be incorporated within Australia's Kyoto target. That is still to be tested. That is something that we would want to see tested in an environmental impact assessment. But the important point I want to make is that the ACF's firm view is that Australia needs to go well beyond its Kyoto target. We believe that there needs to be a substantial reduction in greenhouse pollution, not an increase in greenhouse pollution. We believe that we should be looking for a cut of more than 60 per cent by 2050.

Senator TCHEN—Sure, but that is outside of the FTA consideration. The third issue you said the ACF had particular concern with was the provision of environmental measures in the investment chapter. On page 4 you said:

... if an environmental law expropriates or significantly interferes with the investments of a U.S. corporation, the Australian government would still be liable to compensate that corporation ...

If I substitute the words 'Australian entity' for 'US corporation', that is still true, isn't it? If an environmental law expropriates or significantly interferes with the investments of an Australian entity, the government would still be liable for compensation, wouldn't it?

Mr W. Smith—If there were direct expropriation then they would be liable for compensation. But in Australia, if an investment or company is affected by regulations—affected, not expropriated—then it is not liable for compensation. The Tasmanian dams case made it clear that expropriation under the Australian system refers directly to when property is compulsorily acquired and not in terms of regulation. There is a whole range of scenarios that you could paint in Australia where governments introduce regulations. A classic example would be the Murray-Darling and what is happening in terms of water with the national water initiative of the federal government, which will impact on a whole range of companies. That is an important thing to happen, but the companies probably will not be compensated if it impacts on their business. They may be compensated if they lose that business—the business is expropriated—but they will not be if it is just in terms of a regulatory impact. So it is potentially a substantial change to Australian law.

Senator TCHEN—I am not sure how you draw that conclusion, because chapter 11 made it quite clear that basically it provides that the law that applies to one country's companies or entities should apply to the other country's entities. I cannot see any grounds for you to believe that, under the FTA, a US company would get preferred treatment to an Australian entity.

Mr W. Smith—I certainly hope I am not correct. This is also the view of the New South Wales government, the Victorian government and the ACT government in their submissions, but we have not seen their legal advice. I understand that they have legal advice. I would be keen to see that issue explored further through this committee.

Senator TCHEN—There is a similar issue on page 5. You refer to the rules governing domestic regulation and the impact on environmental laws. You say:

This chapter will potentially open up Australian environmental laws ...

The quoted section in italics states:

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards—

and so on—

... that such measures are:

(a) based on objective and transparent criteria, such as competence—

and so on. Is there anything wrong with those provisions?

Mr W. Smith—Is this article 10.7(2)?

Senator TCHEN—Yes.

Mr W. Smith—The worrisome bit is where it says:

(b) not more burdensome than necessary to ensure the quality of the service ...

I am not sure that that is defined.

Senator TCHEN—But isn't that a good general principle—that law should not be more burdensome than necessary to ensure the quality of the service?

Mr W. Smith—You would want to have strong environmental regulations and you would want to be achieving environmental objectives, I would have thought, under environmental regulations.

Senator TCHEN—Environmental law should not be draconian, should it?

Mr W. Smith—No, it should not be draconian—absolutely not. But you need a definition of 'not more burdensome than necessary'. It is not contained in here, and I think state and territory governments in their submissions, as I have outlined, will raise concerns and questions about what that means.

Senator TCHEN—I am sorry, you have misunderstood my question. I am saying that, as a matter of principle, law should not be more burdensome than necessary to ensure quality of service. That is a good principle, isn't it? These are statements of principle and how we actually carry them out further down the track has not been defined yet.

Mr W. Smith—We want to make sure that the first principle of environmental law is—

Senator TCHEN—We all want to make sure of it. My question is whether, as a matter of principle, you have any objections.

Mr W. Smith—Our first principle is that they actually achieve environmental outcomes.

Senator TCHEN—Thank you.

Mr CIOBO—You are the latest of a number of witnesses who have made comments along the lines of: 'These rushed negotiations are not what we were after. We would have ideally liked X, Y and Z, if it were not so rushed.' I think you referred to false time frames or something like that; I will check the record—

Mr W. Smith—Artificial.

