



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE
LEGISLATION COMMITTEE

ESTIMATES

(Additional Estimates)

TUESDAY, 2 MARCH 2004

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

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

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

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

SENATE**FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE****Tuesday, 2 March 2004**

Members: Senator Sandy Macdonald (*Chair*), Senator Hogg (*Deputy Chair*), Senators Chris Evans, Ferguson, Payne and Ridgeway

Senators in attendance: Senator Sandy Macdonald (*Chair*), Senator Cook (*Deputy Chair*), Senator Conroy

Committee met at 7.02 p.m.

FOREIGN AFFAIRS AND TRADE PORTFOLIO

Consideration resumed from 20 February 2004

In Attendance

Senator Hill, Minister for Defence

Department of Foreign Affairs and Trade**1.1.5—Bilateral, regional and multi-lateral trade negotiations**

Mr Doug Chester, Deputy Secretary

Mr Stephen Deady, Chief Negotiator, Free Trade Agreements

Mr Bruce Gosper, First Assistant Secretary, Office of Trade Negotiations

Mr Allan McKinnon, Special Negotiator, Trade

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade Legislation Committee. I welcome the officers of the Department of Foreign Affairs and Trade. This evening the committee will sit from 7 p.m. until we are finished, hopefully before 11 p.m. approximately, to conclude its examination of output 1.1.5, Bilateral regional and multilateral trade negotiations. This will conclude the Foreign Affairs and Trade portfolio. When written questions on notice are received, the chair will state for the record the name of the senator who submitted the questions. The questions will be forwarded to the department for an answer. The committee has resolved that the deadline for the provision of answers to questions taken on notice at these hearings be Thursday, 1 April 2004. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege, and I also remind witnesses that the giving of false or misleading evidence to the committee may constitute contempt of the Senate. The Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament, or its committees, unless the parliament has expressly provided otherwise.

Minister, do you or any of your officers wish to make an opening statement?

Senator Hill—I just want to thank the committee and the officials for agreeing to schedule tonight in lieu of the Friday afternoon that had been determined to be the second slot of Trade. The change was as a result of a scheduling issue on my side and I express my appreciation. Secondly, I am a little surprised by the reference to 11 p.m., because there was a 2 ½ hour

slot, as I understand, on the Friday afternoon and I am assuming that this is the 2 ½ hour slot tonight.

CHAIR—I have spoken to Senator Conroy and he indicated that if all goes well we should be well finished—

Senator Hill—I do not think we are planning to be here after 9.30 p.m., so we will end up having another row and maybe more resolutions in the Senate.

CHAIR—No rows, Minister. We will proceed and I am sure we can get through everything by 9.30 p.m. Senator Conroy, fire away.

Senator CONROY—You would have been the happiest man not to have to come back. We were all ready for the big bang today and the release did not happen. What happened?

Mr Deady—Senator, we have been working very hard with our American colleagues over the course of the last three weeks since we concluded negotiations in Washington to do this first run-through of the legal scrubbing of the agreement. We were aiming to have the text up in what would certainly be record time by today—that was the intention of both us and the United States; both sides have worked very hard to do that. Unfortunately, there were just a couple of issues that we were unable to finalise text on last night and then today, so discussions on those issues are continuing. We are still hopeful that we can conclude this first scrub, as we call it, of the text so that we can get the legal draft out there and up on the web site at the same time. We will release this guide that we prepared to the agreement. That is the plan, but there were these couple of issues and that is the reason that we were unable to put it up today.

Senator CONROY—I understand it was described as a ‘technical delay’. What was the technical delay and what were the areas in which there was a problem?

Mr Deady—I will not get into the details of the particular areas. I will say that part of this legal process is looking for clarity and consistency. Going through this legal process also reveals, at times, areas where there perhaps were some genuine differences of understanding on some of the precise nature of the final commitments, and that is the reason that it is delayed today. Given that we are looking at a 900-page document—350 pages of actual text—there is actually very little in this scrub that falls into that category where there was a genuine difference of understanding. What we do have are these couple of areas that need to be worked through. We are doing that with the Americans; we will be continuing that tonight and tomorrow and, as I say, looking to get this up as soon as we can.

Senator CONROY—I appreciate that you are trying to comply with getting it out, as you said, in world record time. Is this rush going to cause problems because of these interpretational issues? Are we are rushing it too much?

Mr Deady—No, I do not think it will cause problems. People have been working very hard; I think it reflects that there are genuinely very limited areas where there are differences, particularly of this nature where there is, as I said, this lack of precise understanding of the nature of the commitments that has to just be worked through in language. It is not that it is rushed; the fact is that we are doing this very much for our own purposes to get this out for the Australian public. The government is committed to getting this out as quickly as possible

so people can look at the detail of the agreement and work through that, with the help of this little guide that we have also been working towards. Also, as you know, it is really the American system—the requirements of the Trade Promotion Authority—that needs to get the text up to the United States Congress as soon as possible so they can begin their review of the agreement and their discussions with the administration on aspects of it. The administration wrote to the Congress on February 13; that started this first 90-day clock ticking. So there is obviously a need there for the Americans to get the text up as quickly as they can, and they are working very much to this end as well.

Senator CONROY—Now you probably were gone by the time we had a chat with the officials looking after the Thai Free Trade Agreement.

Mr Deady—Yes.

Senator CONROY—There seemed to be genuine confusion—I think that is the polite way to describe it—about the legal scrubbing process. We had a discussion with them about some of the areas where there was genuine confusion. Can you identify the particular areas you are describing about which there is genuine confusion?

Mr Deady—As I said, I am not going to get into the detail of the precise areas that we are talking about. They are very limited, but they are the subject of the discussions that are going on almost as we speak—certainly once the Americans get back on duty tomorrow morning. I am not able to get into the detail other than to say it is a very small list of issues that we are talking about.

Senator CONROY—Do you think that it will be completed tomorrow?

Mr Deady—Again, I do not want to give another date. Given how far we have got with it, and given where I know that the processes are up to this with this scrub, I believe we will be in a position within a very short time frame to be able to put this up. But I will not, and cannot, give a precise commitment that it will be tomorrow.

Senator CONROY—Will this be the full text, appendix with side letters—the whole enchilada, as they say?

Mr Deady—Yes, the absolute intention is that the whole text will go up—all the side letters, some of which we discussed last time, all the annexes and the tariff schedules on both sides.

Senator CONROY—So is all of that the 1,000 pages the minister is referring to?

Mr Deady—All of that is the 1,000 pages. There are 350-odd pages of legal text, including some of what we call the non-conforming measures, the negative lists on services and investment. The other volume will be the tariff schedules and those more technical things like the rules of origin schedules. Those things will form the second volume. Together they run to over 1,000 pages.

Senator CONROY—Will this scrubbed text be the final one—no further negotiations will be entered into?

Mr Deady—No.

Senator CONROY—There will not be any changes in a couple of weeks time?

Mr Deady—We will make it very clear—it will be on every page—that this is still a draft, subject to further legal review for clarity and consistency. The substance of the negotiations is certainly completed, but the draft that we will put up shortly will still be a draft. There could still be some changes for clarity, some changes for consistency and some grammatical changes. That is the process we go through. What we have done to date as part of this process is to focus very much on the formatting, consistency between chapters and accuracy of cross-references so people are not misled in that initial run-through of it as to which chapter may be referred to in a particular article. Certain flags have gone on particular phrases but, as I said, very much for clarity and precision and not for any area of substance.

