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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia-United States Free Trade Agreement

FRIDAY, 23 APRIL 2004

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JOINT COMMITTEE ON TREATIES

Friday, 23 April 2004

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

Senators and members in attendance: Senators Kirk and Tchen and Mr Evans, Mr Southcott and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

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

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

  (i) either House of Parliament; or

  (ii) a Minister

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

WITNESSES

Committee met at 9.13 a.m.

JUDGE, Mrs Petrice Anne, Executive Director, Office of Federal Affairs, Department of the Premier and Cabinet, Western Australia

HALL, Ms Karen Joy, Acting Director, State Development Strategies, Department of Industry and Resources

STEINGIESSER, Mr Henry, Executive Director, Trade and Development, Department of Agriculture

REID, Mr Sean Edward, Principal Labour Relations Adviser, Department of Consumer and Employment Protection, Labour Relations Division

GRIFFITHS, Mr Ellis John, Director, Planning and Policy, Department of Culture and the Arts

PATTERSON, Mr Murray, Chief Pharmacist, Department of Health

SARGEANT, Mr Barry, Director General, Department of Racing, Gaming and Liquor

YOUNG, Ms Ruth, Principal Policy Officer, Department of the Premier and Cabinet

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

To date over 150 submissions have been received. While the committee asked that submissions be supplied before last Wednesday 13 April so that members have an opportunity to receive comments prior to commencing the public hearing schedule, many extensions have been requested and the committee expects that more submissions will be received in the coming days and weeks. Submissions have been authorised at public hearings this week as they have been received by the secretariat in Canberra. These submissions are being loaded onto the committee's web page as the inquiry progresses.

The committee has heard evidence this week in Sydney, Melbourne, Hobart, Adelaide and now Perth. In the week beginning 3 May the committee will travel to Cairns and Brisbane and will return to Sydney on 6 May and hold a further hearing in Canberra on 14 May. More hearings may be announced as the inquiry progresses and more submissions are received. The committee plans to table its report on 23 June.

I welcome representatives from the Department of the Premier and Cabinet in the Western Australian government. On behalf of the committee, I thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available.

Mrs Judge—Our representation is on behalf of the government of Western Australia, not just the Department of the Premier and Cabinet.

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

Mrs Judge—The government of Western Australia appreciates this further opportunity to contribute to your inquiry into the proposed Australia-United States free trade agreement. The state welcomes the role of the Joint Standing Committee on Treaties in increasing transparency in Australia's treaty making process and allowing the views of the states and territories to be taken into account. You have received the state's submission. I will limit my introduction to some general comments about the treaty and the treaty consultation process. My colleagues are available to take questions on more specific areas.

Overall I would say that Western Australia is disappointed with the outcomes of the AUSFTA. The agreement is a compromise and represents lost opportunities to significantly expand our trade with the US. The WA cabinet provided in-principle support for the development of the AUSFTA, believing that free trade offers substantial benefits for nations and on the basis of potential gains identified in analysis by the Commonwealth and the Department of Foreign Affairs and Trade. However, our preliminary consideration of the agreement suggests that the beneficial outcomes for Western Australia are likely to be relatively modest.

Overall, we welcome the move towards liberalisation in the agreement. There appear to be some gains for Western Australia, for example, the potential for increased lamb and wine exports and cheaper manufactured goods. However, moves towards liberalisation in some areas have been disappointingly small. We have missed the chance to expand Western Australia's exports in such industries as shipbuilding. The Western Australian submission expands upon these concerns and other major implications for Western Australia of the actual content of the proposed treaty. In addition, Western Australia has suggested some areas worthy of greater examination by the committee, for example, rules of origin and intellectual property. However, in particular today I would like to place emphasis on the treaty making process itself.

Western Australian officials appreciate receiving briefings before and after the majority of the rounds of negotiations and the provision of a number of papers on various aspects of some chapters. However, given the wide ranging consequences of free trade agreements across areas of state responsibility, we strongly recommend that in future negotiations it be made clear to the other party at the outset that Australia will have at least one representative of the states and territories on the Australian negotiating team. This would avoid the problem we experienced last year where the states and territories representative was told at the last moment that he could not attend the negotiations. It was disappointing and unsatisfactory, as all states had put a lot of work

into preparing briefings on their key issues. States and territories representation is in keeping with the COAG 96 principles and procedures for Commonwealth-state consultation on treaties that aim to increase transparency and cooperation in the treaty making process.

Mr WILKIE—Just on that point, can you explain why they said you could not participate in the final round?

Mrs Judge—The US said that the representative could not attend.

Mr WILKIE—So it was the United States?

Mrs Judge—Yes. Moreover, although we understand the difficulties experienced by DFAT in conducting the negotiations, there were as a consequence extremely pressured deadlines also imposed on state officials and ministers. Realistic time periods are necessary to enable all governments to undertake analysis, consider the impact on stakeholders and on existing legislation, identify problem areas and prepare submissions and reservation lists. That concludes my preliminary comments. We welcome comments or questions from the committee.

CHAIR—Thank you very much for your submission. Has the Western Australian government formed a view on whether the Australian parliament should pass legislation so that the Australia-US free trade agreement enters into force?

Mrs Judge—The government has not formally done that but it is indicating support for the overall agreement, although the gains are modest.

CHAIR—When the agreement was concluded, what did Premier Gallop say?

Mrs Judge—I cannot remember. Ruth?

Ms Young—The Premier just made a short statement saying he was disappointed about the outcomes for Western Australia.

CHAIR—No more than that?

Ms Young—No more than that.

CHAIR—Regarding the involvement of the states in the negotiations, have there been any other treaties where Western Australia has been so involved in the negotiations?

Mrs Judge—I am a bit unclear about 'so involved in the negotiations'. There are other examples of treaties where Western Australia has represented all states and territories in the negotiations. I am thinking particularly of the Kyoto Protocol, the greenhouse negotiations. But this has been a very wide ranging treaty and I would say that there has been more engagement by the Commonwealth of the states generally over the content of the proposed treaty.

CHAIR—In the area of minerals and resources, do you see any benefits in the Australia-US free trade agreement?

Ms Hall—I believe there are some tariffs. It is difficult to be very clear about those because when you look at the tariff list it is very detailed. You have got to know whether it is rolled metal, sheet metal or whatever it is that you are actually exporting to work out what the tariff impact is. So we have not at this stage been able to ascertain the precise nature of that. Generally, the tariffs were low on mineral exports. There were tariffs in a few areas and I think a couple of those were up towards the five per cent. With those falling away, that does look to be a competitive advantage and will perhaps put us on an equal footing with where the US may be getting other imports from.

The other possibility there too is in the reduction of tariffs on imports from the US on some of the very heavy equipment that is used in the mining sector. But knowing how that works, you really need to look at some of the other Commonwealth schemes as to whether there is a benefit from that. I am thinking of the EPBS, the Enhanced Project By-law Scheme

Mr WILKIE—Do you think it is fair to say, based on what we actually achieved as opposed to what was touted as what we could have at the start, that what we ended up with was more a trade agreement rather than a free trade agreement?

Ms Hall—That is a political question perhaps and I do not feel comfortable answering that. I know people have made some comments in relation to that. I guess it depends on what people's perceptions are of a free trade agreement, and I could not speak on the government's behalf specifically in relation to that.

Mr WILKIE—Obviously, from your submission, you are disappointed in the outcome. Did you believe at the outset that the state would be getting a lot more benefits from the agreement than they actually achieved?

Ms Hall—There were certainly areas in which we sought it, including some of the big agricultural areas. Beef is clearly an Australian issue, and Henry is better equipped to speak on that. Wine is another area where I think we would have hoped for a bit more, and earlier than it is going to happen. There is the technical standards issue in relation to labelling and so on. Again, Henry might want to make further comment on that. Those issues do not really seem to have been addressed. I know that they are complex and that they do take time. One of our concerns is the extent to which the states can remain involved in that type of discussion; I understand that a range of working parties have been set up from that. Shipbuilding was another area. We had hoped for some inroads on the Jones Act. We understood that it was a difficult area, but it would have been nice to have seen more on offer from the US in that regard.

CHAIR—In the free trade agreement all metals and minerals will immediately be duty free. I think you were saying that there are so many different tariff lines in this area—that it can be more than five per cent or less than five per cent or whatever.

Ms Hall—I understand that a lot of them were very low, if not duty free, already. It is only in a number of lines that they exist. The precise nature of which ones will impact WA is not something we have been able to ascertain at this stage.

Mr WILKIE—The fluctuating dollar would probably have a greater effect than the tariffs.

Ms Hall—It may well do, but that would be an industry question.

Mr MARTYN EVANS—Since we were just discussing wine, I would like to clarify the wine aspects. In your submission, you say:

> … the technical and labelling issues relating to the blending and vintage of Australian wine, as well as distribution issues, were not adequately addressed and remain significant barriers to wine exports.

Western Australia is a significant wine producing state, as is my own state of South Australia. A number of members of the committee are South Australian, so it is a major issue for us. Australia has taken up wine exports to America in a large way. The US is potentially a significant importer of wine. Many Americans have yet to experience the pleasure of becoming major consumers of wine in a proper balanced way, as we know one can properly do. Large numbers of Americans do not participate in this pleasure of life, and it is something we should be encouraging them to do in large quantities—but, of course, that should be Australian wine, not Californian wine. What are the non-tariff barriers you are thinking about at point 2.4 which are causing the problems here?

Mr WILKIE—I should probably expand on that. Yesterday in Adelaide we received a submission from the wine industry. Obviously they admitted that tariffs would be reduced over an 11-year period, but they were talking about geographic region indicators and problems with labelling and blending, and they mentioned that that would be a real problem for Western Australia. So it would be good if you could expand on that. Martyn, that is really what you are talking about, isn't it?

Mr MARTYN EVANS—Yes, at point 2.4.

Mr Steingiesser—There are two major differentiations in the regulations with regard to vintages and blending. The US regulation for vintage requires that 95 per cent of the content of a particular product be from a particular vintage. Like the Europeans, Australia requires only 85 per cent. That 10 per cent differentiation is an impediment that is not a tariff impediment in our general trade. With the rest of the world we can trade our wines as 2002, 2001 vintage et cetera when their content of a particular vintage is only 85 per cent. With the US we are going to have to change most of the processes we have within the industry in order to comply with the 95 per cent regulation. This is something that should have been addressed in a so-called free trade agreement.

The second element is blending. The US has a limitation on blending—up to two different varieties are allowed. Internationally and in Australia up to five varieties are allowed. Again, this will require our producers to have a stricter system of confirming that they are capable of producing at the blending specification that America requires.

The labelling issue relates to the definition of 'regional'. If you are doing blending, 'regional' will not clearly identify all of the regions that are participants in the final product. We are going to have to depend on only one region. That is a further impediment. Another issue is whether the use of the term 'cabernet' is an acceptable synonym for cabernet sauvignon in the US and whether the use of the term 'table wine' as the class and type designation on the label of wine entering the US can be supplemented with varietal information without the caveat of supplying

relative proportions. That was also part of our submission. These are the major problems in wine production.

Regarding distribution, the purchase of wine through direct channels like email, mail order or the Internet is controlled in the US at a state level. In 26 US states it is not legal to send wine from outside the state directly to a consumer within that state. Several of these states will allow orders to be placed directly with a producer or exporter, but only if the wines are not otherwise available through conventional channels and the orders are processed by an existing wholesaler and retailer. The costs associated with such distribution arrangements can be prohibitive if you have to involve a distributor in the state. In 13 states, however, such sales are permissible on a reciprocal basis. Australia does not benefit from such reciprocal arrangements with those 13 states. This could have been negotiated in the trade agreement that we have. I do not know if that amplifies the issues enough.