Mr CIOBO—That is it. I am fascinated by this terminology. Are we not living in a world that has nothing artificial about it at all? We are talking about a negotiated agreement between two governments of two democracies, both subject to all the vagaries of democracies, both of which need to be able to embrace and harness political will, political capital and so on in order to make something like this happen. It is not a controlled environment in which we are undertaking a lab

test. We are talking about a trade agreement between two democracies with all of the things I have just referred to. Why on earth is it an artificial time frame? I am fascinated by your rationale.

Mr W. Smith—I guess there are two things I would pick up on. Firstly, I think there was a limited amount of time from when the FTA was finalised to when it became available and, obviously, from the beginning of this process to the opportunity to provide input. That is the first point. Secondly, obviously parliament has decided that there is a need for proper scrutiny of the FTA and that is entirely appropriate. It has set up two committees: JSCOT, which obviously looks at every treaty, and the Senate inquiry. There are two parliamentary processes going on but, in all likelihood, the Australian government will actually be signing the treaty before those two committees have reported. It seems to me that that is the wrong way around.

Mr CIOBO—My assertion would be that the Senate committee into the FTA is an absolute joke and is done for no other reason than political expediency by the Labor Party. JSCOT is a joint committee and this is the committee that appropriately should deal with treaty investigations. In that vein, there is a time frame for this committee to report on this treaty, as it does on each and every treaty. What is artificial about that? I fully agree that perhaps in an ideal world we would have more time to assess and make decisions on these types of things. However, just because the time frame is shorter than ideally may be the case, what is artificial about that? It seems to me that your language is laden with this notion that in some way this is artificial and not bona fide. I want to explore that issue.

Mr W. Smith—It would seem logical to me that the Australian government would make a decision on whether or not to sign this treaty after this committee has reported and, given that the Senate has also decided that there should be an inquiry into it, after the Senate inquiry has reported. That seems to me to be a logical series of steps.

Mr CIOBO—But I still fail to see the artificiality involved in the process.

Mr W. Smith—I am saying that the treaty should not be signed until this inquiry has reported. I am not sure that I get your point now.

Mr CIOBO—You are making the assumption that it is going to be signed.

Mr W. Smith—That seems to be a public understanding.

CHAIR—I should make a point of clarification here. It is normal that, when we see the treaties, they have been signed. This is a little bit unusual in that we are looking at a treaty before it has been signed. But it does not enter into force under Australian law until any legislation that is required passes the parliament. It probably will be signed in May. I do not think that the committee would be unduly concerned about that, but the committee would be unduly concerned if the legislation were introduced before we had reported; that would be a breach of protocol.

Mr MARTYN EVANS—We would not be 'unduly concerned'; we would be properly concerned.

CHAIR—We would be extremely concerned.

Mr W. Smith—I appreciate that, thank you.

Mr CIOBO—My point is that this is a process that has existed for some time. I want to check you on these so-called artificial notions because, as I said, you are the latest in a series of witnesses that have spoken about false time frames, but I fail to see any substantive support as to what is false about them. That is all.

Mr W. Smith—Okay.

Senator MASON—The ACF opposes the free trade agreement with the United States. Do you oppose trade liberalisation in general?

Mr W. Smith—No, we do not.

Senator MASON—You do not?

Mr W. Smith—No. We think that there can be environmental benefits from trade liberalisation, and there are some demonstrations of that. We would prefer, I think, a multilateral approach rather than a bilateral approach, as others would as well, but we recognise that there are environmental impacts of trade liberalisation, and they are significant impacts.

Senator MASON—So you would generally endorse the WTO process?

Mr W. Smith—That is a large question—in broad terms, sure, but there are major qualifications.

Senator MASON—So the ACF does not join the protests against the WTO that many other environmental groups have engaged in; you do not do that, do you?

Mr W. Smith—Our bottom line would be that that the WTO and multilateral and bilateral trade rules should be consistent with multilateral environmental agreements. Our concern comes in when trade laws try to overrule environmental laws.

Senator MASON—So has the ACF been involved in any of the protests against the WTO process?