Senator CONROY—So this is a working draft?

Mr Deady—It is a working draft.

Senator CONROY—When do you anticipate we will get the final document?

Mr Deady—Again, I could not give a date on that. I talked about the Trade Promotion Authority. The clock is ticking now on this 90-day period that has to take place before the United States government is able to sign the agreement. Certainly the requirement is that the final text be completed within that 90 days to enable signing by the US and Australian governments. The deadline is this 90-day period but, frankly, in my view it will take several weeks as we go through this further scrubbing process.

Senator CONROY—Will this working draft be forwarded, or do the Americans have to wait till the final draft?

Mr Deady—Do you mean forwarded to the US Congress?

Senator CONROY—Yes.

Mr Deady—No, this first scrub draft will go up on the USTR web site at the same it goes up on the DFAT web site, and that will be made available to all the US Congress and committees at that time.

Senator CONROY—Is there a formal process that the US goes through? The working draft is not just put up on the web site, 'Here, have a look at the working draft.' There is a formal letter saying, 'Here it is,' and that is what triggers the 90 days?

Mr Deady—What triggers the 90 days is a formal letter, yes, but that has already gone up. A letter went up on 13 February from the President to the relevant committees expressing the President's intention to sign the US-Australia trade agreement, and that started the 90 days. As to precisely what they do, I do not know the answer to that.

Senator CONROY—My understanding is that there is some legal confusion that that is not enough—that a letter that does not contain the actual document is not a trigger.

Mr Deady—My understanding is that it triggers the 90-day clock ticking. That is something that is certainly my—

Senator CONROY—The administration may think that. It is a question of whether the US Congress agrees that the 90-day trigger is started.

Mr Deady—I could not comment on that. My understanding—

Senator CONROY—If you are able to, say to your colleagues in the US when you are talking to them, ‘We are just seeking clarification.’

Mr Deady—I certainly know the issue came up. This is done the way it is done because of the agreements that the United States made with Chile and Singapore. The President wrote, signalled his intention and started the 90-day clock ticking. These were the first ones under the new TPA. The Congress got concerned because there was quite a gap. They were working to conclude the legal scrubbing before they set it up. They said, ‘Hang on. You are eating into our time to consider this.’ That is why they now have this process whereby, as soon as both sides are comfortable that they have a draft that very much reflects the outcome, that is consistent across the chapters and that is in a form on which the public can make a very fair assessment of the agreement, it goes forward. That is what we are working towards in this first scrub.

Senator CONROY—I appreciate what you are working towards. I understand from some colleagues over the other side that they do not necessarily consider that—

Mr Deady—That is the first I have heard of that.

Senator CONROY—It is simply that that was a point that was made to me recently. So the 90 days have commenced?

Mr Deady—Yes.

Senator CONROY—And the two weeks minimum has already passed?

Mr Deady—Yes. On 13 February it went up.

Senator COOK—When do you expect the up and down vote to be held?

Mr Deady—The signing happens in the 90-day period and then there is a further 60 days in which that vote can occur. Mr Vaile indicated that he had some further discussions with Bob Zoellick in Costa Rica. The administration indicated that it is working towards getting a vote sometime in July, certainly before the summer break. That again would be consistent with that 90-day period.

Senator COOK—When is the summer break?

Mr Deady—From memory they will break in August, probably come back for a short time in September and then pretty much go on the road for the election.

Senator COOK—If they do not take that vote, what becomes of the agreement?

Mr Deady—If it is not voted on in July or in the very short period in September, my understanding is that it will sit there and be considered by a new administration. That is what happened with NAFTA. The negotiations occurred under the previous Bush administration and in the end were voted on by the Clinton administration.

Senator COOK—Do you have a date for the last day upon which the vote could occur within that 60-day limit?

Mr Deady—I have calculated these numbers simply for my own processes, but I would not be definitive on them because I am not sure precisely when the Senate and the House rise

towards the end of July. But I suspect at a guess that the third week in July is probably the outer limit of the process.

Senator CONROY—Moving onto audiovisual issues, what do you believe are the implications for the local content laws arising from the FTA?

Mr Deady—The immediate impact of the FTA on the audiovisual local content requirements that we have on free-to-air television—the 55 per cent requirement on commercial TV and the 80 per cent requirement for advertising—is that nothing will change on the entry into force of the agreement. At the moment, as you know, that is all provided on analog television. If and when commercial TV shifts to digital TV, that is fully covered by the commitments that we have got. So the requirements of 55 per cent local content on commercial TV and 80 per cent local content on advertising would remain in force on the shift to digital TV. We have also negotiated that in a shift to digital TV that leads to multichannelling there could be a doubling of the amount of local content on free-to-air television on multichannelling. If, for example, the three commercial stations each began a second channel on digital then the second channel on each of those could be required to have 55 per cent local content too.

Senator CONROY—And if they put five on?

Mr Deady—If they put five on, the limit remains two. There is another provision that would allow up to three to be given 55 per cent local content, but that is a 20 per cent trigger. If a channel had 15 channels then the government could impose 55 per cent local content on three of those 15 channels.

Senator CONROY—So three is the maximum, did you say?

Mr Deady—Three is the maximum.

Senator CONROY—And what about any new media?

Mr Deady—On pay television at the moment we have a 10 per cent drama expenditure quota. We have negotiated so that could be increased to a 20 per cent quota, and we have also negotiated that up to 10 per cent expenditure quotas could be imposed on four additional categories of pay TV channels. They are the arts, children's, education and documentaries. So there would be potential for a government in the future to introduce and impose those additional expenditure requirements on those categories of channels, as well as the 20 per cent on drama.

On new media—interactive media—we have a condition that, on the basis of a finding of the government of Australia, there is adequate Australian content on interactive media and that, if Australians are being unreasonably denied access to Australian content, the government can take measures. Those measures are undefined, so there is no restriction on the sort of measure the government could take. That was a very important issue for the local industry—to ensure adequate local content on that interactive media. That gets to the Internet and a whole raft of the so-called new media platforms.

Senator CONROY—What are you defining as interactive audio and video services? What does it include and exclude? Is there a list?

Mr Deady—I have not got a precise list in front of me. This is something that technology, as it develops, will be the determinant of. Certainly, it means the Internet; it means streaming of audio or visual through telephony; and it would certainly cover things like direct video on demand—those sorts of platforms that we know about. But it has this interactive aspect where the consumer has a choice in what they pull down and watch. That is really the definition we have got to.

Senator CONROY—Can I get a copy of that list?

Mr Deady—I can provide that. As I say, it is not exhaustive; it is indicative. It is something that our DCITA colleagues have worked on.

Senator CONROY—Do we have to consult with the US on these measures?

Mr Deady—We are committed to having a transparent process: these things will not be more trade restricted than necessary and we will have an open, transparent process and allow consultations. But there is no veto power of the United States government in that process.

Senator CONROY—So we can impose it even if they say, ‘We don’t like it’?

Mr Deady—There is nothing restrictive. At the end of the day these findings are made by the government of Australia through the process that we have to establish, including through consultations with interested parties. But there is no veto power. The government of Australia is the one to take these decisions and introduce these measures.

