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SENATE

SELECT COMMITTEE ON THE FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND THE UNITED STATES OF AMERICA

Reference: Free Trade Agreement between Australia and the USA

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SENATE

SELECT COMMITTEE ON THE FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND THE UNITED STATES OF AMERICA

Monday, 7 June 2004

Members: Senator Cook *(Chair)*; Senator Brandis *(Deputy Chair)*; Senators Boswell, Conroy, Ferris, Harris, O'Brien and Ridgeway

Senators in attendance: Senators Cook, Brandis, Ferris, O'Brien and Ridgeway

Terms of reference for the inquiry:

To inquire into and report on:

1. The Free Trade Agreement between Australia and the United States of America to ensure it is in Australia's national interest; and
2. The impacts of the agreement on Australia's economic, trade, investment and social and environment policies, including, but not limited to, agriculture, health, education and the media.

WITNESSES

Committee met at 9.04 a.m.

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

CHAIR—I declare open this meeting of the Senate Select Committee into the Free Trade Agreement between Australia and the USA. Today, in Melbourne, the committee commences the sixth of its public hearings. The terms of reference set by the Senate are available from secretariat staff. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private.

Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. If at any stage a witness wishes to give part of their evidence in camera they should make that request to me as chair and the committee will consider that request. Should a witness expect to present to the committee evidence that reflects adversely on a person the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which, in the committee's view, reflects adversely on that person, and to offer that person an opportunity to respond.

I welcome our first witness, Mr Freya Marsden, from the Business Council of Australia. I note for the record that we do not have a full quorum in attendance but I propose to proceed anyway and seek the approval of the committee in retrospect to commence these proceedings. I think to delay further would cast our program into doubt and would be unfair to the Business Council. Do you wish to make an opening statement?

Ms Marsden—The Business Council wish to thank the Senate select committee for the opportunity to provide evidence at this committee hearing. This is a very important agreement for Australia and for all of our members. The BCA represents 100 of Australia's leading companies and we cover all sectors of the economy. The Business Council aims to make Australia the best place in the world in which to live, learn, work and do business. The BCA is a strong supporter of the free trade agreement, closer global economic alliances and integration. We see trade liberalisation as an important method of improving growth and wellbeing in the world overall, and particularly increasing living standards for all Australians.

Global economic integration has overwhelmingly been a positive force in world economic growth, development and poverty reduction. The Australia-US free trade agreement is a significant step towards providing Australia with the benefits of global integration and providing closer economic links with the largest economy and the biggest trading and investment partner that Australia has. This agreement provides the opportunity for deep economic integration or what the World Bank calls 'WTO-plus'.

I would like to make some comments about the difference between bilateral and multilateral agreements and the question of whether they compete with each other. The BCA believes that the best option for delivering trade investment benefits is through multilateral agreements. We are strong supporters of the WTO. However, gains in these areas are slow and initially very modest. We would also like to note that there are many areas, which cannot be covered by the WTO, that are now very important for Australia's economy, particularly in investment.

Multilateral, regional and bilateral negotiations have proceeded over the past decade, together producing very valuable results. High quality bilateral agreements such as the US free trade agreement have delivered advanced economic integration. Bilateral agreements such as the US free trade agreement provide benefits that cannot be provided through the WTO process.

The US free trade agreement provides frameworks in areas such as professional services and removing other non-tariff barriers, such as red tape. These frameworks are provided in the United States free trade agreement but cannot be provided in the WTO process as it currently operates. These are benefits that are very crucial for Australia. Bilateral agreements provide immediate and comprehensive benefits and can strengthen Australia's position at the forefront of international trade and liberalisation. Australia has consistently been at the front of this trade debate and has pushed for greater trade liberalisation throughout the world. Australia's economy has greatly benefited from the fact that we have lowered tariffs and made ourselves more competitive. We have unilaterally operated in that way and have formed bilateral agreements with other countries.

FTAs can provide competition that keeps multilateral talks on track. Where negotiations have broken down in the WTO process, they can actually come up with solutions through bilaterals that can then be adopted in the WTO process. Australia has recently completed trade agreements with Singapore and Thailand, concluded the trade and economic framework agreement with Japan and is currently investigating the benefits of a free trade agreement with China. All of these things are happening in parallel with us working on the US free trade agreement. We certainly have not stalled our bilaterals with other countries. All of these agreements work towards a greater linkage of trade agreements overall and a greater emphasis on economic growth and prosperity for Australians.

I would also like to make a brief comment on timing, which is something that has been considered by Australian governments. This is an opportunity provided for us now and it may not be there in the future. It is possible that the same benefits will be there down the track, but there is a real risk that the environment as it is currently will provide the best opportunity for signing off on the best benefits. It also provides frameworks and a mechanism for increasing the benefits of this free trade agreement in the future. Given that bilateral activity has accelerated rapidly in the last five years, competition to secure access to emerging trade blocs will intensify further, making a second try with the US much harder. Not only will the political environment possibly be worse later on in the US but in fact the competition that we will be facing will also be different. We are currently near the top of the list and one of the first to negotiate agreements. There are a whole string of countries which are queuing up behind us. We do not want to miss our spot. It is very important for Australia overall.

What happens if we actually miss this opportunity? There are potentially substantial negative consequences for Australia. Australians overall will recognise these in the future if we miss this opportunity now. The United States is Australia's No. 1 trading partner. It is also the world's largest importer and investor. Crucially the US is also the world leader in technology, science, innovation, and research and development. Integration with the US on these areas is a very important aspect of the agreement. It is important for technology transfer. It is important for bringing ideas across into Australia, sharing ideas and growing our economies together. IT is noted in economic literature as a key area of productivity. The greatest productivity gains are in

the area of IT communications. Technology, science, innovation and R&D are areas that we should not pass up.

These are important opportunities for Australia. Economic integration with such an economy is vital for Australia's growth because of the investment opportunities, the greater access to significant markets and Australia's ability to take advantage of technology transfer and systems for expanding our own innovation, research and development, and technology. Failure to conclude the agreement will damage Australia's relative global position, therefore. The BCA believes that potential for jobs will be forfeited, as will the access to rapidly growing sectors in the US economy, and we will lose our competitive position compared to other countries. They will take advantage of the benefits available from this rapid technology integration. Today around 43 per cent of international trade occurs under free trade agreements. Australia should not miss out simply because of a high ideal that we should only pursue free trade through the one track of multilaterals.

I am sure you have heard many submissions now from a wide range of people, but I will summarise some of the key benefits quickly. The key benefits from the US free trade agreement include providing duty-free access from day one for over 97 per cent of Australia's manufacturing exports. They were worth nearly $6 billion last year and are growing. The service industry, which is a crucial area for Australia, generates the most new jobs in today's advanced economies. The AUSFTA will enhance both growth and employment in the Australian service sector. The United States has the largest, most competitive service sector in the world, and Australia's economy can benefit from closer integration in that market. On the investment side, these are gains that could not be achieved through the WTO. The AUSFTA ensures that Australian investors receive treatment equal to that of local investors and that Australian foreign investment abroad brings us economic return.

The BCA supports and promotes the benefits of the US free trade agreement because it is such an important step towards BCA's goals of increasing the competitiveness of Australia's business environment and enhancing the welfare of Australians overall. The AUSFTA will increase Australia's competitiveness through lowering the costs of doing business in both economies and through reducing barriers to investment and the professional services trade. The AUSFA will ensure that welfare gains are available to society through job creation and economic growth.

CHAIR—Thank you for your submission and for the obvious effort that the BCA has put into making representations to this committee. You mention a couple of what I will term, for the sake of the discussion, 'downsides'—what the agreement does not contain: the free movement of people, particularly professionals and so forth. Would you like to tell us why you think that is a failing in the agreement?

Ms Marsden—The free movement of people is a very important area, particularly for our members but for Australia overall. It impacts particularly on the service sector. Although there are now frameworks for mutual recognition in the professional services area, not having free movement of people is important because it can limit some of those benefits. One of the issues is bringing across your spouse. If you go across to work in the US there are still tight limits on bringing across your spouse. He or she can come over but they cannot work at the moment, and that is not reciprocal with Australia. We believe these are important benefits. We were

disappointed that they were not in the US free trade agreement, but we understand that the politics of the time meant that it was not feasible to include them.

We also believe that the benefits overall for the US free trade agreement were so big that we were not about to hold it up on that one issue. We are very hopeful that we can help support DFAT in promoting this as a key issue with the US, and we believe that process is already under way. There are two avenues where Australia can progress that particular issue, which is obviously very important for our members. One is through taking it directly through Congress and the other is through the US free trade agreement itself. I think it is recognised on both sides that this was an omission in the agreement and there will be frameworks in this agreement to come back and discuss areas which have not been included.

CHAIR—When you say you recognise that it was held up by the politics of the time, what are those politics that you are referring to?

Ms Marsden—There are two areas. One is the terrorism issues of the time. Obviously, there is a heightened awareness of terrorism and allowing people in, allowing people to stay and those sorts of issues. Anything to do with people movement is therefore treated with sensitivity. The other area—I am not across the details, but I understand there were internal politics in the US—is that the previous agreements with Chile and Singapore were pushed through by the US trade department but were not discussed properly within Congress. This is hearsay that I have been told; I do not know it for a fact. Consequently, that lack of discussion and consultation has meant that the Senate committee that normally looks at these people movement issues has said specifically of trade agreements, 'No more of this. We will only look at this issue outside trade agreements,' and Australia's was one of the next trade agreements being negotiated so it got caught up in that process.

CHAIR—You have said that the political environment in the US is likely to be worse in the future if we delay adopting the free trade agreement now. What do you mean by that?

Ms Marsden—I said it is possible that it could be worse. There are a number of factors involved. Our security arrangements and the fact that we have a close security alliance mean that we have a strong relationship with the US at the moment. It is very unusual to have both sides of politics supporting a bill. We have had advisers out here from both sides of politics who have said to us, 'This is the first time for a long time where it looks as though we will both vote for this.' This is a very unusual sort of situation. Obviously when it comes to the crunch we cannot guarantee they will both vote that way. There is still a real risk in US politics, even now, that it will not go through. This is an unusual situation; I think Australia has a better opportunity than most other countries at the moment of getting this through.

The security environment is constantly changing. There is a whole range of issues including offshoring, which does not have a lot of basis to the heat in it, but it is obviously causing a lot of political heat. These sorts of issues could change the environment in the future, so we believe this is an excellent opportunity now as far as the US is concerned and it is our best chance at the moment. The second issue in that is that we have managed somehow—I am not sure how—to queue jump and get to the head of the queue for having our agreement negotiated. There is a whole queue of countries out there that are trying to negotiate these agreements with the US. We have managed to get to the head of that. If we lose our spot it could be a very long time before

we get to renegotiate and have a second shot at it, particularly if it is positive in the US and then ends up being negative in Australia.

CHAIR—Despite the fact, as you have pointed out, there appears to be bipartisan support for it in the US?

Ms Marsden—There appears to be bipartisan support for it now but you cannot guarantee that that will go all the way through, and there would be some loss of goodwill and good feeling were there to be bipartisan support in the US—they vote before us—and then we turned around and said, 'Thanks, anyway.' Obviously all that goodwill would not be there afterwards.

CHAIR—I do not know that I have time to explore that. You have addressed this question of bilateral versus multilateral and identified the argument under the label 'competitive liberalisation' that the government often makes that things that are obtained in a bilateral agreement can be levered into the multilateral round to energise and progress the round. Would you care to identify for us in this agreement what those items might be that can be levered into the round?

Ms Marsden—It is less to do with levering in and more to do with areas that we hope will be in the round in future. An example of that would be investment. Capital movements now are a key issue for Australia. Services and investment are key parts of our economy and these are not things that are easily negotiated in the WTO or are ones that are not included in the WTO at all.

CHAIR—But we do have an investment agreement with the United States.

Ms Marsden—We do, but that is a bilateral agreement; it is not a WTO agreement.

CHAIR—What I am asking is: what in this agreement do you think might be able to be levered into the round to energise the round?

Ms Marsden—On sugar for instance, the fact that we pushed very hard for it and were not able to get it means that we now hold—as far as I can see—the moral high ground. The sugar industry in the US turned around and said, 'There is absolutely no way we are doing this in a bilateral; we will only do it in a WTO and a multilateral agreement.' However, by saying that, they have made it clear that they are interested in discussing it and they recognise that they will need to discuss this in the next multilateral; whereas, previously, they would not go near it at all.

Senator O'BRIEN—Doesn't it equally mean that they think it is a lot harder to get a multilateral up? So the sugar sector in the US holding out for a multilateral outcome is another way of stalling?

Ms Marsden—Yes, I think that is true. It is a way of stalling but it is also showing their cards by saying they will only look at it in a multilateral round.

Senator O'BRIEN—But that only means they will look at it. It does not mean they are prepared to concede one inch, does it?

Ms Marsden—No, but that does not mean that will have less chance than we have had previously. We have put the pressure on them.

Senator O'BRIEN—Less than zero is still zero.

Ms Marsden—But we now have greater pressure in highlighting what should have been a major issue in politics in the US as part of the trade agreement. I have heard a number of advisers on both sides of the US point out that they feel uneasy about signing off on this, because it has not gone far enough in areas that it should have. It is obviously putting the pressure on in highlighting it as an issue. I think that is just as important. All these gains are very slow and incremental. Any gains that we can get in that area are very important.

CHAIR—The other dimension to this is that Australia has argued long and hard in the WTO that any bilateral agreements, to be in conformity with the WTO rules recognising bilateral agreements, must be comprehensive. There is an argument: how can this agreement meet that standard which we have argued for—for a long time internationally—if it does not include sugar, which is clearly a major part of our exports?

Ms Marsden—Yes, that is true. We would like to hold out for the higher ideal of a fully comprehensive agreement. In the end we took the practical stance that we support this agreement because it holds so many vital benefits for Australia's economy and Australia's growing sectors—that is, our services and investment industries. These areas are so important for Australia that we in the end said, 'It's a shame about sugar, but we hope that they still sign it.'

Senator BRANDIS—Various economists and economic modellers have tried to model the effects of this agreement and they have reached different conclusions. One thing that does not seem to be controversial between them is that they all say, 'It is very hard to project the economic effects of an agreement like this because it really depends upon the uptake by Australian and American businesses of the opportunities that the agreement provides.' I think that the expression that is used is that you cannot model for the dynamic effects of the agreement. I understand that argument, but it seems to me therefore that it is really over to people like you—that is, the business people and the entrepreneurs, who are going to take advantage of the opportunities that the agreement would provide, to get a sense of what those dynamic effects will be. What I am asking you for really is an impressionistic and imprecise set of observations. From the point of view of your members, do you see an eagerness to embrace the opportunities that this agreement provides and are you able to, in an impressionistic way, make some predictions as to the dynamic effects on Australian business investment and trade with the United States which would be directly consequential upon this agreement coming into operation?

Ms Marsden—I can make a couple of comments. The first is that we recognise that this agreement is about opportunities; it is not about direct provided benefits. It is not a hand-out to Australian businesses.

Senator BRANDIS—If nobody does anything it will make no difference.

Ms Marsden—That is exactly right. In recognition of that, we are talking to our members about what the benefits are. We are setting up things—we are running a seminar with DFAT on

government procurement. If I can use government procurement as an example, it has a very substantial potential market. At the moment about 10 per cent of that market is accessed by foreigners. The benefits of this free trade agreement mean that it will be easier for Australian companies to access the government procurement market. We are talking about very large dollars, so, obviously, our members are keen on that and smaller companies are also keen on it. However, there are still many hurdles to jump over to actually access this market, so it is something on which we are providing some initial advice. We also note that Canadian companies, in particular, have managed to take advantage of these particular benefits and they have done that through a government-run group which assesses what the benefits are and helps companies to get through all those hoops and makes sure that they stay on track. There are a whole lot of steps that they have to get through to get themselves on the right schedules. Once they are on the schedules then it makes life a whole lot easier. If they are competitive, which our companies are, then there are some obvious benefits there. In all of these arrangements, there are still steps to be taken. We are hopeful that we can work with government to ensure that these opportunities actually become benefits.

Senator BRANDIS—Would you say it is generally true that your members are eager to take advantage of whatever commercial opportunities this agreement would provide?

Ms Marsden—Our members are always looking for opportunities, including offshore. There are very large markets out there, whether in China, the US, Asia or Europe. Our members are always looking for new opportunities. They are very interested in this agreement and the opportunities it will provide. It will also provide opportunities back onshore in Australia in terms of greater investment and greater opportunities to develop.

Senator BRANDIS—Is this the best opportunity for improved access to the US market, from the point of view of the interests of your members, that we have seen in the recent past?

Ms Marsden—Definitely. This is a much larger opportunity than we have been able to provide through the WTO process so far. That is not to say that WTO will not get there in the future but the benefits are slow and incremental. This is the best agreement that we have seen—alongside the CER and the other ones that we are linking up with Asia. It is a crucial agreement in terms of the size of the market and also the standard of the economy. Their technological know-how, their ability to use systems and their ability to use R&D and the amount of knowledge that can be passed back and forth in terms of providing deeper economic integration will be crucial.

Senator BRANDIS—Is this the best opportunity for improved access to the US market that there has been?

Ms Marsden—Yes, that is correct.

Senator O'BRIEN—We have a submission before us which talks about article 11.7(1)(c) and suggests that that article obliges the Australian government to pay compensation to US investors if Australian laws, including environmental, human rights and labour laws, expropriate their investment, either directly or indirectly through measures equivalent to expropriation. The submission refers us to a case in the North American Free Trade Agreement involving Metalclad Corporation and Mexico which provided an extremely broad definition of what constitutes

expropriation. That submission suggests that we are, through that measure, granting rights to US investors that do not exist for Australian investors in Australia. Has the Business Council of Australia looked at that issue?

Ms Marsden—I do not believe that is the case. I believe that there are similar issues on both sides in that. However, if you are okay with it I would prefer to take that question on notice. It is a fairly technical one.

Senator O'BRIEN—Sure. I would appreciate that, because it is a substantial issue that is raised if the agreement is providing rights to US investors that do not exist here.

Ms Marsden—Is that the investor state issue?

Senator O'BRIEN—No. It is suggested that is about expropriation or nationalisation. Provision 11.7(1)(c) has a counterpart in the NAFTA which has been interpreted very broadly—that is the nature of the submission—and that interpretation has been approved by the Supreme Court of British Columbia. The interpretation held that an expropriation under the NAFTA includes 'covert or incidental interference with the use of property which has the effect of depriving the owner in whole or significant part of the use or reasonably to be expected economic benefit of the property'. That is the ACF's submission to us. I am drawn to that. It is an issue for business here in Australia. If rights are being created in this country—

Ms Marsden—And not on the other side.

Senator O'BRIEN—that do not exist for Australian businesses in the agreement then we should be fully aware of that before we enter into provisions which give effect to this agreement.

Ms Marsden—I am happy to take that on notice. It sounds a little bit like the investor state issue, which we did not support or were neutral on. We have not got that in our agreement. So if it is the investor state issue it is not in our agreement but I will find out for you what that is.

Senator O'BRIEN—It is 11.7(1)(c), so it is in the agreement.

Ms Marsden—Thank you.

Senator O'BRIEN—I refer you to submission No. 160 from the ACF which sets out their rationale. I would be very interested to know whether BCA has a precise view on that matter.

Ms Marsden—Yes, we can provide that for you.

Senator O'BRIEN—You talked about how the free trade agreement would deal with issues that multilaterals could not deal with, and you gave the example of red tape. Can you give some more detail on how that would work?

Ms Marsden—We can also take this on notice but I am aware that there are three different frameworks involved. With respect to red tape and regulations, I refer to the use of a number of what we call non-tariff barriers that stop Australian businesses competing in the US. There are frameworks there to ensure that it is feasible to reduce some of those non-tariff barriers, and that

is what I am referring to. Another one of those would be mutual recognition of professional services. Again, these are non-tariff barriers but they impact severely on how we do business.

Senator O'BRIEN—I would have thought that the provisions under GATS essentially require measures to be the least trade restrictive and, if they are not, they are challengeable. So I am wondering what the difference is between the bilateral US-Australia FTA—

Ms Marsden—The difference is that this is a specific agreement between two countries that has frameworks in which we can negotiate directly to improve the situation for both sides. These are win-wins for both countries.

Senator O'BRIEN—So it is the maintenance of an ongoing bilateral dialogue that allows us to correct any problems that emerge?

Ms Marsden—Yes, I agree with that.

CHAIR—But you are aware of TIFA, aren't you—that we do have an existing, ongoing dialogue on trade and investment?

Ms Marsden—This is a higher level, Senator. This is a level that I think will provide us with greater gains overall.

CHAIR—It is certainly at a higher level because the government decided to do nothing about taking up the opportunities under TIFA.

Ms Marsden—From a business perspective, that may be the case, but whether it is or it is not, we are looking for greater gains overall for Australian people and for Australian businesses in the US. So whichever method you use, we are happy to go with that.

Senator FERRIS—I noted the comments you have made about multilateral versus bilateral agreements. Do you have any comments to make in relation to some suggestions by other witnesses to this committee that this proposal for a free trade agreement also undermines the negotiating power of the Cairns Group? I know the Cairns Group is principally focused on agricultural trade but, as a general principle, do you have any comments on that?

Ms Marsden—Only to note that, at the same time as we are working with the Cairns Group, all of the members of the Cairns Group, as far as I am aware, are off negotiating bilaterals as well. It is agreed that all of these trade networks need to operate concurrently, in parallel. The gains that you get through multilateral agreements are much larger, they are quite fast and they obviously provide benefits across the board. But that does not undermine the fact that bilaterals will actually provide gains in a faster form and none of the other countries are looking back at us and saying, 'You shouldn't be negotiating bilaterals.' It is actually quite the reverse: other countries are looking at us and saying, 'Wow, the US took them seriously and China is now taking them seriously, so maybe we should be knocking on their door as well.' These are benefits for Australia, not the other way round.

Senator FERRIS—Other witnesses have also suggested that because Australia is a small nation in relation to the United States we will not have the negotiating power that we might have

if the scales were more reasonably balanced. Some people have recalled the CER and the evidence that was given at the time that suggested that New Zealand would not have the negotiating power in a CER with Australia. Have you done any work on that? Do you have any comments to make on that?

Ms Marsden—We have not done any work specifically on that issue, but our understanding is that New Zealand is very happy with the CER. If you want to draw that comparison, then that is a reasonably positive outlook on it. Both Australia and New Zealand, at the same time as negotiating the CER, went through a process of reducing tariffs unilaterally on both sides. This was a positive process for both economies in terms of creating a more robust and efficient economy. On that note, when you look at Australia and the US, the threats and opportunities provided in the US and the threats and opportunities provided in Australia mirror each other on the whole. However, Australia is a highly competitive economy. We have very low tariffs to start with. We are already in a very strong position. Our companies are used to competing and operating without protection. We are therefore in a very strong position despite the fact that we are dealing with such a gigantic market. These are actually benefits for us, not the other way around.

Senator FERRIS—On page 2 of your submission, there are two paragraphs beginning with the words 'failure to conclude'. The first sentence is:

Failure to conclude an effective and progressive bilateral agreement ... will have substantial negative consequences for Australia.

A sentence in the second paragraph is:

Potential jobs will be forfeited, as will access to rapidly growing sectors of the US economy.

Would you like to expand on those and, at the same time, comment on the suggestion that has been made to this committee that we could delay signing this agreement without any negative consequences?

Ms Marsden—I think that goes back to the issues I was discussing during the questions from the chair. It is possible that we can delay this and in the future pick up exactly the same benefits, but the Business Council believes that there is a very real risk that the same benefits will not be available down the track. You renegotiate; you do not necessarily start with exactly the same agreement and just keep going from where you left off. The US is our No. 1 trading partner. There are substantial benefits there in terms of employment and integration, and we believe these benefits would be lost overall. If we miss this opportunity now, it will be the same as I was talking about before: we will lose our spot in the queue and we may not have the same type of environment in the future. We have a lot of goodwill at the moment. For whatever reasons, the feeling in the US is strong that Australia is a friend and that this is a good thing to do with our friendly country. That may change in the future. It may not be the same sort of environment, and security issues may come into play. All of these issues may mean that in the future the environment will have changed and the opportunities will not be there, but a key one would obviously be the loss of position in the queue. The other thing I would like to point out is that obviously there are areas where we would have liked greater gains, including in agriculture, but overall this agreement at least sets up the frameworks to progress things in the future. It keeps

our position in the queue, it starts us on a very good platform, with great benefits in areas such as manufacturing and services, and it allows us to progress from there through the frameworks that are set up.

Senator FERRIS—Another point I would like to explore with you is in the middle of page 4 of your submission. You are talking about the recognition of professional qualifications. I noted the comments you made about the difficulties of employment for partners and spouses, but what about the barriers to mutual recognition of, for example, qualifications?

Ms Marsden—Those barriers can be looked at through the framework that is set up. They are not direct benefits immediately. However, they are better benefits than we would have achieved through the WTO process. The agreement actually sets up side letters and frameworks which will allow us to have ongoing dialogue and better move forward in those areas. These areas are very important, obviously for our members, but across Australia the service sector is a very crucial part of our economy.

Senator FERRIS—Did you see the failure to achieve that in the agreement as a disappointment or was it more significant than that?

Ms Marsden—The failure to have it directly in the agreement?

Senator FERRIS—Yes.

Ms Marsden—No. As I understand it, it was never likely to be directly in the agreement. We are very pleased to get it in a framework. Obviously, it would be ideal if we could get it into an agreement, but it is not something that is generally included in these types of agreements. It is something that Australia flagged as crucially important for our businesses, and that is why we have got it in this side framework.

Senator RIDGEWAY—I want to follow up on your comments that we have got a better deal than we would have under the WTO processes. Isn't it true that the Australian government had a significantly better opportunity to get greater agricultural access to the US market through the EU-US proposal at Cancun?

Ms Marsden—I am not across the detail on the agricultural side. I can get back to you if you think it is necessary.

Senator RIDGEWAY—I am surprised that the BCA did not take a particular view then against the position that the government may have taken, particularly given that some of what was on the table, especially that dealing with agricultural subsidies, would have been dealt with far more effectively at that time than now.

Ms Marsden—We actually do not have many agricultural members in our group. We represent the top 100 companies in Australia, but that is not agriculture, I am afraid.

Senator RIDGEWAY—I understand that, but I make reference to your comments that in this case there is greater agricultural opportunity as well as other opportunities. I also go to your

submission, where you state that a failure to conclude on the FTA now or in the next decade would have disastrous results for the Australian economy.

Ms Marsden—No, Senator. I actually said that failure to conclude would mean that we lose opportunities. I am not saying that we would go backwards; I am saying that there are these vast opportunities there which we can take advantage of. We have been given this opportunity now. It is better that we actually take it and use it. On agriculture, I was not saying that bilaterals specifically provide the best opportunities to negotiate agriculture. In fact, I was saying that in some cases the process of going through a bilateral applies pressure on areas that are very difficult to move forward, including agriculture. The sugar industry in the US have actually said they will not negotiate bilaterals on sugar and they will only look at that through the multilaterals. That is fine. It is not ideal for us and we would like better results but, as I have said before, BCA are very keen on multilaterals. We just do not agree with the argument that bilaterals undermine them; we think they put more pressure on them to do the things that we need them to do, which is reduce protectionism overall and provide better growth for the world economy as well as Australians.

Senator BRANDIS—But it is not an ideal thing; that is your point.

Ms Marsden—That is right. It can operate in parallel.

Senator RIDGEWAY—What do you say then in response to the Productivity Commission's report, where 12 of the 18 bilateral agreements it looked at were considered to have the effect of diverting trade away from domestic arrangements? Surely the BCA must have a particular view about that.

Ms Marsden—The Productivity Commission—

Senator RIDGEWAY—You talk about opportunities, and I accept that, but aren't opportunities also looked at in the context of the foreseeable future, whether it is medium or long term?

Ms Marsden—The Productivity Commission report, as I remember it, had a number of qualifications in it, but it also looked at bilaterals in terms of trade diversion. I will just make the point that some of the key benefits in this agreement that we are looking at with the US are to do with the service sector, where there is not trade diversion; it is about increasing competition for both economies. There are benefits for both sides, so there is no trade diversion. The other issue there is that we have low tariffs, particularly in Australia but also to some degree in the US, so trade diversion is minimised. In the investment and services area, there is not that issue and the benefits are very substantial. We believe in the BCA that they well outweigh any of the costs.

Senator RIDGEWAY—Do you regard the assessment done by CIE as being fairly accurate, or did it overstate—or understate—some of the possible gains?

Ms Marsden—I have not gone through the CIE assessment in great detail. We are wary of econometric analysis for these types of agreements. It is often better to look at specific sectors and assess them on a micro-economic level and have a look at the cost benefit. We believe

overall that the benefits well outweigh the potential costs, and that is why we support this agreement.

Senator RIDGEWAY—Would it concern you that, if the CIE report were done on the basis of NAFTA benefits that had been accrued in the North American continent, a lot of the benefits depend upon both how close you are to the marketplace, as opposed to how distant, and, particularly, the size of the population? The assumptions that are made in the CIE report, for example, compare Australia to Canada. But we are nowhere near the United States, as you would appreciate. Would you think that is a flawed assumption that could lead to overstating what the gains are going to be?