Mr W. Smith—Not that I am aware of.

Senator MASON—Because other environmental groups have, as you know.

Mr W. Smith—I have been with ACF for the past couple of years and I am not aware of any—

Senator MASON—I just do not know; that is why I asked the question—

Mr W. Smith—protests that we have had.

Senator MASON—because some have. Some environmental groups are against trade liberalisation as a matter of principle.

Mr W. Smith—No, we are not.

Senator MASON—You are not? Okay, that is fine.

Mr W. Smith—We actually have a formal policy to that effect.

CHAIR—You are against it because of the economic impact, is that right?

Mr W. Smith—No, we are not against trade liberalisation per se and we have a formal position on that.

CHAIR—I understand.

Senator MASON—It is funny you say that, Chair, because my next question ties in with that. Mr Smith, you said in your opening remarks—and I think also in response to a question from Senator Tchen—that increased GDP is almost invariably followed by harm to the environment and an increase in greenhouse gases.

Senator TCHEN—I think what Mr Smith probably should have said was 'all things being equal; other things being unchanged'.

Senator MASON—If you use that logic—and free trade does tend to increase GDP—you would be opposed then to trade liberalisation as a matter of principle?

Mr W. Smith—No, we would not be automatically opposed to it. We recognise that there are environmental impacts; we want to make sure that—

Senator MASON—How is that statement consistent with support for trade liberalisation? If you argue that an increase in GDP is almost invariably followed by harm to the environment and an increase in greenhouse gases—that is what you said—how is that consistent with general support for trade liberalisation?

Mr W. Smith—This is a large discussion. We are obviously not opposed to economic growth. We want to see a healthy, productive economy. We do not think that the way the Australian economy operates at the moment is sustainable in any way, really—for example, in terms of greenhouse gas emissions, waste production and the way that we use water. So, if we continue down that track then essentially it follows that there will be an increase in environmental problems. If we can move the economy onto a more environmentally sustainable footing—that is certainly what we would encourage and it is well supported by a lot of people—then there are ways to deliver economic growth that can also deliver sustainability and environmental protection.

Senator MASON—Fair enough. This is another big question, I suppose, so we will not pinch the discussion for the next 10 minutes. But I am not so sure that that statement you made is right. In a post-industrial society with an increased concentration of service industries and so forth and

with better technology, I am not actually sure that increased GDP does mean greater threats to the environment. I will just say that. I am not sure that assumption of yours is right. We can leave it there. You can answer that, of course.

Mr W. Smith—I have a quick response. I was quoting there from the CSIRO. But the important thing is that there is a counterargument to what I have just said, which is that developed countries and economic growth can still lead to better environmental protection. That is probably similar to what you are saying. There are strong reasons for believing that. The counterargument I would make is two-fold. I will refer to two recent reports that have come out particularly focusing on Australia.

Firstly, there is the new book out by Ross Gittins, the economics editor of the *Sydney Morning Herald*, in which he compares Australia to a range of other developed countries. He makes it clear in that book that Australia does have the highest per capita greenhouse gas emissions. We have the highest waste per capita and the highest use of water per capita. The Australian economy, despite the fact that it is an incredibly developed country and a very wealthy country, is incredibly inefficient in the way that it uses waste and water and in the greenhouse pollution that it creates. That is the first one.

The second one is an Australian Bureau of Statistics report that they put out maybe two weeks ago on measures of Australia's progress, a very good report that looked at a whole range of indicators of progress in terms of health, social indicators and so forth. It includes environmental indicators. We are generally doing really well in relation to health, social issues and a range of other things. In terms of the environment, we are actually not doing well. We are actually going backwards on a whole range of indicators. Greenhouse pollution is a classic example but biodiversity loss is also there. The number of plants and animals that we are losing has increased by about 40 per cent over the last decade.

Senator MASON—I can accept both those arguments. But that does not mean increased GDP almost invariably is followed by harm to the environment. I am not sure that argument is sustainable. The worst polluters in the world are the former Soviet Union and the People's Republic of China and elsewhere. They are not the First World.