Senator CONROY—I saw a report that, while we protected the existing measures of 55 per cent, I think, of local content—

Mr Deady—Yes.

Senator CONROY—if in the future a government reduces that—say, to 40 per cent—that triggers a clause that says no future government can increase it back to, say, 55 per cent. Is there some clause like that?

Mr Deady—In the services chapter—and we spoke about this—there is what we call a ratchet mechanism, an ongoing liberalisation element, that applies to exceptions in relation to annex 1 reservations. And the 55 per cent local content on analog television is an existing measure, so it is captured in annex 1. So it is true that if a government took action to reduce that at some point, then that would become the new binding. So there is an automatic liberalisation in that.

Senator CONROY—So 55 per cent is the cap now?

Mr Deady—That is the cap.

Senator CONROY—So we have agreed to that?

Mr Deady—We cannot increase that. We are bound at that level.

Senator CONROY—Sure. So if the government announced after the agreement were in force that they were reducing local content to, say, 40 per cent, that would then become the new cap?

Mr Deady—That is my understanding, certainly, as to the annex 1 measure. The other measures that I talk about—digital TV, multichannelling—are annex 2 reservations.

Senator CONROY—Have you got a how-to guide coming out with this?

Mr Deady—Yes, we have got a how-to guide. But, again, a government taking that decision would clearly understand that that is the commitment.

Senator CONROY—You used the word ‘ratchet’. To my mind ratchet is something that goes up, not something that goes down.

Mr Deady—The liberalisation increases, hence the—

Senator CONROY—So it is a ratchet of liberalisation?

Mr Deady—It is, yes.

Senator CONROY—As I am sure you have seen, and maybe even ground your teeth over, USTR says that in the area of broadcasting and audiovisual services, the FTA contains important and unprecedented provisions to improve market access for US films and television programs over a variety of media, including cable, satellite and the Internet. In your view, what are those important and unprecedented provisions?

Mr Deady—Again, those are their words. What they are talking about are the bindings that Australia has given as a result of this FTA negotiation. The Americans recognised in part of the negotiations that they have very good access for films and television into this country. There is not a market access problem for the United States into our audiovisual market; I do not think that was ever the issue. The issue was whether the government of Australia was prepared to take bindings that in the future would effectively maintain that openness through the existing measures that we have place, and that is the commitment that has come out of this FTA.

Senator CONROY—You mentioned appendix 1. What else is subject to this ratcheting upwards of liberalisation? What else is in appendix 1?

Mr Deady—The trade in services chapter—the cross-border trade in services—includes this ratchet mechanism that provides for future liberalisation in both the service industries and the services market for Australia and the United States; each will be bound automatically to the other partner. So we will be bound automatically, unilaterally, to the other partner. So any liberalisation that the US undertakes in its service industries in the future to make these measures less non-conforming would apply and be bound automatically to Australia and vice versa.

Senator CONROY—If they took a general measure against somebody else, it would not affect our position: is that the way it works?

Mr Deady—Again, there is a separate clause in the services chapter—again, an MFN clause—that if the United States provided some additional concession to a future FTA partner—

Senator CONROY—I was thinking the opposite—that if they decided to take some upward increasing measure that reduced it, it would not apply to us because obviously it is a legal document.

Mr Deady—With our 55 per cent, we could not go above it. If we went below it, then that would flow through and be a new binding.

Senator CONROY—What else is in annex 1? You mentioned services and then you said that the ratcheting clause is in services and it applies to annex 1.

Mr Deady—A number of reservations are in annex 1. Basically annex 1 is—the way we describe it—effectively a standstill commitment, a standstill reservation. So we say that we have already a measure in place that is not consistent with, say, national treatment, that it does discriminate in favour of Australian service providers to this extent and that is again what the audiovisual one does. Then we say that we will not make that measure any more non-conforming than it already is, and that is the commitment that we enter, so it is a binding on the status quo. Annex 2 reservations are areas where we again have non-conforming measures, and we can make them more non-conforming in the future. So the government has full flexibility in those sectors, and they are usually identified as sectors rather than specific measures where the government has full flexibility to introduce more restrictive measures.

Senator CONROY—Could you just help me out here? What sorts of services would this apply to? I am just trying to understand, being a relative beginner, what else this applies to. You talk about the service industries in the service industries chapter. I am just trying to understand what other things we put on standstill that then would be ratcheted down.

Mr Deady—These annex 1 and 2 reservations apply both to services and investment reservations. I will give you a couple of examples. We have reservations on aspects of professional services, where a person who is not ordinarily resident in Australia may be refused registration as a company auditor. That obviously discriminates against a US resident. That is an annex 1 reservation. If we removed that—if the government changed that to say that we would allow a company auditor to be a non-resident—then we could not change it back. If a government took a decision to remove that non-conforming measure, a future government could not reverse that decision. These are all part of it.

Senator CONROY—Thanks for that. These will all be released hopefully in the next day or so?

Mr Deady—Yes, I hope so. These are annex 1 reservations.

Senator CONROY—So you think that when the US say ‘important and unappreciated provisions’, they are just blowing their own horn a bit?

Mr Deady—I would not use those words. What I have described is the way I think they represent what they believe has come out of the negotiations for them—that is, that Australia has made commitments on audiovisual in this agreement to bind our existing arrangements and to allow additional flexibility. That is the sort of commitment that Australia has not made in previous trade agreements in audio-vision.

Senator CONROY—So the US made it clear that they would not agree to a reservation for media along the lines we have in the Singapore-Australia FTA. How much narrower do you feel this is than the Singapore agreement? The Singapore agreement included everything. What is your gut feel on this?

Mr Deady—I cannot answer it any more fully than to describe what the measure is. The Singapore agreement provided the government with absolute flexibility to introduce new measures and to increase the local content requirement to 85 per cent, 95 per cent or 100 per

cent if it wished. This is a commitment that we will not increase it above 55 per cent. What we have built in, though, is this flexibility to absolutely maintain the status quo as TV inevitably moves to digital but then to provide this additional flexibility right off the bat—a doubling if that went to multichannelling, and these other commitments. So there is still a large amount of flexibility that would require a large amount of domestic local production to fulfil those sorts of quotas into the future, if a future government took those decisions.

Senator CONROY—The DFAT fact sheet outlines the range of quotas to be applied to the various forms of media. How can these quotas for different forms of media be changed? Can Australia decide to increase or decrease them unilaterally or do we have to consult with the US?

Mr Deady—With respect to pay-TV expenditure requirements, on the 10 per cent on the four new categories, there are no additional requirements at all in relation to those. The government could take those decisions. As far as the 20 per cent goes, the increase in drama content, there would need to be some process of consultation and a decision taken to increase it. Again there is no limitation. That is a decision for the government of Australia.

Senator CONROY—If we wanted to increase the amount of drama content, would we be allowed to as a result of this?

Mr Deady—Yes, up to the 20 per cent. The expenditure quotas on pay TV could be increased up to a maximum level of 20 per cent upon a finding by the government of Australia. I will read it:

Upon a finding of the government of Australia that the expenditure quota for the production of Australian drama is insufficient to meet its stated goal for such expenditure, this expenditure quota may be increased up to a maximum of 20 per cent.

Again, it goes on to say that that shall be through a transparent process involving consultation. But there is no veto power; that is a decision by government of Australia.

Senator CONROY—If an incoming government felt that we wanted 25 per cent, we would not be able to?