Ms Marsden—As I said before, I have not gone through the CIE report in detail. Leaving aside that report specifically, in issues of distance Australia is in a special situation where we have to be particularly competitive and particularly aware of the fact that we have this isolation. I think that is all the more reason to take advantage of opportunities where they become available. In terms of capital flows and technology flows, the distance issue is not as great. When we are talking about moving people over there to work in a large economy, the distance issue just is not as substantial for those sorts of areas, and they are key areas for our economy.

Senator RIDGEWAY—Let us go back to your either/or argument. Given the role of the select committee in making some sort of assessment about whether or not the agreement is in Australia's national interest, does that leave open the way that, as far as the BCA are concerned, putting the agreement off is something that the BCA would accept, even if they would prefer to deal with it at this particular point in time? Or is it just one and not the other?

Ms Marsden—I am not quite sure if I understand your one and not the other point, but we totally support the agreement for now. We think that the benefits would basically be lost if we delayed. We think there is a real risk that the environment will not be as good as it is now. We think that the gains we have now are good enough to get us through and get us strong benefits for the economy, and we should sign off on that and build on that relationship. There are a number of frameworks in there. The direct benefits are positive enough for us to sign off now and support it strongly, and they are good for Australia overall. But the frameworks are even better and even bigger. Those opportunities are very important and we do not want to pass them up. We want them as soon as possible—1 January is what we are hoping for.

Senator RIDGEWAY—Does the BCA take an approach that looks at triple bottom line responsibilities—that is, social and environmental outcomes as well?

Ms Marsden—A lot of our members adopt triple line.

Senator RIDGEWAY—Do you think it is unreasonable, then, for certain views to be put forward to this committee about concerns to do with the Pharmaceutical Benefits Scheme, the cost of medicines or Australian content? Do you think that those things ought not to be given the same weighting in the process of considering whether or not a free trade agreement is in Australia's interests?

Ms Marsden—I am sure you are giving them the same weighting. I think they are very important for Australia, and I am sure you, and this whole panel, are looking at them.

Senator RIDGEWAY—Do you hold a particular view as to why it is that the government did not go to such an extent as to give ironclad guarantees in the agreement, or as part of the side letters, about those particular issues—to the same extent that they would have, for example, in relation to the business community?

Ms Marsden—I am not across a great deal of detail on either the PBS or the cultural issues, but my understanding is that we got very good deals considering what we were up against. These are actually exclusions from what a comprehensive agreement would be, so the US are arguing that we have isolated these areas and been very effective in doing so, both on culture and on the PBS issue. I think that these have actually been very well looked after in the agreement.

Senator RIDGEWAY—Why do you believe that, as in the case of the recently signed Australia-Singapore agreement, which deals with cultural exemption, the Australian government did not take the same approach in relation to the United States? We are not talking about history; we are talking about recent memory. Why would the government not take the same approach?

Ms Marsden—Each of these agreements is a bilateral agreement, negotiated on a one-on-one basis. There are benefits and costs all the way through this agreement. We think, on balance, that they are positive overall.

Senator RIDGEWAY—So you would not be concerned that on balance and taking everything as a whole perhaps the committee or members of the public may take a view that it is not necessarily in Australia's interests?

Ms Marsden—Our members believe that on balance it is in Australia's interests. We are surveying the Australian public through the AUSTRA group through Newspoll. On balance the Australian public thinks it is in Australia's interests as well.

CHAIR—I have one final question. You mention in your submission and in your oral evidence that the United States is the biggest trading partner of Australia. We export about a third to them and they export to us about two-thirds, which means we have a deficit in trade with the United States of about a third of the total partnership. Has the Business Council of Australia done any work to see whether this agreement will widen that deficit or narrow it?

Ms Marsden—No, we have not done specific analysis on that. It is not surprising that there is a deficit given the size of the country but we think that the opportunities are very substantial. We have got a very competitive economy and we believe that we will get to benefit from this.

CHAIR—Thank you very much.

[9.56 a.m.]

HALL, Ms Brigette, Public Policy and Research Coordinator, Australasian Institute of Mining and Metallurgy

LARKIN, Mr Don, Chief Executive Officer, Australasian Institute of Mining and Metallurgy

McCARTHY, Mr Peter, Director, Australasian Institute of Mining and Metallurgy

CHAIR—Welcome. I note that we did not receive a written submission from you but no doubt you will direct your remarks to the agreement.

Mr Larkin—I will make a few remarks. My colleague Peter McCarthy, who is a director of the institute and is also Managing Director of Australian Mining Consultants, will give a couple of practical examples. The Australasian Institute of Mining and Metallurgy has 7,500 members. About eight per cent of those are overseas. They include metallurgists, mining engineers, geologists and professionals in mining surrounded by the minerals industry. The minerals industry is a truly global industry. Australia is a competitor in that industry and we are a world leader. We have a comparative advantage in the global industry. I have lots of figures on the significance of the minerals resources to the Australian economy and particularly to the balance of trade in Australia. I will not go through those, because I am sure you have seen them, but we can table those. It is not a sunset industry; it is an industry of the future.

We believe that the trade in commodities and particularly technical services between Australia and the US is very important to this global industry and the minerals sector. We are particularly concerned with the promotion of trade in professional services and technical commodities. In professional services it is a better story than in the wine industry in that there are $3 billion worth of technical services exported around the world from Australia. That is predicted to grow to $6 billion by 2010.

Any removal of any barriers to trade—whether they be tariffs, quotas, legal impediments, mutual recognition or barriers to professional mobility—are, we believe, not in the interests of our members or in the interests of the minerals industry in Australia. We are only a small organisation; therefore, we have not done a lot of research into the magnitude of the trade or the impacts and the detail of the free trade agreement and how it will affect it. However, on the surface we believe it does provide an umbrella framework for increased trade in mining technical services, which is software and other technical services, and the potential for increased mutual recognition of qualifications. We believe it would help in the movement of capital and it will enhance Australia's attractiveness as a favourable destination for US investment in resource projects in Australia. Dependent on the detail and how it is finally worked out, it could set precedents for further bilateral arrangements with emerging markets, such as China and India, which hold the future demand for the resources sector. That is our overall position. My colleague Peter McCarthy has some practical examples.

Mr McCarthy—My first point is that the professional work force in the industry is a very mobile work force and does work all around the world, as you are probably aware. My own experience has been of working all around the world, but I have not worked in the United States for practical reasons; there are impediments at the moment to doing that, some perceived and some real. Anything that opens that up for us as a small business operating in that sector would be beneficial. We would also appreciate a larger pool to draw expertise from in finding the right sorts of people to do the very specific technical jobs that we require in our business.

My first example is that we did open an office in Denver in the United States in 1988 and at present we only have one other office outside Australia, in the UK. We had difficulty with an employee of ours, who was experienced in the culture of our business and in the way that we do business, going over there. He was fortunate to win a green card in a lottery and was therefore able to stay and develop that business for some time, but when he moved on to another industry position we were not able to maintain the continuity and eventually that business failed. Anything that will make it easier for us to develop business in the United States, I would welcome.

My second example is that the mining industry needs to source capital globally, and in order to source capital it needs to describe its proposed activities in a way that the investors understand. That is where the professionals in the industry come in: writing the expert reports, the technical reports, the oil reserve statements and so on that back up those calls for investment. I am travelling overseas on Wednesday this week to try to raise $A135 million for a project in regional Victoria that will employ 500 people. We have been bound up for quite a number of weeks in the legal difference between how you describe projects in Australia and how you describe projects in the United States. That means the US is not high on the list of places that we will be going to in order to try to raise that money.

A third illustration is that the standard professional indemnity insurance policy for engineers and consultants working in Australia has a North American exclusion. If we were successful in winning a project in the United States at the moment we would need to negotiate on a case by case basis an extension to that policy and pay a substantial premium to be able to work in the United States. Again, if the agreement in the future makes it more transparent to ensure our sorts of activities in Australia versus those in the United States then I would welcome that.

Lastly, the US operates on a system of state registration of engineers. When we operate in Australia we can move all around Australia and do engineering work at present, but to set up a similar business in the United States we would have the problem of whether our employees were registered in the particular state where the work was being done. At the moment that makes it very difficult to operate as a consultancy, using the business model that we use in Australia.

Ms Hall—I would like to reiterate the fact that the mining work force globally is quite small—less than one per cent in Australia. Currently, we are finding that many of the tertiary courses that provide the skills required are in the process of closing, given that they are considered niche courses. The situation is similar globally. Given that, it is important to open up study and work agreements to allow the transfer of these skills and the opportunities to study these niche courses on a global scale.

Mr Larkin—So we are not saying that we believe this will create it. What we are saying is that it creates the potential for us to address those problems.

CHAIR—You have just hit an exposed nerve, Ms Hall. My electorate office is in Kalgoorlie. The Kalgoorlie School of Mines is a world ranking school of mines, and we are doing our best to make it a global centre of excellence, but it is closing down courses because of a lack of students. So you are saying that, because we are unable to train sufficient mining technicians ourselves, we should import them?

Ms Hall—Not necessarily import them, but open up the opportunity to develop our expertise in-house to take that outside and convey those skills elsewhere.

Senator BRANDIS—Mr McCarthy, I have a question on the second of the points you made about how the project descriptions in your documentation when you raise capital are not standard across jurisdictions. Is this going to help you? If this agreement were to come into force and you are raising capital say, on the American market, aren't you still going to have to comply with the requirements of their law in doing that? It is not going to standardise the documents for raising commercial capital, is it?

Mr McCarthy—That is right. It will not do that, but I would expect that there will be convergence over time. So, if there is more capital moving between the two countries for these sorts of projects, inevitably we will try to align our requirements better and it will become easier in the future.

Senator BRANDIS—Is that an illustration of the commercial practices, including the commercial practices of lenders, becoming more uniform, reflecting the volume of trade between the two economies?

Mr McCarthy—Yes, it is fair to say that that is true.

CHAIR—On that question, what about the EU? If we standardise with the Americans, we are not standardising with the European Union. These things are best done on a global basis, aren't they?

Mr McCarthy—A good example of this is the code for reporting of oil reserves and resources, which is called the JORC code in Australia. We wrote the world standard code here some 10 to 15 years ago. It has largely been adopted around the world, with the notable exclusion of the United States. So that is one area in technical reporting where we have a particular difficulty with the United States. Other countries have written their own versions of the code, but they are all based on the code that was developed here in Australia.

Senator BRANDIS—Of all the arguments against this, the most compelling argument against it—and, on balance, I am not against this, but that is not to say that there are not good arguments both ways—is that, in so many things, and you have just given an illustration of them, the American commercial practices and laws are particular and unique in the world. For example, they do not conform with the laws and practices of other advanced capitalist nations. If Australia participates in this agreement then we might be drawn into the vortex of American particularism

and away from the other sophisticated capitalist economies like the EU, as Senator Cook said. What do you say about that?

Mr McCarthy—I do not know that I am qualified to comment on that. My own view is that these all need to be normalised—so the more free trade occurs, the more likely it is that the EU, for example, will begin to align themselves with what the Americans are doing.

Senator FERRIS—Has the institute had a look at opportunities that might involve your members that will be created by the removal of tariffs on manufactured goods into the United States?

Mr Larkin—No, we have not got into that. We are primarily concerned with professional services.

Senator FERRIS—What about the question that I asked Ms Marsden before with regard to the difficulty of mutual recognition as it applies to the area covered by her organisation? How do you see that playing out in relation to, for example, the recognition of geologists and some of the field specialists who work in the mining industry?

Mr Larkin—As I said before, it is a global industry and, therefore, we would like them to be able to provide their services anywhere they might trade in the world.

Senator FERRIS—Yes, I heard you say that, but are they not able to now?

Mr Larkin—Not at the moment, unless there are bilateral agreements—although in Australia there are no regulations that say this is a metallurgist and this is not. It is the employer who recognises qualification, not the jurisdiction. Geologists are in the same category. The only ones who are not are mining engineers, and with mining engineers you need the bilateral agreements such as in the US. An example is the one that Peter McCarthy gave before of the JORC code, which is a worldwide code. It recognises a competent person, and a competent person is a person who has had five years experience in a particular area such as geoscience. We are currently working with Canadians, Americans and our sisters and brothers around the world to recognise competent persons on the same qualifications. The professional organisations that they belong to will be the disciplinary process should they break those rules wherever they trade in the world. We are progressing some of those mutual recognition issues on an industry basis or a professional basis, but we also feel they need to be looked at, particularly in engineering, across all those jurisdictions in America. If this can provide a national framework in Australia and the US, then it is in our interests.

Senator FERRIS—Do you have any views on how this agreement might impact on our labour laws or, for that matter, our environmental legislation?

Mr Larkin—No.

Senator FERRIS—You have not looked at that area?

Mr Larkin—No, we have not.

Senator RIDGEWAY—Mr McCarthy, I want to go to the issue you raised about professional indemnity standards as I understood it. Are you suggesting that one of the possible barriers to how the trade agreement might work in practice is the fact that you would have to go through not only a number of hoops, but also different systems in anything up to 50 states in the US; is that correct?

Mr McCarthy—Not so much in relation to the professional indemnity insurance—that is to do with professional registration—but certainly it flows on from that. If we were to write a report or give advice in a particular state of the US and we were not registered, then any professional indemnity insurance would not cover us because we would be practising illegally, in effect. The professional indemnity issue is really that the jurisdiction is perceived differently and they assess the risks differently in setting premiums. The premiums we have paid in Australia for the sort of work that we do are not considered appropriate in United States.

Senator RIDGEWAY—What about the issue of professional standards? You are no doubt aware of the Ipp report and the tort law reform process that has been going on and the fact that various states are now contemplating looking at professional standards legislation being put in place, and it is an issue that has been raised by engineers previously. Does that present any problems for the level of discussion and debate that is occurring in this country and the standards that presumably would be put in place as compared to compatibility with what might exist in the United States? Is it going to be easy, for example, to integrate and harmonise or is it going to be problematic because of the differing standards and regimes in the US?

Mr McCarthy—It is problematic at present. I do not expect that the standardisation within Australia will help that necessarily because there will not be any incentive to harmonise with the United States. In the short term I hope that one is resolved because it is very much impacting on our business and all of the professionals working in industry. Step one is to solve the Australian problem and then, if we could harmonise with the United States, that would be a good step two.

Senator RIDGEWAY—On that particular matter though, does that mean that the free trade agreement would be less of an incentive to want to participate in the US marketplace? Or is it likely to present problems to your members in being able to meet what would be the differing standards or rigid standards?

Mr McCarthy—I am not sufficiently familiar with the effects of the agreement to be able to say which way that will go. I cannot really answer that question.

Senator O'BRIEN—You are the second witness in a row to mention the problem of access by Australian professionals to the US market. You gave us an example of the failure of a business as a result of that access problem. Are you suggesting to us that we should discount the benefits of trade in services to some extent because of your experience unless and until access and professional recognition issues are sorted out?

Mr Larkin—I think you are working at multi levels. As I said earlier, we are trying to get professional recognition through our registered overseas professional organisation on an industry basis. There will then be the negotiations, the umbrella, and we see this as providing an umbrella that creates certain standards that will then flow through.

Senator O'BRIEN—How does it do that? Can you explain how the agreement will create those standards?

Mr Larkin—As I said, we have not gone into the full detail or understanding, because we have limited resources, as to what it will do. We are talking more in principle than in practice.

Senator O'BRIEN—Are you talking about what you would like to see happen or what you think will happen under the agreement?

Mr Larkin—What we would like to happen, and hope will happen, once there is communication, because communication will create the opportunities.

Senator O'BRIEN—Thank you; I understand your position better now.

CHAIR—Your association does not represent mining companies; it represents mining technicians?

Mr Larkin—Correct.

CHAIR—Therefore it is to be viewed as an association of professional persons in mining and metallurgy?

Mr Larkin—Yes.

CHAIR—An issue therefore for you is the ability to transfer to any place in the world without your professional qualifications disbarring you from practising?

Mr Larkin—Correct.

CHAIR—I think you have made a magnificent case for some universal recognition of those standards rather than simply American recognition of them. As an organisation, do you have links with your American equivalent?

Mr Larkin—Yes, we do.

CHAIR—As far as they are concerned, as a group of professionals in your field, do they query your professional qualifications or our academic or educational standards in any way? Do they challenge you?

Mr Larkin—Not the professional organisations; the state regulations may.

CHAIR—I am talking about your peers. In a council of your peers, you get a tick—is that right?

Mr Larkin—That is correct.

CHAIR—So it is the state governments in the United States that are the problem?

Mr Larkin—Where they have certification boards.

CHAIR—Is Nevada the key problem?

Mr Larkin—I cannot answer that.

Mr McCarthy—I believe it is quite general. There are active mining centres in various states in the United States. Nevada is just one.

CHAIR—But the Nevada School of Mines is regarded as a pre-eminent educational institution for your profession in the US, isn't it?

Mr McCarthy—I am not aware of that.

CHAIR—So you have to drill down past the federal government to the states in this case. Did you hear the Business Council of Australia's evidence earlier? They said that, while they are pro the agreement and urge us to adopt it, their concerns with it, which they see as the downsides, are with the movement of natural persons and the recognition of professional qualifications.

Mr Larkin—No, I did not hear that evidence.

CHAIR—If you get the opportunity, it is worth looking at that concern because that is a concern that they have entered into our record.

Mr Larkin—We understand that annex 10A of the free trade agreement also provides for the working group to consider the feasibility of developing model procedures for the licensing and certification of professional service providers. So that is very much an umbrella statement but we are hanging our hat on it.

CHAIR—But it has no time limit to it so we are not working to a deadline.

Mr Larkin—That is correct.

CHAIR—Thank you very much. We will take a short break.

Proceedings suspended from 10.20 a.m. to 10.34 a.m.

BELL, Dr Stephen, General Manager, Commercial, Qenos Pty Ltd

KELLY, Mr Barry Martin, Managing Director, Basell Australia Pty Ltd

WINSTANLEY, Mr Murray Evan, Chief Executive Officer, Australian Vinyls Corporation Ltd

CHAIR—Welcome. Do you wish to make an opening statement?

Mr Winstanley—I will make a couple of comments about the company I manage. We are the only manufacturer of PVC in Australia and we support a processing industry worth about $800 million to $1 billion. We provide an essential raw material for that industry. We operate plant which has a replacement value of up to $200 million, and the shop floor jobs in our company are some of the highest paid in Australia—our union members would routinely earn a package between $105,000 and $110,000—so there is a lot of value added in the process.

We have provided submissions on FTAs. We support the move towards FTAs but we have some concerns about the way they are being implemented. Principally we are concerned about consistency. For the Thailand FTA—and I represented the plastics and chemicals industry in the negotiation of that FTA—we put forward a submission about phasing on a number of products over a period of time, which was agreed to. We had phasing on a broad range of products in the period to 2008. We put forward the same view for the United States trade agreement, but only two months later we get an outcome which says that the tariff on those products will go immediately. We are concerned about the lack of consistency in that. We have requested comments from DFAT, DITR and a number of other organisations on the approach the government takes to trying to ensure consistency when it is negotiating free trade agreements, and we have not got a suitable answer.

The outcome for us is that a $25 million expansion of our plant will now be postponed until we understand exactly what the immediate loss of tariff means for us. The Thailand outcome was a good one. It gave us time to restructure. Losing our tariff with the United States immediately next year is of some concern to us. The impacts will be that the protection we get by having phasing for Thailand is now undermined and the time we could have had to restructure our business is now undermined. It is very likely that this will lead to increased dumping. We compete with a great variety of countries. As soon as one tariff goes to zero, other countries will have to drop their prices to meet that new price point. In effect, when tariffs go to zero that will drop our prices $50 a tonne. If you are importing from another country you will have to do the same to compete. That could lead to increased dumping.

Looking to the future, we ask that there be consistency when free trade agreements are discussed—because there are proposals to have further free trade agreements. We do not object to free trade agreements; we simply want a consistent outcome that allows us to plan our business and make our investment decisions in an environment which we understand. Principally that means providing for an adjustment period for our type of business, which is capital intensive and is one in which decisions, once they are taken, take up to five years to implement. By the

time we do our design work and implement our capital we are looking at four to five years. We cannot simply adjust our business overnight.

Dr Bell—I echo those comments. We hold a view similar to Murray's. Qenos is the sole polyethylene producer left. Its origins lie in the consolidation of the industry over the last 10 or 15 years. The Australian petrochemical industry originated in the late fifties and sixties in a very small market with a high tariff structure and, as a consequence, was typically made up of two, three or four producers which were relatively small players that competed with each other in a locally focused market. Over the last 10 years the industry has consolidated, through mergers, acquisitions and shutdowns, down to one producer of all of the main polymers in order to give it the ability to compete against regional and global players and to meet the needs of the local processing industry downstream.

We represent roughly three-quarters of a billion dollars of turnover and up to a billion dollars at the high point of the pricing cycle. We have 1,000 employees—in both the Port Botany, in Sydney, and Altona facilities—and we compete against pretty much every region of the world in terms of the import competition that comes into the market. We have a very strong domestic market position but we are fully exposed to the global marketplace and the pricing of our products is based on what the competitive environment is in the region, not on a cost-plus pricing regime.

We also fundamentally support the free trade agreement approach but our concerns are that, in moving towards implementing free trade agreements, the same sorts of issues that Murray raised be addressed on the way through. There is the phasing of tariffs, as we need time to adjust. It typically costs significant capital and significant effort to deliver the productivity required and make the adjustments to the change in the competitive landscape. We would like to see rules of origin addressed such that the rules of origin cannot be circumvented. Clearly, any opening-up of the market requires robust antidumping measures. A market the size of Australia's, being 20 million people, on a world scale is relatively small. As such, it takes only a small amount of incremental capacity out of some of the big producers in the region to do significant damage to the market.

In an environment in which free trade agreements are implemented and tariffs are reduced from five per cent to zero, it is not just the competition or the possibility of dumping out of the market where we have got the free trade agreement that is a concern. Also of concern is what other competitors will do to stay competitive in the marketplace. We also feel that, as with the outcome of the Thailand free trade agreement, phasing—and therefore time to adjust and spend the capital we need to spend to deliver productivity improvements to further consolidate the business—is required. We have the example of the Singapore free trade agreement, which was put in place immediately with tariffs going from five per cent to zero in July-August last year. We immediately saw a $50 a tonne reduction in the prices of products in the marketplace that we had to match to maintain our market position. We do not have any doubt that there will be an immediate impact from the implementation of an immediate phasing of tariffs from five per cent to zero. For us, with 400,000 tonnes of domestic production, if we are to take that sort of price reduction of $50 a tonne immediately that will have a significant impact on the bottom line of the business. We need time to adjust in order to meet that challenge.

Mr Kelly—I support my colleagues' contribution in terms of the desire for Basell and the rest of the industry to have time to adjust. I will go back to the beginning, just to explain. Basell Australia is the largest polypropylene manufacturer in Australia. The raw material of polypropylene is propylene. This typically comes from refineries here in Australia. We turn that propylene into polypropylene. The types of products which are made from polypropylene plastic range from ice-cream tubs and—polypropylene being a key input into automotives—car bumper bars, fascia boards and carpet, to Australian bank notes. One of our customers takes the material and turns it into banknotes and exports those around the world. You can understand where polypropylene might fit into the petrochemicals supply chain.

We have two facilities, one in Sydney and one in Geelong. The facility in Geelong is small, at 60,000 tonnes per annum. When it was built in 1991, the facility in Sydney was considered world scale. It has a capacity of 120,000 tonnes per annum. We are operating it at the moment at between 140,000 and 150,000 tonnes per annum and with some further investment we hope to be able to get it up to 200,000 tonnes per annum. The Australian market in polypropylene is about 230,000 tonnes per annum. We are one of two suppliers. We are the largest; the other is approximately one-seventh of our size. But the point I wish to make is that these days world-scale latest technology is seeing plants currently being built with capacity for 450,000 tonnes per annum, so you could imagine that the facility located in Geelong, at 60,000 tonnes per annum, is quite small. We are very keen. We have been investing over the last couple of years. We have spent nearly $30 million on Geelong in trying to upgrade the facility's product capability as well as making it more efficient. We hope and plan to be able to spend another $80 million in the next two years to be able to double its capacity and put it in a better competitive position.

I guess the fundamental point I am making here is that, in terms of the issues with the reduction in tariffs in free trade agreements—and, again, I have to say that fundamentally we believe in free trade agreements—we want to make sure that it is an even playing field. We want to make sure that the support and the countervailing measures which apply in one country or in the region also apply to Australia. We are seeking an even playing field. We are seeking some time to adjust and complete these investments. We wish to make sure that we see fairness in the application of tariff reduction across all free trade agreements. Fundamentally we support the industry position, but we are looking for consistency between free trade agreements, we are looking for consistent application of the rules of origin and we are looking for countervailing measures.

The only other comment I should add in addition to those of my colleagues is that my company also has an interest in a downstream compounding operation which is a pre-eminent supplier to the automotive industry. When I speak with our customers, one of their concerns is indeed imports of finished products into this country. When we talk about issues of concern that they have, they wonder why products can be imported so cheaply and they try to understand the contribution that raw material pricing can make to that. When we compare with raw material pricing in other countries we find it difficult to understand how some of those products can come into the country so cheaply. We ask, 'Are they interested in, and can we support, some countervailing measures or antidumping measures?' Frankly, most of our customers in Australia are small to medium enterprises, SMEs, and really do not have the wherewithal, the resources or the time to go through the process of trying to make an antidumping claim. Certainly one thing which I would be seeking on behalf of our downstream customers is more ready access to anti-

dumping or countervailing measures to help them adjust to the free trade agreements which we continually find ourselves involved in. That is all I would like to add.

Dr Bell—I would like to make a comment which builds on that a little. As an industry we have a track record of demonstrating that we can make the adjustments necessary to stay internationally competitive. So we are not here as a manufacturing group that is seeking to maintain or even increase protection from the outside world. We face the outside world every day of the week. This industry, not much longer than 10 years ago, in the late eighties, operated behind 30-plus per cent tariffs. Today we have a minimal tariff of five per cent. We have demonstrated that we are more than capable of meeting the challenge of making the adjustments necessary to remain competitive.

We build on typically indigenous feedstock. Our particular manufacturing operation is similar to Basell's. It takes ethane or gas and oil out of Bass Strait and into the Altona operation. We process that into high-value plastics. Likewise, the Botany operation takes ethane through a 1,400 kilometre pipeline out of the Cooper Basin in South Australia into the Sydney operation. Again, it builds on indigenous feedstock to make high-value products that then go into the downstream processing operations. There is an enormous tooling industry and contracting industry that sits on the back of our businesses as well. So whilst we might employ 1,000 people directly, indirectly each of these businesses employs an enormous number of people through the contracting and tooling industry on the back of the Altona strip, the Botany operations and the refineries at Clyde and Corio in Geelong.

The jobs are very high value added. People do get paid enormously well. These industries will not be replaced if they go. They will not be replaced by greenfield operations; they will be gone forever and the country would be thereafter dependent on imported product to replace the outputs that we make as an industry. So we think we make an enormous contribution to the community and to the Australian economy. We build on indigenous feedstock and we add a lot of value right through the chain. But we do compete against the rest of the world. We think we are capable of making the adjustments to remain competitive, but we need time to make those adjustments.

CHAIR—Thank you very much. What you have said summarises the written submissions that we have had. I wonder if each of you could tell us: if this agreement were to go ahead, what value of investment already in prospect to upgrade and improve your companies would be put aside or not proceeded with?

Mr Winstanley—In the case of Australian Vinyls, we were planning to improve the capacity of our plant by about 25 per cent in the first phase and subsequent to that by another 30 per cent five years down the track. The first phase is about $25 million. We have agreed to spend $7 million of that, but the remaining $18 million is now on hold and will remain on hold until such time as we understand the outcomes of this agreement. We had planned to do that over the period to 2008, which is why the Thailand tariff phasing to zero per cent in 2008 worked. We are not certain of the outcome of the tariff going to zero next year, so until we see what happens we will not make that decision.

Dr Bell—I could speak on behalf of Qenos. We are currently well advanced on the scoping of a major project to convert and upgrade the Altona facility from a liquids feed to a gas feed on the

cracker there. That will generate a significant step change in the competitiveness of the operation. The capital involved in that change from Qenos's perspective alone is $50 million and there is significant capital that the feedstock supplier, Esso and BHP, will have to put into that project. That project is not yet guaranteed and is at risk if the implications of a free trade agreement here are such that we do not believe we can get the return on the capital. Our shareholders are both international players, Orica and ExxonMobil. We compete with the rest of the world for capital. If they have better projects offshore, they will put their money into those projects. It is not as though the capital is guaranteed here in Australia. They basically look at it from a global perspective, they have a limited amount of capital and they put the capital where they can get the best return, so we compete with the rest of the world for that capital. We also spend about $20 million a year of sustenance capital ongoing, and clearly that would be under some impact of negative implications as well.

CHAIR—What is the figure I am looking for?

Dr Bell—For the project it is $50 million that is immediately at risk.