Mr MARTYN EVANS—Yes, it is quite clear what the problems are there. Some areas seem to be very difficult, blending and the number of varieties that are included on the label and so on. Is it going to be a case of Western Australian and other Australian producers adapting their production methods for export wine? Is that a feasible proposition for those states? Many Australian producers already export to the US market. Is it the case that those who want to do that will simply modify their production techniques, as many already have, to meet those requirements? Is that such a prohibitive barrier given that many already do this?

Mr Steingiesser—It is an additional cost and it does not allow you to have the versatility of having one line of production for exports where you can reorientate the goods to Europe, Japan or the US. You are going to have to have a dedicated line of production for the US. The majority of the small and medium sized producers, which compose the bulk of the producers of wine in the state, like any other sector in agriculture will have the 20 per cent/80 per cent role—20 per cent control 80 per cent of the production. It is very similar in South Australia—it is more evident than it is here. If you want to encourage small and medium sized winemakers to experiment with export opportunities, this will make it much harder for them than for the larger companies. Of course, it is feasible—it is a matter of costing and competitiveness.

Mr MARTYN EVANS—What would happen if many people went to the total 95 per cent requirement rather than the 85 per cent? Given that it is a more stringent requirement, what is the implication?

Mr Steingiesser—It is a cost implication. Either you are competitive in the more specialised segments of the market or you are not.

Senator TCHEN—Mrs Judge, the Australia-US free trade agreement is not a stopped process. In fact, it provides for continuation of review and further discussion not only in some of the specific areas like sanitary measures and some of the other detailed technical matters but also in article 21.1 to provide for specific establishment of a joint committee for reviewing the progress. Given that it is not a process that has stopped, do you think that there is further opportunity for Western Australia in particular to gain in future negotiations on some of the issues that you said were disappointing from Western Australia's point of view?

Mrs Judge—I am not too clear about that because we are still assessing the overall implications of the proposed treaty. There do seem to be inconsistencies between some sections of it, so it will have to bed down a bit before we can be sure of what we are committed to by the Commonwealth government. Obviously, there are those review processes which I am sure will tackle some of those issues but, overall, some of the areas have been declared 'no go' in the negotiations, and throughout the negotiations we thought there would be greater gains than were subsequently achieved.

Senator TCHEN—Given that it is an equal negotiation that involves give and take, and that there are areas that the Western Australian government has indicated that it is disappointed that Australia did not gain concessions, can you tell the committee were there any particular concessions that the United States were fairly insistent on and which they did not get? Are there points that the United States demanded which the Western Australia government believe that Australia could have given up? There may not be any, but can you suggest some that we might give up as a trade-off to get some of the things that Western Australia wanted?

Mrs Judge—Not off the top of my head.

Ms Hall—I would like to add something to Petrice's previous answer in relation to the ongoing nature of free trade agreements and the fact that they do come up for reviews from time to time. I am not involved with other treaty processes—I have only been involved with the Singapore one to some extent and now this one. It is not particularly clear to me how those review processes will work and how the states will be able to input into those processes. There is a review coming up on the Singapore treaty in July, and we are just starting to talk with the Commonwealth about it now. It is not at the same level as the US one, but it is difficult to know whether you can get things on the agenda. Those processes are a bit less clear than when you are going through the negotiations. So your hopes are higher at the time of the initial negotiations than further down the track.

Senator TCHEN—Hopes and expectations should be high at the beginning. In terms of state participation, there are two issues. Firstly, you are understandably disappointed due to America's request that state and territories not be represented. But that is understandable because the United States is a federation as well and presumably their state and territory interests would have to be represented by people from those governments. If they cannot have their own people there, they would be reluctant to have Australian states and territory interests represented.

Mrs Judge—I can understand that argument, and that is the one that was run by the US, but it is our contention that it should be up to a sovereign nation to decide who represents it in the negotiations and it should be made clear at the outset, from the Australian point of view, that there is always a position reserved for state and territory representation. I want to clarify that, in the subsequent negotiations, the US did agree to the states and territories representative attending, but we felt that it had not been made sufficiently clear at the start of the negotiations so that we could have avoided this embarrassing situation. It is more than embarrassing because we had put a lot of work into preparing information for our representative, who was not allowed to go just at the very last minute.

Senator TCHEN—Of course, but are you not prepared to give the Australian Commonwealth government credit for actually achieving this concession from the United States subsequently?

Mrs Judge—I think it was laudable, but I do believe that for future negotiations they ought to establish the guidelines at the start of the negotiations.

Senator TCHEN—I am sure they will take that on board.

CHAIR—Just on that, there were six meetings as I understand it. Which of the meetings was the state and territory representative not at?

Mrs Judge—We did not start with state and territory representation at the initial meetings. I will just check with Ruth.

Ms Young—It was the third one.

Mrs Judge—It was the third one—and it was the Friday when everyone was leaving that our representative was not able to join them.

Senator TCHEN—I am from Victoria and I am not sure whether you know but, on the eastern seaboard, Victoria and New South Wales are—how should I put it now?—very vocal about their donor status within the Commonwealth compared with other states. You indicated that Western Australia would be satisfied if there was just one state or territory representative involved in these negotiations. Supposing New South Wales and/or Victoria, because of their donor status, insist that they should be the ones who represent all states or territories. Would Western Australia be happy with that?

Mrs Judge—I would say that Western Australia also regards itself as a donor state, but this is something that has been agreed through the COAG process—that we are trying to increase the involvement of the states and territories in all negotiations. Agreement has been reached by our heads of government that we will try and make this representation work where one state or territory is chosen to take on board every state's issues. If you just look at this particular round of negotiations, it is in fact the Victorian representative who did go to the meetings. There were significant differences, particularly, say, with the Queensland point of view over sugar, but the Victorian representative was able to present the range of views. We were quite happy with the representation that was done for us by the Victorian representative.

Senator TCHEN—Thank you. I note that.

CHAIR—I would just like you to clarify this. In annex 1 of the national interest analysis, we have been advised that there was one state and territory representative attending the third round of negotiations, three attending the fourth, two attending the fifth and one attending the sixth and final round. Is that your understanding as well?

Mrs Judge—Off the top of my head I cannot confirm those actual figures, but it sounds correct.

CHAIR—Is the issue that no provision had been made beforehand for the Western Australian state representative to attend the third round?

Mrs Judge—No. The states and territories representative, who happened to be the Victorian, was not able to go and represent Western Australia and the other states and territories. We did have—

CHAIR—What I have in front of me is that one state and territory representative attended the third round of negotiations. Are you telling me that is wrong?

Ms Hall—No. I believe there were two people intending to represent the states and territories at that one, but only one person went forward and the other one was denied the opportunity.

Mrs Judge—If I can just clarify that, there was a representative in the government procurement negotiations, and he was a representative of the procurement ministers, because we are looking at state and territory government procurement markets. The Australian delegation made sure that they took a states and territories representative with them to those associations, but that representative was not involved in the other negotiations.

CHAIR—Thank you.

Senator TCHEN—One of the issues you raised was that the Commonwealth in these negotiations did not give the states sufficient time to study the implications of these proposals. Before the Commonwealth had approached Western Australia advising you that a formal process of treaty negotiations had commenced, had Western Australia undertaken any studies on the implications of a free trade agreement with the United States? I have not tracked this issue through, but I would have thought that a free trade agreement had been on the Australian government's agenda and, hopefully, on the US government's agenda well before the current round. I remember then Prime Minister Hawke talking about it, and I certainly remember former trade minister Cook talking about it.

Mrs Judge—We did provide information as a government across a range of agencies about the areas that we would like to see improved in relation to trade with the US. Karen can give some more information about the processes that were used to provide information to the negotiators.

Ms Hall—Can I just clarify whether you are asking for what we did prior to negotiations commencing?

Senator TCHEN—Yes. I am wondering whether your study of the situation only commenced as a result of the Commonwealth's approach or whether you had done studies before that in advance of any negotiations.

Ms Hall—I have only been with the department I am with since about February of the year before they started, and I was working in that particular role. To my knowledge through our agency, we would have explored market opportunities there but perhaps on a more individual basis, I imagine, rather than in the overall way that you are prompted to do when you know a free trade agreement is moving forward. There has been talk about an agreement with Japan for a long time too, but it can be a long time coming and the situation changes during that period of time. When you might undertake a preliminary study is perhaps a good question, because it is always difficult to know quite when to do it. We were aware when the Department of Foreign

Affairs and Trade and the Australian government were moving on the US one and when they put out a call for submissions. The timing of the whole thing was very awkward because the call for submissions, to my memory, was in November of that year, so we were in the lead-up to the Christmas period, the school holiday period and all of that, and submissions were required by early January.

At that time we did put out a wide invitation to a range of industries. We involved a number of the agencies in Perth and held a meeting. We got about 50 people from industry, from the tertiary sector and also from government agencies along to the meeting, and that was the beginning of our consultation with industry. Right from as early as we could, we were looking at what the specific issues were in that regard. It took us a bit by surprise, I have to say.

Mr Steingiesser—If I could add to that, because the essence of agriculture is extremely regulated worldwide, all the business is actually done by governments and not by traders. In the Department of Agriculture, we have a permanent team that discusses and evaluates multilateral agreements and bilateral agreements targeting to be ready for any possible movement.

Of course, we would like to have a multilateral agreement under the WTO eliminating a series of discrepancies that exist in trade practices in agriculture. We hope always that the bilateral ones will assist us in this pursuit but, unfortunately, when it comes to actual discussions everybody says, 'No, we're going to discuss that on a multilateral basis; we won't discuss it now between ourselves,' et cetera. That was the case in the US negotiations as well. There is an element of preparedness within the department toward specific markets that are a priority to the state. The US at the moment in agricultural terms is perhaps our eighth or ninth priority market. The current agreement will not elevate the position of the US as a priority market for the state, so we will continue to relate to this market at that level, apart from, of course, specifics like wine that may have an opportunity. But on the rest it does not look like it will replace them.

Senator TCHEN—Thank you.

Senator KIRK—Following on from what Henry was saying about this consultation with the states and territories, which does appear to have been a problem—and I have to say that I am a bit confused about who was attending at which negotiations and hearings—are you aware whether or not South Australia was represented?

Mrs Judge—No.

Senator KIRK—They were not represented at any point?

Mrs Judge—No.

Senator KIRK—It seems extraordinary, I have to say, us being such an important state and all. We are very well represented here—there are three of us!

Senator TCHEN—You will have to become a donor state too!

Senator KIRK—I really do not like that term, Senator Tchen.

Mr Steingiesser—We have a very good relationship with South Australia, regardless of that.

Senator KIRK—Yes, and we do with you too. Listening to what you have been saying, in your submission you make the point about the deficiencies in the process. It occurred to me that perhaps this is something we could be looking at and making a recommendation about in relation to future agreements that might be negotiated. I note that there is not a great deal of detail in your submission in relation to this. I thought you might perhaps be able to provide the committee with some guidelines as to how you would like to see these things occur in the future.

Mrs Judge—Certainly—we would welcome the opportunity. We will provide some more information on the actual representation that happened in the US free trade negotiations and what we would like to see happen in the future.

Senator KIRK—That would be most helpful, I think. Henry mentioned possible future agreements that might be negotiated—Japan was mentioned. When you were talking about the lead time—the time that you had from November through till January—to call for submissions from industry and it not being a terribly long period of time, I thought perhaps that in your guidelines that you are going to prepare for the committee you might also be able to include some information about how you would like to see the consultation process, even leading up to the negotiations, and the sort of time frame that would be required. That would be helpful to us.

Mrs Judge—Thank you.

Mr WILKIE—Henry, this would be your area, I imagine. In relation to beef, obviously the deal for beef is very poor overall. Has the state got any comments about the permanent beef safeguards that have been put in place? Some have said they are not going to be a real problem; others have said it will be an issue in the future. It was quite interesting that the US wanted to have the safeguards there, but when we were negotiating with Japan they were vehemently arguing that there should not be any safeguards. So, on one hand, they have argued against it, but, on the other, when it came to their market they made sure they put them in. Do you think that will have any impact?