Mr W. Smith—In terms of per capita, Australia has the highest rates of greenhouse pollution in the developed world.

Senator MASON—Sure, but there are specific reasons for that. Australia may have that. But that does not mean an increased GDP is almost invariably followed by harm to the environment. That is a different issue. When you are making submissions, that is a grand philosophical statement to make but it is not right.

Senator TCHEN—Also, Australia's record in terms of greenhouse gas generation per GDP dollar is not the highest in the world—per capita, maybe, but not per GDP dollar.

CHAIR—Mr Smith, thank you very much for you attendance before the committee today.

[2.42 p.m.]

BALLENDEN, Ms Nicola, Senior Health Policy Officer, Australian Consumers Association

CHAIR—Welcome. Would you like to make an opening statement before we proceed to questions?

Ms Ballenden—Yes, and I can talk you through the submission in recognition of the fact that none of you would have had a chance to read it.

CHAIR—I suggest that, although we have only just seen the submission, you just talk about the points you have raised in the submission and then we will go to questions.

Ms Ballenden—All right. Our submission addresses two things. One is the parts of the free trade agreement that relate to pharmaceuticals and the Pharmaceuticals Benefits Scheme. The other relates more generally to intellectual property and copyright. Given that my specialisation is health, I cannot really talk about the copyright issues, so I will have to take those questions on notice.

CHAIR—Okay.

Ms Ballenden—I will talk about what we think the impact of the free trade agreement might be on the Pharmaceuticals Benefits Scheme. Basically, we do not see any clear benefits in the pharmaceutical area for consumers. The vague language used in the agreement and the state of commitment to commercial rather than public health considerations raises the possibility that the implementation of the free trade agreement may seriously undermine the PBS and in fact increase the cost of essential medications. While vague terminology would make it technically possible to implement the agreement in such a way as to have minimal impact on the PBS, such implementation would have to ignore the agreed principles that have been enunciated in the agreement. We therefore recommend that issues relating to pharmaceuticals be removed from the free trade agreement.

I will go through the points in order. In the first, if you look at the agreed principles which are in annexure 2-C, the emphasis is very much on the important role played by innovative pharmaceutical products and the importance of research and development in the pharmaceutical industry and of appropriate government support through intellectual property protection. The stress is on rewarding innovation and rewarding research and development. There is a fundamental mismatch between the wording of the agreed principles of the free trade agreement and the guiding philosophy of the Pharmaceutical Benefits Scheme. The PBS is clearly not about compensating drug manufacturers for what they might have spent on R&D; it is about providing drugs at an affordable and accessible price to the Australian population. So there is a fundamental conflict there.

The way that the PBAC, the Pharmaceutical Benefits Advisory Committee, makes its decisions clearly ignores research and development costs. It ignores the costs of innovation and considers only the health benefit of a particular drug. It must do this to negotiate the best and

most cost-effective price for pharmaceuticals both for taxpayers and for consumers. That is what the PBAC does. If you put more emphasis on recognising R&D and rewarding innovation in the context of the PBS, you will push up prices for taxpayers and possibly for consumers as well, depending on how those costs are spread around. It is not only the agreed principles but also the stated goals of some of the US negotiators in terms of what they are trying to achieve in this free trade agreement. For example, at the hearing of the US Senate Finance Committee on 9 March, Bob Zoellick said:

> ... how do we emphasize the principles we can all agree on to move forward? High quality health care. Making sure that, if they're going to set prices in some ways it's a transparent system; people know the basis of the rules. To make sure that those rules, as we do in the Australia agreement, include recognition of the role of innovation and the role of R&D, have review processes for those rules.

We have taken that to mean that either the PBAC must change the criteria on which it is making its decisions or this new proposed review body would have different criteria for evaluating the PBAC decisions.

The other possibility is that all this stuff is dealt with within the industry portfolio. If that were to happen, we would not have so much of a concern. If it were to happen within the context of the PBS and the PBAC, then we clearly would have a concern. As I said, we think that this change could lead to increased costs and higher prices paid by the government for those drugs, resulting in higher prices for taxpayers which may also mean higher prices for consumers.