Mr Kelly—In the case of Basell Australia, we have been embarking upon a program to upgrade the Geelong facility, as I mentioned earlier, for a number of years now. Already we estimate we have spent approximately $40 million. There is an investment arm to upgrade the plant and to allow us to receive feedstock for that plant. There is maybe another $70 million or $80 million still to go. For the committee's information, we were proceeding full steam ahead with that towards the middle of last year. Basell Australia belongs to part of the Basell Polyolefins group world wide. The shareholders, BASF and Shell, put a hold on that project because they wondered about the viability of the continued expansion of the Geelong site. The developments in Asia and the developments with the free trade agreements contributed to the supervisory committee putting that project on hold. We are currently making submissions to that group to seek their full endorsement for continuation of our project, so the potential quantity of investment risk is approximately $75 million. Whether the US free trade agreement goes ahead or not is going to swing that investment. To be honest, it is probably not just the US free trade agreement. It is what is happening in the region with the free trade agreements—

CHAIR—'In the region' being the Asia-Pacific?

Mr Kelly—Correct. As with Qenos, the Basell board faces the decision day in, day out when it comes to the allocation of scarce capital expenditure and the best place to put that money.

CHAIR—If you would not mind giving us a figure, how many jobs are involved?

Mr Kelly—In the case of the Geelong plant, we have a direct work force of approximately 60 personnel, so it is a relatively small number of directly employed—

CHAIR—It is a capital intensive industry.

Mr Kelly—Indeed. Multiplying the effect, I would estimate it is easily five to six times that. Frankly, if we do not invest in and upgrade our Geelong plant, we will be facing a closure of that site within the next five years. There is no doubt in my mind about that.

Mr Winstanley—We have directly 125. If you look at the outsourced things, such as distribution, IT and warehousing, you would see something like 175.

CHAIR—And a multiplier?

Mr Winstanley—A multiplier would be four or five, like most of these industries.

Dr Bell—If our project does not go ahead, that will spell the start of the demise of the Altona petrochemical facility. There would be about 500 jobs directly at Qenos that would be at risk, and we are integrated into the rest of the complex. BASF and Dow are both operating down there and rely on our feedstock, so if they could not find alternatives, other companies would be directly impacted as well.

CHAIR—I am going to be tough with you guys about this. What are you actually putting to us—that we should nix the agreement or that we should defer it until such time as you have the phase-in protections that apply in the Australia-Thailand agreement, that you are satisfied that we have robust and effective antidumping legislation and that you do not want the rules of origin, which I might say are integral to this agreement? I frankly cannot see how you can take them out because they were one of the toughest areas of debate. You do not want those rules of origin; you want the Australian rules of origin, do you?

Mr Winstanley—No, the rules of origin with the US agreement are, by and large, workable. They are like the Thai agreement; they are based on a change in tariff classification, which is workable. We have difficulties when you use a cost based rule of origin, for a whole range of reasons.

CHAIR—So what are you putting to us? We have to vote on this and we have to vote on a firm question: yes, no, defer.

Mr Winstanley—We would go for defer. I will let my colleagues speak for themselves but I would go for defer, because I think the agreement has not recognised the needs of this industry and is inconsistent with the one that was announced two months earlier on Thailand. It seems to me that the government needs to get its strategy for manufacturing right here. If we are going to have a range of free trade agreements—they are now talking about ASEAN countries as well; China—where they have different outcomes on key parameters in each agreement, then you provide an investment climate that is very difficult to go forward with.

CHAIR—It is the nature of bilateral FTAs that you have that. What are you recommending to us, Dr Bell?

Dr Bell—From Qenos's point of view, we would like to see the phasing of the tariffs, as per the Thai agreement. We do not understand why one particular product got an exemption—it is phased but the rest are not. On the rules of origin, I agree with the proposition put here. We do not see any problem with those—they are quite workable. Even with the antidumping legislation, I do not think, fundamentally, there is a problem with the legislation. Our difficulty is with the way it is applied by Australian Customs. We want it applied robustly.

CHAIR—That is a resource problem, isn't it?

Mr Winstanley—It is a resource problem.

CHAIR—Yes, a lack of resources to Customs to do the job.

Mr Winstanley—That is part of the problem.

Dr Bell—So if we could have phase-in and consistent and rigorous application of antidumping measures when predatory pricing activity is going on from offshore, then we do not have a problem.

CHAIR—Are you the same, Mr Kelly?

Mr Kelly—I would support that. In terms of the countervailing or dumping measures, I would like to emphasise the costs for anyone making an application in that regard and the fact that, for SME industries, they simply do not have the time and resources to do that.

CHAIR—Okay.

Senator BRANDIS—Gentlemen, in response to Senator Cook's question a couple of minutes ago about whether you favour supporting, rejecting or deferring the agreement, Mr Winstanley said he was in favour of deferring it. I take it the other two gentlemen at the table are both going along with that view. If it were a choice between three—voting the agreement in, voting it down or deferring it—what would you say, Dr Bell?

Dr Bell—Are we voting it in with phasing of tariffs or without?

Mr Kelly—At the moment it does not matter.

Mr Winstanley—As it stands.

Dr Bell—As it stands, then deferring it.

Mr Kelly—I would echo that.

Senator BRANDIS—Would your view be the same if the best advice to the Australian government from our embassy in Washington, the people who have been dealing with the American Congress and the US Senate was that if we do not grasp the political window of opportunity we have now there is a likelihood that we would lose the agreement? So deferring, in a sense, ceases to be an option and, if that assumption be right, it becomes a choice between grabbing the agreement with all the shortcomings you have identified or losing it.

Dr Bell—I guess it depends on the assessment of the overall good of the agreement, in the national interest. I am not sure that I am in a position to make that assessment.

Mr Winstanley—I will be rather more selfish!

Senator BRANDIS—Before you go on, Mr Winstanley—Dr Bell, this is the problem here: we have a multiplicity of interest groups who, quite properly, are contending for their own sectoral interest. Some say it is great, some say it is terrible and some take an immediate position. We have to factor in all those sectoral interests and arrive at a view that sets out what we think is in the national interest or otherwise. I am inviting you to speak for the sectoral interest, Dr Bell.

Dr Bell—From a sectoral point of view, I favour deferring.

Senator BRANDIS—What if deferring is not an option? From your sectoral point of view, what if the options are taking it with its limitations or losing it?

Dr Bell—From a sectoral point of view, I would vote against it. That is a purely self-interested point of view.

Senator BRANDIS—Mr Winstanley?

Mr Winstanley—Same position.

Senator BRANDIS—Mr Kelly?

Mr Kelly—From a sectoral point of view, I would argue that the continued viability of our industry is certainly going to be dependent upon the performance of the SME enterprises downstream of us going forward. In terms of whether or not I agree that the agreement should go ahead, or that we should take the opportunity, is going to depend as much as anything on how this agreement supports the small to medium manufacturing enterprises that we have in Australia. From what I have read of the agreement, I am not sure that it protects the interests of that group as well as it should.

Senator BRANDIS—Overall, their lobby groups support it. The small to medium enterprise lobby groups support it, and big business support it as well.

Mr Kelly—Again, there are sectors within that SME enterprise group.

Senator BRANDIS—Of course there are.

Mr Kelly—When I speak with the sector which I am primarily involved in, I am not sure that they are convinced that they necessarily support the agreement. If I were to end up with a choice, on behalf of the upstream industry and the downstream sectoral industry I would not support it.

Dr Bell—Could I make another comment?

Senator BRANDIS—Certainly, Dr Bell.

Dr Bell—The jobs affected are not just in our own enterprises but are those of a lot of our customers. Typically they are highly skilled and very well paid jobs. You have heard some numbers cited. In our operation, a typical operator would get a base salary of about $80,000 or $90,000 a year. If those jobs go, they will not be replaced by highly skilled jobs on $80,000 or

$90,000 a year; they will be replaced by $27,000-a-year service jobs in places like McDonald's. In terms of making an assessment of the overall interest, one has to look beyond—even within the sector—what is in our immediate operations.

Senator BRANDIS—I will direct myself primarily to Mr Winstanley, but the other two gentlemen should feel free to jump in. You made an important point about consistency with other free trade agreements. Given that, ex hypothesi, these are bilateral agreements that we are talking about, don't you accept that each bilateral trade agreement is going to have its own particular features, which will reflect the different structures of the other party with which Australia is negotiating and will reflect the policy priorities of the different governments with which Australia is negotiating? In other words, why is consistency such an important thing when inevitably, when you are dealing with different bilaterals with different economies, there are going to be different issues?

Mr Winstanley—I accept that there are going to be different issues and that you are not going to get absolute consistency between free trade agreements.

Senator BRANDIS—If you did, they would not be bilaterals; they would be multilaterals.

Mr Winstanley—On the other hand, I would also say that, if governments are going to be involved in these, they ought to have some view on what they want to do in particular sectors of the economy. The consultation that we had with Thailand was very good. The consultation with the American negotiators was laughable.

Senator BRANDIS—I am not sure how you can say that. We have had evidence from the negotiators who negotiated on behalf of Australia, and their evidence was unanimous that they are completely satisfied that they got the best deal possible.

Mr Winstanley—I do not agree with that.

Dr Bell—What Murray was referring to was the consultation process.

Mr Winstanley—Let me complete what I was saying. If the negotiators and the government are going to take a view about a particular sector of the economy, they have to consult and they have to cross-reference. These negotiations were going on at the same time. There was little evidence that I could see of cross-reference between the Thai negotiating team and the United States negotiating team.

Senator BRANDIS—Do you know whether there was any?

Mr Winstanley—Yes, we asked them.

Senator BRANDIS—You asked who?

Mr Winstanley—We asked the negotiators.

Senator BRANDIS—Which negotiators?

Mr Winstanley—The Thai negotiators.

Senator BRANDIS—Did you ask the Australians negotiating with the Americans?

Mr Winstanley—As best we could get access to them, yes, which was difficult.

Senator BRANDIS—Because they were in the United States negotiating the agreement.

Mr Winstanley—Not necessarily. I think, if you want to consult, you have to actually make an effort to consult. Consulting is more than ticking the box. It is a dialogue, and you do not necessarily get a dialogue all the time with government consultation. You get asked questions or you are allowed to make a statement, but there is no feedback.

Senator BRANDIS—Come back to my question about why you say consistency as between different bilateral trade agreements is so important to you.

Mr Winstanley—Let us look at my company. We had a 30 per cent tariff in the late eighties and it went to five per cent in the mid-nineties. We have been investing and adjusting since that time. We have spent a bit less than $100 million in that period of time. When I expand a plant, it will take me two years to design that expansion. It will take me up to two to three years to implement it. I am designing an expansion of 25 per cent now followed by 30 per cent later. That is another five years. I cannot make decisions in an environment which changes overnight. It is very difficult. We said: 'We can go to zero per cent tariff and we will continue to invest. So on top of that nearly $100 million, if you look ahead five to 10 years, we would spend another $70 million. We will continue to do that. We can go to zero per cent tariff. We have gone from 30 to five, but give us four years to do it.' That argument was accepted by the Thai negotiators. Two months later, it is not accepted. How do I make a sensible decision in that environment where the second decision undermines the first? We asked as an industry for roughly 90 chemicals out of thousands of chemicals to have some degree of phasing. It was a very small component of the total chemical space. We asked for the same 90 chemicals roughly with the United States agreement.

Dr Bell—One got up. It was 2,4-D and only because Dow is competing with Nufarm in the United States and they wanted to have Nufarm competitively harnessed by phasing the tariffs down the other way because it was in the US interest.

Mr Winstanley—As an industry, we employ around 70,000 people and we turn over somewhere between $25 billion and $30 billion. We are a large industry. If the government wants to nurture and retain that industry, it needs to take a view on how it is going to develop in the future. And this is a vital part of it. If you keep changing the ground rules, we can adjust, but don't do it in a different way a couple of months later.

Senator BRANDIS—To give us a sense of the relativities here, what is the relativity between the amount of your industry's business that is conducted with Thai companies and the volume of trade with American companies?

Mr Winstanley—They would both be relatively small. There would not be a lot of difference. I do not have the exact figures.

Senator BRANDIS—Can you approximate for us?

Mr Winstanley—We are not big exporters to either country. There certainly would be more imports from the United States than there would be from Thailand.

Senator BRANDIS—By a factor of how much? Twice as many? Three times as many?

Mr Winstanley—It is probably a factor of something like 10, I suspect. I think it is a relatively large number of imports from the United States.

Senator BRANDIS—When you say that, I wonder to what extent you have not got this analysis from the wrong end. When imports from Thailand are a relatively small proportion of the volume of trade, to what extent is it a sensible analysis to say the Thai agreement that represents a small part of the micro-economy of your sector is a standard? Does it matter much?

Mr Winstanley—It is a growing competitive area. Thailand has a very big petrochemical industry and it continues to invest. It will have a much bigger competitive position in the future in Australia and the free trade agreement will enhance that. But, as we have said from the start, we are not afraid of free trade agreements. We will meet the competition.

Senator BRANDIS—But you want 90 chemicals phased in over four years.

Mr Winstanley—We had about 90 chemicals overall. As I said, that is a very small component of the total chemical tariff lines. Most of them are tariff free immediately.

Senator BRANDIS—Stripping away the generalities here, when it comes to specifics your complaint is that you wanted the tariff reductions on 90 chemicals phased in over four years and you did not get that. That is the point.

Mr Winstanley—That is certainly a very large part of it because that is what we got a couple of months earlier, absolutely.

Senator BRANDIS—If you had not achieved that in relation to the Thai deal, do you think you would still be coming here saying that about the American deal?

Mr Winstanley—Yes, we would, because we would be doubly upset.

Senator RIDGEWAY—This is more a statement than a question. From my perspective, I wanted to congratulate the three of you for coming along and talking about the issue on the basis of merit, about whether or not it is in your interest. As you would appreciate, there have been others who have not been as forthright or willing to come forward or who have at the very least done it by confidential submission. Thank you for coming along and being very frank about that.

Dr Bell—Can I make one comment about Thailand in relation to the previous question. For us Thailand is significant. We make what is called linear low-density polyethylene in a plant in Sydney. The market in Australia is about 150,000 tonnes and Thailand accounted for in the order of 40 per cent of the imports that came to Australia up until the middle of last year, when we were successful in a dumping action against Thailand. We export about 10 to 15 per cent of our

total production, in the order of 40,000 tonnes per annum. Most of that goes into the region. We put very little into Thailand and find we cannot get into Thailand because there is currently a 30-plus per cent tariff wall that we have to get over to get into Thailand. That is one of the reasons that we feel that phasing is very important, because we have got to have consistency of approach and a level playing field. We often ask government, and opposition for that matter, what their vision is for manufacturing in this country, where they want to see manufacturing not in three years time when the next election is due but in 20 years time. If you go to Singapore, you find that Singapore has a national view of where they want manufacturing to be long term and they set in place the structures and support to get it there. That is really the issue in terms of consistency from our point of view that we would like to see addressed.

Mr Kelly—I support that. Singapore and Thailand have large manufacturing capacities. They are exporting countries. For your information, I was just looking at the published data available of all the imports of products directly competing with us, and it would appear that 25 per cent of that is coming from Thailand and nearly 30 per cent from Singapore. So in our industry Thailand is very significant. It is more significant than the US in that regard, that is for sure.

Senator FERRIS—I notice that at the end of your submission, Mr Winstanley, you say in your second point that we should improve the effectiveness of Australia's antidumping system as a matter of urgency and before the FTA is concluded. For many years now I have heard people complain about the current arrangements for antidumping: they are slow, they are costly, it is difficult to prove material damage and so on. Do you think that this agreement is going to further undermine that, or is your problem with antidumping measures an existing problem anyway?

Mr Winstanley—I chair the industry antidumping task force, which is a coalition of a lot of industries—paper, steel, chemicals, glass, food processing and a range of other industries—so I can offer some broad comments on this. The US free trade agreement does not undermine the antidumping system. The Americans are very big supporters of antidumping measures. What it does do, though, and this will happen with any free trade agreement, is that where you have got a number of countries exporting to Australia, if a particular country's tariff preferentially goes to zero and the price drops immediately then if those other countries want to stay in the game they will have to drop their price by an equal amount, which will increase the level of dumping actions in Australia.

The problem we have with it is its cost, its timeliness and the fact that the hurdles are getting higher and higher each year. For example, initiation is a process whereby you prepare a dumping case, you put it in and you have to get through the first hurdle—that is, Customs gives you a tick and says, 'We will go and examine this case.' I am not exactly certain of these numbers, but I think they are pretty close: three years ago 47 per cent of all cases lodged got initiated, last year it was 27 per cent, and this year it is less than 10 per cent.

Senator FERRIS—Why do you think that is?

Mr Winstanley—I think there are a number of reasons for it. One is that they are very wary of ending up in the courts, so they are a little gun shy and the cases they will approve are ones that are pretty much cut and dry. You might contrast that with how the Europeans and the Americans use antidumping activities. You might then go back to the question about a vision for manufacturing in this country, because it is very difficult to get one up. I have just got a case in,

and the costs are running at close to $200,000. I took the decision to lodge that case in May last year. It still has not been initiated. In the meantime I still have to face what I consider to be predatory pricing activities from overseas companies.

The second issue is that we have a range of timelines. We say we will complete a case within 175 days. Cases are routinely given extensions of time—not as a matter of an unusual circumstance but routinely. At one stage last year, 100 per cent of all cases were given extensions of time. So there is a definite problem with the administration of antidumping actions in Australia. That will become more important as we have free trade agreements that increase the risk of dumping activities. It is not all Customs' fault. They are asked to do a very difficult job, and they do not have the resources to do it. That needs to be addressed. Equally, some of these are very complex cases, and they do not necessarily have the expertise to deal with them. That is not going to be overcome unless you put some resources in. If we are going to go forward and move tariffs to zero—and we accept that that will be the outcome—we want to make sure that the administration of the one measure that we have available, which is through dumping and countervailing measures, is effective and timely and that the resources and skills that are needed to make pretty complex decisions are available. That is not the case today.

Senator FERRIS—Did you have the same concerns with the Thai agreement in principle?

Mr Winstanley—Yes, in principle. Again, the Thai agreement does not in any way undermine dumping activities.

Senator FERRIS—But it does not deal with the problem.

Mr Winstanley—It does not deal with the problem back here. We are saying: 'Go ahead. Have the free trade agreements, but make sure you put the appropriate processes in place in Australia in this particular area.'

Senator BRANDIS—There is absolutely nothing in this agreement that detracts from enforcement of Australia's antidumping law. I understand your point—

Mr Winstanley—I have just acknowledged that, Senator Brandis. What I said was that we have a problem with the antidumping system per se.

Senator BRANDIS—That is a different issue.

Mr Winstanley—No, I was asked the question.

CHAIR—He was asked the question.

Senator FERRIS—Technically five per cent tariffs are often known as nuisance tariffs, and they are abolished—from five per cent to zero—in quite a straightforward way sometimes. I was interested to see that you adjusted from 30 per cent to five per cent, but I could not see anywhere in here where you said how long you had for that adjustment period. I heard you say to Senator Brandis that you wanted a phase-in for that. Were you looking at one per cent a year or something like that? Would one per cent a year really make that much difference?

Mr Winstanley—Let me first deal with adjustment. The adjustment in my particular industry occurred essentially over the period 1994 to about 2002, from 30 to five.

Senator FERRIS—Eight years.

Mr Winstanley—About eight years, essentially. On the second part of the question of whether a five per cent tariff is important: yes, it is. We are in a capital intensive industry at net profit level. These industries typically make up to four or five per cent, that is net profit after tax, and maybe 10 or 12 per cent EBIDA—earnings before interest, depreciation and amortisation. A five per cent reduction flows directly to the bottom line, so it is actually quite a big impact on—

Senator FERRIS—Twenty-five per cent over eight years, I would have thought, was a pretty big impact. Eight years is not very long for a 25 per cent adjustment.

Mr Winstanley—In my case, I have closed two plants and retrenched 75 per cent of the work force.

Senator FERRIS—So that was part of the adjustment process you talked about.

Mr Winstanley—Correct. And I have invested close to $100 million. The next phase is not retrenching workers; it is investing in making the scale of my plant larger with my existing work force, and four years is the quickest I can do that.

Dr Bell—There are two ways of getting productivity: cutting your fixed costs and spending money on technology. Fixed costs is people, basically. In this industry, prices are declining in real terms two to four per cent per annum. Every year our costs go up—everyone wants a wage increase; we all do, and typically they are going up in the order of three to four per cent per annum. We have got to generate a five per cent per annum real productivity gain in the base case just to stand still. We do not improve anything by generating five per cent per annum. On top of that, we start to talk about—as we phase tariffs down—getting the extra one per cent, two per cent, three per cent—up to five per cent—beyond that. It is a hell of a shock to these businesses that are generating only single figure returns anyway. For our business the impact of five per cent is about $25 million. It would wipe out our recent profitability. It is a cyclical business, and we have been at the bottom of the cycle for some time now.

Senator FERRIS—I was pretty impressed by your work force payments. One of your shift managers earns around $110,000 a year. They are very highly paid people.

Mr Winstanley—Again, let me just tell you that these are skilled people. Every month we take our plant operators off for one day's training. We put a lot of effort into training. Of the five per cent productivity gain that I get per annum, I look to get half of that from the input of my workers and half of it from capital. And I do; it is a fact of life. If they did not deliver that 2½ or three per cent per annum, I would not be here. These are highly desirable, highly skilled, highly trained people and we have ongoing training routinely built into our shift structure.

You asked a question about phasing. We initially asked for three and two—go from five to three and then three to zero. At the end what we got was five to zero in four years time. That is

entirely workable. It is a reasonable outcome. We are not arguing about that. It was not all we asked for, but it is close enough.

Dr Bell—Five per cent does not sound a lot as a number, but in the context of the world that we are operating in every day, it is significant money.

Senator FERRIS—Yes, I appreciate your explanation. I was just making the point that often when we have customs tariff amendment bills that move through the Senate, the five per cent to zero is described as 'getting rid of a nuisance tariff—

Dr Bell—Yes, the nuisance tariff is a different issue.

CHAIR—It is sometimes regarded as an essential tariff to compensate for fluctuations in the exchange rate.

Senator FERRIS—I certainly understand the explanation that you have given, and I appreciate that you have taken the time to do it. I have a final question. I think you were talking about some of the downstream industrial applications for your products. With the automotive products that you would be expecting to produce, for example, would you expect that you may go into vehicles which might have a greater demand, or would there be downstream products that would benefit from the elimination of 90 per cent of tariffs into the United States that might increase demand for your products into transformed manufactures?

Mr Winstanley—There is a balance to that. Yes, certainly, some of our customers will benefit but a great deal of them will not. Already, in my particular industry, we can see areas where there is increased competition and some imports coming into the country ahead of free trade agreements to develop positions that can go forward with a lower tariff in the future. So the answer is that there is a balance to that. On balance, for my particular customers, it is a negative. But I acknowledge that some of my customers will benefit from it.

Senator FERRIS—I would have thought one of the difficulties you would have in dealing with the United States would be the fluctuation in the exchange rate, where the dollar has gone from US55c to US83c in a relatively short period of time—certainly within the adjustment period you are talking about for your tariff phase-down.

Mr Winstanley—There is a misconception that the chemical industry is like any other commodity industry—that is, if you sell gold at $US400 a tonne at an exchange rate of 0.8, you get 500; and, if it is 0.6, you get whatever that figure is. It does not work like that for us. I can show you the data, and it is in my submission. I am independent of exchange rates. For a whole range of reasons, it is not that simple.

Dr Bell—We compete with the US-dollar pricing in the region. Our products are denominated in US dollars and are regionally priced. Even though we get indigenous feedstock out of Bass Strait and the Cooper Basin, the contracts are all tied to oil prices and are denominated in oil. The component, if you like, that does get a benefit or a disadvantage from the exchange rate is the input cost you have for your work force which you pay Australian dollars for. But at a product level, a headline level, we compete against US dollars. We have feedstocks and inputs, including a lot of the capital equipment. It is not always made here but imported into the country

and purchased in US dollars. You will tend to be impacted on by whatever the exchange rate is at the time, because you are hedged, in a sense, against it.

Senator FERRIS—I appreciate your explanations.

CHAIR—I want to make a few remarks about the importance of the petrochemical industry. Since we are well endowed with hydrocarbons in this country—almost self-sufficient—you add value to that. If you did not, we would import it and we would not have the basis for a plastics industry and a whole range of other things in this country. Thank you for coming forward and for your detailed submission. I was particularly taken, Mr Kelly, by your table on how you are working to become more and more competitive.

[11.28 a.m.]

CHRISTOFF, Dr Peter Alex, Vice President, Australian Conservation Foundation

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

CHAIR—Welcome. Thank you for your very detailed and extensive submission. Now you have an opportunity to speak to it before we ask you questions.

Mr Smith—Thank you for the opportunity to appear before you today. We put in a pretty comprehensive submission to this inquiry and are keen to highlight some key issues in relation to that. My colleague Dr Christoff will also highlight some issues. What I want to do in the beginning is to explore some of the key themes from our submission.

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

I want to further elaborate on some of those points and I have asked my colleague Dr Christoff to highlight some of the missed opportunities that we think have arisen from this free trade agreement. Firstly, in relation to environmental impact, without an environmental impact assessment it is difficult to assess the direct potential environmental impacts of the FTA. I really want to emphasise this point: there has, to date, been no environmental impact assessment for this FTA. Chapter 10 in the recent Centre for International Economics' report deals specifically, if fairly scantily, with the potential environmental impacts of the FTA. It is not an environmental impact assessment—the report admits as much. The Centre for International Economics' report states at page 129:

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

Nonetheless, the Centre for International Economics' report has acknowledged that there could be a marginal but unquantified rise in greenhouse pollution arising from increased GDP. This would be occurring at the very time that we need to significantly cut our greenhouse pollution. The Centre for International Economics predicts that the FTA will deliver an increase of about $6.1 billion per annum for Australia's GDP. There has obviously been a lot of discussion about

that report. Leaving aside the concerns about these costings, it is worth thinking about the potential environmental impact of that expansion in GDP.

I want to make a broader point about Australia's economy. Obviously, the Australian economy is travelling very well, and most recently there has been an Australian Bureau of Statistics report that measures Australia's progress; but in terms of Australia's environmental health, on nearly every single indicator we are going backwards, despite our strong economic performance. We do lead the world, unfortunately, in our production of greenhouse gasses. We are almost the world's leader in the use—or the misuse—of water. We use more energy than pretty much any other developed country, and we are the greatest producer of waste in the developed world. Our economy is incredibly inefficient in terms of the way that it is currently structured.

If you take a situation where you are potentially bolstering GDP by something like $6.1 billion per annum, the CSIRO has estimated that each dollar increase in GDP, in terms of how the economy is currently structured, requires the consumption of an additional 37 litres of water, an additional three square metres of land disturbance and the burning of an additional 10 megajoules of fossil energy. The increase in Australia's water consumption, land degradation and energy use from a projected $6.1 billion annual increase in GDP, therefore, will be substantial and clearly not environmentally sustainable. I want to be really clear here. We are not opposed to any increase in GDP; we are not opposed to economic growth and we believe very strongly that we can have a healthy environment and a healthy economy. But we do need environmental reforms which address our wasteful economy, protect our rivers and our forests and cut greenhouse pollution. Our fear is that these sorts of reforms to the economy will be more difficult to achieve under this FTA.

I want to make another important point about the fact that we do not have an environmental impact assessment. The clock is obviously ticking on this FTA. This Senate inquiry is due to report by August. We do not have a comprehensive environmental impact assessment and, in all likelihood, there will not be a comprehensive environmental impact assessment prior to this Senate committee reporting. It is our very strong view that the Senate should not be supporting this FTA without such a comprehensive environmental impact assessment. There are other issues that we are also deeply concerned about, which I will come to in a second, but I really want to emphasise that point.

I want to touch very briefly on the issue of compensation. The FTA appears to oblige the Australian government to pay compensation to US companies if Australian environmental laws expropriate or significantly interfere with their investments. That is article 11.7. This could potentially expose Australian governments to billions of dollars in compensation payments, forcing them to think twice before introducing the sorts of tough environmental laws we need to cut greenhouse pollution and to protect our rivers. I want to emphasise that it is not just the ACF that is saying this; the Victorian, the New South Wales and the ACT governments in their submissions to the Joint Standing Committee on Treaties—and I think also in their submissions to this inquiry—have raised strong concerns about the potential economic and environmental impacts of these provisions.

If that were not enough, governments will also need to ensure that their environmental laws are not 'more burdensome' than necessary. That is article 10.7.2 of the services chapter. If you combine the potential for compensation with the need to ensure that laws aren't too burdensome,

you get what is called regulatory chill, a failure to introduce the tough environmental laws that are needed to cut greenhouse pollution and protect our precious rivers and coasts.

In conclusion, the ACF want to welcome this inquiry and JSCOT inquiry. They really are the only opportunity for the community to put their views. We think it is outrageous that the Australian government has signed the FTA before these two important committees have reported. We believe there are strong environmental reasons for opposing the FTA, and we urge the Senate committee to share that view. We urge this committee to support new legislation giving parliament an adequate role in approving proposed international trade agreements. I will get my colleague Dr Christoff to add some other comments.