Mr Steingiesser—It will have a very limited impact. I do not believe it is extremely relevant. Again, when it comes to beef the US is an important market for the state. Most of the trimmings and secondary cuts are exported to the US, but in terms of the numbers that the state currently has and the projection for the next five or six years, we anticipate that the safeguards will have minimal impact.

What can have more impact is the bioterrorism regulation that the US has implemented and which will require additional costs in terms of paperwork for forwarders et cetera. I think that bioterrorism will be more costly than the safeguards but I do not think we could have had exemption of that. It would have been quite good but it is not rational.

Mr WILKIE—The submission touches on quarantine issues. I think you are saying the state does not see it being a problem. When we were in Tasmania the Apple and Pear Growers Association, talking nationally, were saying they have some real concerns about quarantine, particularly in the area of fire blight in fruit. They were saying that they believe the bar would be

lowered significantly in terms of quarantine because of the compliance measures we would have to put in place.

Mr Steingiesser—In our overall analysis, the SPS negotiations, which are multilateral negotiations, which are the ones which will be governing this agreement, are acceptable to the state as a result of the current negotiations. I do not think we have to highlight anything beyond that. Of course, in the follow-up negotiations related to quarantine we have to make sure that we protect what we have. But as it was defined I do not see any—

Mr WILKIE—You mentioned bioterrorism. What exactly would that force the state to comply with? We have not heard of bioterrorism being an issue.

Mr Steingiesser—There is a series of new procedures in order to export products to the US that are defined under the Bioterrorism Act in the US. That will require a series of additional procedures—mainly paperwork, to be honest, rather than any other measure—in order to enable goods to enter the US. This work is an additional cost. There are another two or three forms that each exporter has to fill out in order to be able to send goods. That is a cost.

Mr WILKIE—Shipbuilding was mentioned earlier as a disappointing area. I visited some of our big shipbuilding facilities down south and they are very impressive. In the lead-up to the agreement we were talking to them about the possibility of getting some real benefits. I can understand that they would be very disappointed at the outcome. Has the state done any calculations about what they might have missed out on or what the potential would have been for the shipbuilding industry in Western Australia?

Ms Hall—No, at this stage we have not done that work. I have heard that there might be some further discussions as a spin-off of the agreement but I am not clear how that is proceeding either.

CHAIR—In your submission you say there are a number of elements of the AUSFDA expected to be positive for the state's agricultural exports, potential opportunities for Western Australia in the export of horticultural products such as strawberries and olives, and in beef, lamb and wine, and new opportunities for WA industry in the removal of tariffs on seafood products. If the free trade agreement does not enter into force then these benefits will not be realised.

Mr Steingiesser—Yes.

CHAIR—It is understandable that in any negotiation between two parties there will be things that we are trying to achieve in access and there will be things that the other party is trying to achieve in access to our market, and it would be naive to expect that we would get 100 per cent of what we want without giving away something that we do not want to give away. In your submission I think you reflect that there are things that stay the same that we did not want to change, there are things that provide increased access for Australia and there are things that you have some concerns about. But overall it will be up to the committee to make a final recommendation as to whether it is in Australia's national interest to ratify the free trade agreement. Can I get an idea of the Western Australian state government's position?

Mrs Judge—The Western Australian state government's position is that they have called for more analysis. They will be considering the results of that, and they may well be providing some additional information to the committee as a result of that. They have not yet considered the results of the analysis.

CHAIR—We would appreciate that. What analysis are they calling for? Is it departmental analysis?

Mrs Judge—No, it is from a consultant.

CHAIR—Who is the consultant?

Ms Hall—Allen Consulting.

CHAIR—They did a similar job for the South Australian state government—and we have a copy of that—prior to the negotiations being concluded.

Ms Hall—Yes, that is correct.

CHAIR—When do you expect the report from Allen Consulting?

Ms Hall—It is probably more the timing for cabinet consideration that might determine when we could get something forwarded to you, but it is imminent.

CHAIR—I see. We would appreciate that. It is entirely normal to have supplementary submissions as an inquiry progresses.

Mr WILKIE—It was suggested yesterday that the agreement was concluded quickly and pushed through as a matter of urgency more for US than Australian domestic political considerations, given that elections are coming later this year, and that had the negotiating teams had longer to negotiate we probably could have resolved a lot of the issues that we are now putting to working parties. Is it the state's belief that had we had more time to renegotiate we could have got a better deal?

Mrs Judge—There is no doubt that those short time frames created great pressure. It may be—we are just speculating, of course—that with more time they could have got a better deal, but the reality is that they had to do it within the US's time frame.

Mr WILKIE—Comments have been made in different places about the financial modelling and proposed benefits to Australia, and that it is a pity that Australia's agriculture department did not do any modelling on the impact on agriculture. Treasury did not do any modelling either on the impacts to Australia overall; they used private contractors to do that. That contractor ended up using the Productivity Commission's findings and information to base some of their findings on. Is the state disappointed that the Productivity Commission had not been used to come up with some financial modelling, given its experience in the past in these areas?

Mrs Judge—We really have no view about who should have done some modelling, but we do believe there should have been some. We look forward to seeing the results of the current

analysis that has been commissioned by the Commonwealth. In response to our request, they are looking at the impact on states and territories, so we shall certainly take that into account.

Mr WILKIE—Thank you for your submission. It is very comprehensive and covers the areas very well. Most of us only got it on the plane last night on the way over here, so we have not had a good chance to examine it in detail. Unfortunately, that is why there are not as many questions as I would have liked. The submission itself is very comprehensive, so thank you very much for that.

Mrs Judge—Is it open for us to ask a question?

CHAIR—Certainly. We might not be able to answer it.

Mr Sargeant—I will just add one point further to Henry's comments in answer to Mr Evans's questions regarding the wine industry. No Australian legislation actually prohibits the import of wines from other countries. We have quite a liberal view on importing wines between states and from overseas. The only requirement is that the people who sell it within a state have to be licensed, which treats everybody equally.

My concern is more of a question to the committee, rather than making too much of a comment. The gambling and liquor industries in Australia are regulated, and even the Commonwealth has bought into gambling, in relation to interactive gambling, through the Interactive Gambling Act. It is noted that the reservation for gambling and betting and the reference to national treatment and local presence in relation to alcohol have been removed from annex 1 of the agreement. It is argued that these matters are now addressed in a side letter that is appended to the agreement. I would like to get a clarification of the status of moving the reservation from an annex to a letter appended to the agreement. Does that lower the reservation? What is the implication? I do not understand.

CHAIR—That is not my understanding, but, in order to get you a definitive response, we will take it on notice and get advice from the department on it.

Mr Sargeant—Thank you.

CHAIR—I am not sure of the distinction, but I think it is better that that sort of question be referred to the department.

Mr Sargeant—Western Australia have a particular interest in it, because, whilst we are very similar in relation to the regulation of casinos and liquor, in the area of gambling you would be aware that we are the only state that does not have gaming machines outside casinos, in licensed clubs and hotels, and we are very keen to maintain that. We do not want there to be any way in which we would lose that particular situation.

Mr WILKIE—I have a question about government procurement. At the start of negotiations, the figure of something like $200 billion that might open up potentially for government procurement in the US was often touted. I think, at the end of the day, the outcome achieved had something like just over 30 states agreeing to be part of any government procurement options and just over 20 states agreeing to make themselves available for government procurement. At

the end of the day, what sort of amount do you think is potentially available for government procurement?

Mrs Judge—I think it is not really clear, but I would just like to clarify that the $200 billion figure is in US dollars and relates to the federal government procurement market. We cannot really estimate how much would be added by the individual US states being added to it, so that is a bit unknown. The government is still considering how much it will enter into the state governments procurement market. Sorry, I forget the point of your question.

Mr WILKIE—I was just wondering where you considered that there were potentials there. In your submission I think you made the comment that, in reality, the business sector may have a limited capacity and sustainability to actually bid for US procurement.

Mrs Judge—That is unknown, really. We are still making recommendations to government, and it is yet to consider what it will do about government procurement, but I do expect that the number of states will in fact be higher than the 20 you have just mentioned.

CHAIR—I think we have had evidence that it is 27 but likely to go to 37 or something like that.

Mrs Judge—Yes.

Ms Hall—The point that is being made there, I suppose, is just that any agreement provides potential; it is then the capacity of industry to really take up that potential in the marketplace. We are conscious that many of the businesses in WA are small to medium sized enterprises, so their capacity to supply into a large market like the US is going to be tested, I think, for them to take the opportunity that the government procurement market there might present. It is not to say that there is not potential, but it is the capacity of business to actually take up that kind of potential.

Mr WILKIE—In the area of professional services, it has been raised that we can now have access to many of the professional areas—like accounting, law and others—that operate in the US. But in reality, whilst we have that potential, we already had it anyway. There are real issues about recognition of qualifications, given that every state has different rules. A major problem exists with visas, where professionals from Australia who want to get into the US often have to wait up to two years for a visa, and that has not changed as a result of this agreement. I am just wondering what sorts of rules apply for the professionals who are US citizens coming over here to get in and work. I think normally they have fairly quick access by comparison to Australians. Has that been the experience of the state?

Ms Hall—There were a couple of representations made to us in the early consultations. I am not clear about US workers coming this way. We are certainly conscious that US businesses are established and operating here with some US staff in them, but I am not quite clear on their visa arrangements. Going the other way, two specific areas raised visa issues. One was the ICT industry. The issue they raised was that they had been able to go over and work on projects in the US and renew their visas while in the US and then, I guess with some tightening up after 9-11, they were being required to leave the country to renew their visas. They advised us that in terms of the continuity of projects that was proving a problem for them.

The other area was the arts area. Performers were saying to us that, while they were able to get work in the US and to provide performances there, they had to have that arranged before they could get their visas to go there to do the performance. So they felt like they were in a bit of a bind. They could make the arrangements but then they did not have the visas to actually do the performances. They were saying that they felt that there were things that could be done to rectify that. We have put that forward in earlier submissions.

CHAIR—We have mentioned liquor and gaming and so on, but did you want to say anything about the chapter which deals with cross-border trade and services, the professional services section?

Mrs Judge—I do not think so. We did make a submission about labour relations. I have somebody here who you could ask about that, but not specifically about cross-border trade.

CHAIR—Have we got the labour person here? Early in section 15.2 the submission says:

> Western Australia considers it essential that the sovereign power of the Western Australian Parliament to legislate to protect the health and safety of its citizens ...

It goes on specifically about the sovereign power of the Western Australian parliament. Given that the labour chapter, as I understand, principally just says, 'We will enforce our own labour laws,' why does the Western Australian government believe that ILO conventions are more important than Australian domestic law?

Mr Reid—I do not think we would argue that ILO conventions are more important than domestic law. The concern is that, being a member country of the ILO, we have certain obligations to comply with those conventions that we have ratified. That is the general point.

CHAIR—You are not arguing that these are breaches of the ILO. The issues that you have raised are open to interpretation.

Mr Reid—The comments of the committee of experts of the ILO are quite clear. They have been made over a number of years now. I think there is a degree of interpretation there, but the concerns are well founded, based specifically on the comments of the ILO committee of experts, specifically with regard to convention 98, which deals with collective bargaining.

CHAIR—How is the Commonwealth Workplace Relations Act in breach of that section?

Mr Reid—There have been a number of observations made on that. One of the examples we highlighted in the submission relates specifically to Australian workplace agreements being an individual form of agreement making. The committee of experts has consistently found that to breach that convention, specifically in cases where people are offered, for example, Australian workplace agreements as a condition of their employment. Arguably they are denied the right to bargain collectively when that occurs. That is one of the principal arguments that the committee of experts has raised.

CHAIR—Do you see that there is a contradiction between saying in one part of the submission that we have a sovereign power to legislate here but, in another part, hanging it all on

the ILO commission of experts, rather than law that has been passed by the Australian parliament?