Mr Deady—No, this is a binding of 20 per cent.

Senator CONROY—So we have given up the right to go above 20 per cent?

Mr Deady—We have taken bindings in this area that would limit the expenditure quota to 20 per cent. Currently, as you know, it is 10 per cent, so there is additional flexibility for a future government.

Senator COOK—Is it reviewable at any point, or does it continue in force ad infinitum?

Mr Deady—It is a commitment under the agreement that it continues.

Senator CONROY—It is a fairly substantial policy decision that we forever give up our sovereign right to regulate above 20 per cent.

Mr Deady—I think it has to be seen in the context that at the moment the measure is 10 per cent on just one category. When you look at the additional flexibility that has been built in here for future governments, you see that 10 per cent being spread over four additional

categories and a doubling of the drama, if needed, to meet the stated goals of that expenditure. But it is a commitment.

Senator CONROY—Have the ratchet provisions that we were talking about before ever been in any other FTA that you are aware of?

Mr Deady—They are certainly in several United States FTAs. We, in fact, pressed a ratchet mechanism on Singapore as part of the negotiations.

Senator CONROY—Did we succeed?

Mr Deady—We did not, no. There is not a ratchet mechanism in the Singapore agreement. They are common. In this case, when you look at the fact that we are gaining access to the US services market, I see that as a very substantial outcome from the negotiations—that you have that unilateral liberalisation built into the agreement.

Senator CONROY—I understand that a 10 per cent expenditure quota for drama channels delivered a mere three per cent Australian content. Do those figures sound familiar?

Mr Deady—I am no expert on the numbers. We have certainly had some discussions with the industry and I do, I will admit, recall those numbers; they have said that to us. I am not sure what that means exactly, but I have heard the 10 and the three. But I do not know where they got that from.

Senator CONROY—If we doubled the numbers, we could go to 20 per cent, which would only deliver six per cent—if the 10 and the three are accurate.

Mr Deady—I cannot comment on how those numbers translate to actual production. As I say, I have seen the numbers but that is all I have seen.

Senator CONROY—Have you had any feedback from the industry about the inability to deliver the SAFTA position? What are they saying to you?

Mr Deady—No, we have not. I actually have not spoken to the industry; they have not been in contact with me since I got back. We provided some additional information to them. The minister wrote to them elaborating on the fact sheet that we put out in this area, so they are aware of more of the detail than was in the fact sheet; but I suspect they are looking, like many, to see the detail of the agreement.

Senator CONROY—So will the government retain the ability to intervene within the cultural sector in areas not specified in the reservation?

Mr Deady—Certainly in areas that are not covered by the reservation—if we are talking about the ABC, SBS or the public broadcasters—there are no restrictions at all on the government's activities. There are no restrictions on the subsidies or taxation concessions that the government can provide to the film industry. On issues like subsidies to libraries or other aspects of wider culture, there are no restrictions under the agreement.

Senator CONROY—As I think we have discussed previously, this is a pretty fast-moving landscape. The future will be substantially different from what it is today, and there is going to be greater choice of media. An example—and it is not something that I am up with yet—is 3G phones, which you can now almost beam to each other. The very advanced ones are not quite televisions, but it is not beyond conception that your phone could become a TV, the way

technology is developing. How are we going to cope with that under these restrictions? Where would a 3G phone that received a TV signal fall in these categories—is it covered in what we talked about before?

Mr Deady—The interactive—

Senator CONROY—Do they fall into that?

Mr Deady—Yes.

Senator CONROY—We can identify this one because it is almost there, but that would be captured?

Mr Deady—Yes.

Senator CONROY—Let us say that more than 15 channels turn up. Say it is 600—an extreme figure, but let us say 600. Are we still capped at three?

Mr Deady—Yes, on free-to-air.

Senator CONROY—What about pay?

Mr Deady—We have the restrictions on pay, as we have described through the expenditure quotas.

Senator CONROY—What about e-cinema—something I had never heard of myself and certainly not experienced—where, at some point in the near future, movies will be beamed into cinemas directly from Hollywood studios? Will the government have the ability to regulate for Australian content at cinemas in the future?

Mr Deady—We do not have any measures in place on cinemas now. There are no requirements to show Australian movies in cinemas, so there would be no capacity in the future for a government to introduce measures there. But if you are talking about interactive, again—that is, direct TV and video on demand—then that is covered by the interactive audio.

Senator CONROY—Just coming back to this question of all the new technologies, are we locked into quotas or can we look at another mechanism in the future—if, for example, the expenditure quota just does not work?

Mr Deady—In terms of interactive media, no, there are no restrictions on them. There are no exclusions. The government is free to introduce any measures. There are no limitations on measures in that commitment. Expenditure quotas could be introduced, as could other measures that a government might look at that are relevant to the platform that we are talking about at that time.

Senator CONROY—You made the point about the interactive services.

Mr Deady—Yes.

Senator CONROY—If we find that this expenditure cap of three in 10 or six in 20—if we are doubling it—is not delivering Australian content, do we have the capacity to look at another mechanism?

Mr Deady—I think the distinction here is that subscription broadcast television is pay broadcast TV. The subscriber has no say in the product that he or she watches, other than to shift channels. They cannot be the determinant of what they watch at a particular time, and

that is the distinction. The interactive media is where the consumer has that choice. The commitments on subscription broadcast television are the ones we have talked about: the expenditure quotas, the existing 10 per cent on pay, and the capacity for the government in the future to increase those expenditure quotas. But that is the distinction between pay broadcast TV and these other interactive media. That is the distinction that is drawn.

Senator COOK—In e-cinema, where you can beam the movie from the studio into a cinema, those movies still have to undergo an Australian classification process, don't they?

Mr Deady—Yes.

Senator COOK—So we can control the classification.

Mr Deady—Certainly, all aspects of public morals and those sorts of issues are not affected by any of these commitments. There are exceptions for all of those.

Senator COOK—Is there any change to the free traffic of artists and/or technicians between the two countries?

Mr Deady—No, there are no changes at all to any of the visa or other requirements in relation to artists, performers or musicians.

Senator COOK—And technicians?

Mr Deady—No. There is no change in any category.

Senator COOK—I have got nothing more on this at this point.

Senator CONROY—I want to move on to copyright. I understand the government have agreed to an extension of the copyright term from death plus 50 years to death plus 70 years: is that the mickey mouse clause? I think I may have misclassified it, but is this the real mickey mouse one?

Mr Deady—That is the mickey mouse one.

Senator CONROY—Why did we agree to that?

Mr Deady—This was part of the overall deal that the government agreed to in order to align our copyright term more closely with that of the United States. Seventy years is also the term that is in place in the EU and the term of many of our trading partners. Australia is a net importer of copyright material at the present time, so it will have some costs, but—

Senator CONROY—You are not suggesting we are going to become a net exporter of copyright, are you?

Mr Deady—There are certainly some benefits for the Australian economy, and that is why this does come down very much to an issue of looking at the arrangements, the balance, and the future prospects for the Australian economy in these areas. It does potentially provide a boost to investment in these areas. That is a factor that has to be taken into account. One of the numbers I have seen is that between 1996 and 2000 Australia's exports in this area—IP type areas, copyright industries—grew faster than the national economy, with an average growth rate of about 5.7 per cent. Exports grew by around nine per cent. So there are certainly some advantages in this area of copyright extension.