Dr Christoff—I also very much appreciate the opportunity for the ACF to appear before this inquiry. I want to make some elaborative comments and add a couple of points as well. I begin with the issue of compensation and regulatory chill. Our concern is that a number of opportunities that might be available to us through this agreement have been perhaps foreclosed or limited by the threat that is posed by the chapter 11 component of the agreement. We are very concerned that the opportunities to actually enhance existing regulations and to enact new laws that would deal with the substantial environmental problems currently faced by Australia are being closed down by that particular provision.

The ACF have some very clear policies on trade and the environment. We support trade policies, regulations and activities taking place within a framework that enhances social and environmental wellbeing. We are not opposed to trade. We believe these sorts of activities must take place and be framed by a set of analyses of the opportunities for trade in terms of their social and environmental outcomes and costs. We acknowledge that trade and in fact investment liberalisation do offer the potential under the right circumstances to enhance ecological sustainability. So we are not at all opposed to trade per se. We also believe though that regulation of trade and investment must be subsumed to broad social and environmental goals and that trading agreements, such as this one, must be clearly identified in terms of their various costs—economic, social and environmental. As Wayne has identified, there has been no effective costing of the environmental impacts at all.

A number of opportunities are being missed in this agreement which substantially undermine its validity. Firstly, the ACF does believe that these sorts of agreements and trade in general should be orientated towards eliminating inefficient and ecologically damaging national policies and practices. Through the process of trade it should be quite possible to eliminate those subsidies—both hidden and direct—that support environmentally damaging industries. This is a major aim of the agreements that came through from the World Summit on Sustainable Development two years ago. It is a clear theme that is now running through the debates in the World Trade Organisation, on the Committee of Trade and Environment and the whole trade and environment debate. Finally, trade agreements should encourage a whole range of different forms of environmental innovation and improved performance.

We are deeply concerned that the agreement as it is currently defined, despite the fact that it does mention the Australia-US joint statement of environmental cooperation as a future possibility, does not actually go anywhere towards articulating what such a statement might or in fact should contain. There should be something in this agreement which directly takes on board the issue of hidden and direct subsidies. This agreement is trying to tackle a whole range of

subsidies to the American agriculture sector, but it does not identify the hidden subsidies that occur in agriculture in Australia—for example, the losses of soil, water and biodiversity, which are effectively hidden subsidies built into long-term environmental costs.

The agreement does not identify the issue of subsidies in relation to energy—fossil fuel costs. It does not tackle and does not progress the debate that is currently very much alive in the World Trade Organisation about the relationship between products and processes. This agreement could, and should we believe if it is going to have any worth, raised the bar in terms of sustainability. For example, it could clearly articulate very effective processes for ecolabelling to encourage both American and Australian producers to be much clearer about their environmental responsibilities and to use effectively the sorts of market based incentives which the agreement touches on. These are the issues I wanted to raise briefly. I am sure there are others that will come up in questioning.

Senator BRANDIS—Dr Christoff, do you believe that when this committee delivers its report to the Senate we should act in the overall national interest?

Dr Christoff—We should certainly be acting in the overall national interest. I think the question is how one defines that national interest.

Senator BRANDIS—That is what I wanted to explore with you. We have had a multitude of submissions to this committee, and I am sure those submissions almost universally have been made by concerned Australians acting in good faith and honestly representing points of view which they hold. Many of those submissions have said, 'This is tremendous. It will be great for trade, great for Australian commerce. You should not hesitate in recommending that the agreement be adopted.' Other submissions have said, 'This is terrible from our particular point of view. Do whatever you can to make sure the Senate does not enact the enabling legislation.' Others have taken an intermediate position. I think the gentlemen who were giving evidence on behalf of the petrochemical industry who you heard before could be fairly described as taking a somewhat intermediate position.

My question to you is almost a philosophical question. If we are satisfied—and I am not saying we would be—that on balance the net effect of this agreement is good for the country and that, while some of the bases on which you assess the effects are almost incommensurable, while there are winners and there are losers, when you net it all out there are more winners than losers, should we recommend the adoption of the agreement? Or, do you say that, if one significant sectoral point of view can honestly say, 'Our sector's interest will be damaged by this agreement,' it should be vetoed? Is it a net balance question or should it be enough for one important group to say, 'Regardless of whatever else it does for the country, it hurts the environment; therefore we have a veto?' How do you think we should approach it—on the net balance principle or the veto principle?

Dr Christoff—I think it is a fair question. The answer is that we probably should approach it on a net balance principle, but I think the issue there is how you define 'in the national interest'. I do not think the environment is a sectoral issue; it is an issue for all of us, as our Prime Minister says about a whole range of other issues. If we find, as I think is the case with this agreement, that the longer term future and opportunity for all Australians is going to be substantially detrimentally affected—and we believe that is the case—by intensifying the range

and the effect of environmental impacts, as this treaty is currently poised to do, then I do not think it would be, on balance, feasible for this committee to suggest that this agreement is for the betterment of all Australians and in the national interest.

Senator BRANDIS—I have listened very carefully to what you have said and I have read your submission. It seems to me that you do not actually say that the agreement is harmful to the national interest or to the environment in any particular way. Rather it seems to me that what you say is that there are not enough safeguards, so the effect of the agreement could be to harm the national interest. Is that a fair characterisation?

Dr Christoff—No. I do think we take it a little further than that. What we are saying is that, first of all, in the absence of rigorous analysis we can only assume what the environmental impacts will be, but the projections there are very clear in terms of environmental outcomes. The second point would be that under the circumstances, given the sorts of regulatory frameworks we currently have, it is quite clear that we have to date been unable to tackle those environmental impacts, which will be intensified by this agreement. Thirdly, we see the agreement in its current form actually providing a compensatory mechanism and having a chilling effect on regulations, which will make it less likely that we will actually be able to tackle those expanded and intensified environmental impacts in the future.

Senator BRANDIS—I must say, with respect, that still sounds conjectural to me. You might be right; the conjecture might be a fair projection as to what could happen in the future. But I invite you squarely: can you identify one specific identifiable negative outcome for the environment which you can say from reading the text of this agreement will happen if the agreement is given effect to?

Dr Christoff—I would propose two perhaps. All of these things are conjectural in the sense that the agreement is not yet fully implemented.

Senator BRANDIS—Hang on a second. If the agreement had something in the environmental chapter that said, 'The Australian environmental standard in respect of a particular area of the environment is X and now as a result of the agreement it is going to be Y'—if there was some actual or quantitative or measurable reduction of an environmental standard—you would be on pretty strong grounds, but I do not hear you saying that.

Dr Christoff—We cannot say that because I think the agreement is cast in general terms. What we can point to though are the very many open doors that people can wander through to do damage to existing environmental regulation and future environmental regulation. The example that I point to most potently would be to deal with the issue of climate change and greenhouse gas emissions in the future. It is quite likely under the sorts of compensatory mechanisms that are embedded in the agreement at the moment that an American energy corporation working in Australia, if subjected to new carbon levies and taxes, could say quite feasibly that it is going to lose a significant proportion of its future profits and it could potentially therefore claim compensation under the agreement. Of course, all of this is conjecture until the agreement is in place. It is quite clear that this is a very valid and strong interpretation and one already supported by a number of others who have made submissions, including the Victorian and New South Wales governments.

Senator BRANDIS—That does not mean that Australia's domestic environmental standards are being reduced; it means that they are being implemented. But a corporation whose profitability is affected by the implementation of those standards has a right to seek compensation. It does not follow to me that that represents a reduction of standards.

Mr Smith—It is precisely that point that is the issue. At the moment, there is no specific entitlement to compensation under Australian law if potential amounts of your profits are undermined by the introduction of new legislation or regulation. But this agreement opens the door to that. It opens the door to potentially significant compensation arrangements for American companies and presumably for Australian companies as well. It is governments that are going to be wearing that cost.

Senator BRANDIS—That is a cost to the revenue. That is something the Treasurer might get exercised about. It seems to be an assumption in your logic that there is not a reduction in our environmental standards.

Mr Smith—No. In many ways I wish we were not having this conversation because, in a perfect world, we would be coming to this inquiry having seen a complex environmental impact assessment. This is a significant agreement. There should have been a comprehensive environmental impact assessment. That has not been done and it is a weakness in this whole process.

Dr Christoff—If I can add one comment too: I think underlying the position you might be taking is an assumption that our existing environmental regulations are in fact adequate.

Senator BRANDIS—No, I am not making that assumption. I am not saying they are not, but I am not making that assumption. I do not think that is any part of the logic of this discussion.

Dr Christoff—With respect, I suspect that it is. Given the environmental indicators that we see across the board, with the exception of urban air quality, and with the ongoing substantial decline of Australian environmental conditions in a range of important areas—water quality, energy consumption, greenhouse gas emissions and so on—it is quite clear that over time and in the near future we are going to have to substantially revamp, enhance and strengthen our government's frameworks in these areas. So I think it is certain that there will be a push towards strengthening those regulations; therefore, companies which would seek to find compensation in the face of those new imposts would have a real opportunity to do so under this agreement.

Senator BRANDIS—So probably the core of your critique is that the agreement does not provide sufficient protections or safeguards to Australian domestic environmental standards.

Dr Christoff—And also the opportunity for those standards to be strengthened effectively over time.

Senator BRANDIS—But whatever those standards might be at any given point in the future.

Dr Christoff—I think that is fair, yes.

Senator BRANDIS—Is Mr Michael Kerr here?

Dr Christoff—No, he is not.

Senator BRANDIS—Just so the record reveals this, Mr Michael Kerr is the person who was signed as having prepared your submission. These are questions I would have wished to direct to him, but it strikes me as more than—

Mr Smith—It is a submission on behalf of the Australian Conservation Foundation.

Senator BRANDIS—I understand that, but some of the questions I am about to put are slightly more technical. It is a 14-page submission which deals with the following: chapter 11, investment; chapter 10, cross-border trade in services; chapter 7, quarantine and phytosanitary measures; chapter 8, GMO food labelling laws; and chapter 21, the dispute settlement mechanism. It strikes me as passing strange that it barely even mentions chapter 19, which is the chapter about the environment.

Mr Smith—I would like to make an introductory comment. The way we approach public policy is to say that environment is not just an issue that happens in isolation within one particular silo. Environment impacts on the whole of government.

Senator BRANDIS—I understand that.

Mr Smith—Issues in relation to investment are absolutely significant and critical to future regulatory arrangements for protecting the environment. This is an issue that was raised with us by the Australian government in our consultations with them. They were at pains to talk to us about the investment chapter and issues in relation to services as well.

Senator BRANDIS—That is fine. I am not saying that any of the issues you deal with are not relevant and I understand entirely that you take, both literally and metaphorically, a global view. However, it does strike me as remarkable, especially in view of something Dr Christoff said to me a couple of minutes ago, that you do not even refer to the protections that are provided for the environment by chapter 19. Let me, for example, refer you to article 19.2(2), which reads:

… each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws—

that is, environmental laws—

in a manner that weakens or reduces the protections afforded in those laws as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

Let me refer you to article 19.1, which reads:

Recognizing the right of each Party to establish its own levels of environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws provide for and encourage high levels of environmental protection and shall strive to continue to improve their respective levels of environmental protection, including through such environmental laws and policies.

Dr Christoff, your criticism is that there are not safeguards there. There it is: article 19.1, which is a generic safeguard, and in your submission you do not even acknowledge its existence.

Mr Smith—We welcome those provisions; there is no question about that.

Senator BRANDIS—Why did you not say that in your submission?

Mr Smith—But there are also some caveats in relation to that. If you look at, for example, article 10.7(2), it states, essentially, that environmental laws should be 'not more burdensome than necessary to ensure the quality of the service'. There is a caveat that is placed on that. The issue in relation to compensation also presents a caveat.

Senator BRANDIS—If we are looking at, as it were, the hierarchy of legal rights and obligations, in section 1 of your submission you lead off with comments on chapter 11, the investment provisions, and you seem to be concerned that the provisions of the agreement about investment will derogate from environmental protections. That is a fair characterisation of your position, isn't it?

Mr Smith—That it could potentially? Yes.

Senator BRANDIS—What about article 11.2?

In the event of any inconsistency between this Chapter—

that is, the investment chapter—

and another Chapter, the other Chapter shall prevail ...

which includes the safeguards in chapter 19 about the environment except to the extent of the inconsistency. So there is a hierarchy of rights and obligations in the structure of this agreement—you are right—but those chapters that you criticise as potentially derogating from environmental protections are made subsidiary to the overall safeguards for the environment in chapter 19, which you do not even mention.

Senator O'BRIEN—Can I draw your attention to pages 9 and 10 of the submission, Senator Brandis, because they do mention chapter 19.

Senator BRANDIS—In passing, but barely treated and certainly—

Senator O'BRIEN—It is not what you said before.

Senator BRANDIS—it does not characterise the relationship with chapter 19, which is a peak provision to which the other provisions you criticise are subject, not vice versa.

Dr Christoff—With respect, I think that is probably overinterpreting the strength of chapter 19. It certainly does try to give some strength to existing environmental laws, but I do not think that it deals with the issue of the chill factor that we are talking about and the difficulties of moving from the current and extremely inadequate regulatory legal basis for environmental

protection to something that is a lot stronger. It says 'strive to continue to improve their respective levels of environmental protection'. That is extraordinarily weak, woolly and vague phrasing, whereas the sort of case history that currently exists in relation to the NAFTA agreement, case history through the WTO and, I would think, the very much more precise interpretations available in chapter 11 on compensation would really perhaps undermine the broad intentions of chapter 19 that you are describing.

Senator BRANDIS—I think that we are talking about two different things and they are both important issues. One is the status quo—let us assume continuity of the regulatory status quo. It is whether this agreement, were it to be implemented, would derogate from the existing environmental regulations in this country. It seems to me, I must say, about as plain as language can be in chapter 19 that there is an express prohibition on doing that and then there is a subsidiarity with the other chapters that you criticise so that, in the event of an inconsistency, the environmental protections prevail. That is issue one. The second issue, as I hear you, Dr Christoff, is that it seems to me you are more concerned about the effect of the agreement, because this phenomenon, which you have described as regulatory chill, might be to discourage regulators in the future from tightening environmental legislation still further. Now is it the second rather than the first of those two broader issues that concerns you most?

Dr Christoff—I think that the second is the more problematic and direct one that we have to deal with, because it is quite clear that the existing regulatory legislative framework dealing with environmental outcomes is inadequate. The underlying premise of our submission is that, at this point in time, all environmental indicators show a substantial decline. If we increase trade on the basis of the current inadequacy of our regulatory framework, we are going to increase environmental degradation. Therefore, we need to improve our laws and the second point becomes an extremely important one. That is what we are concentrating on.

Senator BRANDIS—I am not for a moment saying that you are wrong. All I am seeking to tease out is what the real heart of the criticism is. It is not that the treaty does not, as a core obligation, entrench existing environmental safeguards but rather, as it seems to me, you are saying that by the very structure of it, it is going to be a deterrent to tightening those existing safeguards further. Is that your point?

Dr Christoff—I would rephrase it slightly. It entrenches an existing inadequate system of environmental safeguards. Therefore, it will extend environmental degradation, which is not in the short- or long-term national interest. It will not allow us to progress to a more rigorous and ecologically sustainable society.

Senator BRANDIS—I think I understand your point.

Mr Smith—I want to emphasise also that the New South Wales and Victorian governments have raised concerns in relation to this. I would really encourage this committee to be asking these questions of the New South Wales and Victorian governments as well.

Senator BRANDIS—If they come before us we can. But this is a 1,000-page treaty. It is a complicated agreement. It deals with the whole of two economies, in one way or another, and with broader than economic issues as you, of all people, are at pains to say. Anybody can come along and say. 'We've got a concern about this and we've got a concern about that.' That is fair

enough but it is our job to work out what actually is going to happen as best we may and what the net benefits are. That is why I am always uncomfortable with criticisms that overreach by not giving sufficient credit to the safeguards and protections that are in fact already there.

Senator RIDGEWAY—I am mindful of the time constraints, so I just want to ask one particular question.

CHAIR—We are going to run over time, unfortunately.

Senator RIDGEWAY—I am interested in the point that you make in your submission about the privatisation of Australia's national park and conservation services. Are you able to tell us about the similar US experience in that regard and the dangers that we might face if we were to go down a similar path? Do you also have any thoughts about the impact of such privatisation, particularly regarding the discussion that we have just had about adequate regulatory standards dealing with environmental protection or improvement thereof and—as a personal interest, from my perspective—the impact that it might have on Indigenous participation in land management?

Mr Smith—I will have a go at answering some of that. I must admit that on the issue of Indigenous management of land I do not have an answer for you. I am keen to explore that a little bit further myself. I would not mind highlighting one particular issue about liberalisation of services. It comes in the Centre for International Economics report, which states:

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

It seems to me that that potentially means that if the US, for example, enters into an FTA with another country and secures the liberalisation of a service that is not covered in our FTA then that obligation automatically extends to the Australia-US free trade agreement. Given that biodiversity services are not exempted, that national parks are moving towards privatisation in the US and that there is now a significant opening up of and private employment within national parks, you can imagine a scenario where the operators in the US seek to expand their services and look into reaching into Australia. That automatically puts pressure onto the Australian government to have access to those national parks. That is a significant concern, obviously.

Senator RIDGEWAY—Would that also mean that, as a hypothetical, if we are not talking about publicly funded conservation areas and if it runs on a user-pays system—if people are going to meet some budget bottom line—it would open the possibility of broadening the definition of what parks are used for, other than conservation, including the possibility of development within national parks to meet that budget bottom line in order to operate? Is that a high possibility and is that something that is currently occurring in the United States?

Dr Christoff—I cannot comment in detail on what is happening in the United States, but I think that speculatively it is a possibility. Another thing to consider more broadly is that with privatisation, with the establishment of private concerns in terms of regulation and management of natural and other areas—again getting back to the compensation issue—if we were to find ourselves in a situation where we wanted to tighten regulations and make the burden of responsibility more onerous for those private contractors, they may rightly say, 'We're unable to

meet those new regulations. You have actually, in a regulatory fashion, hampered our business potential,' and they themselves may seek compensation. Again, it is purely speculative.

Senator RIDGEWAY—I have just one other question. I want to go to the provisions in the FTA relating to Australia's quarantine laws. You are probably aware that they have been the subject of a lot of debate and discussion. What are your thoughts on the proposal in the FTA to set up a new committee dealing with sanitary and phytosanitary matters and on their role in reviewing the quarantine decisions, separate to what I believe are adequate standards as they currently exist? Do you foresee this as a problem in terms of being able to challenge the current standards that exist? Does it open the way as well to the prospect of the introduction of GMO type products? How do you see this working under the agreement, in practice?

Mr Smith—There are a couple of issues there. We were certainly very pleased that the specific issue of quarantine was not on the table, that there were no direct changes made to the quarantine arrangements under the FTA. That is a very pleasing result. We would probably share the view of the National Farmers Federation, who have very similar views and concerns about the state of the quarantine arrangements. We are comforted, to some extent, that they seem to be fairly comforted.

It is another one of those situations where, despite the fact that this committee has been established, we cannot really say where that is going to go in five or ten years time. I think it potentially opens the door to a weakening of the quarantine system. As you are aware, we have had the situation in the US where US farm groups and other bodies seem to be taking a different interpretation of what has been agreed in relation to quarantine to Australian organisations. That is a concern. We will be tracking that very closely, and if there is any suggestion that the quarantine arrangements are going to be weakened then obviously we will be out there hollering about it.

We want to make sure that the process with the committee is as open and transparent as possible and that environment groups are intimately involved in that process. We will keep a close eye on that. With regard to GMOs, we are very pleased that in the end they were not on the table and that there are no changes in relation to them. But let us be very clear: the US government is pushing very strongly. It is challenging the EU and the WTO in its GM arrangements and we would expect that, if it wins, it will put pressure on the Australian government and the Australian state governments to remove their moratoriums and current controls. That is a real concern. It is probably less of a concern in relation to the FTA than the WTO, and it may be that things happen much more quickly through the WTO than under the FTA. But, again, the door is open for further negotiations that could weaken our GM arrangements, and that is a real concern.

Senator O'BRIEN—Senator Brandis asked you about chapter 11 effectively being made subservient to other chapters. In relation to the matters you referred to on pages 3 and 4—that is, the expropriation clause, as it is described—is there a provision in the environment chapter which makes it clear that that clause will not apply?

Dr Christoff—Not according to our reading of that chapter.

Senator O'BRIEN—Do you want to take that on notice and give us that answer unequivocally?

Mr Smith—That is my strong understanding. It would be our view that the expropriation arrangements in the FTA actually undermine other aspects of the agreement.

Senator O'BRIEN—Is one clause in conflict with another clause to the extent that it is rendered inoperative? That is the key question—whether there is something in chapter 19 that would render that inoperative. That is what I would like you to answer, perhaps on notice.

Mr Smith—Sure. We would also specifically welcome advice from this committee on that issue. Again, I think it is a really significant issue. State governments, in particular, are potentially liable for significant compensation. You would expect—and I would be hoping—that the Senate inquiry would be able to address some of those issues and provide clear advice to the parliament on that.

Dr Christoff—I also understand that there is a question as to whether chapter 19 is of the same status as the other chapters, in terms of the other chapters being legally binding and chapter 19 perhaps not. We could provide further advice on that matter.

Senator O'BRIEN—I would appreciate that as well. With regard to article 19.4, do you say that is in any way binding on government as to how it approaches the regulation of environmental matters?

Dr Christoff—Allow me to scan the article for one moment.

Senator O'BRIEN—It is in the submission on page 9.

Dr Christoff—Could I have the question again?

Senator O'BRIEN—Do you say that the provision is encouraging the Australian government to pursue a voluntary regime for environmental regulation rather than a legislative regime?

Dr Christoff—I think it certainly can be read in that fashion. There is no equally strong statement about strengthening regulatory mechanisms and formal rules.

Mr Smith—Flexible voluntary market based mechanisms are important, and we certainly support market based mechanisms. The classic example is an emissions trading system to help cut greenhouse pollution. We are a strong supporter of that. But you need to have a strong regulatory framework to underpin any of that, and there is no real reference to a strong regulatory arrangement in this. It is worth mentioning that the Centre for International Economics report explicitly states:

The key to protecting Australia's environment lies in maintaining robust domestic environment protection regimes.

So, regardless of what you do with your voluntary measures, you need to have a strong, robust domestic environmental protection regime.

Dr Christoff—If I could add one comment, I think it is certainly the case that voluntary mechanisms can contribute to environmental governance overall. But I think the recent thinking, particularly coming out of the OECD—and there is a report to this effect—suggests that they are far weaker and far less effective than was initially thought, say, 10 or 20 years ago.

Senator O'BRIEN—At the beginning of part 5 of your submission, where you refer to the environment chapter, chapter 19, it says:

This chapter was introduced in accordance with legislation in the United States ...

Are you saying to us in a roundabout way that this is simply there for no other reason than there is a regulatory requirement in the United States for it to be there?

Mr Smith—It is absolutely there because the United States has required it—that is an important point. It was made very clear to us at the beginning of discussions that we had with the Department of Foreign Affairs and Trade—I think we had two meetings with the department—that they did not believe there were really any environmental impacts from the FTA and that the environment was not an issue. They did not think there was a need for an environment chapter and the only reason there is an environment chapter in the agreement is that it is compulsory under American legislation. Of course it is there. It has to be there; if it were not, there would not be an FTA.

Senator FERRIS—While my colleagues have been asking you questions, I have quickly reread chapter 7. I notice that twice on page 8 of your submission you talk about the sanitary and phytosanitary measures being weakened because the committees on sanitary and phytosanitary measures will in some way undermine the current quarantine arrangements. I reread chapter 7 to try and find where it suggests that the science based evaluation that we have in this country, which is rigorously applied, will in some way be changed as a result of this agreement. I accept the establishment of the committees, but nowhere in the agreement—and, I must admit, nowhere in your submission either—is it suggested in any way that there will be a change to the science based procedures that we currently have. Can you explain to me how it is that these committees are going to weaken our quarantine measures? I think we all agree that our quarantine measures are among the strongest in the world.

Mr Smith—Let me emphasise what I said before. We are certainly encouraged by the view of the National Farmers Federation.

Senator FERRIS—I did hear you say that.

Mr Smith—Also, I am encouraged by the presentations that have been made to this committee. Working through the transcripts of the hearings of this committee, I think there has obviously been substantial discussion about quarantine issues, and various views have been put. I think it has been a really critical discussion and I have also been pleased by some of the responses by the members of this committee to this issue in emphasising the importance of quarantine.

Senator FERRIS—And DFAT and AFFA of course as well.

Mr Smith—Sure, that is right. I recognise all of that. The concern is what could potentially happen in the future. What is the status of this committee going to be? What is the process for this committee? How is it going to operate? How open and transparent will it be? What sort of consultation will there be with environment groups, farmer organisations and so forth? We will be monitoring it very closely, as no doubt the National Farmers Federation will as well. Again, I emphasise that I think we would have a similar view to the National Farmers Federation on this issue.

Senator FERRIS—I appreciate that, because they have given us evidence that accepts that science will continue to be the basis of evaluation. How can you predict in the future that anything is going to stay the same as it is today? You suggest twice on page 8 of your submission that this agreement threatens to undermine our sanitary and phytosanitary procedures by the establishment of working committees, which hopefully might smooth some of the processes of aggravation that often take years to resolve in a science based sense, and in some way it is going to threaten our quarantine measures. It seems to me to be quite mischievous, because it does suggest that we are going to change our procedures, and we are not.

Mr Smith—I am not sure what else I can add to what I said before.

Senator FERRIS—No, you cannot say anything.

Senator BRANDIS—But you accept we are not changing our procedures, don't you?

Mr Smith—Yes, we raise some concerns in relation to our submission. It is obviously a complex agreement of, as you know, 1,000 pages. We are deeply concerned about quarantine. It is a significant issue for us. Issues about pests are major environmental issues and we want to make sure, as you do, that we have the strongest possible quarantine arrangements. We want to make sure that the arrangements that are put in place in terms of the establishment of the committee are open and transparent.

Senator BRANDIS—It strikes me—and I do not say this in any sarcastic way—that you both take an extraordinarily conservative view about these things. It is true that this is a complex agreement; it is true that in any complex agreement there are going to be new structures established, including dispute settlement structures. It seems to me the reductio ad absurdum of your view is that nothing would ever change and you would never have agreements between countries which established any complex regime about anything for fear of one potential way in which the establishment of those structures might impinge on a particular area of public policy. You want to put everything into deep freeze.

Dr Christoff—I respect your misinterpretation of our position but it is a misinterpretation. That is why I actually stressed some of the policy positions underpinning ACF's position on trade.

Senator BRANDIS—I do not have any doubt about the integrity of your policy position.

Dr Christoff—If I can finish—

Senator FERRIS—I was actually doing some questioning and that was going to be my last question.

CHAIR—We are 15 minutes over and we have another witness to come on by telephone. I do not want to curtail anyone's essential comments but if we can bring ourselves to focus on the issue I would appreciate it.

Dr Christoff—I will make a summary comment, perhaps, as time is of the essence. On the contrary, we think that there are many ways in which trade can be used effectively to improve environmental conditions. That in fact underpins the broad thrust of our submission. We do not believe that this agreement is heading in that direction. We have not got the transparency; we have not got the scientific assessment; we have not got the sort of accountability which would enable us to be confident that this agreement is heading in the direction that you would like us to believe that it is. Until we have that, of course we are going to oppose it. That is not conservatism; that is just good sense.

CHAIR—We are told this is a living agreement. It embodies a series of processes that will evolve over time. My simple question—and this is the first one—is: is the precautionary principle, broadly stated, what you are in fact putting to us now? If these things evolve in the direction that you have forecast that they may then that is a major concern for the environmental movement in Australia. Is that what you are putting to us?

Dr Christoff—I would suggest it is a little stronger than that. There certainly is a precautionary issue in there but our belief is that, current circumstances being what they are and current practices being what they are, if this trade agreement ramps up trade we are going to seen environmental degradation increase in Australia. We are saying that is virtually a certainty. It is a prediction. Then there are a range of other issues to do with precaution which need to be dealt into it. But our concerns are much solider than that.

Mr Smith—I will throw one other point in quickly. Senator Cook, you made a reference in a previous hearing to concerns about delegated legislation.

CHAIR—Yes.

Mr Smith—There are arrangements in place under this FTA—and it may be some of these committees are part of those arrangements—where there is delegated legislation. The Australian parliament will not necessarily have the capacity in the future to actively find out exactly what is being changed in terms of the agreement and where it is heading. That is an ongoing concern.

CHAIR—Okay. My second question is a practical political question, I suppose. The environmental movement has the rubric, 'Think globally, act locally.' The environmental movement in the United Stated is an outspoken and influential movement. Have you had any discussions with it? What are they proposing, if they are proposing anything, in their lobbying to the US Congress about whether the US Congress should support or oppose this treaty?