Mr Reid—Again, I do not think they are inconsistent. We are really raising the concern that these are observations that have been made consistently and probably warrant some sort of action from the Commonwealth to ensure compliance. The point needs to be made that we do not ratify these conventions lightly. There is a significant amount of work that goes into ensuring that, in fact, our legislation is compliant with those conventions before we actually ratify them.

CHAIR—Do you have any view on claims by US labour unions that are critical of Australia's labour laws?

Mr Reid—Not off the top of my head, no.

Senator TCHEN—To assist the committee—and I am not sure whether this has been asked—can Mrs Judge indicate to us what exactly the Western Australian government's position on this free trade agreement is.

CHAIR—I have asked that question. I would like to thank you very much for appearing before the committee. It is always a pleasure to have state governments before a Commonwealth parliamentary committee, and we really appreciate your attendance today.

Mrs Judge—Thank you. We welcome the opportunity to appear and we are particularly pleased that this committee exists.

CHAIR—Before we move on to the next witness, it is resolved that submissions Nos 152, 154 and 155, as per the list circulated, be authorised for publication. It is also resolved that submission No. 11.4, which is a supplementary submission from the International Fund for Agricultural Development, be received as evidence and authorised for publication.

[10.26 a.m.]

JENKINS, Mr Brian Joseph, Honorary Secretary, StopMAI Coalition (WA)

CHAIR—Welcome. On behalf of the committee, I thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Do you have any comments to make about the capacity in which you appear?

Mr Jenkins— I am the Honorary Secretary of the group known as StopMAI. It is a civil society organisation which was formed about six years ago to contest the Multilateral Agreement on Investment. Whilst we are concerned about multilateral agreements, we are also concerned about bilateral ones.

CHAIR—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I also acknowledge that in the public gallery are former senators Jean Jenkins and also Dee Margetts, who is now a member of the Western Australian parliament. Mr Jenkins, would you like to make some introductory remarks before we proceed to questions?

Mr Jenkins—The committee will be aware that the entity known as civil society has for some years taken an interest in these proceedings. Trade negotiations traditionally have been the preserve of executive government—not even of the parliament, in most instances—and business lobbies of various kinds. The prime beneficiaries of these negotiations are corporations, and the bigger the corporation the bigger the benefit that accrues.

It has been only in recent years that civil society has been organising itself to try to understand these issues and to take a role to try to have some impact on what is happening. Although we do not have a formal place at the table, it is now well known as a result of what happened in Paris over the MAI negotiations and Seattle over the World Trade Organisation negotiations a few years ago that civil society has established itself as a force in these events. But we do not want this to be just a matter of brute force; we try to understand these issues and to present some arguments.

The StopMAI Coalition is broadly representative of a number of groups. We do not have any political affiliation. We have people with views right across the political spectrum. We try to make sense of and present our views on occasions such as this. We have identified a few issues that are important to us and issues which relate to the impact of these agreements on ordinary people, especially in terms of the costs.

As taxpayers, ordinary people are going to be picking up a lot of the costs of this. If Australia is sued by a corporation, for instance, under the dispute resolution process, and $100 million of compensation is paid to that corporation, as has been the case in Mexico and Canada under NAFTA, then the Australian taxpayer will pick up the tab for that. So the dispute resolution process is one of our very specific concerns. We have general concerns about how treaties and

the treaty process generally impact on the sovereignty of Australia. Australia is fortunate to have a constitution in which the sovereignty is vested in the people rather than in government. We hope that some of these concerns will be addressed. We do not want to see Australia's sovereignty weakened by having our law making powers handed over to tribunals. For instance, there was a case recently in which the NAFTA tribunal overruled a decision of the United States Supreme Court.

We are concerned about lots of specific things as well—the impact of the FTA and trade treaties generally on our quarantine regulations, professional qualifications and licensing. All of these things will come under contest by US competitors. The overall effect of this on the sovereignty of the Australian people could be a matter of great concern. I will leave it at that.

CHAIR—Thank you very much. The Multilateral Agreement on Investment was not a particularly good multilateral treaty. It just involved OECD members. That has been stopped—it is not going ahead—but your group has continued on.

Mr Jenkins—Let us say that in the eyes of the negotiators of the 29 wealthy countries who were chasing after this MAI, it was a particularly good thing. They were extremely disappointed that the negotiations foundered. The idea was mooted in about 1990 or 1991. The formal negotiations started in 1995. These negotiations went on for something like three years. We maintained that they were taking place in secrecy. The OECD said no, because they had put out a press release in 1993, or something of that sort, and therefore it could not possibly be secret. When the MAI foundered, as I see it, it was basically because the French government—the only government which had engaged in consultations with its civil society—was given advice by its own consultants that the treaty was not going to work and it was going to be politically very difficult. I think the Greens in France had raised a lot of arguments in public as well. So basically because the French withdrew, and they were the host government, it made it very difficult for lots of other people.

Of course, governments all around the world had been put under pressure about this, and even the Australian government was starting to feel a bit embarrassed about the level of protest. When it foundered, I think the statement that was made by the Australian executive government representative was that it had been put on ice—not that it had been killed off. In fact, we very quickly learned from the British government that the next step was to move the negotiations about investment out of the OECD and into the World Trade Organisation. This is what happened, and we are now seeing multilateral negotiations on investment through the General Agreement on Trade in Services, for instance, and in other areas of the WTO's operations.

They did take a dive when the Cancun negotiations failed, and it is quite possible that investment negotiations will be taken off the table for a few years. But they have not failed. We deliberately kept the name StopMAI, because we suspected that people would otherwise forget that there were powerful people in the world who are interested in having treaties which would take away the rights of governments—including the Australian government—to regulate against the interests of these large investors. The MAI is still around. We call it the Dracula treaty: it goes back to its coffin but it gets up and lurks about in the night. We have not yet put the stake right through the heart of the MAI.

CHAIR—In part 6 of your submission, you are concerned about an investor-state procedure, and you quite rightly point to article 11.16. But in this agreement there is no investor-state dispute settlement mechanism. Do you acknowledge that there is no investor-state dispute mechanism established in the Australia-US free trade agreement?

Mr Jenkins—Yes. My concern is that, if the intention is to never have an investor-state dispute resolution procedure, then one would think that it is entirely unnecessary to make any reference to it in the FTA. My experience of business and law would suggest to me that that has been put there as a sleeper and that it is a springboard for a future action to bring investor-state disputes to life. There is provision in the FTA for an investor to make a complaint, and, under the agreement, that complaint must be listened to and acted on by a government.

CHAIR—As I understand it, the article says that parties may consider establishing an investor-state procedure to hear a claim by an investor if there is a change in these circumstances regarding the parties' economic and legal environments. That is a big 'if' in a developed country like Australia, I would suggest.

Mr Jenkins—Yes, but we are negotiating with a country that is 20 or 30 times the size of Australia. The Australian economy is, I think, three or four per cent of the size of the American economy. These things are conducted by powerful lawyers with enormous vested interests. I would submit that the wording of this agreement is almost identical to NAFTA. When you start reading it you realise that the people who have negotiated from the US side have said, 'We are very comfortable with NAFTA; therefore let's try and make it as close to NAFTA as we possibly can.'

If you look at the way NAFTA's disputes have evolved, there have been about 20 cases—bearing in mind that NAFTA involves Mexico, Canada and the United States—and the earlier cases involved US complainants against Canada and Mexico. All of the cases that have been launched by US corporations have succeeded, and I would submit that that is possibly because their lawyers are well versed in and pretty good at this business. The United States has never lost an action under NAFTA, even though it has come pretty close on occasion. Bear in mind that these disputes usually lead to payouts of hundreds of millions of dollars in compensation for those companies; and, of course, the court proceedings are not cheap. I would think that Australian negotiators would want to have avoided that type of dispute resolution at all costs and therefore no mention of investor-state dispute resolution should ever have appeared in this FTA.

The fact that it is there tells me very clearly that in 10 years time we are going to have a NAFTA type investor-state procedure, because that is what the American lawyers want and that is what they are good at. They have never lost an action and it has been very profitable. Zoellick, the US trade negotiator, said that he regarded the development of these bilateral relations with Australia and 140 other countries—because they want the whole world to be tied up with these preferential agreements with the US—as the sixth biggest industry that the United States have.

Mr MARTYN EVANS—In your submission, you mention a number of other international trade agreements as well, including the World Trade Organisation, Seattle and the like. What is your view generally about these kinds of multilateral trade organisations? Do you feel that there is a place in world trade for these kinds of structures, or would your organisation be opposed generally to these multilateral trade arrangements and treaties?

Mr Jenkins—We are not generally opposed to them. In fact many treaties, including the treaties on civil rights, environmental protection, the Kyoto Protocol and these types of things—

Mr MARTYN EVANS—No, I am referring to trade here.

Mr Jenkins—Yes, I understand. There is no general objection to it. The only general thing that can be said is that we perceive that these treaties are engineered by powerful corporate interests and they therefore reflect those powerful corporate interests. We object to the way in which that influence is exercised and the way in which it invariably succeeds. We do not object to the process itself. What we would like to see is greater transparency, greater consideration of the views of other entities and greater concern for particularly the environment, for instance, and human rights. We are a coalition so we do not have a single point of view, but some of our people would stress labour rights, others would stress sustainable development, others would stress sustainable ecology, et cetera. But there is no provision in these treaties for those views and those interests to be considered. These trade treaties are about making a profit for corporations, and anything that gets in the way, even if it is the sovereign Constitution of Australia, has to be somehow sidestepped or put down or moved away from.

I would much prefer to see—and I am speaking personally now—a multilateral arrangement, because the FTA is not a free trade agreement; it is a preferential trade agreement. It does not provide for free trade in any shape or form. It is a con to use the words 'free trade agreement'. As a multilateral thing, the globe probably cannot afford free trade. When you consider, for instance, that in Australia each calorie of food requires something like 2,500 calories of energy to create it and transport it to our table, this is a nonsense. When you have free trade with the United States and you bring that food from the United States, you can then multiply that by four. It would be more like 10,000 calories to bring every calorie of food to the table.

The sort of provision that we would like to add to the multilateral agreements would be reciprocal responsibility. So if a corporation wants to be given popular endorsement or public endorsement or government endorsement for protecting its profits against expropriation and so on, then that corporation should enter into a reciprocal undertaking to behave according to a code—that it will not destroy the environment, tip cyanide into the rivers or exploit work forces by moving its manufacturing to India or places where they can pay cheaper wages. If there were reciprocal arrangements—

Mr MARTYN EVANS—I think the committee understands the point you are making about it not being a free trade agreement with the United States. The committee has had plenty of evidence to that effect so far—that it is certainly not a free trade agreement. It is a trade agreement, but it is far from a free trade agreement—although certainly when you are looking at an agreement about trade between two highly developed countries, and that is something that is unique about this agreement, both countries have quite substantial sovereign laws already about issues like the environment, labour laws and so on.

There is probably not a lot of relevance in this treaty in having substantial provisions about environmental law and labour law and so on when, while some members of this committee might disagree with the current government's views about labour laws in particular and certainly environmental laws and so on, the government may well change this year. Some of us would certainly be barracking for that outcome; others would not. But that is not the topic of today. We

would make changes to those, and other members of the committee would not. But that is what happens in a democracy. That might happen in the United States as well. But that is well provided for in our current democratic processes in two highly developed countries. Would you actually want to see, in an agreement between the United States and Australia, substantial provisions relating specifically to setting out highly comprehensive provisions about labour law, environmental law and so on?