Senator CONROY—I understand Australia is currently a signatory to the Berne convention, which is to do with a copyright term of the death of the author plus 50 years: are you familiar with that one?

Mr Deady—I am aware of it. I am not an expert on it but yes it is, as you say, life plus 50 years—that is right.

Senator CONROY—We have been a signatory to that for 90 years. What happens now? Are we formally sending them a letter advising that we have withdrawn?

Mr Deady—I am not aware of the precise arrangements. What we have agreed to is that it would be life plus 70 years from the author's death. I do not know whether that means—

Senator CONROY—Can an FTA override an international treaty?

Mr Chester—Maybe I can answer that.

Senator CONROY—Please do; I do not know the answer.

Mr Chester—The Berne convention sets minimum standards, not maximum standards and, like the Uruguay Round TRIPS agreement, it also includes a term of life plus 50 years. But, again, it sets a minimum standard, not a maximum standard.

Senator CONROY—I am not sure I would agree with your definition of minimums and maximums in this case. I would possibly turn them around the other way, but never mind. You mentioned a benefit to Australia: which copyright owners in Australia will benefit?

Mr Deady—Obviously, the producers of material covered by these extensions—music producers, writers and so on—will benefit. Certainly, that part of the Australian industry—the cultural industries, the copyright owners—see this as an advance for them. As I say, this is an on-balance thing. Performers, writers and artists would certainly see pluses in the copyright extension term. The audiovisual industries that we have talked about certainly saw this as a benefit.

Senator CONROY—So Elvis is a beneficiary, if we can work out whether he is dead or not?

Mr Deady—I think he would benefit, yes.

Senator CONROY—Excellent. In relation to extending the copyright term from 50 to 70 years, the authors in question are dead, in general. How is it a benefit to people who are dead? I am looking forward to this answer.

Mr Deady—The thing is that it is not a retrospective commitment—that is, that we do not have to go back and extend copyright.

Senator CONROY—I was going to ask you that. Does it mean that, say, if someone who died 51 years ago would suddenly be—

Mr Deady—Something that is already in the public domain, even though that author may have died 51 years ago, does not—

Senator CONROY—It will not be reclassified.

Mr Deady—No.

Senator CONROY—How does that help Disney?

Mr Deady—It is a prospective thing. Certainly from Australia's perspective, you are looking at encouraging investment in IP industries in the future, and that is the benefit. There is also a point—

Senator CONROY—When did Walt Disney die?

Mr Deady—I do not know the answer to that.

Senator CONROY—I actually do not know either. Does anyone else know the answer? Senator Hill?

Senator Hill—What was the question?

Senator CONROY—I was just asking if you knew when Walt Disney died?

Senator Hill—What year?

Senator CONROY—Yes.

Mr Chester—I think it was less than 50 years ago.

Senator CONROY—I did not think he was that long gone.

Senator Hill—It was about 10 or 15 years ago.

Senator CONROY—Did Walt design it himself or was it designed by somebody else? It is called the Mickey Mouse amendment because clearly Disney studios wanted it. I am just trying to understand, if we are nowhere near the 50 years ticking over, why they were so determined on it.

Mr Deady—Again, I think it is very much the international standard. Certainly, the EU, most developed countries and the US have this 70-year period. As I mentioned, our creative industries would certainly see value from this extension for their own works.

Senator CONROY—This change serves essentially the corporate monopolies which own the majority of copyright material. Is that a fair way to describe it? We are talking about Disney studios and some pretty big companies around the world getting a bit of a leg up.

Mr Deady—It benefits the creative industries, the producers of intellectual property material. They will see the potential for these increased rewards for the work they own.

Senator CONROY—But they are dead.

Mr Deady—They are not all dead. A number of them are working and producing movies. It certainly does have the potential to encourage investment in these industries, and that is a benefit of this. As we have said, there are some costs because we are an importer of copyright material, and those are the sorts of issues that are weighed up. But it is certainly not clear that there are no substantial and significant potential benefits from this extension. It certainly puts Australia in the company of the EU and the US in the area of copyright protection.

Senator CONROY—Does it benefit our libraries and universities?

Mr Deady—To the extent that this extends the copyright terms, there would be some additional costs to the users of the copyright material. Again, that is true.

Senator CONROY—So universities and libraries will end up paying more?

Mr Deady—To the extent that this material is being drawn on and used by those libraries and to the extent that it does have a shelf life that runs out to 70 years, there would be some impact. So there are costs, but they are difficult to quantify. But, as I said, there is an issue of balance here and what this means for creative industries in Australia. It is an on-balance issue and, in the context of the overall agreement, the government decided that it was prepared to sign on to an extension of that 50 years out to 70 years.

Senator CONROY—Senator Hill, are we looking at a sugar- style compensation package for libraries and universities to offset the increased costs you have imposed on them?

Senator Hill—No, we do not have that in mind.

Senator CONROY—Are you conscious that there will be an increase in costs to unis and libraries?

Senator Hill—I do not know that there necessarily will be.

Senator CONROY—Well, I think Mr Deady has let the cat out of the bag on that one while you were reading.

Senator COOK—A tax on knowledge.

Senator CONROY—In all seriousness, I think the only implication you can draw is that there is an increased cost to universities. Anyway, that is one for you to ponder on.

Senator Hill—A longer copyright? The other side of the coin is that it encourages investment and gives Australians opportunity to therefore invest with greater confidence. Investing in the creative endeavour is something we want to encourage in this country.

Senator CONROY—I understand that work by an eminent group of US economists, including Milton Friedman, on the US Copyright Term Extension Act of 1998 showed that the profit for the creator in the extended term was, at the most, a few cents and often a percentage of a cent. Are you familiar with that study?

Mr Deady—No.

Senator CONROY—I assume those few extra cents go to the creator's estate and the copyright owner.

Mr Deady—I said I am not familiar with that study.

Senator CONROY—Was any analysis undertaken on the impact of this particular change? I appreciate this was a bit rushed at the end and it was pretty cold over in Washington, but did you get a chance to look at the consequences of this?

Mr Deady—We have not done any particular work on this question of copyright extension. I mentioned, and the minister mentioned it again, that these are the sorts of issues you look at in this area: what are the additional costs, if any; how do they spread across the community; and what are the potential gains for Australia moving into this area. Again, this is a question that was certainly thought about and looked at by us as we went through these negotiations. It is an on-balance question. The costs are difficult to really measure, particularly as they accrue over a very long period of time. Certainly, across the wider community, the impact on a particular book or record is probably very low. There are other clear pluses, such as what it does for encouraging investment and encouraging the creative sector to look at—

Senator CONROY—That study argued that the creators are barely getting a cent, literally. The copyright owners are doing pretty good. So, and I hesitate to use the words, the dynamic benefit from those creative juices flowing is pretty minimal. The copyright owners are doing okay but the creators, who are the ones by definition who must enjoy this dynamic benefit, are not.

Mr Deady—I am not sure they are always different people but the creators—

Senator CONROY—The Disney studio, Michael Jackson? People go around buying up copyrights—that happens extensively. Fighting over the copyright of Beatles songs—there are all of these cases. They are not necessarily the creators.

Mr Deady—If you are an artist, a creative person, looking at the Australian market now with an extension to 70 years, you would see that the effort you are putting into your creation has those additional years of property protection. That is something you would factor into your investment decisions.