Mr Smith—That is a very good question. We have had discussions with American environmental organisations—a reasonable amount of discussion. Particularly early on, one of our most significant concerns, which we have stated publicly, was in relation to the investor-state

dispute resolution processes. That was a significant concern for American environment groups, as well as us. We and American environment groups are very pleased that there is no investor-state dispute resolution process in this FTA. Hopefully, that provides a very good precedent for other US FTAs. They are very pleased with the outcome from that perspective. They are still concerned about the potential environmental impacts. They are concerned, as we are, about issues to do with land clearing and the expansion of agriculture in Australia. We have not had any specific discussions with them as to where they stand at the moment in terms of the FTA. The environment movement in the US is, even more than in Australia, a pretty disparate movement, so there is a range of different views across the organisations. There is not one specific view about this FTA. We have not been given formal advice from them as to their position on the FTA.

CHAIR—As the ACF, you are putting to us that when it comes to the proposition of implementing legislation we should vote it down. I appreciate your comments about how disparate the environmental movement is in the United States, but there are a number of internationally recognised organisations—the Sierra Club is one that comes to my mind—active in Geneva at the WTO and so forth. I have encountered them there. I am interested to know what they are telling our counterparts on Capitol Hill in Washington. Could you take that on notice? Are they telling them what you are telling us, or are they telling them something different?

Dr Christoff—It is fair to say that different environment organisations have different agendas in different countries. It is certainly the case that in the United States the groups we have spoken to are very pleased about the shift in ground that is represented by the investor-state relations component of this agreement. It is a major improvement—

CHAIR—We are not a developing country. Investor-state clauses relate to developing countries not developed countries by way of international trade law. That is one thing. I just want to know the answer to my question.

Dr Christoff—I understand.

CHAIR—Thank you for a very detailed submission.

[12.24 p.m.]

KOSKY, Mr Tony, Treasurer, Australian Flower Export Council

CHAIR—I welcome Mr Kosky, who is appearing via teleconference. We do not have a written submission from you, so you now have the opportunity to address us and we will then ask you some questions on your evidence.

Mr Kosky—The flower export industry is probably worth about $40 million or $50 million in exports. Of that, about $12 million to $15 million would be to the United States. At the moment, flowers carry 6½ per cent duty. Our biggest competitors are now coming from South America, whose product enters the United States duty free under developing country arrangements. Our biggest item—wax flower, which comes from Queensland, Western Australia and Victoria primarily—is 6½ per cent worse off before we take anything else into consideration, as against exports from Peru. From our point of view, having a free trade agreement with the United States would be a big advantage for this industry.

CHAIR—My recollection of the flower industry is that one of the advantages we have in exporting flowers to the world is that we are countercyclical climatically—that is, our seasons are different to those of the Northern Hemisphere, so we can supply when they cannot supply. The other advantage, I understand, is that our indigenous flora is prized particularly in Europe and, I would imagine, in parts of the United States. However, our indigenous flora has been smuggled out of this country, propagated in Israel and some places in Latin America and exported to our markets in competition with Australian producers. Is that still the case?

Mr Kosky—Yes, I think that is historically correct. You are 100 per cent right in terms of the climatic issue, except that, when it comes to South America of course, a lot of South America is in the same climatic zone as us. Because of their eco-climate, with the height of the mountains and so on, their seasons overlap ours. Peru is just starting to export wax flower into the United States and so are we, from Queensland. Our season most probably goes a little later than that of Peru. Probably about November and early December we are alone, but we do overlap in the main part of the season.

You are right that some of the Australian flowers which were unique to Australia have been taken up by other countries, especially South America, but then again I guess you could say that we grow things such as protea and leucadendrons, which we have got from South Africa. You are not going to be able to stop that; that goes on all the time.

CHAIR—Is the Peruvian competition we have for the American market a recent thing?

Mr Kosky—In the last two years. They now have two major farms, with huge production capacity. Last year was the first year that we in Australia felt it very badly—especially the Queensland growers, who were the first cab off the rank, starting about now and going for the next six weeks. They felt it and so did the west, which is the largest producer in quantity.

CHAIR—We are losing market share to them?

Mr Kosky—We are certainly losing market share. If you go back five years, we did not have this competition. This is just the start of it. There are other items such as rice flower, which has been a traditional Australian export to the States and is now being grown in Colombia. The quantities are not yet great, but they will certainly increase as the next few years evolve.

CHAIR—My final question concerns the phytosanitary arrangements for the product from Latin America. Are there any plant diseases that make them less competitive than us in product that the Americans scream for?

Mr Kosky—As far as I know they get through the USDA, which is very strict. They get through all right and they have to meet pretty rigid standards, just like we do. As far as I know, there are no unusual diseases that affect them more than us.

Senator FERRIS—Could you take us through what you see as being particular opportunities for your industry in the United States? What diversity of flowers do you see being able to be exported? How do you think Australia has the capacity to meet that given that so many of your products are irrigated and we have difficulties with water? Could you take me through how the infrastructure would be able to deal with these expanded opportunities?

Mr Kosky—Coming back to the first point, a lot of the production is non-irrigated. A percentage of the products are irrigated but there are a lot that are not—for example, in Western Australia and even in Victoria in the north-west. They rely directly on rainfall. As Australian wild flowers tend to come from the desert, they are quite resilient to the lack of water. Water is an issue but not as great an issue as for other crops because a lot of the plants are reasonably resistant to long spells of dry weather. There is an opportunity for Australia. We often have an issue where we have certain types of plants or flowers that we could export but, price-wise, they are not competitive with items coming from South Africa and other parts of Africa—let alone South America. There are a number of items like that. With regard to the 6½ per cent, at the cheaper end of the scale you might be looking at items which are $3 or $4 for a bunch of 10 stems. There is no great value in a bunch compared with some other products so 6½ per cent of that is a good saving, which does make us competitive with many other items.

A lot of the other items which are lesser known in America are being promoted by our council. In fact, this month we have a very big inclusion of a booklet in one of the big floral magazines going right throughout the States. We are spending money at trade shows and so on to promote some of the lesser known Australian flowers. There is a great interest in Australian things. That goes across many industries, not just the flower industry. We are trying to piggyback on those sorts of things. What is popular about Australian flowers is that they have colour and shape—banksias and things like that have colours and shapes that are not seen in other countries—plus they have longevity as far as shelf life is concerned, which is a big advantage. They are the three things that we are using in our marketing to promote Australian flowers.

Senator FERRIS—Do you see the major growth being in Australian wild flowers? Is that an area that you would expect to expand? Also, given the amount of money your industry is spending on promotion, how would you feel if Australia walked away from the agreement?

Mr Kosky—Taking the second question first, if they walked away from the agreement we will be in the same position as we are in now: having to compete in a tough, very competitive

market. We would be doing that. This would be a bonus if we get it. Secondly, there are opportunities. We do see a growth. We are now concentrating as an industry on sales in America as against some of the promotions we have done in recent years in Europe. We feel that that is a better opportunity right at the moment because of the competition that we get from other places in Europe or Africa, which are geographically closer to the big European markets. America is certainly our No. 1 target market at the moment.

Senator FERRIS—And you do see the growth being in wildflowers?

Mr Kosky—Definitely. They can get traditional flowers from any number of countries in the world. Flowers such as carnations, roses and chrysanthemums are produced by so many low-cost producers that we are not in the hunt with exports of traditional flowers, but with wild flowers we are. Australia has a very good reputation for having healthy plants, good service and things like that.

Senator O'BRIEN—You describe the US market as an opportunity. Competition from perhaps Israel and Africa is pretty stiff in the European Union, isn't it?

Mr Kosky—Yes.

Senator O'BRIEN—And we can expect stiff competition from South America and Latin America generally in the US market because they have an advantage in terms of freight costs?

Mr Kosky—Correct.

Senator O'BRIEN—Do we have any species which at this stage are uniquely grown in Australia, or have we lost control of those species?

Mr Kosky—There are a number of species that are still unique. They get fewer and fewer because people are now propagating. It is very hard to keep something completely to yourself these days in any industry, but a lot of things are done under licence. There are more protections now in the flower industry for people who have something and it is easier to police because, if you find somebody selling something that you believe is yours or unique, with the current progress in DNA and that sort of thing you can virtually tell which farm they come from. So there is some security for growers who develop new strains.

Senator O'BRIEN—But no security at all for native species?

Mr Kosky—There are certain native species that have been—

Senator O'BRIEN—Modified?

Mr Kosky—Hybrids have come off them. But, yes, there is never a guarantee that somebody will not come along and pinch a few plants, take them back and go through the whole process. There is no guarantee that you will ever stop that. But it has to be a commercial production, it has to be the right time of year, it has to go through the proper cool chain from picking to delivery—things like that—and Australia has a very good reputation there, just as it does in the

fruit, meat and dairy industries. We have a good reputation for delivery of clean, disease-free goods.

Senator O'BRIEN—What size is the US market for flowers at the moment?

Mr Kosky—About $12 million to $15 million.

Senator O'BRIEN—That is ours, but how big is their market?

Mr Kosky—We are something like one per cent; we are peanuts.

Senator O'BRIEN—I do not think they let many peanuts in!

Mr Kosky—We are known for and classed in the exotics. That is how they term things from Australia: exotics. It is very hard from national figures to pick out things from Australia, because on the world market we are very small players in the horticultural industry.

Senator O'BRIEN—What proportion of our national production would go to the United States at the moment?

Mr Kosky—Say $15 million out of $45 million—about a third.

Senator O'BRIEN—What is your expectation for the future—a continuation?

Mr Kosky—I think that with better and more focused marketing we could increase that. Especially if we were to get the duty free, which would help us with the bulk lines, I think we could see that rise over the next three to five years by $2 million to $3 million.

Senator O'BRIEN—This is all dependent on how good the competition is.

Mr Kosky—Yes, and it is dependent on climate and everything. There are disasters. We have had drought here which has affected our industry. Peru could have floods or droughts and be out of the ball game for a year. We are in the hands of nature.

Senator O'BRIEN—Thank you very much for that, Mr Kosky.

Mr Kosky—The only other comment I have that would be of interest on the trade agreement is that we would like to see the quarantine protocols between the USDA and AQIS and the industry here standardised and reviewed. There are items such as boronia which are prohibited by the USA because they are classed in the field of citrus. They are flowers, not citrus, but they come under the wider scheme of citrus and so they are banned from the United States. We believe that that should be reviewed, because we think it is unfair.

Senator RIDGEWAY—Have you had a chance to look at the free trade agreement from an intellectual property point of view?

Mr Kosky—I have glanced at the booklet that was sent to me. The intellectual property side of things is internationally quite well covered in the flower industry, where there are PBR products. As far as I know we have not heard of too many complaints from Australian growers about intellectual property being taken from them.

Senator RIDGEWAY—Are you concerned at all about the possibility that the intellectual property aspect of the US free trade agreement has not been properly explored or debated, or may well be different or out of sync with debates and discussions that have presumably been happening between WIPO and the WTO? I do not know the extent to which you get involved with that, but would you be concerned about the practical implications—for example, an American company setting up in Peru taking advantage of Australian plants under licensing arrangements or patenting?

Mr Kosky—I think that has already happened. There have been licences given by Australian companies to people overseas, and I think that is going to happen. They see it from a different perspective. They are developing a plant and they see a bigger market overseas; they get a royalty for it if they sell it to somebody in another country. You can argue about whether it is good for the industry or not. One part of the industry is benefiting and another part is suffering.

Senator RIDGEWAY—What about the question with your member companies of the harmonisation or integration of the various systems and standards between some of the states that you deal with in the US and being able to register to do business? Is that going to present any problems in terms of having more hoops to jump through and higher administrative costs?

Mr Kosky—Most of the goods that travel to the United States go through Los Angeles. There are really only two points where most Australian goods go through. I would think that Los Angeles would take at least 90 per cent of the goods. They are cleared through the USDA there and distributed by the freight forwarders for the various companies by refrigerated trucks all over the States, so it is a one-stop shop. The other port of entry is where people may take the direct flights right through to New York for the east coast shipments, but that is in small quantities compared to Los Angeles. We have not experienced any problem with the method of bringing goods in—with hold-ups, regulations or anything like that. It is only a matter whether the goods pass the USDA inspectors. The system seems to work alright apart from that.

CHAIR—Thank you very much, Mr Kosky.

Proceedings suspended from 12.44 p.m. to 1.33 p.m.

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

BRITTON, Mr Charles Crawford, Senior Policy Officer, IT and Communications, Australian Consumers' Association

KELL, Mr Peter, Chief Executive Officer, Australian Consumers' Association

CHAIR—Welcome. We have your submission. It is a very big submission and quite detailed. We appreciate the time you have spent on preparing for our inquiry. I invite you to make an opening statement, after which the committee will ask you questions.

Mr Kell—We would like to take the opportunity to make some brief opening observations. That will involve all three of us, but we will ensure that we are brief. Before we go into detail on particular areas, I note that the Australian Consumers' Association approaches this issue with a track record of having supported more open and competitive economic arrangements and trading arrangements over some period of time. But our support of those arrangements is very much based on the real outcomes they deliver for consumers—not because we have some sort of ideological belief in free trade but rather because more competitive economic arrangements tend to deliver better results for consumers.

There is, nonetheless, a need to test and demonstrate that those benefits will arrive in practice. There is also a need to ensure that the institutional framework around those arrangements will ensure that the outcomes and the benefits arrive for consumers. In the Australian context, greater competition in the Australian economy is really only going to work if we have a strong Trade Practices Act and a very vigorous regulator. We would see similar sorts of issues operating at an international level.

Our concerns about this free trade agreement go to the fact that we cannot see clear and extensive benefits for consumers arising out of the agreement. There clearly will be some benefits due to reductions in tariffs on some goods, but the scope of those benefits is unclear. What is clearer is that certain elements of the agreement would appear to impose costs and potentially significant downsides for consumers. The two areas that we have focused on relate to the pharmaceutical industry and intellectual property. Without further ado, I turn to my colleague Charles Britton to make a few remarks about intellectual property arrangements and then Nicola Ballenden will make some comments about the pharmaceutical industry.

Mr Britton—I will make some overview points about copyright. In our view, the copyright clauses in the free trade agreement threaten consumer rights and upset the balance with producers' rights. It is difficult to discern the consumer benefit in a closer harmonisation of Australian and US intellectual property rules. It is imperative to note some critical differences between the two systems. The US has a constitutional guarantee of free speech; we do not. The US has fair use provisions which provide some protection for consumers in home copying; we do not. The US constitution establishes some ground rules for intellectual property; our Constitution does not. Therefore, adopting the more draconian US line on intellectual property

without attending to the crucial aspects of consumer protection would, in our view, deliver a bad result for Australian consumers.

At the very least, in the legislative changes required to implement the free trade agreement there should be an enactment of a fair use right for Australian consumers, which would harmonise the law with current consumer behaviour and protect consumers as the digital environment moves control from control of copying to control of access.

Ms Ballenden—There is quite an extensive part on pharmaceuticals in our submission. I want to talk briefly about the changes to patent protection which, we suspect, have the greatest capacity to directly influence the prices that consumers pay for medications. There are other parts of the FTA that are concerning, but this is the part that has the potential to have the most direct effect on prices.

In Australia, once a drug comes off patent, the listed price on the Pharmaceutical Benefits Scheme drops when generic competitors enter the market. Depending on the number of generic competitors, the price can drop quite a lot. An example is the drug Losec, which recently came off patent. When it was first listed the benchmark price fell by 25 per cent, and when more competitors entered the price fell a further 22 per cent.

It is worth noting that Australia has a fairly small and perhaps fragile generics industry. The comparison with the US is that 47 per cent of prescriptions in the US are generic, whereas only 20 per cent are generic here. There is a variety of reasons for that, but the consequence is that our generics industry is quite small. It does, however, play a vital role in terms of reducing the price on the PBS.

The relevant parts of the agreement are 17.10.5a and 17.10.5b, which talk about preventing market approval where a product is claimed in a patent. There are problems there which I am happy to talk about later regarding the type of patent and whether or not a claim is valid. The second part, 17.10.5b, talks about early notification, where the generic company has to notify an originator company if they are proposing to make a generic form of the drug. This may allow the originator of the drug to get an injunction put on the generic company much earlier, which would then result in a delay on that generic coming to market.

There are two possible ways in which this measure could impact on prices. One is that it would cause delays in generic drugs coming to market and the second is that it may make the business environment more difficult for generic manufacturers, leading to fewer of them, more mergers and less competition, which would have a negative impact on the listed price of pharmaceuticals on the Pharmaceutical Benefits Scheme. I wanted to talk about that briefly because I think some of the other issues in the FTA have received quite a lot of attention, whereas this issue has the potential to directly affect prices and has not received quite as much attention.

CHAIR—We have had a roundtable of intellectual property experts address us. We will obviously draw from that what we think are the appropriate comments that they have made. So we are familiar with the matters relating to intellectual property and we can have quite a shorthand discussion about some of those issues. We are planning to have a roundtable for the Pharmaceutical Benefits Scheme. We have had some initial submissions on the PBS, and some

of those matters that you canvassed have been mentioned to us. But, again, I think you can regard us as fairly sensitised to the detail and we can have a reasonably structured conversation on the PBS.

Thank you for putting your views to us, but what are you proposing to us? I ask this question on the basis that we will sooner or later—in a month or so—have to decide what our recommendations are. Subsequent to that, we will have to take our bodies from one side of the Senate to the other side of the Senate to vote on a specific proposition. I think it would be interesting for us to know what the Australian Consumers' Association believes we should do and how we should vote—bearing in mind that, if we seek to amend or knock out any of the implementing legislation, that kills the whole deal. The options to us seem to be to vote for it and enable all of the enabling legislation through; to vote against it, which will kill the deal; or to find some way of deferring the matter to see whether it might be possible later to get some refinement in the text. Does the Australian Consumers' Association have a view as to what we should do?

Mr Kell—I would not pretend that we have a view that we have arrived at easily or that it is one that has been clear all along. We would favour, if at all possible, the third option. Refinement to the text would be highly preferable, given the nature of some of our concerns. The overall objectives of having a more open trading environment with the United States are obviously objectives that we support, but particular elements that we have concerns about at this stage would lead us to say that they should not be part of the agreement.

CHAIR—It may be put to you that there is no third option and there is no seeking of a refinement to the text—that this is a yes or no package—because it would require the other side to agree, and the President of the US and the Prime Minister have now signed it. So seeking a refinement of the text—as I follow this argument—may be equal to a no vote. There are two questions that flow from that. What refinements to the text would you seek? That may be a question that you would wish to take on notice. If deferral equals defeat, what would your position be? You may want to take that on notice as well.

Mr Kell—I think we can talk here today about some of the refinements that we would seek, and I am happy to have ACA at least begin to look at some of those issues. In fact, Mr Britton already mentioned one in his opening comments, and we would be happy to elaborate on that. If there were no changes whatsoever to the agreement in its current form, I think we would—with some considerable reluctance—say that in its current form it would be too damaging to support.

Mr Britton—The point I made about the fair use right is something that is ancillary to this agreement.

CHAIR—Yes.

Mr Britton—This point was made in discussion with the free trade agreement teams, and they said that there is nothing the Americans can do about that. But I think the point is that there is something we can do about that—that is, to have a fair use right for Australian consumers in the Copyright Act. That may well be something that could be amended in the package of legislation without jeopardising the free trade agreement, because it is ancillary to it.

As to refining the text, I guess one particular one would be in the extension of copyright term. The real problem in that is that there seems to be a rolling extension of copyright term around the world, and it is getting increasingly extended every time it comes up for renewal. We think a solution is required, and the solution is effectively to move to a registration scheme for copyright that goes out of the current life, rather than, as currently happens, extending the life. So we could talk about what you could do there in terms of refining an approach which would get at the core of the problem of extending copyright term all the time. Rather than just slavishly extending it or just saying that there is not a problem and we should not extend it at all, if you were to address this problem, you would be able to protect valuable copyright and at the same time send an economic signal that that is a cost, and the vast majority of copyright material would fall into the public domain in due course, as it ought to. That would be an example of a refinement.

CHAIR—I do not want to verbal the department of communications—because they have taken some of these questions on notice and they are going to come back to us with more concrete replies—but 'fair use' is a matter that, at least in my mind, is not yet settled. I put to the department a number of questions. If I have a DVD player and I record a sporting event live and there is an action replay or a commercial in that sporting event, as there was in the Eagles match against Collingwood on Friday night—the result being much to my disappointment—if I download that onto my DVD, as I did because I was out to dinner and watched it when I had finished, I am infringing copyright and if the owners of that copyright wish to prosecute me they could and they would most likely succeed. They do not because the damage to them is minor—so infinitesimal it is not worth the effort. But if I were trying to exhibit it, I would most likely be prosecuted. It is put to us with respect to fair use—which the American laws would cover; that is, I am fairly engaging in a use that is reasonable for me to engage in—that the fair use provisions in Australia are not necessary because the practical effect is that no action is taken against me for doing that.

Mr Britton—There are a number of responses, but one is that there is a disconnect in the messages we are sending to people. We are trying to educate people that intellectual property is valuable, and in certain market situations that is true. We have got Australians in the broad offending against the Copyright Act numerous times in their lives, and we think that disconnect needs to be fixed. The other reason that people are not pursued and it is not enforced is because they cannot, whereas we are moving towards an environment where there is increasing micropenetration and monitoring of what people do with intellectual property. An environment is coming where there may be much more pursuit of people into their lounge rooms or lives on intellectual property infringement. In that sense, this is an opportunity to regularise the fair use environment to harmonise the take it for granted world that Australians are living in with the legal environment. I think laws that are not enforced because it is not practical or whatever fall into disrepute. What we do not want is intellectual property laws to fall further into disrepute than they are now.

CHAIR—Downloading a piece of drama on the ABC, as my son did, he is directly in breach. A live sporting event is not unless it has ads or action replays in it but a piece of drama is definitely in breach.

Ms Ballenden, it is put to us that there is an appeals provision in the PBS—it is not an appeal; it is an independent review provision. I understand that the actual words used to describe this process were debated at considerable length between the negotiators, and they settled on

'independent review' rather than 'appeal'. I do not know whether that is trading in synonyms for the same effect or there is a distinct difference between a review and an appeal—but let us leave that debate to one side. It is put to us that this process will inevitably lead to more expensive drugs being introduced to the PBS. The cost of the PBS is increasing and at some time in the future government will be saying, 'We can't sustain this on the budget and we need to review the whole process.' In that way—and the example given is New Zealand—it is argued that American drug companies under the free trade agreement will be able to eventually get market prices for their drugs and that offends against the equity provisions of everyone having access to the drugs rather than paying the price the market bears. Is that your submission too?

Ms Ballenden—Yes, it is. We have a number of concerns about the basis for decision making. The issue around pricing pharmaceuticals has been that drug companies, particularly in Australia, have had a longstanding concern that pricing under the PBS specifically does not recognise R&D. The PBAC only lists a drug in terms of its health benefit and cost effectiveness. It ignores how much a company might have spent on R&D.

Senator BRANDIS—Or how much it might cost us to buy the drug.

Ms Ballenden—It ignores—

Senator BRANDIS—I just interjected that question but that is right, isn't it, that it also ignores how much it costs to supply the drug. You can have drugs that cost hundreds of dollars and in some rare cases thousands of dollars per unit to produce that are being subsidised to all but a nominal extent. That is the current situation, isn't it?

Ms Ballenden—The current situation is that the government through the PBAC reaches an agreement with the drug manufacturers, and they would probably sell it cheaper here than they do overseas. It is in our interests as consumers that they do that. We are not saying that these companies should never seek compensation for R&D. It is just that if they do that through the PBAC process and the PBS, our system as it is will collapse.

CHAIR—On this point—because it is a relevant point that Senator Brandis has raised—in its most modern incarnation the PBS coming alongside Medicare, the then government, through Minister John Button, introduced the factor F program which explicitly recognised R&D, made a payment to drug companies for R&D and put incentives for drug companies to export from Australia. That program, which sat alongside the PBS and was, if you like, a trade-off for not obtaining market prices, has been removed now. We are left without it, but it is an option for a government to reintroduce it if it wanted to meet the argument on research and development—which I would submit is a powerful argument.

Ms Ballenden—That is one that is obviously up to industry to make.

Mr Kell—We did recognise that in our submission.

CHAIR—Yes, you did.

Mr Kell—R&D is a vital issue, but in ACA's view it should be dealt with through separate means.

Ms Ballenden—Through industry policy. It is a part of the National Medicines Policy that a viable industry be supported. I guess there is something of a concern here because the agreed principles talk very much about recognising the value of innovative pharmaceuticals and the role of innovative pharmaceuticals. There is nothing about equity or about public health in the agreed principles. There is also a worrying quote from Bob Zoellick where he links R&D in a way that is quite a concern. I will read out the full quote. He said:

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

So, firstly, I guess we are concerned that the rules for how a drug gets on the PBS need to stay the same. We need to clarify that in any enabling legislation. Secondly, the review body really has to review decisions using the same criteria as the PBAC so that we are not seeing a change in the rules to have more consideration of R&D. That would be one of the big concerns that we have.

The other one is about the review body. Who will actually be on this review body and what are its powers? My understanding is that it is review only; it does not have the power to overturn a PBAC decision. Then there is the whole issue of transparency. It is interesting that it is raised in this way, because members of the PBAC will tell you that they are not even allowed to mention the drug that they are considering, not because they do not want to but because of commercial-in-confidence rules. Lloyd Sansom, the chair of the PBAC, has said a number of times that he would be happy to have PBAC meetings in the Opera House, to make them public.

In this process it is very important that the drug companies also come clean and are completely transparent in their submissions to this review body as well. There should be a limit on how many reviews are allowed. The review body needs to comprise the same balance of health and consumer interests as the PBAC does. This is also a concern, because I do not think we need enabling legislation for this. I am not sure how consumer interests or the public interest will be able to be considered here, because there is no legislation required to actually enact it. The final point is that drug companies already do have a right of appeal through the court system and they have used that on a number of occasions.

CHAIR—On that question, we as a Senate could of course choose not to carry any enabling legislation until such time as the details of the independent review—who was on it, what the guidelines are and how it is going to work—were reported to the parliament. I will not hold DFAT to this, but my impression is that they hope and expect that it will be by the time we deal with the legislation.

Senator BRANDIS—It is good to see you in another capacity, Mr Kell. In the second paragraph of the introduction of your submission, on page 2, you say:

… ACA has also sought to analyse proposals for trade reform on the basis of whether they represent real gains for consumers.

Are we to read that as suggesting that ACA has analysed the free trade agreement according to that criterion, or is that not the way we are to read it?

Mr Kell—It is not meant to suggest that in relation to this particular agreement we have conducted some sort of econometric analysis along the lines of some of the things that have been discussed—

Senator BRANDIS—That was what I was wondering about.

Mr Kell—In part, we simply have not had the time to do it in relation to this agreement. It has been a fairly compressed process. It was rather more a general comment that, in relation to trade agreements over the years, we had sought to analyse whether they are going to deliver the goods.

Senator BRANDIS—May I take it that what you mean by that in a practical sense is that if an agreement is likely to produce the overall result that prices to consumers will be reduced or increases in prices to consumers will be constrained and a better quality of good or service is likely to be available to consumers, all other things being equal, you would give it the tick and if that is not the case then you doubt its worth from the point of view of consumers?

Mr Kell—They would obviously be key elements that we would take into account.

Senator BRANDIS—What other elements are there?

Mr Kell—An example of other elements may be whether the institutional framework around the agreement suggests that, going into the future, those gains are going to be maintained, that any breaches are going to be dealt with—

Senator BRANDIS—But that is a kind of second order thing, isn't it?

Mr Kell—You asked about what other things. I said primarily these are some of the issues.

Senator BRANDIS—But the ultimate test is: does it keep lower prices or constrain increases in prices and does it enhance the quality of what consumers are getting for their money?

Mr Kell—Yes. You would start there; that is for sure.

Senator BRANDIS—You isolate two issues: the PBS and issues relating to intellectual property. We have heard a wealth of evidence about the intellectual property issues. We have heard quite a lot of evidence about PBS issues, although we have yet to hear the principal tranche of evidence on that question. Let it be assumed, for the moment, that everything you say in this submission about the PBS and intellectual property is right. Let it be assumed that it will have the negative consequences for consumers of pharmaceuticals and users of intellectual property that you warn about. But we also know—this is a given—that across a large range of goods and services the immediate effect of this agreement is to reduce tariffs, which is bound to translate into a reduction in prices. What I struggle to see, just as a matter of logic, is how anyone can conclude that, when you net it all out, at the end of the day this agreement is not favourable to the interests of consumers because on the basis of an analysis, and we will assume it to be a correct analysis, of the effect of the agreement in two sectors of the economy it shows a

negative outcome when you have not conducted a holistic analysis so that you are blind to or have not taken into account the benefits to consumers in other sectors of the economy. How do you produce a bottom line assessing gains and losses and working out whether it is, on balance, a plus or a minus overall if you have only looked at two case studies of negatives and not looked at the whole thing with regard to the positives?

Mr Kell—That is a fair question. We have considered the agreement overall in considering these particular areas, so perhaps I can make a few observations in response to that. The first is that these are two rather important sectors. I think that goes without saying.

Senator BRANDIS—But they are all important sectors. The mining people say mining is important, the banana people say bananas are important and the culture people say culture is important. You cannot cherry pick like that. They are all important.