Mr Jenkins—I do not think that is the point. I think that there are separate avenues and separate treaties and so on for setting out the chapter and verse. What I, and civil society generally, would be concerned about is the possibility of the so-called free trade agreement overriding the power of the Australian government—or any of the state governments, for that matter—to legislate in an area. For instance, it is well known that in Western Australia we will not have a bar of a nuclear waste dump. This company Pangea is still hanging around, because they know that if they hang around long enough they will probably be able to wear down our resistance, or they will get South Australia or some other state to accept it— provided the price is right and so on. Under a free trade agreement it may well be that we have already signed away our rights to say, 'We don't want a nuclear waste dump,' because in trade terms it is just money; it has got nothing to do with the environment. I think the FTA uses the term 'provided that there is sensitive regard to environmental concerns' or something of that sort. In other words, the stipulation in the FTA is that, if somebody expresses an anxiety, then provided you are sensitive in the way that you address that anxiety you can go ahead and do what you want to do. We would say that the sort of provision that should be there would be that no trade can be established, no enterprise can be established, without it complying with Australian legislation. If we did have legislation—I do not think we do—saying that there was to be no nuclear waste dump on Australian soil, the FTA should specifically address that. We do not want to be in a position where an investor or even a state can come along and say, 'That legislation does not comply with the FTA, therefore it will have to be struck down.' Make no mistake: this type of legislation has already had to be struck down in Canada and in Mexico as a result of complaints by these investors.

Senator TCHEN—Mr Jenkins, you described StopMAI, your association, as a civil society.

Mr Jenkins—Yes. It is a loose coalition.

Senator TCHEN—Can you describe to me what you mean by 'civil society'? I am afraid this is the first time I have come across this term.

Mr Jenkins—It was a term that started to gain currency during the period when the Multilateral Agreement on Investment was being discussed. 'Civil society' is society generally, if you like, but I suppose it is that part of society which is not already empowered by having a voice in government. For instance, a political party like the Labor Party or the Liberal Party would not be regarded as a part of civil society, and nor would the judiciary, the armed forces et cetera. Civil society does include what are known as non-government organisations—not the type like the Red Cross and so on that are sort of international and big and powerful and have a voice in everything but organisations that provide aid or organisations like WACOSS. Maybe even trade unions would be regarded as a part of civil society; they have some sort of a voice. Civil society is just a collective term for groups of people who do not normally have a seat at the table when these big decisions are made.

Senator TCHEN—Who decides whether you are part of civil society? It seems to me that you are talking about people who one would normally consider to be fairly well organised into groups—such as, as you say, trade unions—as being included in your description of civil society. Why should members of the armed forces or the Army as a whole not be seen as members of civil society? Or, for that matter, why should members of this committee not be seen as members of civil society?

Mr Jenkins—It is a generic term. It is not intended to imply that civil society has one view or is one entity, and it is not intended to say that someone who puts on a uniform and goes and fires bullets one day cannot at the weekend be a member of civil society when he goes and plays chess with his friends or whatever. It is a shifting term; I would not give it too much—

Senator TCHEN—The only reason I raise this question is that in your introduction it seemed to me that you made a very important distinction in your emphasis on the fact that StopMAI is a civil society, and then you spoke at some length about the achievements of civil societies in stopping MAIs internationally. I have not come across this term before, and I thought I would get you to clarify it. But you say it is not important?

Mr Jenkins—No, the term is important because it makes a distinction. I suppose 'civil' means non-governmental and non-corporate. It marks off the sort of interests that we are looking at. When I say I am presenting a civil society point of view, it means that I have not got any political interest in this, I am never going to make any money out of this; it is a civil society view. In fact, the term 'non-government organisation', which has been in use for a hell of a lot longer, is being phased out, and the term CSO—civil society organisation—is being put in, because we are now looking at a range of viewpoints which are non-government and to which government is irrelevant.

Now, civil society is tending to relate more to the environment, the ecology, the planet and human rights and so on generally, rather than seeing itself as having obligations to a particular government. What happened with Vanunu, for instance, is an example of an internal state matter for Israel; but Vanunu is a global figure, and the antinuclear issue and the issues of human rights and not being punished twice for the one event, and so on, are much larger than the internal concerns of Israel. This is the sort of issue we are looking at. We are organised on a global basis, because the Internet allows us to do that. We can compare views with people in Canada—or anywhere, for that matter, as long as they speak English.

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

[10.58 a.m.]

PAIN, Dr Geoffrey Norman, Founder, Scientists for Labor

CHAIR—Welcome. Thank you for appearing to give evidence today. The secretariat will forward a copy of the proof transcript of evidence to you as soon as it becomes available. Do you have any comments to make on the capacity in which you appear?

Dr Pain—Scientists for Labor was formed in July last year. The name tells the story.

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

Dr Pain—Yes. I have given you copies of the notes for my talk. I am happy to supply any supplementary information as a result of questions. The issues that I would quickly like to cover include who in Australia wants the so-called free trade agreement with the USA. If you read Michael Costello's article in today's *Australian*, you will know he has been analysing submissions to this committee, and of course you know better than he that there are a lot of negative proposals and discussions coming in. I also want to cover the arrogance of the Howard government in negotiating the proposed agreement behind closed doors with unseemly haste, while seeking to limit the power of elected representatives to discuss or alter it. I see that this committee's work would have been much more valuable had it occurred at the stage when you were proposing to have a free trade agreement. It could have gathered information which would have armed negotiators.

I am covering the fact that Australia would be disadvantaged by the proposed deal, the impact of the proposed agreement on education and work futures for Australians, and the ease with which America can buy Australian intellectual property resources and infrastructure assets. I will present very briefly at the end an alternative strategy that would bring far more lasting benefits to Australia's world trading position. We are gathered here today because the Howard government has decided on ideological grounds that we should have a bilateral agreement with the USA. This is despite the fact that analysis of NAFTA showed that a million jobs were lost between Canada and America as a result of that treaty. The Australian people have not been asked if they want a bilateral agreement with America.

CHAIR—Before you proceed, if we authorise this paper we can take it as read and you do not have to read it out.

Dr Pain—I would like to discuss it. I can very quickly go through it, speeding things up if you like, because there are points here that we need to bring up verbally.

CHAIR—You can just give us a synopsis. Before you proceed, I require a resolution to authorise this as a submission to the inquiry.

Mr WILKIE—I move that the submission be authorised.

CHAIR—There being no objection, the paper is received as a submission. Dr Pain, please go ahead and give us a synopsis.

Dr Pain—The synopsis is that the whole debate comes down to one issue, in my opinion, and that is jobs. If I then do an analysis of the current state of the Australian and the United States economies, both of which are suffering mass reductions in manufacturing employment, I highlight the example from yesterday when Electrolux announced that it is going to eliminate 300 Australian manufacturing jobs and send them to China and Thailand. I point out that Australia loses 200 Australians each day into what is called the diaspora, the Australians working abroad. Small business is currently sacking workers at 800 workers per week, according to the Howard government. Long-term unemployment has more than doubled under the Howard government.

As I said, the central issue of the agreement is the proposal that this will increase opportunities for work. The background here is that according to ACOSS we currently have 1.3 million unemployed Australians. If we combine that number with those working overseas, we have 2.1 million educated, trained Australians who are not actually contributing to the Australian economy. The US has suffered a similar scenario, with a staggering loss of 2.6 million jobs in the private sector in the last year. American jobs are being transferred to China, Mexico, the Philippines—wherever they can find workers at lower cost. The point of this discussion is that both America and Australia have unsustainable levels of debt and that this is rising. Treasurer Costello presided over the worst international trade and financial debt in history: 6.7 per cent of gross domestic product.

Yesterday the trade deficit was highlighted by the arrival in Australia of the largest container ship in the world. It is not here to pick up manufactured wealth-creating products to export from Australia; it is here to pick up the empty containers due to our trade imbalance with the world. We are importing so many containers that we now have to bring a ship out here to take the empty ones away. Australia has an annual trade deficit with the USA of $12 billion, and various analyses in the submissions to you say that that is likely to be increased by $2 billion. A key aspect of this is the loss of revenue through tariffs, which has been estimated by the AMWU to be $1.5 billion from 2004 to 2008. What we are talking about is unsustainable consumerism. The household debt in Australia is now 122 per cent of household income.

I go on in my submission to talk specifically about IT jobs, because it is not just manufactured goods we are talking about trading here; it is services. We have had the number of students entering IT courses in this country drop by 25 per cent between 2001 and 2003 as a result of the user-pays market economy that is being pushed onto our students. An example is Telstra slashing its IT budget by 50 per cent and arranging to offshore the remaining IT requirements. I give a specific example of IBM Australia, which is terminating 450 career IT professionals and forcing them to train their replacements, employed by IBM in India. Here we have an American company operating in Australia taking on a contract for a government institution, Telstra, and shipping the work offshore. The Australian workers involved were originally Telstra workers and they were sold to IBM in 1997 as a means of cutting Telstra's staff, without them even leaving their Telstra desks. Telstra pulled out of the joint venture with IBM, slashed its IT budget, as I just said, and these workers are now being forced to hand over their careers to the Indians. The

gun is being held at these workers' heads. If they walk out of IBM Australia at the moment and refuse to train their Indian replacements, they will lose tens of thousands of dollars each in redundancy payments.

This will only get worse with the proposed relaxation of the Foreign Investment Review Board threshold for review from $50 million to $800 million. It is estimated that over 90 per cent of acquisitions would not be reviewed, which means that we would be selling all of our intellectual property, asset stripping and offshoring contracts to places like India, unhindered. As of yesterday, Japan reminded Australia that it wants equal treatment to America, and it is using the existing Nara treaty as the lever point. What we are talking about now is unbridled access for acquisitions of our intellectual property and assets by not only America but Japan, and it is being further exacerbated by its demand now for ASEAN to create a free trade zone.

It comes down to dollars. America and Japan, combined, have a huge investment capacity far in excess of what Australia has and can access that money at eight per cent cheaper than Australian business can. So under this free trade proposal we do not have a level playing field at all, because if Australian business has to borrow money it is more expensive to get capital, for a start.

How is Australia going to increase employment with these un-Australian activities, like offshoring, going on? I do not believe that the bilateral trade agreement provides any mechanisms for doing so. As the AMWU have argued, I think very powerfully, we have to abandon the false notion of comparative advantage which is the philosophical background to this whole argument. We have to deliberately build a competitive advantage through increased research, development and manufacturing across Australia. Under the Howard government, we have been burying Australia's ability. There are now 1,000 fewer academics teaching science and mathematics and fewer graduates in science, engineering and information technology—and on top of that we increase HECS fees. Capital spending on R&D infrastructure has declined as a percentage of GDP and some people actually think that under this comparative advantage model Australia should be shovelling chaff rather than manufacturing electronics.

I say that the answer to this problem is to not allow United States campuses to set up on Australian soil, which is one aspect of the free trade agreement worries. What we need to do is to develop our own intellectual property in hard sciences and engineering. I see the trade agreement producing a net loss to Australia, a net loss of income and the loss of sovereignty, and it must be opposed.

My positive proposal, in contrast to the agreement, is to consider one of the most essential problems that Australia has, and that is its exchange rate. We have conflicting interests. Some people want the Australian dollar to increase in value as a recognition of wealth and Australian effort, and others want to see the Australian dollar decrease in value so that they can sell more unprocessed ore, for example. If we had a global uniform currency, this whole issue would be taken out of the equation and people could concentrate on actually building wealth and trading goods and services on a truly level playing field. Thank you.

CHAIR—Thank you very much. In the Australia-US free trade agreement is there anything you would like to say about the specific provisions in intellectual property, technical standards, professional services or anything like that?

Dr Pain—Yes. The technical standards and quarantine proposals are very worrying at this stage. Australia has had a proud history of preventing contamination of our flora and fauna, and this is threatened by pressures under the free trade agreement, particularly for issues like pig meat. The US want to sell us pig meat. That is economically irrational but they want to send pig meat across our way. We are one of the few countries that so far have resisted major pig diseases. Any reduction of quarantine procedures under an agreement would be disastrous for this country.