Senator CONROY—So you are sitting there beavering away—

Mr Deady—I would think you would certainly—

Senator CONROY—And you would go, ‘After I’m dead I’ll be much better off!’

Mr Deady—It is not after you are dead. As you say, the Beatles created those records. If they sell them then the creators benefit from the profits of those sales.

Senator CONROY—They do say that one of the few taxes that has no incentive effects is the death tax because the person is dead. I am just trying to understand how a death benefit accrues because you suddenly have the extra 20 years. But those creative juices must be racing at that prospect of accruing a bit more wealth after you have died. But I will stop teasing you there. Senator Cook, did you have any questions in this area?

Senator COOK—My question is about patents. They get the 20-year extension too, don’t they?

Mr Deady—No.

Senator COOK—Let me take you to an article that appeared in the *Australian Financial Review* on 24 February by Henry Ergas, who was a former chair of the Australian Intellectual Property and Competition Review Committee. Are you familiar with that article?

Mr Deady—I did see that article, yes.

Senator COOK—In that article he says:

Late last year, the US Federal Trade Commission (the US counterpart to the ACCC) released a report on the proper balance between competition and patent laws.

The FTC report, which follows a three-year investigation, highlighted the anti-competitive effects of two emerging problems in the US, namely the granting of excessively broad patents, that is, those that cover an excessively wide range of follow-on activities, and the granting of too many trivial patents.

Later in his article he concludes:

The overall effect of stronger IP protection is that Australian users will end up paying more in licence fees to US producers. It could also raise the cost of Australian R&D efforts, which need to build on previous innovations. Far from promoting innovation, the impact could be to chill it.

What do you have to say about those observations?

Mr Deady—From my memory of that article, it does go on to talk about some of the balancing issues as well.

Senator COOK—It calls for a strengthened hand of the ACCC.

Mr Deady—Yes, but also the fact that with many of these innovations, the usefulness of them has built-in obsolescence—

Senator COOK—That is true.

Mr Deady—that technology takes over and the extension really does not have that sort of impact. Again, I have not got the thing in front of me, but I did read it at the time.

Senator COOK—I am happy to pass it over to you.

Mr Deady—It does talk about it. As I was trying to say before, there are on-balance issues here. It is a question of looking at the impact of the extension on consumers—the users of this copyright material—but also on the copyright producers themselves. It seems to me, in the sorts of things that I think they are saying there, that there are issues on both sides. It is a matter of ensuring appropriate competition policy and other things to ensure these things are taken into account. That is the structure of what we are still trying to achieve here through this extension of copyright.

Senator COOK—What he is saying—and he makes this quite clear—is that the US body, the US Federal Trade Commission, investigated the extension of patent life, or the broadening of patents or the granting of trivial patents, and concluded that it was anticompetitive. Then he went on to say that the effect of stronger IP protection is that Australian users will end up paying more, it will raise the cost of R&D and it will not promote innovation. We heard from Senator Hill a moment ago on how this was going to be useful for competition, but the issue here is the balancing of competition with the right of patent and exclusive use of a particular innovation. This is a fairly sober, respectable, well- based criticism isn't it?

Mr Deady—It is not really for me to comment too much on all of those aspects. As I said, I read the article and I think it was a very balanced representation of the pros and cons of some of these issues in relation to copyright—you mentioned patent—but it does get to these issues of the extension. Also, it certainly lends itself to encouraging investment in these areas and greater certainty for the innovators. That is a factor that would be taken into account in making this balance between the benefit for the copyright property owner relative to other aspects of the community. They are the things that have been taken into account.

Senator COOK—I hate to argue with you, Mr Deady, but it does not give you an upside; it just gives you a criticism of this. Let me just quote to you another section from his article referring to copyright:

Furthermore, it is inconsistent with the recommendation of the Australian Intellectual Property and Competition Review Committee that any extension of the copyright term should only occur after a public inquiry.

He goes on about that. We did not have a public inquiry to agree to this, did we?

Mr Deady—One of the outcomes of the negotiations with the United States was to agree to the extension of copyright term, yes.

Senator COOK—I understand that, but we did not have a public inquiry as recommended by the review body before we agreed to it.

Mr Deady—Not that I am aware of, no.

Senator COOK—Were you aware of the Australian Intellectual Property and Competition Review Committee's recommendation on this point when we agreed to it?

Mr Deady—In negotiating this whole agreement—certainly this IP chapter—we were working with our colleagues in the department of communications and Attorney-General's. We were given a mandate by the government to take this thing forward. The copyright extension was an issue that the Americans put on the table. It was an issue that went right through the negotiations. In the context of the overall deal and the balance that was struck, the government decided to agree, as part of the FTA, to align our copyright term more closely with the United States term. That was a decision on the balance of the agreement with the United States.

Mr Deady—I am not blaming you, Mr Deady, because you cannot be expected to have read every damn thing and you are in a position where you need to be advised on some of the finer details of some of these things. My question was: were you aware of that recommendation when we reached this agreement?

Mr Deady—I was not aware of that recommendation, but that is not to say that members of the team were not. I assume they probably were. As I said, we had experts from the various agencies. But I think, in terms of the negotiations and in terms of the process we were going through in relation to the FTA, these were decisions that were taken as part of the overall package. The government agreed, as part of the overall deal, to this extension. So I am not sure of the relevance of a recommendation that there should be some review before this decision was taken.

Senator COOK—Thank you.

Senator CONROY—I want to move on to procurement. What is the outcome on government procurement?

Mr Deady—The outcome on government procurement is, I think, one of the very strong outcomes for Australia in the FTA negotiations. As you know, we are not a member of the WTO government procurement agreement, which means that Australian companies are excluded from selling to the US federal government. There are really three elements that change as a result of these negotiations: we become a designated supplier in the United States and therefore we are in fact eligible to sell to the federal government; we are exempted from the Buy America Act and the limitations that apply to non-designated suppliers; and we are included on a schedule of suppliers to the United States. So we are gaining access to the \$200 billion federal procurement market as a result of these negotiations. We are not just discriminated against at the moment; we are excluded from selling to that market. So we are now gaining non-discriminatory opportunities to sell to that market.

We are still negotiating or finalising our processes with the United States in relation to state coverage of the FTA also. In the United States government's procurement agreement in the WTO, 37 of the 50 US states have signed up. Of the FTAs that the US has done to date, 37 states have signed up. We are going through a process with the United States at the moment. I think 27 have signed up for the Australian agreement and they are continuing that process—continuing to seek—

Senator CONROY—So at this stage, we have only got 27 states?

Mr Deady—Twenty-seven have signed up, yes.

Senator CONROY—How many did Chile have?

Mr Deady—Chile has the 37 that normally sign up to these FTAs. We have built into the agreement an ongoing process, though. The Americans had not heard back from all of the states when we concluded in January. We still have to do some further work with our own states and territories to finalise this. The government procurement agreement is an opt-in for sub federal level governments. So we have allowed ourselves a short amount of time to finalise that, and that includes us talking to our state and territory governments here.

Senator CONROY—Does any Australian company get any preferential treatment because of this?

Mr Deady—Under the government procurement agreement they do not get preferential treatment, but the discrimination that they face in the US market is prevented from entering into force. So they can now compete and bid for government contracts. If they are supplying goods then they would benefit from the tariff preferences that would apply.