Mr Kell—I said I was going to make a few points. Moving on to the second one, we have had the benefit of observing the analysis that others have conducted in relation to the agreement in a variety of ways, and the commentary and the expert commentary around that analysis. The first point I would make is that there is an enormous degree of uncertainty around the nature of the benefits that emerges even from the modelling done by people who are supporting the agreement. That leads me to an issue about whether we would support some further independent work on modelling some of the costs and benefits. We certainly would if it were undertaken by someone like the Productivity Commission.

For example, you have had expert commentators pointing out that overall the agreement may divert more trade than it creates. If that is the case—if you are getting a situation where the impact of the agreement would be to increase protection against lower cost suppliers from other countries—the net impact on consumer welfare would be an open question. We recognise that. I do not purport to have the exact answer on how those net benefits would play out, but that is certainly something we have looked at in considering our views about the two issues that we have focused on.

The other issue, which is one that you have no doubt had put before you but which I think is quite important, is: what is the alternative to the way this agreement is playing itself out? Is it going to be the case that, if for one reason or another the agreement were to unfortunately not get up, we would never have the opportunity of negotiating in any of these areas to free up trade with one of our closest allies in the future? That is obviously not the case.

Senator BRANDIS—I do not know, Mr Kell. That is a political judgment which depends upon a view as to the way in which the American congress may be constituted in the future. You talk about uncertainties. There is nothing more uncertain than the warp and woof of American domestic politics.

Mr Kell—Indeed. I would also suggest that there is nothing more certain than that trade negotiations in a variety of fields will continue unceasingly into the future through the good efforts of many down in Canberra, both at the political level and at the bureaucratic level. I think one of the important points that we would keep in mind here is: is this all or nothing in terms of the opportunities for opening up markets in a variety of different ways in the future? Obviously, I think it would be unrealistic to suggest that.

Senator BRANDIS—You cannot tell us—and, as I understand your evidence, you do not claim to be able to tell us—whether, were this agreement to be implemented, in the end prices would rise or fall, though you do say you think there is a real risk that prices of pharmaceuticals would rise and the cost of the use of intellectual property would rise. To those two subsets of consumers, you say the agreement is bad news. Even if you are right about that, if, nevertheless, you cannot tell us whether overall—because this is about the entire economy; every sector—prices will rise or fall, whether there will be more losers than winners or more winners than losers, I am struggling to see how you can either approve or disapprove of the agreement overall. And it is the overall effect with which we are seized.

Mr Kell—This I suppose in some ways takes us to the chair's earlier comments about what would be the preferable option going forward. In our view it would be clearly preferable to make a set of what we would see as quite reasonable modifications to the agreement and then support it. You might tell me that that is not feasible, but that would be in our view the sensible way forward. I do not support the approach that one or two submissions have made from proponents who say, 'Economic modelling can tell us nothing at the moment so we should sign up and, if after 10 years we discover there are losses, we can do something about it then.' I am not sure that that is a particularly sensible approach either. We would argue that, with a set of reasonable changes to the agreement, it would be overall something that could go forward, and that is what we are trying to outline here.

Senator BRANDIS—Mr Kell, I can tell you this. First of all—and if you have read the *Hansard* of this committee you would have seen it because it was responsive to some questions I asked—it is the view of those who negotiated this agreement that they got the very best deal they could possibly get. That is from the horse's mouth, from the people who had to do the deal. I can tell you my own experience. Last year I was in Washington for a while and I spent some time talking to some of Australia's allies in the Senate who were supporting this. The view conveyed to me—and this is just one person's impression—was that the political consensus, Democrats and Republicans, particularly in an election year for the Congress passing this agreement, was pretty fragile and the window of opportunity that Australia had was about as good as it was ever likely to be. That is just the impression of some of the players, but I do not think one could assume that the political circumstances in the United States are going to get any more favourable than they are now.

Mr Kell—Again, these are political judgments. We all recognise how quickly the climate can change. As you imply, it may change for the worse. I think it would also be unrealistic to expect that somehow a variety of these elements will never be open to negotiation through the work of Australia's trade bureaucrats going forward.

Senator BRANDIS—Perhaps that is so, but can you suggest to me how the political opportunities for this to be passed by the Congress are going to get any better than a circumstance in which you have a President who is strongly committed to it and whose party is narrowly in control of both houses of Congress and at a time when, for reasons other than the free trade agreement, there is great goodwill towards the Australian government and when ideologically the party in control of the White House is committed to doing free trade agreements to a greater extent than has ever been the case with previous administrations? If it is fragile in those set of circumstances, it is hardly going to get better.

Mr Kell—This is going down some hypothetical tracks I suppose. I would simply make one observation in response. Irrespective of the environment, if you like, that you describe as being favourable, the fact of the matter is, and as we clearly know, the American side are very skilled at pursuing interests that are to their benefit, as you would expect and as they should. I think that occurs irrespective of the warmth between the two nations at any particular point in time.

Senator BRANDIS—That is always going to be the case.

Mr Kell—That is always going to be the case. Hence, we have an agreement. You make the observation that the people from Foreign Affairs and Trade have said it is the best they can do; but in some of these areas for consumers, in our view, that is not quite good enough.

Senator RIDGEWAY—I have a very quick question on some issues raised by Senator Brandis in relation to the establishment of a medicines working group. You have raised in your submission the issue about that component that deals with research and development. Isn't it true that here in Australia, and more particularly in the United States, pharmaceutical companies are already heavily subsidised?

Ms Ballenden—They are through various industry schemes. Also, sometimes there will be subsidies through clinical trials that companies need to conduct to get a drug registered. So subsidies already exist. We can also go down the whole track of the various costs of R&D and marketing, because there are lots of arguments that in fact the marketing budget exceeds the R&D budget. Often what companies are seeking is in fact reimbursement for marketing and promotion costs rather than R&D. But that is a long argument.

Senator RIDGEWAY—I guess what I am trying to get on the record is that the picture that is often portrayed is that poor pharmaceutical companies are not getting the same treatment and certainly not in the context of the Pharmaceutical Benefits Scheme. The argument has been put forward that that could possibly be considered research and development and innovation, but the reality is that here in Australia and overseas we already provide moneys to that effect.

Ms Ballenden—We do already provide moneys to that effect. I guess we are not saying that as a government and as a country we should not provide those moneys. What we are saying is that that funding should be kept very separately from how we price drugs on the PBS.

Senator RIDGEWAY—The reason for that is you would take the view that if it is included as part of PBS considerations the entire system as we know it would collapse?

Ms Ballenden—Absolutely. If we include R&D in considering the listed price on the PBS, our system would collapse.

Senator RIDGEWAY—I want to very quickly go to the issue you have raised about changes to copyright law and the extension by a further 20 years. No doubt you have seen that argument being dealt with by various groups. I note that you talk about issues in the context of the Phillips Fox report that had been done previously. Could you spell out for the record why you do not support the extension of copyright by a further 20 years—not just from the point of view of presumed additional administrative costs because Australia is a net importer of copyright material or even the question of access to information, whether it is in libraries or elsewhere, but

the whole issue concerning the process that has already been gone through and why it is that the free trade agreement and certainly the negotiators did not take account of what had been struck as a balance in previous negotiations and reports that produced an outcome?

Mr Britton—The Phillips Fox report was published only very recently, although the inquiry was going on almost in parallel with the free trade agreement. You mentioned the word 'balance', and I think it is very interesting. The Phillips Fox report is very punctilious in its observation of the question of balance between consumer and producer interests, whereas the free trade agreement essentially does not mention the word 'balance' at all and barely recognises the consumer position in intellectual property. So from that point of view, in a number of places the Phillips Fox report actually comes to conclusions which are, if you like, opposed to what is in the free trade agreement. I am not sure if it actually arrives at a position on the extension of term, but it certainly says there is no evidence of the need for enforcement et cetera.

The increase in term was something that was considered in the Ergas report—that is, the competition review. Government's response to that was to not increase the copyright term. So we have already had a policy determination in Australia through previous processes that we do not need an extension of term—and then the free trade agreement comes along and says we are going to have one anyway. I think the argument against extension of term is essentially that copyright is a balance. The point of copyright is not simply to award benefits to copyright holders; it is also to ensure that cultural material circulates back into the culture of the society. In other words, nobody gets sole licence to intellectual property, because that is built on the work of others and others will build on that work. One of the potential problems in an imbalanced intellectual property system is that you inhibit that process. Nobody is saying we should do away with intellectual property systems all together but, if you bias it against the consumer view, in the end all producers are also consumers.

Our concern is that ultimately a rolling extension of copyright will actually amount to copyright in perpetuity. It has never been envisaged that copyright would be in perpetuity. If that is the debate we should be having, it is a very different debate from that on extending the life of copyright. I did suggest a positive alternative to guard what people regard as important copyright material as the life goes on. As I said, if we put in a registration system with a fee it would then give people an opportunity to protect their copyright if they deemed it a market problem. It would send them an economic signal that there is a cost to doing that. Other material could fall into the public domain, because that is the stuff that other people will build on.

Senator O'BRIEN—I only have one strand of questioning that I want to put to you. It arises from the proposition that Senator Brandis put to you, which I thought you agreed with, but I just want to be sure. He put the proposition that a reduction in tariff will inevitably lead to a reduction in price. Do you agree with that?

Mr Kell—If by 'inevitably' you mean 'in each and every situation', the answer is no—but it is yes more often than not. Again it is a case-by-case basis.

Senator BRANDIS—Ordinarily?

Mr Kell—Ordinarily.

CHAIR—In a competitive market.

Mr Kell—In a competitive market—that sort of thing.

CHAIR—The competitive market is the element.

Mr Kell—Yes.

Senator O'BRIEN—So in a competitive market it is inevitable that it will lead to a reduction in price.

Mr Kell—Broadly speaking. I do not know that the word 'inevitable' is necessarily one that I would go to first. Will a tariff reduction generally lead to lower prices? Yes, but there are obviously a range of circumstances where that will not happen. As I said earlier, from ACA's perspective it is not an attitude that we take based on some sort of hypothetical scenario; it is analysing how it will work in practice.

Senator O'BRIEN—I am interested, because the proposition appeared to be that somehow consumers would necessarily benefit because there would be a reduction in price where tariffs were removed. I take it that would mean that the supplier-manufacturer-producer model—whatever the model that you used was—would not be able to pass on the cost of the tariffs and therefore that benefit would pass on to consumers. Is that what you were trying to convey?

Mr Kell—I think I understand you correctly. The price saving in effect would be passed on in a competitive environment if the markets were working properly, yes.

Senator O'BRIEN—So, because the government imposes a tariff cost, it is beyond the ability of the producer to compete or the buyer to bargain that down. Therefore, when it comes out of the equation the cost of the product in most circumstances is reduced by that amount.

Mr Kell—Again, making unqualified statements that if the tariff were 10 per cent and it were reduced by 10 per cent then the costs would immediately go down by 10 per cent, obviously there are a range of factors that may militate against that, which I am sure you are aware of, but in general, yes, we would see a reduction.

Senator O'BRIEN—Do we expect the same to happen to our goods in the United States in a competitive market?

Mr Kell—I have not considered in detail the situation that would apply in the United States.

Senator O'BRIEN—I was assuming the same things, which is why—

Mr Kell—One would assume—again, setting aside the range of qualifications that you can imagine might apply—that our goods should become cheaper over there if a tariff that previously applied to them no longer existed.

Senator O'BRIEN—So should we question assumptions about the value of the benefit of this free trade agreement if they are based on our keeping the value of a tariff quota that we do not

have to pay? Should we question the value of a judgment as to what the free trade agreement is worth if that judgment is based upon Australia holding onto the value of a tariff—that is, instead of having to pay a tariff rate quota for beef, we have to surrender that to the wholesale purchaser in the United States?

Mr Kell—On the issue of tariffs, there would be a range of factors that you would want to include in any valuation and that have been raised in the context of discussions around the overall assessment of the net benefits—whether the tariff benefits actually will flow through, whether the changes to the tariff regime will not simply divert trade rather than create new trade, and all those sorts of things.

Senator O'BRIEN—But the assumptions are based upon our gathering to ourselves the value of a tariff rate quota of 4c a pound, or whatever it is in the United States. In your view, is that not necessarily the case in a competitive market?

Mr Kell—Again, because we are primarily concerned about the situation of consumers in Australia we have not looked in detail at the way some of these issues may play out in the American market. But I would have thought that the argument there was that, if the tariff drops over there, the benefit that flows to us is from having potentially greater access to the market—from having more of our goods sold and—

Senator O'BRIEN—That is not necessarily how it is advanced to us. That is why I am asking you the question. It is put to us that, even if we do not sell another pound of beef, we still get that 4c per pound tariff rate quota—we get to hold onto that. The proposition that the reduction in tariff will, in most cases at least, lead to a reduction in price appears to be very challengeable. That is why I am asking you these questions.

Mr Kell—It is a line of argument that I am not 100 per cent sure I am following. I am happy to take the question on notice and have a look at it, should you so wish, rather than stumble around at the moment.

Senator O'BRIEN—I would be happy if you would. Do not stumble; give us a considered response.

Senator FERRIS—In your introductory remarks you talked about the number of subscribers to the ACA. Can you tell me how many members the Consumers Association has?

Mr Kell—Our membership is much smaller; it is around 500. Members are quite different from subscribers. We probably have about 160,000 subscribers and a much smaller number of members.

Senator FERRIS—How do you become a member?

Mr Kell—Your first have to subscribe to *Choice* or one of our products and then you pay an additional amount.

Senator FERRIS—Are any peak bodies part of that 500, or are there 500 individual members?

Mr Kell—There are two responses to that. One is that I would have to check which peak bodies might be members, and I am happy to take that on notice. The second is that we are not a peak organisation, if that is what you are asking. Is ACA an organisation like ACOSS, which represents different organisations in the welfare sector? No, we are not a peak organisation; we do not purport to represent the Consumer Credit Legal Centre or something.

Senator FERGUSON—Can you tell me how those 500 members had input into the submission?

Mr Kell—By and large they did not have direct input into the submission, because that is not the way we develop policy on a day-to-day basis. Our members elect our council, or board. They set the policy and the operational framework that govern the way ACA goes forward. As part of the way our governing body oversee us, they oversee the framework in which our policy is developed but they do not typically comment on the full range of individual policies. That would be unrealistic.

Senator FERRIS—Would any of those members know that you have come along here today and suggested that this committee should not support the free trade agreement? For example, would your view be published in *Choice* magazine? How would your members know that this is the policy conclusion that you have reached?

Mr Kell—That is a good question. All our members receive *Consuming Interest*, which is our policy journal and is published quarterly. There have been a range of articles in that talking about the free trade agreement and expressing some concerns with it. Our web site has our submissions on it and features it in that sense. We have had discussions with our council about it. So there are a range of ways in which we seek to inform both our subscribers and members about the whole kit and caboodle of consumer issues that we deal with and seek feedback where possible.

Senator FERRIS—I am just trying to establish whether any of those 500 members would have had the opportunity to have input into this submission before you came along here today and argued that this committee should take away from your submission a lack of support for the free trade agreement. How many of them would have had input into this submission, or was it prepared by a consultant? How was it prepared and how did those people know about it and how will they know about it? Do they know about it yet?

Mr Kell—It is publicly available on our web site.

Senator FERRIS—As of today?

Mr Kell—As of recently. We only finished it a few weeks ago. We make things available as soon as we can. Your question is: have individual members been polled about it?

Senator FERRIS—What I am concerned about—and I will just make it clear—is that you say in your introductory remarks that you have 145,000 subscribers but in fact there are only 500 members of the association. So it is quite different in its detail. I am just concerned that, given the questions that some of my colleagues have asked you and the answers that have been given about lower prices, particularly in relation to the Pharmaceutical Benefits Scheme, you should

still come along here and say that this committee should not proceed with the free trade agreement and should recommend that it not be signed. I am trying to establish how many of those 500 people have had the opportunity to know, before you came here today, that this was what you were going to present to us and how many of them have had the opportunity to express an opinion about that.

Mr Kell—In terms of the finalisation of our position, obviously this has been a fairly compressed process, so we have not gone out and sought to poll our members, and we generally do not seek to do that. We have had material published in our policy magazine, *Consuming Interest*, on several occasions over the last nine months or so—I would have to check exactly how long—that pointed out some concerns that we had with various aspects of the free trade agreement and that clearly indicated that we were not happy with its overall impact. We have also sought the views of our governing body on the agreement. In fact we did not have to seek them; they raised issues with us. We have not polled 500 members or, for that matter, 145,000 subscribers, if that is what you are asking. I am not going to pretend otherwise. That is not generally how we develop policy.

Senator BRANDIS—Mr Kell, you are not the first witness to come along and say, 'We have concerns.' Most witnesses we have had have said they have concerns, including witnesses who support the free trade agreement. In fact, I suspect that if they did not have concerns they would not be interested in being witnesses in this series of hearings. In an agreement of this complexity and scope, everyone will have concerns. I do not think the most ardent defender of the agreement would say that there are not parts of it where they would think, 'Maybe it would be better for Australia if this clause was written differently.' But unless you able to say, and I do not understand you to be seeking to say, 'We have analysed this agreement and we can tell you that there will be more net losers than net winners,' I do not really understand even the logical status of saying, 'We have concerns.' So what? Every Australian, in a 1,000-page document, is going to say, 'I wonder about that.'

CHAIR—I do not know of any company that has polled its shareholders either, by the way.

Senator BRANDIS—You see my point, though, don't you, Mr Kell? I do not seek to trivialise your submission, either.

Senator FERRIS—Or interrupt my questions!

Senator BRANDIS—Well, I asked you if I could interrupt and you says yes.

CHAIR—I would like to finish as we are now almost 20 minutes over.

Senator FERRIS—I just want to ask one more question. Why do you think the government would have agreed to the PBS recommendations in this free trade agreement if it were going to result in increased pharmaceutical costs when they currently cost $5 billion a year and the government pays it? By what logic would you think that any government would sign off on an agreement which was so open-ended, given that, for the last two years—I think it is three budgets now—there has been a proposed increase of $1 in the pharmaceutical benefits costs to consumers which has been blocked in the Senate. Why would any government sign off on an agreement as open-ended as that?

Ms Ballenden—I guess there are two possible answers. One is that the government has a different interpretation then some of the interpretations we have—

Senator FERRIS—Yes. The interpretation is that it will not give that opportunity.

Ms Ballenden—read coming out of the US, in fact, from Bob Zoellick and others. I guess the other is Senator Brandis's point—that is, maybe there are interests that they think are more important than the PBS. I find it hard to believe that they would think that but it is possible.

Senator BRANDIS—I do not think that is the point I made. For the purpose of my question to Mr Kell, I said, 'Let it be assumed for the sake of this argument that what we say is right; let's look at the net benefit of it across the entire economy.'

CHAIR—I think I made the insinuation that people have put to us that the increases in the price of the PBS make it unsustainable.

Mr Kell—We apologise to Senator Brandis.

Senator FERRIS—I just cannot imagine why any government would want to increase from $5 billion a cost that it already bears. In fact, the department of health negotiators, who have been before this committee twice, have assured us that that is not the case. I will leave it there.

Senator RIDGEWAY—Isn't it an equally valid question to ask why it is that the government would not have an ironclad guarantee that the price of medicines would not increase in the free trade agreement or any of the side letters?

Ms Ballenden—Yes, or something in the text guaranteeing equity in public health, as they have clearly protected reward for innovation in research and development.

CHAIR—I thank Mr Kell, Mr Britton and Ms Ballenden of the Australian Consumers' Association. You have put a lot of work into this and we do appreciate it.

[2.38 p.m.]

BELCHAMBER, Mr Grant, Senior Research Officer, Australian Council of Trade Unions

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

BRAIN, Dr Peter, National Institute of Economic and Industry Research

MANNING, Dr Ian, National Institute of Economic and Industry Research

APPLE, Mr Nixon, National Research Officer, Australian Manufacturing Workers Union

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

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

GILLAM, Mr Trent, Australian Workers Union

CHAIR—Welcome. I think the National Institute of Economic and Industry Research are entitled to have their submission on modelling considered separately and, if it is appropriate, we should make an arrangement for that to be done. Therefore, it may be that we take your submission to the extent that is relevant to the remarks made by the other officers but examine your submission, the NIEIR submission, in a stand-alone session. That is appropriate.

Thank you for lodging with us a comprehensive and detailed submission. We do appreciate the effort that has been made. It certainly aids us in our inquiry. The standard format is to invite you to speak to your submission briefly on behalf of your organisation and for the committee to put questions. I think it is appropriate for the ACTU to lead off and then we will go to the Australian Manufacturing Workers Union, the Australian Workers Union and then to the National Institute of Economic and Industry Research.

Mr Bellchamber—Thank you very much for hearing us today. It is fair to say that there is deep concern across the union movement in this country and also in the US regarding this proposed agreement. There is a senior delegation of union officers here today. I bring apologies from Sharan Burrow, who would otherwise be here but is overseas. The ACTU submission is with the committee. It supplements and complements those other submissions that have been put in by our affiliates—and I believe there are quite a number of those. There are several key points in our submission. There is a general preference for multilateral rather than bilateral agreements, for a range of reasons. We see the official reasons given in support of the proposal seem to be a moving feast. Agriculture is dudded, with long implementation periods. It would seem that Australia has fouled its own nest with respect to the Cairns Group in supporting this proposal. There is a real potential for significant job loss in some sectors, particularly in textiles and clothing and manufacturing.

The gains are dubious. Mark II of the CIE modelling has been described by eminent people as being a laughable exercise. It is good to have in a trade agreement, at last, a clause dealing with

labour standards, but this particular clause is weak and defective and is seemingly that way by design. We have a number of other concerns about the agreement, but they are documented in the submission. In order to maximise the time I will leave our opening remarks there and pass over to take any questions you may have, or perhaps you might like to take an opening statement from all of us.

CHAIR—We will take an opening statement from everyone first.

Mr Cameron—I also appreciate the opportunity to make a submission to the select committee. The AMWU's submission that has been forwarded to the committee comprises: our general submission in relation to the various aspects of the proposed free trade agreement; a specific analysis of the impact of the loss of Australia's capacity to use government procurement and offset programs to generate employment, technical and engineering knowledge, and intellectual growth; and the National Institute of Economic and Industry Research assessment of the direct impact of the proposed agreement on Australian trade and economic activity. The NIEIR research also analyses the cost of the loss of national sovereignty to the economy.

At the outset I would like to make it clear the AMWU are not opposed to international trade, nor are we opposed to Australian governments entering into trade agreements that promote our national interest. However, we believe in fair trade, not free trade, and we believe in smart trade, not dumb trade. The Australia-US free trade agreement is plainly dumb trade. Trade agreements should be judged on what they will deliver not just in the next five years but in the next 50 years. The agreement has been negotiated not with the next 50 or even five years in mind; it simply addresses the next five months—the time frame leading to a federal election. It is our submission that the Australian public have once again become the victims of the Howard government fabricating a complex web of deceit in an attempt to create circumstances by which it gains political advantage. The Australian public is increasingly sceptical about this agreement and what it really delivers. We are witnessing an unprecedented misuse of government trust. I call on the ALP, the Greens and the Democrats to reject the enabling legislation for this so-called free trade agreement—an agreement which is a dud and not in the national interest.

The opposition parties are facing an historic and unprecedented challenge. You must act correctly and decisively to stop the Howard government putting its interest before that of the Australian people. We believe, with respect, that the opposition parties have a responsibility to prevent the federal government committing economic treason by trading away our future as a knowledge economy. This agreement must be rejected because it fails the most basic national interest test, which involves answering the following questions in the affirmative. Is it beyond reasonable doubt that the agreement will achieve net benefits for the nation? Will the benefits be achieved in a manner that is consistent with the deeply held values and beliefs of ordinary Australians? And will this be achieved without compromising the political sovereignty of future Australian governments to act in the national interest? That is the national interest test, and this agreement fails that test.

Our submissions rely on our own analysis of the agreement and the analysis of independent economic and social experts. We submit that the proposed agreement fails to meet this national interest test on a range of grounds including, but not limited to, the following. First, the alleged benefits of the proposed agreement are based on economic analysis by CIE which has been completely undermined and discredited by independent analysis. Second, analysis by NIEIR, the

International Monetary Fund, the Productivity Commission, ACIL Consulting and Professor Ross Garnaut expose the CIE report as no more than economic spin doctoring. The report is, in our view, an attempt to deceive the Australian public.

The proposed agreement will result in the loss of manufacturing jobs. The Monash study for the Victorian government predicts the loss of 1,100 auto component industry jobs in Victoria as a result of the proposed free trade agreement. The Allen Consulting Group report for the South Australian government shows the auto component industry as the sector most at risk. The NIEIR study shows a greater than 50 per cent probability of job losses in the auto and component sectors, with a 25 per cent probability of very substantial job losses. The original CIE study showed negative outcomes for the auto industry. The second CIE study, in table 7.2, suggests that 11 of 16 non-food manufacturing sectors will lose employment because of the proposed free trade agreement.

Third, the agreement removes the power of governments to ensure that Australia makes full use of productive investment to build the industries of the future. By agreeing to strip governments of the right to use government procurement and offset policy to build the economy of the future, the Howard government has abandoned future generations to low-paid, low-skilled jobs. This is a recipe for social dislocation and increasing divisions within Australian society.

Fourth, the agreement changes the national interest test for foreign direct investment, allowing amongst other things the unrestricted takeover of Australian intellectual property in industries critical to Australia's future. Fifth, the agreement will inevitably lead to increased power for multinational pharmaceutical companies to intervene to influence price setting in the name of profits before people. This is likely to occur through the review mechanism, which remains a secret, the article 21.2(c) dispute resolution process and the delay of generic drugs coming into the system. Australians will be forced to pay more for their prescriptions and health costs and will, as Professor Drahos and others have suggested, have diminished access to elective surgery.

Sixth, the agreement does not implement Australia's international obligations as it fails to recognise or implement core labour standards which Australia has signed up to. Seventh, NIEIR estimate that the agreement will cost Australia $47 billion over the next 20 years and has the potential to destroy 57,000 jobs a year due to our loss of national sovereignty. Eighth, the market denies the sugar industry access to the US market and significantly delays access for our agricultural commodities.

The AMWU is of the view that this dud deal must be rejected; it fails the national interest test. As argued by others, it has been rushed with undue and unnecessary haste through an approval process that should extend well into the next year and not be restricted to the election schedules of the Howard government or the Bush administration. A lie is being perpetrated on the Australian public. This lie has huge economic implications for the economy, for workers, their families and communities. There is an obligation on this Senate select committee to expose the lies. This committee must act in the national interest and reject the enabling legislation for this dud deal that is the proposed free trade agreement.

CHAIR—Thank you, Mr Cameron. Mr Gillam, we will now hear your statement.

Mr Gillam—I would like to thank the committee for the opportunity to appear today and I send apologies from Bill Shorten, who would like to have been here. The AWU supports the comments of the ACTU and AMWU before us; we agree that the FTA appears to fail the national interest test. While we have a number of concerns that we have set out in our written submissions, for the sake of keeping my opening comments very brief, I would like to touch upon the impact of the FTA on agriculture. From our perspective it was very disappointing that sugar was excluded from the FTA. We are similarly very concerned about the potential the FTA has to impact on Australia's quarantine regimes. I will end here to move on to any specific questions you may have.

CHAIR—Mr Kentish, Mr Murphy and Mr Apple, I take it that the views you would put have been presented and that you do not need to add to them? We will then hear from Dr Brain.

Dr Brain—With respect to your opening remarks, I would like to say that I have prepared a general background philosophical presentation that tries to explain our thinking rather than going through the nuts and bolts of the report. Therefore, my address will not waste time in terms of what you want to achieve.

CHAIR—The reason I mentioned it is that we know about the CIE model for example and you have produced a modelling exercise of your own. The committee would appreciate having an opportunity to talk to you about it.

Dr Brain—I understand that; I am simply saying I am not wasting your time. For the proposed agreement to be decided in the national interest, three tests have to be applied and passed. The three tests are. One, is it a positive benefit in terms of the current economic structure? Two, is it a positive benefit in terms of future desirable economic structures? Three, does it facilitate the transition path from the present to the future? If you can answer yes to all of these questions then there is a strong prima facie case for a positive national interest assessment. Up to the current time nearly all the analysis I have seen has been anchored in terms of the current economic structure. But the importance of looking at it in terms of the future can be seen from the following example. Just imagine if you were deciding on a free trade agreement with the US 100 years ago in 1904. You would have modellers coming to you saying that Australia would benefit greatly from the exports of coal and hay—hay to feed the horses that pulled carriages. Of course this assessment would have been quite wrong within 10 years with the rise of the motor vehicle and the oil economy.

In terms of a general methodological issue or how the economic assessment should be made, the idea of bottom line point estimates is absurd. I think we can all agree that whatever the dynamic of flow-on effects will be, they will be large—whether it be a multiplier of two, four, six or whatever—compared with the direct effects. Therefore, the analysis should simply focus on the direct effects. This should be done with some humility because there is a wide range of possible outcomes. To accommodate this as best we can, one should try to take into account all possible outcomes in a framework of decision making which allows an assessment of the probable range of outcomes, which we have tried to do.