CHAIR—Given that we accept all that, as I understand it the sanitary and phytosanitary measures principally just say that our existing quarantine measures stay. We are going to have some high-level committees between Biosecurity Australia and the equivalent American organisation. We are going to have some working groups and so on. But there does not seem to be any obvious reason why our risk assessments should change.

Dr Pain—The pressure is clearly on from the Americans to relax our fairly severe importation and quarantine rules. They want to speed up the access to their farming markets to send material over here; otherwise, we would not be discussing the issue.

CHAIR—The SPS chapter reaffirms 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. You are representing Scientists for Labor. Is there anything wrong with making decisions on the basis of sound science?

Dr Pain—No, but the definitions involved in those are arbitrary, and the view of America as to what is sound and reasonable may well be different. For example, America is already infected with many of the major diseases unilaterally and we are not, and obviously, in terms of marketing, they will want to gloss over some of those fine details of contamination. That is the threat.

In the area of pharmaceuticals, intellectual property is one of the big issues from a scientific point of view. But at a political level we have in Australia one of the finest social systems for getting medicines to people who are sick. Indeed, people, including Hillary Clinton, came over and studied our PBS. There is pressure from pharmaceutical companies in the United States to increase prices delivered to Australian consumers. What the Australian people are saying is that we have an excellent working model for the globe. We should be able to reduce the cost of pharmaceuticals for American citizens and world citizens—in particular, citizens in Third World countries. That is an area which impacts on the return on investment on patents. That comes right down to the fine humanity of what patents are for. By definition, if you get a patent you publish your information for the good of mankind and you give up your monopoly after a number of years. If we follow that extension, what we should be doing is talking to very rich American pharmaceutical companies to get them to reduce the costs of their essential drugs.

Senator TCHEN—I am a bit curious about the organisation you represent. You describe yourself as Scientists for Labor. Does that mean that your organisation is affiliated with the Labor Party?

Dr Pain—No. It is a group of scientist that may well include Greens voters, but they know that ultimately their vote will go through to Labor on their card. It is a loose association at this

stage. It is not formally incorporated. We may do that if we see a need to raise funds for expenditure. At the moment we are purely dealing in ideas.

Senator TCHEN—Thank you. You said that the Howard government decided on ideological grounds that we should have bilateral agreements with the USA. Are you also opposing this bilateral agreement on ideological grounds?

Dr Pain—Yes. I do not believe that this system is fair or free, as I said. Bilateral agreements are preferential and discriminatory and they lead to international conflict, which we now have with Japan coming into the scenario. ASEAN are also now saying, 'Hey, what about us?' It is not just ideological; it is intellectual. It is silly to go down this path. If you are going to have any sorts of trade reforms they should be non-discriminatory.

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

[11.20 a.m.]

MARGETTS, Ms Diane Elizabeth, Member, Legislative Council of Western Australia

CHAIR—Welcome. On behalf of the committee, I thank you for appearing to give evidence today. Would you like to comment on the capacity in which you are appearing?

Ms Margetts—I am a member of the Legislative Council of Western Australia, and I am appearing today as the Greens (WA) spokesperson on economic issues.

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

Ms Margetts—Obviously I have been on both sides of these kinds of committees, at the Senate level and at the state legislative council level. I have been interested in economic globalisation, of various sorts, since before I was elected to the Senate; in my first speech to the Senate that theme was emphasised. When I left the Senate, I expressed disappointment at how little I had progressed in trying to get some sort of wider understanding. Whilst not wishing to insult anybody, I was always very concerned about the apparent lack of detailed information and knowledge among federal and state parliamentarians about many of the issues associated with the so-called free trade and free market debate. I was involved with hearings on the Uruguay Round of GATT and national competition policy and other aspects. I was concerned about how brief those assessments inevitably were, or were seen to need to be, and how little chance the community had to be involved in the process. I am still very concerned about that.

It is clear to me at least that many of the negotiators from the federal level and even the state level are chosen from amongst people who are already convinced that free trade and the free market is the way to go. Almost automatically, state and federal governments select negotiators from amongst those people who almost have built-in blinkers from some of the other issues involved, and that has been a concern of mine for a long time. I think it is unfortunate that once there is a pro free trade position—where free trade is seen as an instrument that is going to take the country forward—it becomes very difficult for individuals within political parties to take the time to look at what some of the realities are.

I am a regional parliamentarian these days; I represent the Agricultural region in Western Australia. For those who might not know the region, it is far less than the size of Western Australia but it does go from Kalbarri in the north, right through the wheat belt down to Esperance. That is 260,000 square kilometres. I am frequently out in the region, talking to individuals. At meetings that I have been to in my region, if the people assembled were asked whether or not they believe the Australian US free trade agreement is going to be of net benefit to Western Australia—and that question has been asked on a few occasions—the majority have said no.

I do not think that comes from a position of ignorance. They might be farmers, dairy farmers, cray fishermen or other interested regional people and so on. The reality is that, although regional Australia has often been used as the battering ram and the rationale for why we have to negotiate further so-called free trade agreements, in many cases it is regional Australia that feels the most let down with the results of those agreements. It is not only that they are not good enough but also that the details are so different from the generally debated points of view.

At the macro level, most of the debate has been on the details of the sugar agreement or the PBS. They are really important issues. However, they probably mask the fact that the biggest sector of Australia's economy is the service sector. The likelihood of Australia's service sector surviving in a robust manner after an agreement of this type with an economy the size of that of the United States is not great from the point of view of many people, including observers of other outcomes and agreements.

That is the kind of issue I would like to point to today. There is something of particular concern in relation to Western Australia. It is in relation to government procurement. I was disturbed when I listened to the evidence of the representatives of Western Australia. I believe at some stage they were asked whether they had anything to say about services for Western Australia, and the person at the table said, 'No, we have nothing to say.' I have here a document called *Corrs In Brief* relating to government procurement, which was put together on 9 March 2004. I can pass it on at the end. A statement in it says:

The rules apply to procurements by most central government agencies of the Commonwealth and each of the States and Territories. Some agencies are omitted from Annex 15-A (and therefore not covered). These include a number of agencies in the aviation, agriculture and fisheries fields, including CASA and Airservices Australia.

Generally only the following procurements will be excluded from these rules ...

Then it says:

(e) Health and welfare services by New South Wales, South Australia, Tasmania, Australian Capital Territory or Northern Territory ...

I am looking for Western Australia but I cannot find it. I do not know why Western Australia is not included. I do not know whether the lawyers who put forward this document are incorrect, but unfortunately now that the Western Australian government representatives have given their evidence possibly the only way you could find out why we are not on that list is to write to them. The next point says:

(f) Education services by New South Wales, Tasmania, South Australia, Australian Capital Territory or Northern Territory ...

Once again, I am looking and Western Australia is not there. We have been given assurances at the federal level that there is the ability to exempt health and education services, because when you talk to general members of the community their concern is about vital things such as health, education, water and the provision of basic services. When you get general assurances that there is the ability to exempt service provision from the impacts of such a so-called free trade treaty, I guess people sit back and feel a little comforted. But there is this big question now as to why

Western Australia is not on that list. Did Western Australia not ask to be exempted, or did Western Australia ask to be exempted and the argument was not strong enough, or has there somehow been an assumption by the Western Australian government—and I would suggest naively—that we will stand to gain in our service sectors, in the provision of health and education services, against an economy the size of that of the United States?

I am horrified by the prospect that we have been left in this vulnerable position and I think there are a lot of questions that need to be answered. The FTA is not just about sugar farmers in Queensland; it is about what is going to happen in the future about the ability of the Western Australian government and the Western Australian community to have real and serious input into the provision of health and education services and whether there will be a situation in the future where investors will play a much more important role in the way these absolutely vital services are provided. Everybody knows how seriously the community takes these issues.

There are many issues in the details of such agreements. It is unfortunate that there is often an assumption that somehow or other things will get better: 'It may not be perfect but, don't worry, we'll sign up to it and things might get better.' In fact it becomes extremely difficult for changes to be made which appear to erode the agreement. It often means that if environmental laws, health provision requirements or education arrangements are not satisfactory now it will be impossible or extremely difficult to make those changes in the future. It is a ratchet effect and a very similar ratchet effect to what was proposed under the Multilateral Agreement on Investment. Many people consider that bilateral agreements like the FTA are a backdoor way of implementing many of the aspects of the Multilateral Agreement on Investment that Brian Jenkins described so well earlier.

I will just mention a few other issues. From a parliamentarian's point of view, I have seen legislative changes required at a state level and a federal level where there appeared to be no rationale coming from the Australian community. We know, of course, that when Australia signed up to the Uruguay Round of GATT the package required a range of legislation changes. At various stages we have seen agriculture ministers and trade ministers having to defend the indefensible. It is important to debate such issues as importing pork meat, chicken meat, salmon and so on, but I have watched trade ministers, even from the National Party, who are supposed to be close to these constituencies, being unable to defend the position that Australia seems to have been forced to take.

With the import of pilchards for tuna feedlots, we know that we had the biggest biomass kill—or at least one of the biggest that I think has ever been experienced in the world. We watched in Western Australia as wave upon wave of dead fish washed up on the shores of places like Esperance. I saw them floating in the water. That deep scientific concern is meant to be embodied in the precautionary principle, but even all the evidence of the plume of dead fish that started from Port Lincoln was not considered by many of the negotiators to be sufficient scientific proof. So when people give glib assurances and say, 'Don't worry, the scientific method will be the safeguard,' I would say: 'Have a look at the dead fish. Have a look at the fact that we are still importing pilchards. Have a look at the many other biosecurity pressures that are occurring.' The level of scientific proof required is such that cannot prove risk absolutely until the predicted outcome happens, and once it has happened it is too late; you are already infected. That has implications for our chicken industry—newcastle disease, of course—our fish and our wild ecosystems, yet here we are signing up to yet further input from corporations to be on

committees for our quarantine and labelling, and undermining the precautionary principle in Australia. That is a real issue; it is not a speculative issue. I have seen the people who are distressed about the realities of what is going on and still not finding that the arguments have been accepted.

Unfortunately free trade agreement theories do not meet reality. I am sure that the committee has been told that free trade so far has not resulted in increased competition at the international level. The free trade push via treaties so far has clearly resulted in less competition and a greater move to global monopolisation. That is the reality. It is being clearly proved in almost every sector you look at that instead of more competition we are seeing less; there is more vertical integration and less real local content and, in my view, less real choice. Unless, as a consumer, you are looking for mobile phones or computer equipment, I would dispute that at the consumer level the result has been greater choice or even greater consumer satisfaction.

The very basic assumptions of the benefits of further free trade agreements always should have been checked. There should have been an assessment: what were we trying to achieve and have we achieve it? Which sectors were trying to benefit? Often the analysis has been very crude. As I say, in my view, the assumption has always been that as consumers we would benefit but, as far as I can see, there has never even been a full and adequate assessment of whether, as consumers in Australia, we are better off in terms of choice, service and availability than we were before we started signing the range of free trade agreements. That is a general discussion about our assumptions and our lack of ability to even make basic checks on the assumptions we started with. I am more than happy to leave my remarks there and answer any questions you may have.

CHAIR—Thank you very much for your submission, which is very detailed, and for your comments today. You represent the Agricultural region and you mention that you are finding concern in regional communities and so on. Surely some of those whom you represent will benefit from having increased access—whether in the area of seafood, wine, beef, dairy or even minerals and resources—to the United States.

Ms Margetts—I am sure that people within the Agricultural region may benefit, but it is more likely that it will be those with considerable market power already. It might be those in agribusiness. In Western Australian we have, or at least have had, one of the single most valuable fisheries in the world: the western rock lobster industry. That has been forcibly deregulated via national competition policy and now, with further globalisation, I guess it will have additional pressures. That industry is already in a situation where there will be fewer players, even this season. It is probably the only fishery in the world which has an accreditation for sustainability. I am not sure that that accreditation will stay. If western rock lobster product becomes simply a commodity rather than a premium product into a premium market, I think the industry will be in dire straits in a very short time—and that industry has already been pushed for further deregulation of its processing facilities; it has had its quotas reduced. That industry has already had some difficulties.