CHAIR—I think you have raised a very important point. You said that the ACA would not be so concerned if the agreed principles—if they are reflected in any way—were done through the industry portfolio, which is how it is done now. There are incentive schemes for pharmaceutical R&D. I do not see any reason why that would change. As it is written in annexe 2-C of the draft text, do you see anything wrong with the transparency rules or the medicines working group? The problem I have with your submission is that you are saying all these bad things could happen, but if we are actually just looking at the text—

Ms Ballenden—That is why I made the opening statement. The text is vague, but the principles are not. They are quite clear in the philosophy that they are enunciating. Most of the text is fairly vague. I will deal with your questions in turn. My understanding of the transparency clause is that sections (a) to (e) already happen and that changes will not be required there. If you are talking about (f), which deals with an independent review process, we do not see a benefit for consumers in introducing that; we see a possible threat to the PBAC. It will put pressure on them, and companies will always be appealing to this review body where they have a dispute with the PBAC. Also, we do not know the criteria for that review body's decision making. How will they make that decision? In terms of natural justice it would seem to make sense only if they base it on the same decision-making criteria that the PBAC has. We are concerned by comments that Zoellick and Senator John Kyl have made clearly linking research and development with pricing. If they had not linked it in that way, we would not have so much of a concern. If they said, 'We're going to seek extra support from the industry portfolio,' they are quite within their rights to do that as an industry, but they are not talking about that; they are talking about the way we price drugs, which can only be taken to mean the PBS. So that is about transparency.

CHAIR—What about the medicines working group?

Ms Ballenden—We do not know what it is doing. There are some within the US government who think that if they can force other countries to pay more for their drugs then drug prices in the US will fall. Where they get that argument or the evidence for that argument is questionable, but they clearly have this agenda. It does not seem to be in Australia's interest to set up this working group if it is to discuss the PBS. It is not in our interest to make changes to the PBS. It is not in consumers' interests; it is not in taxpayers' interests.

CHAIR—Given what we have got here, if the agreement with the United States is ratified, is there anything you would like to see included in the independent review process, with the PBS?

Ms Ballenden—As a minimum we would want them to base their decisions on the same criteria that the PBAC has. We think that membership of that committee or review body should not be open to just industry people. It should reflect a broad range of expertise, consumer interests and stakeholders, as does the PBAC.

Mr CIOBO—Ms Ballenden, I am interested in a number of comments you have made. Does the ACA not see any correlation between access to innovative new drugs and the pricing of those drugs in relation to R&D investment costs?

Ms Ballenden—I am not sure I understand your question.

Mr CIOBO—Let me rephrase it. Do you believe that the provision of drugs to the marketplace is principally a commercial investment by pharmaceutical companies?

Ms Ballenden—Yes.

Mr CIOBO—And that would be based upon recouping R&D costs and the like?

Ms Ballenden—Yes.

Mr CIOBO—So what is the fundamental problem that you have with enunciating a relationship between the pricing of pharmaceuticals and linking it to R&D investment costs?

Ms Ballenden—That is not how the Pharmaceutical Benefits Scheme works.

Mr CIOBO—No, but that is a separate issue. I am just asking about what the problem is with regard to an enunciation like that

Ms Ballenden—It will push the prices up.

Mr CIOBO—But if you are saying that it is pushing the prices up then implicit in that statement is the comment that pricing at the moment does not ensure that you seek an adequate recovery of your investment costs.

Ms Ballenden—It does not.

Mr CIOBO—So does that not make it unsustainable?

Ms Ballenden—Not from our perspective, no. It is not my job to say what is reasonable for industry to argue for. I am not an industry advocate. That is their job. It is reasonable that they seek to have R&D costs recognised. I am saying that if they attempt to get those costs recognised within the context of the PBS then the price of our drugs will go up.

Mr CIOBO—Hang on. You have just made a link there that I am separating for the moment. I am talking about the pricing of pharmaceuticals in the marketplace and you are saying to me that it is not your problem if drugs are underpriced and do not recoup R&D investment costs. I am challenging that because, in my view, it is in consumers' interests that a marketplace be sustainable and that the costing of drugs in fact cover the investment costs associated with producing those drugs. If that is not the case, the consequence will be that Australians will not have access to innovative new lifesaving drugs and innovative new drugs that deal with other ailments.