As we see it, the proposed free trade agreement boils down to two key aspects: first, the impact of the removal of direct trade barriers and, second, the economic cost of the loss of sovereignty that the FTA will impose potentially on Australia's ability to pursue its own

economic objectives. The question of economic sovereignty is purely linked to an assessment of future desirable economic outcomes.

This government, as with all high-income governments, would say their key objectives were to create high value-added, knowledge-intensive, innovation-intensive economic structures. The reason why governments state this so vehemently these days is that, if an economy stands still in the value-added chain and freezes the economic structure, it will be forced increasingly to compete with developing economies on cost. If a high-income economy stands still, a $5,000 or $10,000 Indian or Chinese worker's wage rate will become the benchmark determining the outcomes for an increasingly large percentage of its work force.

Most high-income governments know that it is impossible to move up the value-added chain while sticking to the pure economic free trade model as enshrined in the FTA. Successful governments in Asia or Europe, which have successfully moved their economies up the value-added chain in the last couple of decades, have aggressively used the power of the state, or the collective states in the case of the EU, to: (1) pick winning industries to participate in the supply chains of the emerging technologies of the future by accumulating resources including all capital knowledge and skill; (2) use the full sovereignty of the state via offset policies, government procurement policies and control over the financial system to nurture the development of the emerging industries; and (3) build institutional protection, including direct government ownership of enterprises, controls over foreign ownership and devolution of power to regional governments to reduce the risk of the intellectual property which is essential to these types of industries being transferred to the dominant economic power or to other competitors. These governments have learnt to use the sovereignty of the state to create critical masses of complementary activity with strong links to the institutions of the state.

In this context, no doubt some countries now and certainly some countries in the future will look at Australia as an example of the costs of not moving up the value-added chain and of the associated cost of the loss of sovereignty resulting from the decision not to fully use sovereignty and the powers that entails that are currently available to governments to shift their economies up the value-added chain. This can be seen from the fact that at this time the Australian economy has been driven to the point where economic meltdown could occur at any time, either from its own internal dynamics or from a mild external economic shock. In this context, 'meltdown' means a severe recession, where a further four to eight per cent of working age households come to rely on social security for a subsistence income, bringing the overall total up to between 20 and 25 per cent of all households.

The vulnerability of the Australian economy currently is probably the highest of all high-income economies, including the United States. Most of the conditions sufficient for crisis on the historical record are either satisfied or close to being satisfied. Firstly, the household savings capacity of the economy has been destroyed by a lax monetary policy. Currently, nearly 10 per cent of consumption expenditure, or $60 billion a year, is financed by new debt acquisition. Household debt-to-income ratios have now reached levels where, by themselves, they are likely to trigger meltdown. This is purely because the effects of policies such as superannuation have been totally offset.

Secondly, the abandonment of aggressive industry development has led to a share of manufacturing in GDP equal to third world status; a pathetically small number of significant

firms in the emerging technologies of scale; and a trade performance over the last few years which is reaching crisis levels. Furthermore, the volume of non resource based exports has been stagnant now for almost four years, despite a 40 per cent jump in regional—that is, Asia Pacific—trade and a 30 per cent increase in the volume of imports; and, in terms of the balance of payments, not only is the debt a problem but our ability to control short-term speculative flows has degenerated. Australia has gone from a position of parity between short-term debt—that is, debt less than 90 days old—and foreign reserves to a ratio of four to one in favour of the former.

The only reason why Australia has not melted down until now is that the fall in interest rates has kept our current account deficit at less than seven per cent instead of 10 per cent and above, which would have been the result if interest rates had remained at their mid-1990s level. As we all know, the world interest rates cycle is now entering an upswing phase. Australia has got itself into this mess by not following anywhere near aggressive enough strategies to move up the value-added chain and unleash those powerful sustainable, internal growth forces that results.

CHAIR—Dr Brain, I do not want to constrain you, but do you have much more?

Dr Brain—A little bit more; we are almost there.

CHAIR—Thank you.

Dr Brain—In terms of the three tests, we argue in terms of the current structure that the benefit to the economy will be somewhere near the current assessments. When you look at that, at about $20 million on a cumulative basis but taking into account the other aspects of loss of sovereignty and other aspects associated with the agreement, you get the numbers that the others have quoted.

It is our view that, in terms of the likely dynamic consequences of the agreement, the agreement will in the short term have a palliative effect and offset the current difficulties by triggering some degree of short-term capital inflow, but it is likely, because of the current vulnerability of the economy, that we will experience a Mexican-type response with an initial boom and then bust.

CHAIR—Thank you, Dr Brain. I might start in terms of questions from the committee. Without minimising the significance of anything that anyone has said, I do want to come to you before I conclude my questioning, Mr Belchamber, to talk to you about the labour standards elements of the agreement. This is really the first time that we have had an opportunity to talk about the manufacturing industry, so I would like to—while noting your comments, Mr Gillam—put my questions to Mr Cameron to begin with. This morning we heard from three companies in the petrochemical industry, who asked us not to proceed to adopt the enabling legislation and thus strike down the agreement, although their preference would have been to renegotiate some of the provisions of it.

Starting with the automotive industry, General Motors Holden have put a submission to us effectively asking us to endorse the agreement. We have not heard from Ford and we have not heard from Toyota—and we may not. Just focusing for a moment on the automotive industry, are

there some specific views that you would like to put to us about the impact of this agreement on that sector?

Mr Cameron—Yes, thank you, Senator Cook. We are very concerned about the impact specifically on the auto components sector in Australia. The American Manufacturers Association have put forward a figure of an increased $2 billion worth of manufactured goods exported from America to Australia. That figure has also been quoted by Bob Zoellick, the chief trade negotiator on behalf of the United States.

CHAIR—It is in your submission, I notice.

Mr Cameron—Yes, it is in the submission. It is not surprising that General Motors Holden would be supporting this. It is a clear strategy of these hub-and-spoke bilateral trade agreements for the United States, supported by big business in the US, to try to drive their costs down and access manufactured goods as cheap as they possibly can.

GM have consistently promoted a cost down strategy within Australia, with some of our component companies now facing a further demand for a 20 per cent cost down approach to compete with China. They are being told that, unless they achieve that, sourcing for Australian component parts will go overseas. This is part of the strategy to reduce costs. This is part of a strategy that is designed to take the risk of the whole thing back to the component sector. We believe that, if the component sector is diminished any further, that supply chain to the industry will be diminished. We will lose our economies of scale. We will lose the capacity to compete with the US industry. Our analysis would be that US industry is about 10 years ahead of us technologically at the moment in terms of investment. They have huge economies of scale that we do not have. If GM decide to source from within the US, some of that sourcing will come from Mexico, which will be part of the rules of origin. We could see significantly low cost components brought in here from Mexico because, we believe, the rules of origin are neither simple nor effective. This will cost jobs and it will diminish the capacity of the component sector to supply effectively. If we lose the component sector we lose a huge part of Australian manufacturing.

CHAIR—Let me just take a contradictory view. It is sometimes said that, if we cannot manufacture products in Australia with the same quality and price as well as other countries and if there are no barriers to bringing those quality low-priced goods into Australia, that reduces the costs to all Australian consumers who take up Australian manufactured goods. By reducing those prices, the argument goes, there is more disposable income to spend on other things, which creates jobs in other areas. What do you have to say about that?

Mr Cameron—I think that is the typical, neoclassical economic response. It facilitates the fairytale that if you simply open up the economy to free trade everything is going to be better. That has not been the experience over the last 20 years in this country. It is absolutely essential that Australia does not lose its capacity to engage in the knowledge economy. The knowledge economy fundamentally has manufacturing as a key aspect. If we simply become a quarry, a farm and a nice place to visit then the capacity for people to have disposable income to buy the cheaper cars will not be there. We need a dynamic manufacturing sector. We need a manufacturing sector that can employ workers with decent skills and a sector with decent wages

and conditions. Otherwise, we would not be able to buy these cheaper imported cars. It is a bit of a fallacy.

CHAIR—Do you see anything in this agreement that would promote R&D in Australia?

Mr Cameron—Absolutely nothing. In fact, to the contrary. The capacity for removing Foreign Investment Review Board restrictions opens it up for companies who do R&D in this country to be taken over very quickly. The research and development outcomes transfer back to the United States. So it is a negative for research and development. This is really about increasing Australia's capacity to export agricultural goods into the United States. The negotiators in the government totally failed in that. At one stage, $4 billion was the figure the government bandied around in relation to total free trade and yet we do not achieve that. Now the CIE says it will be even more. This is a crock. This is a bad agreement. Our negotiators were completely outmanoeuvred. Not even John Howard's personal intervention could rescue this. It has simply been taken forward because the government cannot be seen to be backing away.

CHAIR—I have one final question to you on the manufacturing industry. You seem to be saying that it is more expensive to do manufacturing in Australia than in other locations and that the component parts industry is essential to the health of the manufacturing industry Australia wide. I do not think there is any disagreement between us on this point—that is, that the car manufacturing industry is the central prop around which Australian metal manufacturing is based. I have always thought that, as a consequence, it is important to have a car manufacturing industry in Australia so that the Australian component parts industry has a market but it can grow beyond that market to be an exporter to the world car manufacturing centres elsewhere. I have heard you speak generally on the broad subject, but would you care to address the likelihood, if we were not to proceed with this agreement, of the component parts industry in Australia growing to be a world car supplier and supplying parts for cars manufactured in Europe, Japan, Korea and the United States?

Mr Cameron—I do not think we have anything to be concerned about in relation to the capacity for our industry to compete internationally in terms of skills, on-time delivery and quality. The issue that we seem to have coming forward now is that the industry must compete on the lowest cost wages. To some extent, that is GM's approach here—that is, the cost-down approach.

For many years we have had a tariff regime. That tariff regime has been, I think, a beneficial regime, especially in the last 10 years where incentives have been put in place for the industry to increase its cost, quality and output. If you look at what is now happening internationally, Australian car manufacturing is seen in all of the key factors as good as anywhere else.

The component sector is particularly in trouble, because the car companies have used the cost-down approach to starve them of the money to invest in research and development, to invest in new technology, to put the proper machinery in place and to do the training on the job. That is a domestic issue that has to be addressed, and you can only do that by giving our industry time to deal with these issues and compete internationally. We would argue that we have the capacity in our components sector to be internationally competitive, but if you face us off with no tariffs against the most powerful manufacturing nation in the world, where our tariffs go to zero from day one in this agreement, that is unfair. It is a dumb approach to building a manufacturing

capacity in this country and it consigns us to low pay and low-cost production—if we can get it—and it is not in the national interest.

CHAIR—I said that that was the last question, but I have another one. Are you aware of the Nara treaty—the treaty between Australia and Japan? I think it is article 11 of that treaty—a treaty of friendship and cooperation—that says that if Australia or Japan is to extend a concession to a third country or countries, automatically that concession will be extended to our partner. In this case, that would be Japan or, if they did it, it would be us. Given that, do you think that implies that if we carry this treaty we are bound to remove tariff protection for our motor vehicle industry for Japanese imports as well as American?

Mr Cameron—I think the logic would be to say yes, that is what we will face. In fact, I think it goes further than that. If this agreement goes through, I think we will be bound to extend the same flexibility for Asian and other trading partners in terms of—

Mr Bellchamber—Most favoured nation?

Mr Cameron—No. Our capacity to use our own government expenditure is diminished. If we give certain rights to the United States and say to them that we will not give especial consideration to our own manufacturers but we will give it to them as well, then you cannot say to any Asian company or any of our trading partners that we can use offsets and do government procurement in our country without giving it to them. So this agreement is not only an agreement with the United States but also an agreement in terms of tariffs world wide, an agreement in terms of offsets and an agreement on government procurement. That is where we lose our national interest in this agreement.

CHAIR—This is the first trade agreement that Australia has entered into that has provision for labour standards in it. You made some criticism of the way in which those standards are expressed. What is the ACTU's view about what should be the provision? Are you aware of what the AFLCIO is putting to the American congress about this agreement on the American side?

Mr Murphy—The concern that we have raised is that the labour chapter makes it clear that the scope of application in the dispute settlements chapter only applies to one particular clause in the labour chapter, which is that the parties shall not fail to enforce labour standards in a manner which would create a trade advantage. There is nothing else in the labour chapter that refers to international labour principles, ILO standards or an onus on the parties to strive to achieve core ILO standards that is in any way enforceable in terms of this agreement. Under this agreement, if it can be established that Australia, or for that matter the United States, lowers the labour standards that currently exist or moves further away from the ILO core labour standards, no dispute can be mounted on that; it is only if we fail to enforce.

The labour chapter effectively says, 'You can reduce your labour standards and that's not disputable, but if you fail to enforce them, even though you can reduce them, that is.' The ACTU's view is that that is of very little value, particularly when the penalty, at the end of the day, is that the government which failed to enforce its labour standards has a veto on the expenditure which is the compensation for failing to enforce the labour standards. The ACTU's view is that the core labour standards should be part of the agreement and subject to dispute resolution and should be enforceable under the dispute settlement provision. The AFLCIO in its

submission to congress is arguing the same thing and has argued that the text of this agreement is inferior to that of the US-Jordan agreement with respect to the labour standards clause.

CHAIR—What are they proposing?

Mr Murphy—The AFLCIO submission proposes essentially the same thing—that the onus to achieve and maintain ILO core labour standards should be a matter which is subject to dispute resolution and settlement.

CHAIR—What is the AFLCIO recommending to congress as to the fate of this agreement?

Mr Murphy—The AFLCIO assessment of this agreement is rather hostile. It is partly critical because of the labour standards clause. They have also identified concerns that they have with respect to movement of people into the United States under US migration law. Their overall assessment is that—in light of the significant decline particularly in manufacturing employment in the United States, and the fact that, in their view, the result of previous bilateral and regional free trade agreements that the United States has entered into has been negative for US workers—this agreement should not be passed by congress with the current terms set out in those areas.

CHAIR—And they have put that to congress?

Mr Murphy—Yes, they have.

Senator O'BRIEN—I would not mind further elaboration of the position the AMWU outlines with regard to the US procurement market and how you arrive at the numbers. Mr Apple might want to elaborate on how you get to the numbers on what we would get and what we would lose.

Mr Apple—There are two sets of numbers. The first set of numbers is in relation to what we would win from the American procurement market. Take the federal procurement market plus, say, 37 states, given that it is 29 now. We employ there the same methodology that was employed by the Productivity Commission and the Bureau of Industry Economics in 1996, which was to take Australia's existing market share in the US for both goods and services and apply that to the import share of the US procurement market. When we do that, we come up with a number of about $60 million to $70 million, rather than the CIE number of $150 million. We both agree that existing exports in the procurement market in the US are about $50 million. We then argue about whether it will be another $20 million on top of that or whether it will be an additional $100 million to $150 million.

I spent 15 years on the board of directors of the Australian Trade Commission, so I understand a little the concerns of the CCC in Canada about how difficult that market is in terms of access. If you set aside arrangements and the way they work, in theory the purchasing agency is supposed to tell you that it is a set-aside when two or more American small businesses have the capacity to meet the contract at a set price. What happens in fact is that quite often the purchasing agencies do not have that information until other people have bid for the contract. So you are an Australian exporter, you get in with this new agreement and do all the costs of bidding for the agreement, then you find out that it is a set-aside agreement. That is one of the problems that exporters have getting into that market.

The other problem that I have with the numbers we get out of exports to that market is that, even though the legislation is currently buried in both Senate and House standing committees, there are proposals from the senator from Wisconsin and the two representatives from Ohio to toughen up the Buy American Act, which would require Senate estimates committees on basically every waiver to allow imports. Similar things are happening at the state level. I suspect that is why you have 29 rather than 37 American states signing up to the agreement. So on the export side what we get is limited.

What do we lose? The first thing we lose is the ability of the government of New South Wales to implement a 20 per cent price preference on manufactured products. We lose the ability of the Western Australian government to introduce regional preferences. We lose the ability of the South Australian government to do offset agreements like EDS or Motorola. At the Commonwealth level, you will have to substantially change your criteria for procurement in contracts over $5 million, because you have a number of industry development tests in those agreements.

One may well ask, 'If this is true, Mr Apple, why did all the Labor state governments sign up for the agreement?' There are three answers to that. As Professor Garnaut and Bill Carmichael pointed out to this committee, the first is that you are really going through this agreement very quickly indeed. The states met Mr Vaile on 7 May and they had to sign up on 7 May. They had to have a letter to their cabinets by 10 May. I can tell you there was considerable controversy at the lower levels of the bureaucracy in many states that governments had to enter into the agreement this quickly. The governments also had conflicting legal opinion going back to the Hughes decision with CAA about how the Americans will litigate this agreement. I think when Dr Faunce was before you he talked about constructive ambiguity. Constructive ambiguity here is that a small or medium enterprise is not defined in this agreement. That will be your first section 22(c) challenge. It will come very quickly, and it will define small- and medium-sized enterprises.

To quantify what we thought we might lose from all of these things happening, we said to the national institute: 'Replicate the 1996 BIE study of taking away all preferences then make an assessment of the economic structure of the future. Look at not being able to use any offset powers whatsoever and also not being able to leverage up any new technologies in ways that you may not be able to imagine today.'

For example, I spend a third of my time in the venture capital industry investing money in industry funds, and one of the big deal closers for us is if a firm is able to get an R&D Start contract and it can get a government contract to go into export after that. We think that this will put a substantial dampener on the ability of firms to be able to link procurement to their R&D contracts. We left it to NIEIR to take those factors into account and to try to do a quantitative assessment going out 20 years. They have gone in to the fact that in most of those sectors the losses will be in very technology intensive activities with high-multiplier effects, which is why they took our money.

Senator O'BRIEN—How does that compare with CIE's analysis?

Mr Apple—The CIE analysis did not go into state government procurement, so they did not try to estimate the costs to state government. They did not try to replicate the 1996 BIE

methodology. In relation to the federal procurement market, they thought that there might actually be benefits, rather than costs, because it might be disciplined by the court system, which would be more open and transparent.

Senator O'BRIEN—What does that mean for deals with US manufacturers to manufacture here? Is that the end of those deals?

Mr Apple—What it means is that, when you have a $100 million ICT contract with IBM, you cannot get them to set up a plant here, you cannot get them to set up a head office here, you cannot get them to do an R&D agreement here and you cannot ask them to specify in an agreement what the industry developments will be, except with respect to small and medium sized enterprises. As Justice Finn's decision in the Federal Court in 1997 in the Hughes case shows, you have to be extraordinarily careful in your request for tender about how you phrase what you ask IBM—particularly when it is competing against another multinational—about what it will do for small and medium sized enterprises, because there are some things that you can do and some things that you cannot do.

Mr Belchamber—Senator Cook asked a question about the AFL-CIO review on this agreement and what it had said. We refer at paragraph 27 of our submission to the Labour Advisory Committee for Trade Negotiations and Trade Policy in the US. This is a report dated 12 March 2004. The labour advisory committee is constituted under section 2104(e) of the Trade Act 2002, which requires that advisory committees provide the President, the US Trade Representative and congress with reports required under the act. This particular report was presented to the congress, the US Trade Representative and the President on 12 March. There are 58 members of the committee. They are if not wholly then overwhelmingly from AFL-CIO affiliated unions or are AFL-CIO elected officers. The final paragraph of this report reads:

The LAC recommends ... Congress should reject the agreement, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed.

The LAC recommends that USTR reorder its priorities before continuing with negotiations towards new free trade agreements with the Andean Region, Bahrain, Panama, Southern Africa, and Thailand. American workers are willing to support increased trade if the rules that govern it stimulate growth, create jobs, and protect fundamental rights ... We will oppose trade agreements that do not meet these basic standards.

That, in essence, reflects the views of AFL-CIO as put to the congress with respect to this agreement.

CHAIR—As there are no other questions from the panel, I will now ask a few more of the questions that I have on my mind. Firstly, this question is for the ACTU. We have not asked you about the Pharmaceutical Benefits Scheme but there are comments in your submission about that. We have not asked you about intellectual property but you have made comments about that too. Given the role of the ACTU in looking at the needs of low-income earners, do you have anything to say to us on the point of whether or not this agreement will enhance the life choices of low-income earners in the context of the PBS?

Mr Belchamber—Our clear conclusion is that this agreement would not enhance the life circumstances and prospects particularly of low-income workers and families in this country

over the medium and longer term. The provisions for major drug companies to appeal decisions of the pharmaceutical benefits tribunal and to achieve price increases and seek to achieve what they regard as a higher return on their intellectual property mean that the prices of drugs will go up in Australia and, as with all price increases on necessities and essentials, that is entirely regressive. The people who will be hit hardest are the ones who are hardest pressed for income.

CHAIR—For a net importer of intellectual property what comments do you make about that in the context of low-income earners?

Mr Belchamber—I am not sure what your point is. I come from Adelaide.

CHAIR—I grew up in Adelaide, Mr Belchamber, so we have a shared background, although I was smart and got out of the place—no disrespect to South Australians of course.

Mr Belchamber—It is a great place.

CHAIR—Yes, it is a great place. One of the areas in this agreement that we have spent a bit of time looking at is the intellectual property provisions. We pay a significant tariff because of the cost of intellectual property to our economy, and we export intellectual property. We import much more than we export. The provisions here would suggest that we are remaking our intellectual property laws via the agreement. My question was in the great tradition of dorothy dix questions in the parliament: how do you think that might impact on low-income earners?

Mr Belchamber—If we are paying more for it, it makes life harder for them. What applies with respect to intellectual property may apply more generally under the terms of this agreement. If there is to be a higher return to the foreign owners of intellectual property, then somehow or other it comes out of Australian net income and the ones who will bear that, particularly in respect of pharmaceuticals, will be low-income earners.

CHAIR—If these things occurred, what would be the ACTU's response in terms of applications to the federal Industrial Relations Commission over low-income wages?

Mr Belchamber—We would be in the Industrial Relations Commission every year trying to increase minimum wages, to protect the living standards of people who rely on award minimum wages; that is what we would be trying to do.

CHAIR—How many people in Australia rely on minimum award wages?

Mr Belchamber—About 1.8 million at present. It is that order of magnitude—1.8 million to two million workers. We argue every year for increases based on the unmet needs of low-paid Australians and will continue to do that to the extent that the provisions of this agreement increase costs and increase the unmet needs of low-income Australians. We have had to argue that through the safety net adjustments each year. All affiliates of the ACTU would take it up in the course of bargaining. That is our core business: tending to the welfare of our union members.

CHAIR—This may be a question for Mr Murphy. Under the WTO rules, there is a provision for countries to enter into bilateral trade agreements. Australia has consistently argued the proper interpretation of those rules: if they do enter into them, those agreements should be

comprehensive in scale. Do you have a view about whether this agreement can be classed as meeting that rules criterion if it excludes sugar?

Mr Murphy—Unfortunately, the actual wording of the WTO agreement refers to substantial coverage across sectors. Therefore I do not believe substantial coverage across sectors can be classed as preventing, unfortunately, the exclusion of a particular commodity within a sector. So the judgment to be made is whether it covers all sectors that are subject to WTO agreements rather than it being a judgment about how it treats individual products or commodities within a given sector. Certainly, the more you exclude individual commodities within a given sector, the more difficulty you would have meeting the test. But, frankly, I think there are problems with the exclusion of sugar in terms of Australia's national interests. I doubt it would be sufficient to fail the WTO substantial coverage of sectors test.

CHAIR—That is interesting. Do you think it contradicts the position that Australia has taken in its interpretation of the text?

Mr Murphy—Our interpretation has been to produce maximum liberalisation outcomes—particularly in agriculture, which is an area where we have historically had competitive strength in trade. I accept that point. I am simply saying that I doubt it is sufficient, given that the agreement also covers industrial goods, agriculture, intellectual property, services et cetera. I doubt that that exclusion alone would violate the WTO test. I doubt in any event that anyone would run a dispute to that effect either.

CHAIR—If these two countries were engaged in it, they are the ones that are affected.

Mr Murphy—I think the real difficulty with the degree of exclusion of sugar and the others with long phase-out periods in agriculture is less how it relates to the WTO test and more how it undermines our central gains as a result of the free trade agreement with the US and also the extent to which it indicates that the leader of the Cairns Group is prepared to compromise so fundamentally on agricultural trade liberalisation. I think that is the real problem with it.

CHAIR—Mr Gillam, the United States entered into a sugar agreement with Central American countries six weeks before it signed off on this package with Australia. The agreement provided a two per cent increase in access per year for the next 15 years for Central American economies. When we discussed this matter with the department and with the NFF, as I recall, I put to them the question: would they prefer to see a provision in this agreement that, if the US provides a more beneficial access on agricultural commodities to their market to a third party or parties, they had to automatically provide the same level of access to Australia? Does the AWU, which has significant employment in the sugar industry, have a view about whether such a provision would be desirable?

Mr Gillam—The kinds of arrangements that you are talking about would be preferable to the current arrangements provided for under this FTA.

CHAIR—This is a question to Mr Cameron, Dr Brain or Dr Manning about the work that you have done in terms of analysis of this agreement and its impact on the manufacturing sector. Are you in a position to advise this committee what, in your opinion, the impact would be in terms of jobs?

Dr Brain—The detail is there to make that assessment. We did a detailed industry analysis at the four-digit level. If we add them up, we can give that to you when we come back.

CHAIR—You will be able to aggregate it?

Dr Brain—Yes. We will take it on notice.

Mr Cameron—The only analysis that has been done in detail is the Monash University analysis for the state government in Victoria. They estimated there would be 1,100 manufacturing jobs lost in Victoria, in Geelong. Can I say, Chair, in relation to the question you asked about the WTO, you and I have had some debates about the WTO in the past—

CHAIR—Quite so.

Mr Cameron—I would put to the committee that the real issue is not whether this breaches WTO rules but whether this agreement is in the national interest of Australia. We see it as patently not. The government and its negotiating team had their playlunch taken away from them by both the opposite negotiating group and President Bush, who would not even submit one inch to the protestations of our Prime Minister. This is just a bad, bad agreement.

CHAIR—I understand your point of view on WTO rules, but if Australia has long held a strong position on the interpretation of those rules, which on the face of it it now repudiates by virtue of this agreement, then it does affect the national interest because it affects our ability to negotiate internationally on sensitive matters like agriculture. Are you able to offer any comment on the situation in South Australia? You have given us the figures from the Victorian government—the Monash study based on Geelong. Is there any basis for making any observations about the impact on the South Australian automotive industry?

Mr Cameron—The only thing we have is from the Allen Consulting Group, who did a report for the South Australian government. They did not come up with figures, as I understand it, but they did say the auto component sector was the sector most at risk. If you start losing jobs in South Australia, in addition to the closure of the Lonsdale plant, that is going to be a huge problem in South Australia. We will be deindustrialising the state.

CHAIR—I have one final question. I know you will put it to us—and you have put it to us strongly—that we should reject this. I do not know what the view of this committee is, because we have not met to formulate a view, although individual members of this committee have publicly offered their views about it. However, if the Senate were of a mind to proceed with this agreement one of the small components—but, nonetheless, strategically important in this—are the Independents. I think if they all vote with the government then the thing is a done deal, and I do not know what the position of the Independents in the Senate is at this stage. One of the Independents is a member of this committee but he is not here today—that is the One Nation senator. If the Senate were of that view, would you be expecting the government to provide a sugar industry equivalent package for any automotive worker that was thrown out of work?

Mr Gillam—If they go ahead against the national interest I think there is a huge responsibility on parliament to provide labour adjustment packages and very good incentives for workers to be able to find alternative employment; but my estimation would be that that would be a futility. It

will end up like Newcastle and some areas in Geelong, where skilled workers end up driving pizza trucks and cabs, and that is not the way for this economy to move into this millennium.

CHAIR—There does not seem to be any further questions from the committee, which is a bit of a surprise to me. Thank you, gentlemen. We look forward to seeing the economists back in the future to talk about their study.

[3.49 p.m.]

GALLAGHER, Mr Peter William, Principal, Inquit Communications Pty Ltd

CHAIR—Welcome.

Mr Gallagher—Thank you for the invitation to talk to you this afternoon. I am the principal consultant at Inquit Communications Pty Ltd, a company I founded in 1996 to provide advice and materials on trade and public policy to businesses and business associations. We consult to some of Australia's largest businesses and peak industry organisations, particularly in the food and resources sectors. I convene the business forum on economic relations with China, which is an informal group of 60 or so representatives of Australia's largest resources, services and manufacturing firms and several peak industry organisations that focuses on preparations for the free trade agreement with China. Internationally, Inquit provides trade consulting services, training and publications to the United Nations International Trade Centre and the World Trade Organisation. I am the regional convener for Asia of the International Trade Centre's World Trade Net, comprising business associations, government officials and academics in nine countries of North, East and West Asia.

My interest in the Australia-US free trade agreement dates to 1997 when I wrote a pamphlet for the Australian Centre for American Studies, then based at Sydney University, which advocated the idea that had been tentatively included in the Clinton administration's trade program. I argued then that an FTA with our biggest trading partner and the world's most productive economy would help to lock in and sustain the processes of micro-economic reform that, it seemed to me, had been languishing in Australia. Given the already low levels of border barriers on either side, I suggested that the biggest impact on Australia would be found in an improved investment climate, due in part to the head-turning impact of the FTA between the US and a significant economy in the western Pacific—that is, Australia. Despite some flaws in this agreement, which I think may have been difficult to avoid, it nevertheless largely achieves those objectives.