Dairy and irrigators largely are not in my electorate, but I do have some irrigators as well as potato growers, dairy and milk producers, the western rock lobster industry and the wheat and grain industry. The majority of producers in those industries, when asked, say that they have not

had a positive experience and are not expecting to have a positive experience; the smaller players have often been knocked out.

Unfortunately, through the national competition policy and free trade it may mean that in Western Australia we will not have a fresh milk industry at all. It is extraordinary to me that we do not have the ability to go back and see what the outcome of the assumptions has been. If we assumed that we were going to have a more efficient industry and we end up with no industry at all in the future, what will we have achieved? If we end up having to get chilled milk—if we have fresh milk at all—from Victoria or powdered milk from Tasmania, that is not efficient in real economic terms or in terms of energy and the extra pressure put on the Murray-Darling system for irrigated agriculture. Most of our dairy industry is not irrigated. Whether it is the free trade agreement or the free market regime under national competition policy, we should have had a built-in system for review. Once evidence of mistakes come in, where is the process of review as to whether we have gone forwards or backwards?

Mr WILKIE—You talked about the $4 billion calculation and the fact that the modelling is quite flawed. I have been quite critical that they did not get the Productivity Commission to go through all the issues based on their past experiences with trade agreements. What are your thoughts about that?

Ms Margetts—I am a member of a group called the Globalisation Round-Table in Western Australia, and we have discussed the issue of the projections on a number of occasions. The roundtable, by the way, is a forum for a whole range of sectors across Western Australia to talk through a number of these issues. As you know, even conservative commentators from a range of areas have questioned the basis of the analysis. It is a bit like free trade negotiators—if you are a proponent of free trade, you will look for the benefits and any potential pick-up in trade; if you are looking to make an argument, it is a case of 'lies, damn lies and statistics'—you will probably seek those statistics which appear to support your argument. I seldom see the Chamber of Commerce and Industry in Western Australia presenting an argument about the potential benefits and losses in trade, let alone environmental and social concerns, or sovereignty and democracy.

Whenever you do those calculations, you have to make sure that you consult widely. The calculations are, to say the least, flawed. If you look back at the original calculations that were given to Australians before we signed up to the Uruguay Round of GATT, and you look at Australia's current balance of trade, nobody from those original calculations of the Uruguay Round of GATT alluded at any stage to the fact that our balance of trade was going to go from positive to negative to such an enormous extent. Proponents will push that there will be only benefits but, from a trade perspective, the evidence in terms of the Uruguay Round of GATT is that Australia has a trade deficit when we used to have a trade surplus. There may be other reasons for that, but it was exactly during the period after Australia signed the Uruguay Round of GATT that we went from positive to negative. I would say that the original calculations were flawed, and it is likely that the most optimistic assumptions are also similarly flawed.

CHAIR—Thank you very much for your attendance before the committee today. It is good to see you again.

Ms Margetts—Thank you for the opportunity. By the way, I have copies of the *Ten devils in the detail* if anyone managed to miss getting one.

CHAIR—We actually received it on Monday and we have authorised it as an exhibit to the committee, so it should be on our web site as well.

Ms Margetts—Excellent.

[11.45 a.m.]

PUDNEY, Dr Christopher John, (Private capacity)

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

Dr Pudney—My remarks are in relation to chapter 17 of the proposed FTA, and they relate to harmonisation of Australia's intellectual property, or IP, legislation with that of the United States. My concerns relate to the braking effect that it will have on small IT companies like mine on innovation and providing solutions for clients. It is a brake on the way that we do business.

CHAIR—Would you like to elaborate on that? Do your concerns relate to Internet service providers, or do they relate to copyright?

Dr Pudney—They relate mainly to software patents and how they can affect things like open source, which are tools that my company uses and also provides as part of the solutions to our clients. Many other companies like my own will be using those tools as well. If we have harmonisation of our IP legislation with the US legislation, then the broadening of the software patents legislation in Australia will possibly dampen the way that we can make use of open source solutions.

CHAIR—Can you show me where we are going to have harmonisation of IP legislation with the United States?

Dr Pudney—We have existing software patents legislation in Australia, and there are some limitations on the way that those can be applied. If we harmonise our software patents legislation with that of the United States, then those limitations will be effectively removed and therefore it will affect some of the tools that we make use of—particularly open source tools and also our own solutions that we develop for our clients—and we will have to be wary of and look out for the large number of existing software patents. In practical terms, it will be more or less impossible for small companies like my own to proceed with reference to the existing body of software patents. There are so many of them, and many of them are extremely frivolous. We would simply have to proceed in the hope that we do not transgress any existing patents and that, if we do, we are not pursued.

CHAIR—I am looking at article 17.9, and I am reading specifically from the guide to the agreement. It says:

The Article on Patents generally reflects Australia's current laws and it is not anticipated that major changes to the Patents Act 1990 will be needed to implement the FTA.

And then there are a whole lot of provisions. As I understand it, we maintain Australia's patent laws. We do make some changes in the intellectual property area—for example, the extension to the life of a copyright—and there are some specific provisions relating to Internet service providers. I understand what you are saying about open source software and so on, but is there a specific provision in the FTA which does affect an Australian software patent?

Dr Pudney—Not one that exists that affects an Australian software patent but rather that some of the existing limitations on the Australian software patents legislation will be removed. So what you read to me previously is not the same as my understanding; I understand that those limitations will have to be removed if we are going to harmonise our IP legislation with that of the United States.

CHAIR—I have read the article you have from Roger Clarke. I am not aware that we are harmonising our IP legislation with that of the United States. There are limitations in Australian law which are going to have to be removed.

Dr Pudney—That is my understanding—that is correct.

CHAIR—Do you know what those limitations are?

Dr Pudney—I do not have the article before me, but they were things like if they are nuisance, frivolous or obvious steps they cannot be patented, whereas those sorts of limitations do not exist in the United States and, as a result, if we are to harmonise then we will find ourselves having similar sorts of patents being applied here.

Mr MARTYN EVANS—I understand the concerns that you raise, because I have some familiarity with this area of computer programming. Isn't it more the case that the United States patents office has been more enthusiastic, indeed overzealous, in allowing the patenting of software processes and the look and feel and so on—all of those applications in software and computer areas that, quite rightly, the Australian patents office has been much more reluctant to patent—than it is a question of the legislation and provisions of the treaty? Is it not more an aspect of the way in which the patents office has applied those legal provisions, which we would not actually be required by the FTA to adopt?

Dr Pudney—Isn't it the case, though, that one of the reasons our patents office has been more rigorous is because those limitations already exist in the legislation? If those restrictions are removed from the Australian software patents legislation, then the patents office cannot necessarily reject those kinds of patent applications anymore. You are correct in that many frivolous software patents have been granted by the US patents office, but that has something to do with the kind of patents legislation that their office operates under. If similar legislation is brought into force here, then the Australian patents office may well have to grant these frivolous kinds of patents as well.

Mr MARTYN EVANS—Yes, it would certainly be the case that, if the laws are different, then interpretations would necessarily follow from those different laws. That would be a correct conclusion, but it is my understanding that, notwithstanding any differences in the law, it is also the case that the US patents office, from the beginning of the IT era, took a more generous view of what it might allow to be patented than did the Australian patents office. But that is a matter

of history now and subject also to clarification, I suspect. This is something I am sure the committee will want to take up again with the department, but that is just my understanding of what has occurred over time and no doubt has occurred in parallel with any differences in the legislation. So we might well be looking at two separate but parallel effects, one of which arises from differences in the legislation and one of which has arisen in relation to differences of interpretation by the respective patents offices. So there may well be two quite separate but parallel effects which have tracked along in time as well.

Dr Pudney—There may well be. I would still feel more confident if the restrictions on Australia's software patent legislation were maintained rather than having to rely on just the Australian patents office's rigour in examining those sorts of patents.

Mr MARTYN EVANS—None of what you are saying revolves around the open source movement wanting to make use of code which is someone else's, only to make use of code which is already in the public domain, I assume.

Dr Pudney—Yes.

CHAIR—I want to mention article 17.9.3 and article 17.9.6. The guide says:

Under this Article Australia is free to adopt exceptions and limitation to patent rights in accordance with the flexibilities available under Article 30 of the TRIPS Agreement.

Is that the sort of thing you would be looking for in the free trade agreement—if we can make the exceptions and limitations that we already can now?

Dr Pudney—Absolutely. If we are able to maintain the existing limitations, that would be far more desirable than having them removed.

CHAIR—You have raised a serious point and it is up to us to determine. I have read this and I can see your concern. But with the section on IP rights in front of me, I can see that there would be things that, to my mind at least, would allay your concerns.

Mr MARTYN EVANS—I think it is very important. Patent law took many years to settle when these things first originated. We are now in a new computer, IT, digital era and common law, patent law and legislative law will have to come together to settle many of these difficulties. How these issues will be reconciled in the first instance is not always straightforward, because the Internet has provided people with many new opportunities for piracy. Parliament wants to stop the digital opportunities for piracy that now exist. We all agree that piracy should be prevented. It is one of the worst possible outcomes of the digital era. If we allow people to use the digital era to steal other people's ideas and to improperly profit from them, then that has a very chilling effect on innovation. People can profit from your ideas and prevent you from profiting from them, which of course is what patents are designed to prevent.

At the same time, if those patent laws are too harsh and prescriptive and therefore prevent you from making proper use of code which you are entitled to make use of, then that achieves the wrong and opposite effect. So the correct balance has to be achieved in all of this. Intellectual property laws rigorously enforced are essential to the whole digital era to allow people to

properly profit from their own creative work. The right balance has to be there. I do not think anyone intends to actually prevent that outcome. We want to make sure the right balance is in the agreement and in our own laws anyway. That is in all of our interests.

Dr Pudney—Yes, I agree. The balance that we have at the moment is appropriate, let us say, but my concern is that that balance will be tipped away from our favour if we harmonise.

CHAIR—There are some sections which relate to Internet service providers, cybersquatting and so on. Is that of concern to your company?

Dr Pudney—No, it is not. We do not deal in those sorts of things.

Mr WILKIE—Thank you for making yourself available at such short notice. We appreciate the effort you have put in. In the fax you sent to Dr Southcott, you mentioned that you were trying to get permission from Dr Clarke to use his submission. Has that come through at all?

Dr Pudney—It has not. I notice on the first page that it is licensed as free for educational use. Reading the terms of that, it is difficult to—

Mr MARTYN EVANS—Can I say that Dr Clarke also communicated directly with me because of my interest in this area. He sent his submission directly to me as a member of this committee as well. I think he is quite happy to have it tabled in this context. I do not think he would have any concern about that.

CHAIR—If you vouch for that, we can authorise it as it is.

Mr MARTYN EVANS—I think that would be quite appropriate. I do not want to speak for him. At the same time, I know when he spoke with me some weeks ago in the context of this hearing, he was very keen to have his views known.

CHAIR—We will authorise it as an exhibit at the end.

Mr WILKIE—In the light of that submission, I will be putting forward a recommendation that we contact him and see if he would like to appear before the committee and speak to his submission at some point in Canberra.

Mr MARTYN EVANS—I have spoken with him as well about this very document. He was quite happy to have it known in this context. He sent me directly a copy of the same document.

Mr WILKIE—We have had other people raise similar concerns in Melbourne.

CHAIR—It was Cybersource. I do not know if you know them. They are an open source software company as well.

Mr WILKIE—I think people have made the observation that Australia's economy in the future is going to rely very heavily on the IT industry. It is an area of the agreement where it would appear that the terminology is not quite up to scratch and does not take into consideration

a lot of where we may be heading in the future. We need to consider that. Again, we appreciate that you have made time available to appear today.