Ms Ballenden—It is always the choice of the pharmaceutical company to make that drug available or not, and they will do that in negotiation with the PBAC.

Mr CIOBO—They will do it on a commercial basis, though, won't they?

Ms Ballenden—If they make a decision that it is not cost effective to sell that drug in Australia at the price that the PBAC offers, then they will not offer it.

Mr CIOBO—You are not concerned about that?

Ms Ballenden—Obviously there would be cases where that may disadvantage consumers, but the question really is: if you balance the desire to keep prices low and the reward for innovation, does any potential delay in getting access to those drugs really justify a massive increase in prices across the board—which is what would happen if you went down the path of considering R&D and innovation in pricing decisions?

Mr CIOBO—With due respect, I do not think you can say that. I think you have gone right out on a limb with a very broad assumption about the pricing of pharmaceuticals. If I correctly understand what you just said to me, you would rather Australians forgo opportunities to new innovative drugs if it meant that overall we could keep the costs of drugs down. Is that correct?

Ms Ballenden—I am not aware that, to date, there has been a case of any pharmaceutical manufacturer refusing to make a drug available at the price that the PBAC has been willing to pay. I am not aware that that has happened so far, and I guess I am prepared to wear the risk that it will possibly happen down the line, given the benefits that are in that system.

Mr CIOBO—Okay. So, in summary, the ACA's position is that you would happily forgo access for Australians to innovative drugs if it meant that overall we have cheaper drugs available in Australia for those that are currently listed.

Ms Ballenden—No—

Mr CIOBO—You said that to me.

Ms Ballenden—I am saying that I think our current system affords timely and affordable access to innovative drugs already.

Mr CIOBO—But unsustainable access, possibly.

Ms Ballenden—'Unsustainable' is a value judgment that you would make—not that I would necessarily approve.

Mr CIOBO—All I am doing is putting pricing back to first principles: in order to bring a product to market you have got to recover costs. I do not think there is anything particularly complicated about that aspect.

Ms Ballenden—And of course it is always up to those companies to decide the price at which it is profitable to provide that drug to the Australian market.

Mr CIOBO—I will move on to a separate point. You said that you did not want to see any changes to the PBS at all. Is the PBS perfect at present?

Ms Ballenden—No. There are delays in getting drugs to market sometimes. We do not know much about the decision-making process. It is not particularly transparent. It is not perfect.

Mr CIOBO—So why are you opposed to changes to it?

Ms Ballenden—I am opposed to these changes to it.

CHAIR—I think that is a very important point, because you have said there are delays and we do not know why decisions are made. Surely requirements that they are considered within a certain time frame and requirements that there is some transparency are good things. They are addressing—

Ms Ballenden—They already exist. We are happy with what already exists. You have to see these things in the context of the broader principles that have been enunciated, and those principles are about commercial concerns; they are not about public interest concerns.

Mr CIOBO—I am sorry, but you cannot separate the two issues like that. How can you possibly say to this committee that your concerns are about public interest—

Ms Ballenden—I meant public health concerns.

Mr CIOBO—Public health or interest or however you want to phrase it, the fact is that that might be (a) unsustainable, (b) have no correlation between the cost of delivering innovative new products to market, and (c) may be an active disincentive to the development of new and innovative drugs into the future, and you say we do not care.

Ms Ballenden—No, I am just not sure that what you are saying has been proven to be accurate. I do not know the evidence for what you are saying.

Mr CIOBO—That is what the industry is telling us, and you are saying that they are wrong—

Ms Ballenden—Yes.

Mr CIOBO—So therefore isn't the onus of proof upon you to demonstrate that maintaining status quo is in fact going to result in a sustainable, innovative industry into the future?

Ms Ballenden—No. I do not need to argue for industry in Australia. I do not need to argue for industry. Industry can argue for themselves. If we look at the issues of sustainability and costs, I do not know how you can make an argument about sustainability. Consideration of research and development costs will push up the price that is paid for drugs on the PBS. You do not think it will?