Australia will be a wealthier and more economically secure country as a result of this agreement. In my submission I offer some specific reasons for this view, taking into account the direct benefits of the agreement and the potential costs such as those due to trade diversion. I conclude that the agreement deserves the Senate's support. I do not think that the agreement achieves its full potential, for reasons that I have set out in my submission, particularly in the section on the multilateral impact of the agreement, but that is no reason in my view for withholding or even delaying implementing legislation.

I am sure that the committee has heard a lot of arguments about many aspects of this agreement. I have mentioned several in my submission, so I will confine my remarks to one concern I have not mentioned and one general observation about how I think this agreement fits into Australia's current suite of trade policies. This issue concerns copyright. I am not certain how to evaluate the economic impact of the extension of the duration of copyright. Whether granting an extension to 70 years plus life of the author is likely to lead to greater opportunities in an integration, for example, with the US entertainment industry or on balance merely to

reduce the welfare of Australian consumers who had otherwise been able to enjoy and exploit works in the public domain at a much earlier stage is difficult to say.

The copyright extension creates a new property right. It seems to me that no substantial decisions on intellectual property should be made on the basis merely of an economic exchange with a foreign government. The key consideration in the creation of any intellectual property is a balance to be struck between the interests of our society in the incentive that the IP right gives to innovation or creativity and the impact that the creation or extension of a monopoly right will have on the welfare of Australian consumers. Foreign commercial interests do not appear on either side of this ledger, because intellectual property is inherently a territorial right. The territorial nature of IP rights might be breaking down, possibly under the pressure of globalisation of production in many goods and services industries, but it has not done so yet. Even the WTO TRIPS agreement provides only for the harmonisation of procedures and minimum standards as they apply in the territory of individual member states.

In my view it was inappropriate for the Australian government to undertake to change this property right for reasons mainly of a balance of rights and obligations in a trade agreement rather than on the basis of an evaluation of a balance of rights and benefits in Australia of such an extension. Although I think it is possible given the benefits of integration—for example, with the US entertainment industry—that the recommendation if they had made the judgment on this basis would have had the same effect, this does not allay my disquiet with the way in which this concession was made.

Finally, I turn to the bigger picture. Our agreements with the United States, Singapore, Thailand and the proposed agreement with China and perhaps ASEAN are more accurately described as a collection of opportunities seized rather than as a coherent policy design. The agreements we are reaching on a piecemeal basis will not offer as great a benefit to Australia as they would have if they were constructed to accommodate a broader regional vision. The sum of the parts of a regional trade strategy will not be as great as the benefits that could be won from a whole-of-region trade strategy.

We could expect the risks of trade diversion to be lower, and the benefits of trade creation to be greater, if the agreements that we were reaching were contributing to a network of bilateral agreements that were at least to some degree porous to each other and allowed the trade benefits of each bilateral region to spill over more fully into the others—for example, for the benefits of each bilateral agreement to spill over more fully into the other agreements. The framework that could achieve this coherence is not the multilateral trading system of the WTO. These agreements are all arguably consistent with our WTO obligations but they go well beyond the provisions of the WTO treaties. That is why we have negotiated them.

In my submission I suggest that the idea of a suitable framework already exists in the APEC proposals. Although the original APEC program was in my view doomed to fail from the outset, a version based on reciprocal agreements is feasible and offers enormous potential benefits not only for Australia but also for the other countries of the Asia-Pacific region. Australia, the United States and New Zealand are the only developed countries in the APEC region that are currently pursuing a strategy of 'WTO plus' bilateral agreements. Canada was until recently also pursuing such a program but has made little headway.

Given our close relationships with the United States of America and New Zealand and considering the important bilateral and regional implications of our next proposed bilateral agreement, with China, I hope that senators will agree with me that the Australian government should be giving consideration to the sort of policy framework that I sketch out in the final sections of my submission. Australia has developed some unique technologies for the creation of broadly based, integrating regional trade agreements that it could employ now to create a more profitable regional trade settlement. I would be delighted to answer any questions that the committee may have.

Senator BRANDIS—Have you done any modelling of the agreement?

Mr Gallagher—No, I am afraid I am not an economic modeller. I have read the models that have been produced for DFAT but I have not done any myself.

Senator BRANDIS—I am inclined to agree with what you say, but I wonder how your views as to economic benefits are arrived at absent some quantitative analysis.

Mr Gallagher—Actually, it is not absent some quantitative analysis. I accept the analysis that was made by CIE in their initial assessment. Although I think they were wrong in some of their numbers, the direction and scale of what they were suggesting is correct. Some of their numbers were wrong because DFAT directed them to take into account certain considerations and concerns that turned out to be false—on beef in particular—but I think the scale and size of those were correct. I think that their assessment of the size of the barriers between each side that would be reduced as a result of the agreement is correct and that the rather small benefits that they projected on a static basis are correct. As it happens, I also agree with them on their second report, where they said that most of the benefits, having seen the agreement, were likely to occur in the investment side. I have always thought that was going to be true, simply because it is implausible that we would get a big bang out of reducing the rather small tariffs we have between each other.

Senator BRANDIS—It does seem to be pretty much the consensus view among economists, both those who like the agreement and those who do not, that its effects will be mainly felt in the investment sector, at least in the short to medium term. You draw a distinction, as others have done, between the static and the dynamic effects. You may not be able to answer this question, but can one generally say in relation to other bilateral free trade agreements, either involving Australia or the United States, whether the dynamic effects of the agreement have tended to be greater or less with the experience of the agreement coming into operation than had been expected of them at the time the agreement was entered into?

Mr Gallagher—There has been quite a lot of work on that. Probably the most dramatic example is in the US and Mexico where the dynamic impacts are, depending on how you calculate them, many or at least three times—I have seen numbers like 30 times—the size of the expected static benefits. That is also said to be true of the benefits of joining the EU, although the numbers are not quite as clear there, at least in the studies I have seen. It is both consistent with the theoretical expectation and with the data, certainly from Mexico, the United States and some examples in Europe, that the dynamic effects are much bigger than the static effects. The reason that it is so plausible that they are is that that is where the benefits of integration come from. It is the second round impacts not just on prices but on productivity that really matter.

Senator BRANDIS—These are the multipliers.

Mr Gallagher—That is right. When you evaluate the benefits for Australia you have to ask yourself: given that this is not a perfect agreement—and you have heard a lot of reasons that it is not a perfect agreement, I would imagine—

Senator BRANDIS—I do not know how long you have been in the room today but a lot of people come along here and say that it is not a perfect agreement because this particular thing is wrong with it. To me, they seem to make the entirely non sequitur leap that therefore it should not be approved by this committee.

Mr Gallagher—I am making the opposite leap, which I hope is not a non sequitur. It is not a perfect agreement. However, I think the benefits plausibly outweigh the costs, whichever of those models you take. Even if you only take them grosso modo you do not worry about the absolute numbers because you know and I know that those numbers are very easily susceptible to changes and assumptions. However, the plausible way to view this agreement is that the benefits are of such a scale that, with all its faults—and I do not think any of the faults deliver significant disbenefits; I simply think they are faults where the agreement has not achieved its potential—the benefits far outweigh the costs.

Senator BRANDIS—You referred to some studies of other free trade agreements that tended to suggest the dynamic effects had been much greater than had been anticipated. I assume you have in mind a body of literature which has subjected those agreements to a retrospective study after some years?

Mr Gallagher—Yes. They are studies of Mexico. There are legions; there are lots of them.

Senator BRANDIS—I think it would be very helpful, certainly speaking for myself, if the committee were made aware of some of those studies, even if only for comparative purposes. If it is not too much trouble could you supply the secretariat with a representative sample of the principal studies you have in mind which illustrate the point you have just made?

Mr Gallagher—Certainly.

Senator BRANDIS—Thank you.

Senator RIDGEWAY—I have two questions just as a follow-on to some of the issues that Senator Brandis raised and which you have spoken about. In relation to the first and second CIE reports, perhaps I am looking at this very differently and they cannot be compared but wouldn't you agree that the first report was taking an approach that looked at the best case scenario—that is, a perfect free trade agreement with the United States without barriers? If that is the case, wouldn't you find it odd that the second one comes back with all the restrictions in place yet it talks about substantially even more gains than the previous one? Doesn't that strike you as odd in terms of what the benefits would be?

Mr Gallagher—I am sure in your profession, like in mine, you read lots of these model outputs. The only thing that does not surprise me about them is that the same company, having produced them, made sure that they were as consistent as possible and would produce the

results. I think the difference you are pointing to can be explained by the instructions they had on the assumptions they were to make about those models. In the first one, they were not instructed to look at the benefits of an investment agreement. They looked at some very restricted ways in which the benefits on goods trade liberalisation would occur. They had some very specific marching orders and they made some assessments on a basis I do not agree with. I think they undershot in the first assessment.

In the second one they were able to look at the agreement as it stood. As they sort of foreshadowed in the first model, the impacts of the goods trade liberalisation were not very big because the barriers between them were not very big anyway. But they had the opportunity the second time around, as I understand it, to look at a bigger picture, including the potential investment impacts. Unsurprisingly, they came up with a number that still shows some modest benefits—they are not huge—and some upside risk. Their assessments are never going to be complete, but they say that the risk is on the upside. I think that is a plausible result from what they were doing, as well.

Senator RIDGEWAY—What do you say about the argument that is put forward that the flaw with the approach that was taken by CIE is that it based much of its thinking around the NAFTA agreement and tried to replicate that in relation to Australia, suggesting that we would get the same sorts of benefits? I presume it is correct as well to recognise that the benefits depend upon how close you are to the marketplace and the size of your economy. So if you are taking, for example, a Canadian approach to NAFTA, the majority of people are living within 160 kilometres of the border with the United States and are there at hand, so distance is not really a factor. Given that Australia is 30 times further away from the United States than Canada is, and its people do not live within 160 kilometres of the border, wouldn't you presume that that would affect an assessment as well? Would you not question that assessment?

Mr Gallagher—I totally agree that it does affect the assessment. I am sorry that I am not able to respond in detail to that. I think your remark is well taken. One of the reasons I think this agreement is so important to Australia is that we do have some fundamental resistances to our trade with the rest of the world that we cannot do anything about with trade agreements. Distance is certainly one of those. It is commonly said that the services trade, investment and intellectual property are not so susceptible to that, but it still does appear to have an impact. Borders seem to matter much more than anything else to a lot of trade among OECD economies, where trade is relatively free already, so I agree with you that distance is a big problem and very difficult to measure in those models. There are so-called gravity models that will allow you to make assessments of trade barriers, taking into account the possibility that distance itself is a barrier that governments are unable to do anything about. I am not aware whether CIE took that into account in doing their second model. I have to say I have not read the background to their modelling approaches with that much attention, but I agree with you in principle. There is an issue there about distance and how we can expect the benefits to be transmitted. Is NAFTA an appropriate model? No, I would not think so. But I am not sure to what extent CIE based their approaches on NAFTA.

Senator FERRIS—It is quite difficult to believe that you and our previous witnesses are talking about the same document. On page 4 of your submission you refer to what you call the 'dynamic gains' that will be created for the Australian economy under the free trade agreement. I noted in your introductory remarks that you said you believe that the agreement would make

Australia a wealthier and more secure country. I wonder if you could expand on those comments for me, please.

Senator BRANDIS—Particularly in view of the remarks we heard from Mr Doug Cameron, who said that it was treacherous to the national interest. There seems to be a fairly clear distinction between those views.

Mr Gallagher—I think trade agreements are generally more harmless than that. I cannot imagine a trade agreement being treacherous to the national interest. But let me address the senator's question about dynamic gains and security. Economic security, in my view, depends on our opportunity to create wealth. That is what it is really about—are we going to be wealthier in the future than we are now and can we be more certain about our ability to create wealth for ourselves and future generations than we are now? The creation of wealth depends more than anything else on the productivity of your economy. The only reason that governments negotiate the reduction of trade barriers is not that the WTO tells them to but that they think it is a good idea for their own purposes. The reason they think it is a good idea is that basically what any trade barrier does—other than the barrier of distance which Senator Ridgeway mentioned before—is to implicitly tax businesses trying to do business across the border. That reduces productivity. That makes productivity lower. It makes things more expensive to import and eventually makes things more expensive to export, because all of our import barriers eventually become taxes on our exports.

I think closer integration with the world's most productive economy, which is the US, is probably going to give us opportunities to be wealthier in the future—opportunities that we would not have otherwise. Those opportunities will be more secure because they will be based not on our relationship with the US, not on our ability to import from or export to the US specifically, but on our own productive capacities. That has been true of every trade agreement we have reached—not merely the trade agreement with the US. The agreements we reached with Japan in the sixties did the same thing for us. I think we are doing the same sorts of things now as we did in the sixties. I think the agreement with China will open up even more opportunities for us along those same lines. Contrary to Mr Cameron, I tend to think that trade agreements that open up our opportunities for tax-free exchanges, if you like, across those borders do not undermine our national security. I do not think they are treachery in any sense. I think they are offering consumers, workers, industries and investors many more opportunities than we had yesterday, and that is the reason to embrace it—that is the only reason to embrace it.

Senator BRANDIS—It sounds to me as if you would share the view of Mr Gough Whitlam that tariffs are attacks on the working class.

Mr Gallagher—I do. I did not know he had that view, but I do share it.

Senator BRANDIS—It was one of his many apophthegms.

Senator FERRIS—Can I make the observation that, despite some early concerns in New Zealand 20 or more years ago about CER, the size of their economy and the size of the Australian economy, when you visit New Zealand nobody wants to change the basic fundamentals of CER. In fact, the New Zealand economy has expanded significantly as a result, particularly in some of the agricultural sectors. The other question I wanted to ask you relates to

your years of trade experience in relation to multilateral agreements and bilateral agreements. Perhaps you could make a comment on the Cairns Group. It has been suggested to us by some people that this agreement will undermine the Cairns Group and the leverage of the Cairns Group and also that these types of bilateral agreements undermine the strength of the WTO and other multilateral agreements that might be struck. Could you make some general comments on that?

Mr Gallagher—Can I address the second one first—the question about the WTO. I think this agreement is broadly consistent with the WTO. I have spelled out in a bit more detail in the submission why I think that is. I think the WTO is neither adversely nor favourably affected by regional agreements, including our own. One thing that is certain—and, certainly, all of my clients recognise very strongly—is that we continue to greatly need the protection and security of the WTO, because as a country that still relies on commodities for about 40 per cent of our exports we have to look at global markets when we are looking at price formation. What we get as a price for the stuff we sell is formed in the global market, not in any bilateral market—not even with China, the United States or Japan—and the only thing that gives us a global guarantee along those lines is the WTO.

However, I do not think the agreements themselves have really detracted from the energy that countries are willing to put into the WTO; I think its problems relate to something else. I think its problems relate to the fact that it has grown so big so quickly and that it includes so many economies of different objectives, with different statuses, with different interests at the moment in trade issues and with some very difficult domestic conditions into which to integrate these sorts of globalisation pressures that we are all facing. I think those are the sorts of things that are putting pressure on the WTO.

Senator FERRIS—As we saw in Cancun.

Mr Gallagher—As we saw in Cancun—exactly. I remember Senator O'Brien in Cancun had an excellent introduction to some of these pressures that operate on Australia in the Cairns Group. As to whether the other Cairns Group members think we have jumped the boat, I do not think they do believe that. I think most of them have always considered Australia to be very close to the United States economically and in policy terms, and so none of them are particularly surprised by it. I think the Cairns Group has serious problems too, but I do not think they are made by this and I do not think any of the other members consider this to be a problem. Brazil is probably the only member of the Cairns Group that has recently voluntarily turned down an FTA with the United States, but I think every other one of them—including Canada, which has a sort of FTA with the United States—would put up their hands immediately if they were asked whether they would like one. New Zealand certainly would put up its hand immediately.

Senator FERRIS—Some of them are negotiating already.

Mr Gallagher—Yes, that is true.

Senator BRANDIS—Are you aware of any instances of countries which have concluded FTAs with the United States—and I know there have been very few—and have subsequently repented of doing so?

Mr Gallagher—No, I am not, although—

Senator BRANDIS—Or who, after a change of government, have sought to turn over that agreement?

Mr Gallagher—The Canadians constantly have second thoughts about the United States and United States trade policies in many respects; however, I think their attitude toward their own agreement with the United States is that they should have perfected it in the 1980s when they reached it. They are certainly unhappy about some aspects of it, but I do not think they regret the overall agreement.

Senator FERRIS—It is a bit difficult when they sell almost 90 per cent of what they produce.

Mr Gallagher—Absolutely; that is the problem—and it has given them some security, particularly in bilateral disputes: they have won a few bilateral disputes through the FTA that they could not have won in the WTO, in my view. So everyone takes the good with the bad.

Senator FERRIS—This is my last question, and I think Senator Brandis mentioned this earlier. A number of people have come in here and said, 'Because this does not suit my particular part of an industry, we should not proceed with the agreement,' or we should modify it, delay it or whatever. I notice that you make a comment about sugar along those lines, but then you go on to put forward a 'greater good' argument, which is quite different in a way to a lot of other witnesses who have come here.

Mr Gallagher—I have clients who would offer you the first argument, and want me to offer you the first argument. For my part, I can say that the problem with sugar is that it would have been much better if they had agreed just on a shipload; then they would not have excluded anything. I understand—we all understand—that these agreements go to the limits of what is politically possible, and for some reason the United States government decided it was politically impossible to have anything on sugar; but, for goodness sake, what an extraordinary decision. They have made an issue of this when it did not need to be made an issue of in that sense. If they could have agreed on one additional shipload a year it would have done nothing to the sugar industry in the United States presumably—we know it would have done no harm—and it would have removed the exception.

Senator FERRIS—It would have needed many, many shiploads, wouldn't it, to do any harm?

Mr Gallagher—Yes, that is right. So I am critical of both of them for that; I think it is a failing in the agreement that they do not need.

Senator BRANDIS—Then the Australian sugar industry would not have got a $440 million package.

Senator FERRIS—I was wondering whether I should make that observation!

CHAIR—It is probably what they wanted all along!

Mr Gallagher—It is an ill wind, I suppose.

Senator FERRIS—Thank you very much, Mr Gallagher.

Mr Gallagher—You are welcome, Senator.

CHAIR—Let me just conclude with a couple of questions, Mr Gallagher. I am always delighted to discuss trade matters with you. First of all, we do not have a commitment to a free trade agreement with China, do we?

Mr Gallagher—No, we do not, although it is I think very likely. If you are a betting man, Chair—I have never been successful—I think that is a good bet.

CHAIR—The Chinese advice to me is that in 2007 when their commitments to the WTO have expired they will then be in the marketplace; but we do not have anything at this point?

Mr Gallagher—No, we do not have an undertaking. The New Zealanders, I understand, do; we do not.

CHAIR—And they have an agreement with ASEAN?

Mr Gallagher—Yes, they have already got an agreement of sorts with ASEAN.

CHAIR—You mentioned the WTO's view of bilateral agreements.

Mr Gallagher—Yes.

CHAIR—Are you aware that the director-general of the WTO said that the proliferation of bilateral trade agreements—to use his words—'sucks the oxygen' out of the multilateral round?

Mr Gallagher—Yes.

CHAIR—And are you aware that, among others, the *Economist* magazine made the same criticism?

Mr Gallagher—Yes.

CHAIR—And there is clearly no oxygen in the round at the moment.

Mr Gallagher—No.

CHAIR—On the question of this agreement, are you aware of the Productivity Commission study on trade diversionary effects of bilateral trade agreements?

Mr Gallagher—I am aware of a study they did in general on the trade diversion effects, but I am not aware that they have done one on this. They may have done, but I do not know.

CHAIR—They have not done one on this.

Mr Gallagher—I am aware that they did one generally on the question.

CHAIR—Yes, that is a point of political debate as to whether or not they should, but they have done a study on the trade diversionary effects of bilateral trade agreements. Do you have any comments to make on that?

Mr Gallagher—If I remember it correctly, they reached a conclusion similar to that which was reached in the WTO's trade report last year, which is that there really is not very good evidence of trade diversion in most of the existing bilateral trade or regional trade agreements that continue to exist. There are a lot that are just agreements on paper. With respect to those that appear to be operating, the WTO certainly reached the conclusion—and, if I am not mistaken, I think the Productivity Commission also reached this conclusion—that, although in principle you would expect there to be trade diversion, there is not much evidence of it taking place. It is there probably—somewhere or other. Unfortunately, the WTO also reached the conclusion that there was not much evidence of trade creation in the big regional trade agreements either.

CHAIR—My recollection of the Productivity Commission's finding was that, of the 18 FTAs that they studied, they identified 14 as having trade diversionary effects.

Mr Gallagher—Your memory of that may be much better than mine.

CHAIR—We all accept that the biggest gains have come from the investment side of this agreement—and it is a question of how you look at those. We have a TIFA with the United States. What would have prevented us from obtaining the same agreements on investment under TIFA without having to worry about what is trade between two quite open economies across a range of other sectors?

Mr Gallagher—That is a very good question. I do not know the answer to that, except to say that I think a free trade agreement gives a level of commitment which requires attention—and, if you like, the attention of parliamentarians such as yourselves—in a way that gives it a much higher profile and a much greater potential for head-turning investment opportunities than is the case with a TIFA, which governments frequently negotiate just on the drop of a hat when the minister happens to be there at the time.

The impact of this is much bigger. You have pointed out that it is possible that the impact in the case of the United States and Australia—certainly on aspects of trade barriers—might not have been bigger, but there are other things in this agreement that tend to work in favour of the investment arrangements. I think we would probably not in the case of a TIFA have made even the modest changes to the FIRB that were made. I think in the case of a TIFA there would have been even less prospect than there is—it is still a prospect—in the current agreement of an investor state dispute settlement arrangement.

In a TIFA I do not think we would have seen the potential, which is allegedly still there, for a future agreement on the movement of essential personnel. Those sorts of things bolster the opportunities that are created by this agreement. Basically I think the answer to your question is that, in my view, this is a bigger head turner and it means more. It is a more substantial and more meaningful legally binding agreement and therefore just has more bang.

CHAIR—This is my last question. If the gains through the changes to the FIRB are so great, should we project them MFN?

Mr Gallagher—Yes, I think we should.

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

[4.25 p.m.]

O'ROURKE, Ms Anne Helena, Assistant Secretary, Liberty Victoria—Victorian Council for Civil Liberties

CHAIR—Welcome. As I recall, Ms O'Rourke, you made submissions to the earlier Senate inquiry into the Australia-US free trade agreement and into GATS.

Ms O'Rourke—Yes, and I just want to start by noting that we are not representing any industry sector, either. I will take the mantle of looking after the common interest.

CHAIR—We have your submission. Please address the committee.

Ms O'Rourke—I want to address a number of things. Firstly, I want to address a couple of things that were said in the last submission. It is true that the US is the world's most productive economy, but it also has to be recognised that the US has the highest rates of inequality amongst all developed countries. It also has the worst working conditions of all developed countries. If you travel through the southern states, you will see that the poverty in some of those communities and the working conditions are appalling. So, while you may want to see it as being the booming economy, it also has to be recognised that it is not spread evenly and the benefits do not accrue to the bulk but to the minority.

I note in *Voting on trade*—the report of the Senate Foreign Affairs, Defence and Trade References Committee—that the government chose to ignore all the recommendations, which is a shame. We were actually advocating many of them. One thing that we noticed was that, although the expropriation provisions have not been put in the text at the moment, they can get there via the back door, in that it has been left open to insert them at a later stage. In our first submission, we raised a lot of concern about the investor state provisions.

I have provided the committee with a copy of a paper headed 'NAFTA Chapter 11 Investor-State Disputes'. The summary page of this document details the cases filed. Under Canada, you see that the total damages claimed amounted to $US11,566 billion. For the US it was $US16.198 billion, and for Mexico it was $US501.01 million. Most of those cases will not get up, but it is the impact of having claims put in and the prospect of litigation that has an impact on the government's flexibility when it comes to making regulations or legislation in the public interest.

Canada is the most comparable country to ours in terms of its social policy. One of the reasons that we raised concerns about this in our first submission was the damages claims that have come under NAFTA. I note that the Senate committee did recommend that investor state provisions not be in this agreement, but they have found their way in there, and we feel that this Senate committee should come to the conclusion that, even in the backdoor way that it has been handled in the text, the provisions be taken out altogether. Any government that opens Australia to this sort of litigation is irresponsible. There has been enough warning. Canada has sought time and time again to have the expropriation provisions reinterpreted. There is enough warning about this and enough cases that the government should not even entertain an agreement that has these provisions in it.

But, having said that, we do not oppose the traditional pre-NAFTA position of state-to-state. But, if you look at the figures under this and also at what is being claimed as expropriation—which is not nationalisation of property or stuff like that—you see that it involves mostly public interest regulations.

CHAIR—Ms O'Rourke, do you have any additional remarks?

Ms O'Rourke—Only that, as we said in our first submission, we recommend that the Senate say that these provisions be jettisoned from the agreement altogether.

CHAIR—By a majority, that committee recommended against the inclusion of an investor state clause. Of course, an investor state clause is classically a clause in an agreement between a developed country and a developing country.

Ms O'Rourke—Yes, that is right. It should not be between two developed countries with similar systems of law. With Australia and the US, another reason that it should not be in there is that we are different. We are more like Canada. I suppose in some sense we could be categorised as a social democracy, whereas America is more a liberal democracy. So we open ourselves up to more claims from the US if we have this sort of clause in there.

CHAIR—We have been through this subject several times before, Ms O'Rourke, so I do not really have any questions of clarification. Your point is well made and clear. Senator Brandis?

Senator BRANDIS—No questions, thank you.

Ms O'Rourke—There is one other thing with respect to the PBS. The US legislation—the Medicare Prescription Drug Improvement Modernization Act 2003—is 400 pages long. You will see from the copies I have provided the committee that title XI of that bill is 'Access to Affordable Pharmaceuticals', and underneath that title there is a subtitle—'Subtitle B—Federal Trade Commission Review'. I have also provided a copy of the explanatory memorandum that goes with that. If you turn to the third page, which I have highlighted, you will see that, in the US Medicare bill and in the US Trade Promotion Authority, it is incumbent upon US negotiators during trade agreements to negotiate away fixed price pharmaceutical systems.

From the beginning, the US have had the intention of undermining our PBS. It is already in their legislation and it is in their Trade Promotion Authority. We think that, unless the whole part on the PBS—the review panel—is taken out, over time the PBS will be undermined. It is clear in American legislation that they have always had the intention of undermining our PBS system and undermining any similar system in any other country. There are some states in the US at the moment where the medical system and the prescription system are so bad that they are trying to bring in a system like ours, but the Bush administration has threatened to introduce legislation to oppose the bringing in of a fixed price system.

CHAIR—Is this document with the heading 'Title XI—Access to Affordable Pharmaceuticals' an excerpt from an explanatory memorandum to the bill?

Ms O'Rourke—No, part of it is and the other goes with it. If you search on the Internet for all legislation in the US, the THOMAS—or something or other—site give you the legislation as

proposed, the House legislation, Senate legislation and then the legislation as enacted. They also give you all the conference reports and memorandums.

CHAIR—What is the status of the document that you have given us?

Ms O'Rourke—That is the conference report that goes with the final legislation. You can actually get it for every part of the legislation. I just got the part that was on affordable pharmaceuticals. If you want to look at it in the legislation, you go to 'Title XI—Access to Affordable Pharmaceuticals'. But it is not only there; it is also mandated in the Trade Promotion Authority that the negotiators have to negotiate away any other country's fixed price pharmaceutical systems. So that intention was always there.

We believe that there should be no threat whatsoever to the PBS and that the panel system that has been established in this text will eventually undermine the PBS—because that is the intention. The US have not hidden the fact that it is their intention. They see these systems as non-tariff trading barriers and they have not hidden the fact that their intention is to get rid of them.

We do not oppose the agreement in total, although I would have to say that we would probably be on the side of the unions rather than that of Peter Gallagher. We come from a rights perspective mostly. We also support workers' rights provisions. We are glad to see those provisions but, like the unions, we think that the agreement is ineffective and it needs to be ratcheted up—particularly so with this proposal to have a China-Australia free trade agreement. China is a country that still has slave labour, forced labour—

CHAIR—There is no proposal as yet.

Ms O'Rourke—No, there is a proposed feasibility study. We actually welcome the fact that this agreement does have the labour chapter in it, but we think that it should be on parity with the rights of investors. There is one other thing that we wanted to raise.

Senator BRANDIS—Is it in your submission?

Ms O'Rourke—Yes.

Senator BRANDIS—We have read the submission.

CHAIR—Perhaps you could just tell us what it is.

Ms O'Rourke—I will make one comment. We think the parliamentary oversight process is shocking. We think that one area where the United States is more democratic than us—and I do not think generally they are—is that at least Congress gets a say in treaties and trade agreements. We support the recommendations coming out of the report, and we want that on the record.

CHAIR—The Senate report *Voting on trade*?

Ms O'Rourke—Yes.

CHAIR—As there are no further questions, I thank you very much for your submission and the material you provided the committee.

Committee adjourned at 4.37 p.m.