Mr MARTYN EVANS—Obviously there are many companies of your company's size in the United States. The US is well known for its innovative work in the open source area as well. How do companies succeed innovatively in the US in this area given that they are immersed in their own laws?

Dr Pudney—At this stage with regard to open source there have not been any cases where software patents have been used to cancel or challenge an open source project. That is not to say that that will not happen. For example, there is an existing case based on copyright law challenging the Linux kernel.

Mr MARTYN EVANS—That is the SCO case.

Dr Pudney—Yes. SCO is a company that was in financial difficulty, and it is conjectured that the copyright case was a last-gasp effort to get some funds in order to keep it alive. The concern is that as large corporations build up their portfolios of software patents, should they find themselves having difficulty competing or raising revenue, they will resort to their portfolios of patents against open source projects where open source is competing with them as a way of stifling that competition. As yet the SCO case is the only example of something that has been raised against open source and that has been based on copyright, not on software patents.

CHAIR—I would like to thank you for your attendance before the committee today. I had the opportunity to address the open source conference at Adelaide University in January. I did not realise then how much it would relate to the US free trade agreement. Thank you very much.

Proceedings suspended from 12.03 p.m. to 12.24 p.m.

McDONALD, Ms Meg, General Manager, Corporate Affairs, Alcoa World Alumina Australia

CHAIR—Welcome. On behalf of the committee, I thank you for appearing before the committee to give evidence today. I understand that you have a very busy schedule. Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House 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 now invite you to make some introductory remarks before we proceed to questions.

Ms McDonald—Thank you very much for providing me with the opportunity to appear before the committee. Alcoa World Alumina Australia is very pleased to participate in this inquiry. Alcoa is the world's leading producer of aluminium and alumina. We operate in over 40 countries and employ 120,000 people worldwide. Our worldwide revenue is over $US21 billion and we serve a global market that grew by seven per cent last year, with aluminium consumption in China alone growing by 20 per cent.

Alcoa is based in the United States and has a strong base here in Australia. We have been investing in Australia since 1963 and we have driven the development of Australia's aluminium industry. We are predominantly a regional producer and employer. We operate two bauxite mines and three alumina refineries here in Western Australia and two aluminium smelters in Portland and Point Henry in Victoria. We also operate two aluminium rolling mills at Point Henry in Victoria and Yennora in New South Wales. These are the only aluminium rolling mills in Australia.

Alcoa is one of Australia's leading exporters, with exports of almost $4 billion each year. We export aluminium and alumina to the world's fastest growing economies, including Asia and China. Australia's alumina exports have been crucial to the growth and development of the global aluminium industry. This month Alcoa commenced construction on a $440 million, 600,000 tonne upgrade of our Pinjarra alumina refinery here in Western Australia. This will increase export earnings by an expected $160 million annually.

Alcoa's aluminium production in Australia is 530,000 tonnes per annum. Over 80 per cent of the aluminium ingot is exported, primarily to Asia. We also produce 100 per cent of Australia's domestic beverage can sheet, and 45 per cent of our can sheet production is exported—again, mainly to Asia. Worldwide, we operate in over 38 countries.

Alcoa's investment in Australia has provided employment, infrastructure and opportunities supporting the growth of regional communities. We are one of Australia's leading regional employers. We provide more than 6,000 jobs and support an additional 20,000 indirect jobs. We provide more than $4 million a year in community sponsorship. For example, Alcoa has supported Landcare with over $20 million over 20 years. This has resulted in the planting of over 10 million trees, the establishment of 700 Alcoa Landcare sites and the rehabilitation of thousands of hectares of degraded land. This partnership was recognised last year by a Prime Minister's Award for Excellence in Community Business Partnerships. Alcoa is also a major

contributor to research and development in Australia. Our global refining research group is based here in Western Australia, with an expenditure of around $20 million in research and development each year.

Given Alcoa's strong base here in Australia and in the United States and our experience as a regional producer and exporter, Alcoa strongly supports the Australia-United States free trade agreement. Alcoa was a founder member of the AAFTAC business group in the United States and the AUSTA business group in Australia in support of the FTA. We believe that the agreement will underpin Australia's future prosperity and promote greater economic integration and investment between Australia and the United States. The outcomes on investment will provide long-term benefits to both Australian and US businesses.

We believe the agreement will also support the long-term harmonisation of regulatory, investment and business systems, making it easier for companies like ours to do business between the two countries. In particular, the establishment of a government-to-government framework to manage the economic and investment relationship is important for smoothing the long-term relationship and working through issues. In making this point, we would observe that this is a general point rather than relating to any issues that Alcoa would specifically have.

We think that the various forums and mechanisms established under the agreement and its auspices will be able to continue the work of streamlining the bilateral business environment and that the institutional arrangements to manage the economic relationship will match those of the defence and security ties. On many occasions, issues have arisen in the economic relationship for which there was no high-level government forum and no dispute resolution mechanisms within which they might be solved. The FTA establishes such a framework.

In my personal capacity, I have spoken publicly elsewhere about issues relating to labour and the environment which might be considered in the context of the ongoing administration of the FTA. These are potential issues that arise for Australia, given our constitutional structure, given that labour and environment laws operate predominantly at the state and territory level. We believe that the FTA will create some challenges of coordination within Australia's federal system. We acknowledge that the labour and environment provisions are such that it would take a particularly egregious situation, involving a repeated and flagrant abuse of labour or environmental law, before a party would take the matter to an FTA dispute settlement process. But, on a broader front, this is an issue about which we think there needs to be quite careful management at both state and territory level and on the part of business to avoid these particular provisions being able to be used where governments come under pressure from sectional interests which would seek to resort to the provisions.

In particular, it would be an impost on business where business and government need to manage any claims that would be made about a failure to apply environment or labour laws and to apply resources to demonstrate that there was no legitimate basis for the claims. We have seen on the multilateral front how much public campaigns have the potential to damage corporate reputation. This is something that we would not wish to see used through this agreement. It is an additional layer of complexity that will need to be managed sensibly by governments and business.

I will conclude my presentation by looking at the future. With respect to the investment provisions under the FTA, we are on the record as saying that there are many areas where the business environment could continue to be improved to make it easier for business to flow between Australia and the US. Work and visa requirements are a practical day-to-day impediment for businesspersons moving and working between Australia and the US. Improving this would be of significant benefit to all companies with operations in both countries.

In addition, business made submissions at the outset of negotiations, seeking that the agreement look at Australia's high corporate and personal income taxes, which have an impact on Australia's competitiveness as a place to work or invest. Australia taxes expatriates working in Australia for income earned overseas, such as from renting the family home in the United States or from owning shares held in the United States. Current fringe benefit tax rules also discourage intracompany transfers to Australia. Companies that cover the differential between Australia and the US tax on behalf of expatriate employees are levied with an additional fringe benefits tax. All of these are significant direct or indirect barriers to doing investment between Australia and the United States and to Australia's ongoing business integration with the United States market. Addressing these issues offers a further agenda for opportunities now presented by the FTA and should be the next priority for both government and business once the agreement is in place.

In conclusion, Alcoa welcomes the Australia-US free trade agreement as a significant outcome for Australian business. It will result in long-term benefits for companies such as Alcoa and better place us to serve expanding global markets. It will contribute to further liberalisation, including on the regional and multilateral front, and will underpin long-term prosperity for long-term investors such as Alcoa.

CHAIR—Thank you. You touched principally on the investment side. Is the reduction in tariffs on minerals and metals from day one of the agreement of benefit to Alcoa?

Ms McDonald—Any of the tariff reductions which stimulate growth in trade to those companies that we supply aluminium to would definitely be an advantage to us. As I have indicated, with respect to Alcoa's operations, we supply Asian markets with predominantly ingot and can sheet from Australia. We have extensive operations within the United States, so there would be little in terms of the direct trade of the products that we produce here in Australia that would be affected, but a number of our customers would get benefit from the reduction in tariffs. The automotive industry is obviously one of the big destinations and a growing market for aluminium. Wherever there is growth in that trade, it will benefit the consumption of aluminium and will therefore be of benefit to us.

CHAIR—What sorts of tariffs do you currently face in the United States for your exports?

Ms McDonald—Tariffs were not considered to be an issue; it was predominantly an investment issue.

CHAIR—Are there currently tariffs on your products going into the United States?

Ms McDonald—To be honest, I could not tell you, because we do not export to the United States. We are a United States company. There were some reductions in aluminium fabricated

products and extruded products which I believe were going to be of benefit to some people who produce aluminium products but would not benefit us specifically.

Mr WILKIE—In terms of investment, are you talking about US investment in Australia with Alcoa?

Ms McDonald—Yes.

Mr WILKIE—Have you ever had that knocked back under the current arrangements?

Ms McDonald—Alcoa has had a very happy history of continuing investment into Australia since 1963. It is more a question of perception and the ease of doing business. For instance, we, as a US company, still have to get Foreign Investment Review Board approval for the purchase of real estate around our plants for buffer zones.

Mr WILKIE—But they have never knocked it back, have they?

Ms McDonald—It is less an issue of rejection and more an issue of streamlining the processes and reduction of costs. It is a cost that other companies do not face but we do.

Mr WILKIE—You mentioned work and visa requirements, which are important. You would understand that, under the free trade agreement, there is no change there. People in Australia who want to work in the United States will still have to get their qualifications recognised on a state-by-state basis. In fact, the visa requirements are the same as they were. Australians often have to wait up to two years—professionals, in particular—to get entry to the United States. None of that is actually changed under the free trade agreement. It was changed in some free trade agreements the US has negotiated, but the US closed that loophole when it came to negotiating with Australia.

Ms McDonald—We understand the political context within which the negotiations took place, but we believe that the conclusion of the agreement offers an opportunity to continue to work on streamlining those access arrangements. Having the agreement in place will give us a forum within which to better pursue and make a better case for streamlining some of the visa requirements.

Mr WILKIE—It actually allows for a working party to be established to discuss it. So there is a forum for discussion but there is no actual result at this stage.

Ms McDonald—We understood that. That was one of the issues that was raised by both the US business group in the United States and also the Australian business group with the Australian government as something that we were interested in pursuing. We remain interested in pursuing it and using the platform provided by the FTA to consolidate that.

Mr WILKIE—Is Alcoa Australia a wholly owned subsidiary of the US based company?

Ms McDonald—We are made up of 60 per cent Alcoa Inc. and the remaining shares are taken up by Alumina Ltd, which was the Australian owned company spun off from WMC at the end of 2003.

Senator TCHEN—One of your points refers to the different taxation regimes within Australia and the United States, which poses difficulties for companies. Don't we have double taxation arrangements?

Ms McDonald—There is a double tax agreement, and I believe there was a protocol concluded maybe 12 months or 18 months ago with some changes to that arrangement. But, again, this is an area where we are on the record as saying that part of the benefits that we see from the conclusion of an agreement is that it will provide a platform to continue to pursue those issues. They are issues that many businesses that have operations in both countries look to have further work done on—not under the FTA, but using the conclusion of the FTA as a base from which to pursue those issues. We did not expect that tax arrangements would fall under the FTA, but the negotiations and the desire of both governments to improve and streamline the business environment provide that opportunity, and we would like to see those issues continue to be pursued.

Senator TCHEN—That seems to be the only issue you raised. That is why I asked you a question about it.

Ms McDonald—It is an issue which remains. The thrust of the submissions that we have made is that we are wanting to very much support the early conclusion and bringing into force of the FTA so that we can then turn our attention to these other issues which are on the agenda.

CHAIR—As there are no further questions, I thank you for your attendance before the committee today. It is proposed that the supplementary submission from Alcoa be received and authorised for publication. As there are no objections, that is so ordered.

It is also proposed that the committee receive and authorise for publication a submission from Clem Clarke. As there are no objections, that is so ordered.

Resolved (on motion by **Mr Wilkie**):

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

Committee adjourned at 12.44 p.m.