Mr CIOBO—No, I think it may in some instances but it may not in others. To me, this is about—for lack of a better term—an element of national competition policy which recognises the need for full cost pricing. It seems to me that transparency is fundamental—in the same way that you have full cost pricing under national competition policy—to working out what is a sustainable platform to go forward and then determining what level of government subsidy needs to be put in place to ensure that you can still meet the primary objectives of the PBS. With due respect, the ACA seems to be arguing a very roundabout way. You can still achieve the same principles that the PBS seeks to achieve with the inclusion of transparency and full cost pricing—but that is a side issue. Can you tell me what has been the increase in costs of the PBS over the past decade? Is the ACA aware of the way in which the PBS has grown?

Ms Ballenden—Yes, we are. And we are also aware of the fact that even within the way that the PBAC makes decisions at the moment, which is just based on cost effectiveness, new drugs that are genuinely innovative, that are offering genuine health benefits, tend to be priced higher than the so-called 'me too' drugs, which are copies of earlier ones. So, if a drug is offering a genuine health benefit, there is a recognition of that, if you like. And that has to be the basis of the way that the PBAC makes decisions—not 'How much money might that company have wasted in R&D?' but 'How much benefit is it offering Australian patients, Australian consumers? What is the health benefit of the drug?' That must always be their first priority, not what industry might have spent in R&D—which might be reasonable or might not. It might be something taxpayers want to subsidise or it might not. The consideration of R&D and innovation in PBAC decision making would corrupt the process, in our view.

Mr WILKIE—Thanks very much. I really appreciated the submission there from Mr Ciobo, because I think he just shot down the government's argument that the free trade agreement will not have any impact on the PBS and the possible increase in the cost of medicines.

CHAIR—Why don't you ask your question, Mr Wilkie?

Mr WILKIE—That was from his own mouth. I am hoping that what Mr Ciobo is saying does not come to pass, because obviously you would see increases in the cost of medicines, based on what he has been putting forward. This is what I am asking the Consumers Association. There are two issues that you have raised in your submission. If these issues cannot be dealt with, does the Consumers Association believe that we should or should not ratify the free trade agreement?

The committee can make some recommendations, but at the end of the day, notwithstanding what has been put forward here, we will really have to say whether we should go with it or not.

Ms Ballenden—Our recommendation has been to take pharmaceuticals out. If that means that Australia does not ratify, then I guess we would be prepared to commit to that, yes.

Mr WILKIE—To say 'Not ratify,' or 'Not proceed'?

Ms Ballenden—Yes. Not ratify.

Mr WILKIE—Okay.

Senator MASON—So, just to clarify—sorry, I did not mean to interrupt.

Mr WILKIE—The question is: if we do not take these out of the agreement, does the Consumers Association believe that we should or should not go down the path of the free trade agreement?

Ms Ballenden—I believe it should be removed.

CHAIR—Okay.

Mr WILKIE—That was the point, though—we cannot remove it.

Senator MASON—It is all or nothing.

Mr WILKIE—So, should we or shouldn't we go ahead with the free trade agreement if we cannot?

CHAIR—If we remove it—just so you are clear—we either have to renegotiate or not ratify.

Mr WILKIE—Yes.

CHAIR—Or just let it go.

Mr WILKIE—That is the question I am asking of the witness.

Senator MASON—I want to hear the answer to your question.

Ms Ballenden—I suspect it is something that I need to go back and talk about with my boss.

CHAIR—I would be happy for you to take that on notice.

Ms Ballenden—Yes. I am on safer ground taking that on notice.

Mr WILKIE—Because that is not clear in the submission.

CHAIR—Could the Australian Consumers Association give us the position of the Australian Consumers Association.

Mr WILKIE—That is my question.

CHAIR—Are there any further questions?

Ms Ballenden—A whole part of the submission relates to generic drugs, and I would quite like to cover that as well.

CHAIR—If it is in the submission, we can take it as read. We have that; it is part of the evidence the committee has received. Thank you for your attendance before the committee today.

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

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 3.06 p.m.