Senator CONROY—What if some of our states do not opt in?

Mr Deady—We are still talking to the states. As I said, we have built into the agreement this short period of time to encourage the states to sign on.

Senator CONROY—Have any Australian states signed on?

Mr Deady—All of them have indicated, in principle, a willingness to participate.

Senator CONROY—I meant since the deal was struck, not prior to the deal.

Mr Deady—This was during the negotiations. A state government official was involved in the procurement negotiations right through the process, so they have been kept fully informed about this. They agreed in principle to sign on to the agreement, but that was subject to the final outcome—

Senator CONROY—I will just clarify, then: no state has signed on since the agreement was announced? Given that it was subject to the final agreement, nobody has signed up to it yet?

Mr Deady—No. They were in principle agreements.

Senator CONROY—What happens if one of them does not want to sign up?

Mr Deady—As I said, these are opt-in provisions. We are still working very closely with the states to encourage them to sign because we believe that—

Senator CONROY—Are there consequences if we do not deliver all eight?

Mr Deady—Finalising the state coverage on both sides is something that we have allowed ourselves a few extra weeks to do. We will, clearly, sit down with the Americans and review that once this six-week period that we have allowed concludes, and we will take it from there.

Senator CONROY—I come back to the question I asked: are there any penalties or consequences if all eight state and territory governments do not sign up?

Mr Deady—There are no penalties.

Senator CONROY—Are there any consequences?

Mr Deady—The balance of the chapter would be something that we would talk to the Americans about. We are looking for—

Senator CONROY—So the chapter could be null and void if all Australian states—

Mr Deady—No, I do not think that follows. The commitments at the federal level are fully agreed in both Australia and the United States, so it is a matter of encouraging the fullest possible coverage of the states under this agreement. In relation to the states there are a number of things. There is a transition period of three years that we built in. One of the issues that some of the states are looking at is this question of some of the industry development programs that they have in relation to government procurement.

Senator CONROY—I am very conscious of it.

Mr Deady—What we have there is three years in which they could phase out or adjust those programs. There is full exclusion of support for SMEs. Any policies or programs supporting small and medium sized enterprises would be exempt. A number of the states feel that their programs certainly fit within that exclusion. There is a higher threshold above which these requirements apply to the state governments than at the federal level. So there are at least those three areas where there is some additional flexibility for the state and territory governments. As I say, we are talking to them and encouraging them on the basis that it is the Australian industries based in these states that stand to gain from the market access opportunities that they will have in the United States as a result of the procurement agreement.

Senator CONROY—If we were signatories to the WTO agreement on procurement, we would already have all of the access that we have now got. As you have described it, we have got rid of the discrimination against us, so we are now free to bid in a process that includes a large number of other countries.

Mr Deady—Yes: the signatories to the WTO agreement, the GPA and a number of the US free trade partners in a number of developing countries where the United States have made that concession. Basically, I think it is all the OECD countries—although I could be corrected—apart from us and New Zealand. We are the ones excluded because we are not members of the GPA.

Senator CONROY—About 28 countries?

Mr Chester—I think there are more than 28, but that would include, as I say, the developed countries. That sounds about right, but I think there are some additional developing countries. I think the number is actually higher than that.

Senator CONROY—Can I take you slightly out of the direct area of expertise? You would be aware that, due to our participation in the Iraq war, Australia has been accorded preferential treatment in the contracts that are being let in Iraq. Australian companies have been complaining long and loud that they do not seem to be getting a fair shake of the contracts, even though they are preferred tenderers. Are you familiar with that issue?

Mr Deady—Not really, no.

Senator CONROY—Senator Hill, you would be familiar with it; I think I have even asked you about it in parliament.

Senator Hill—I might know a little.

Senator CONROY—Well, there is no doubt about that, but I asked if you knew about this.

Senator Hill—That depends on your question.

Senator CONROY—I was asking whether you are aware of this issue to do with Iraqi contracts? Australia is one of three or four countries that participated with land troops and other forms of support, and that has accorded us special treatment in the awarding of contracts. I think the EU and the UN are quite upset about the fact they cannot tender.

Senator Hill—I remember that statement.

Senator CONROY—Australian firms have been complaining long and loud that even with preferential treatment against US companies and British companies they are still getting shafted.

Senator Hill—They have not been complaining to me.

Senator CONROY—You have got to get out more.

Senator Hill—A number of Australian companies have been successful in getting contracts and—

Senator CONROY—I did not say no-one; I just said—

Senator Hill—have written thank you letters for the support that they have received from government ministers, including myself.

Senator CONROY—As I said, I did not say nobody had got a contract.

Senator Hill—So it must be different companies that talk to you.

Senator CONROY—I am aware of some of the companies that you are describing, but I am also aware of other companies. I was just wondering if you were aware of others.

Senator Hill—Who is unhappy?

Senator CONROY—I am not in a position to reveal private conversations, but I can encourage them to come and chat with you. Some of it has been in the media.

Senator Hill—We go out of our way to support them.

Senator CONROY—I was just trying to draw the comparison between the fact that many companies have been unsuccessful in tendering, despite having preferential treatment and having the right to bid against the entire EU, and the figure of around \$200 billion to \$300

billion, which is what I keep seeing quoted. Does this fall into the oversold category that Mr Vaile was describing?

Senator Hill—I can think of a couple that have been unsuccessful and disappointed. Obviously, if you are unsuccessful you are disappointed, but the smart ones stay in because a lot more work will flow. This is a very new tendering process for them, and they need to feel confidence in the American marketplace or the American processes. It is not dissimilar to Australian companies bidding for work in global defence contracts. But there have been some successes, and there is great scope if Australian companies are prepared to make the investment and persevere.

Senator CONROY—Thank you for that. We were talking about only 27 states having signed so far. Was that by 13 February, from the announcement, or was that by today?

Mr Deady—I think that is, in fact, by the weekend, yes.

Senator CONROY—Does that include California?

Mr Deady—It has not signed yet, no.

Senator CONROY—Is there a problem there?

Mr Deady—No, I do not think there is a problem.

Senator CONROY—It is the fifth biggest economy in the world.

Mr Deady—It is, yes.

Senator CONROY—The terminator is in charge.

Mr Deady—We are certainly pressing USTR; we are doing our own work through the embassy there.

Senator CONROY—Who agrees to it? Does the governor agree to it? Should we lobby Arnie or the state congresses or the state legislatures?

Mr Deady—The process is that these states have never had 50 sign up; they have had 37 in these other trade agreements. We are working very hard, and I believe we will be successful in getting that same sort of coverage. There are issues involving timing and getting commitments back from the US states. We are still working on that, including on those important states like California.

Senator CONROY—Are you anticipating it will get to 37?

Mr Deady—Yes.

Senator CONROY—Are you anticipating you will have California?

Mr Deady—Yes.

Senator CONROY—There would be a pretty big hole if California were missing; it is the fifth biggest economy in the world.

Mr Deady—We are pushing very hard, and we are talking to our colleagues to encourage that coverage. There is another point on this that I think is worth making: as I said right at the beginning I think this is a big part of the deal. I do not think it is oversold at all. We do not have access to this part of the market. We have certainly got information from Australian

companies who are successful in selling to the US government but who have been required to set up joint ventures to establish in the United States or in other countries that they can supply from. Many of those companies, whilst they may well maintain those investments in the United States, would see value in being able to produce and supply from Australia. So it is a big thing.

Local governments are not covered by these agreements for either country; they are not covered by the commitments. But the fact that you are a designated supplier and that you are on this list and able to supply to the federal government does impact, we have heard, in relation to sales to counter governments. The other thing is that this is an area where, at the moment, the United States has access to the government purchasing markets in this country without any discrimination against them. That is a fact. US companies are not discriminated against. They can certainly sell to federal governments—and they do—and to state and territory governments. This is an area where there is an imbalance and the agreement does allow us to remove that imbalance.

Senator CONROY—Are you aware of whether the great bulk of government procurement in the US occurs at the federal and state level or the local government, city or county level? Have you got some sort of breakdown?

Mr Deady—I have heard some numbers, but I hesitate because they are not official type numbers. We have certainly seen the figure of 200 million. That is a number that was provided to us by the US for federal purchasing. My understanding is that, at the state government level in the United States, our states actually do proportionately more purchasing, because our states certainly supply education, health, and those sorts of services. Much of that is done at the county level in the United States. So the coverage issue is relevant there. But, in any event, you are looking at very large purchases by the feds and very large purchases at county level; some of the states are actually in between those two levels.

Senator CONROY—And there are some big councils.

Mr Deady—There are some big counties, certainly. And they do provide education and health.

Senator CONROY—I appreciate that you do not have the information handy. Would you be able to give us some assessments; for example: 25 per cent of all procurement is done by the feds?

Mr Deady—We will see what we can do there.

Senator CONROY—Could you do it for federal, state, local government and city? There might be tiers that we do not even understand.

Mr Deady—We will see what we can do. But I would say there is probably a limit to how far we can go down that chain in terms of cities, but certainly we will see what we can do. We know the federal number. We will see what we can do on the states.

Senator CONROY—Sometimes we think we are overgoverned, but the US has got tier upon tier. The USTR fact sheet says that the Australian government will eliminate its industry development programs under which suppliers have had to provide various types of offsets—

sort of local content. Senator Hill, I think the Department of Defence has an offsets program. Have you still got that?

Senator Hill—Yes. We have had an offsets program. We are to some extent moving away from that towards encouraging industry to invest into the global chains, rather than to acquire on domestic offsets. Within the major contracts there have been offset arrangements.

Senator CONROY—Mr Deady, is there a sort of axe going through them, or is there a phase-out at the end of a contract? What is the implementation deadline for giving up our industry development programs?

Mr Deady—I should say that there is an exception for Defence from industry development.

Senator CONROY—Saved, Senator Hill.

Senator Hill—Well, yes, in that regard.

Mr Deady—There are no phase-ins on the other industry development procurement schemes. Any existing arrangements would not be impacted.

Senator CONROY—The contracts would peter out: after that it is one in, all in?

Mr Deady—Yes. These schemes at the federal level have been very minimally used in recent years.

Senator CONROY—Will the government still be able to fund programs such as R&D Start and the R&D tax concession?

Mr Deady—Yes. It specifically offsets arrangements for those sorts of programs related directly to government procurements, not broader grants or subsidy programs—they are not impacted by that commitment. It is the government procurement only.

Senator CONROY—Does the US have similar programs that it will be eliminating?

Mr Deady—It will not be able to introduce any of those sorts of programs. It does not have any particular programs it will be eliminating. Again, both countries have programs for SMEs, and they are both protected. There are exceptions, and they are protected as part of the agreement. So we can still provide these arrangements for small to medium sized enterprises. The United States has some programs for disadvantaged communities which are also excluded. We have exclusions for programs in relation to Indigenous people. There are those sorts of things. There are exceptions in the chapter to that broad exemption from industry development offset type arrangements.

Senator COOK—Do you have a figure on the value of the programs we are forgoing by virtue of this agreement?

Mr Deady—I will have to take that on notice. I do not have that number.

Senator COOK—Was there any scoping study done or any work done with the states to work out roughly how many programs there are and what they were set out to do?

Mr Deady—There has not been a scoping study as such. As part of the consultations and the process—which, as I mentioned, included a state government representative on the delegations—we have worked through and crafted the language and these exceptions to

something that accommodates many of the state programs. When you take into account the higher thresholds and the concessions for SMEs, by far the majority of the states are comfortable that their arrangements are consistent with the obligations that are in this chapter. A couple of states—and it is only two—are still looking at their programs to determine what changes, if any, they can make to become consistent with the obligations.

Senator COOK—So you are saying that when you agreed to this you set the bar at a level where it would not catch anywhere near all of the state programs, but it has caught a couple?

Mr Deady—In context, it does not apply below those thresholds. Any programs that are set below those thresholds will not be touched. But equally important is the exception in relation to SMEs. Most of these programs are aimed at small to medium sized enterprises in the states. Those exceptions allow the states to comply with the obligations under the chapter.

Senator COOK—But I think you have said that it has caught a couple or a few.

Mr Deady—It has caught a couple—we are talking about two.

Senator COOK—Which two are they?

Mr Deady—My memory is that they are in New South Wales and Western Australia.

Senator COOK—In what programs are they?

Mr Deady—I will have to check with the experts—I do not recall.

Senator COOK—Will you do that for us?

Mr Deady—Yes, we will do that.

Senator CONROY—How will the deal generate big gains for Australia's service sectors?

Mr Deady—We have negotiated a very comprehensive agreement on services. We are pursuing this negativist approach which we have talked about so all services are covered by the commitments. There are commitments on national treatment, which will mean no discrimination against Australia service providers in the United States. There are commitments on MFN so that any further liberalisation the US gives to others will flow through to Australian service providers.

We are talking here about access to the world's largest economy, the biggest services market in the world. We are getting a result from the United States in the services area that is well beyond the commitments that the United States have made in Geneva as part of their GATS commitments. This is a very clear area which is GATS-plus in this agreement. I think the United States have indicated to us and other FTA partners that it is in FTAs that they are prepared to make commitments in the services area that go well beyond what they are prepared to do in Geneva. So we have non-discriminatory treatment in the United States as a result of this agreement, right across the board, subject to the exceptions that we spoke about.

In many of these areas we have established a series of working groups, such as a working group on professional services, where we are looking at mutual recognition of qualifications. These are the sorts of areas where over time, again, you will see the real benefits of this agreement flow to Australian service providers. Both Australia and the United States have open service industries. Market access really is not an issue in relation to both countries. There are some commitments on market access on both sides, but they do not particularly go

that much beyond WTO commitments. With the national treatment issues, once you are established in that market, if you are providing services to that market then regulations cannot be introduced or imposed on an Australian service provider that would discriminate in favour of US industry.

In the working groups, specific work programs have been established and time frames have been set for advancing these issues. This is an area where we do think there is a real dynamism in the agreement that will lead to very substantial improvements for Australian service providers. Many of the commitments on professional services, on education services, that we have got out of the United States are far beyond what they have done with their other FTA partners, so this is an area where there really is a benefit to Australian service industries as they operate in that market.

Senator CONROY—You used the phrase ‘GATS-plus’. Which parts of the agreement are GATS-minus?

Mr Deady—There are no parts that are GATS-minus. We obviously observe our existing GATS rights. No, there are no parts that are GATS-minus. We can see by the very nature of this agreement—the negative list approach that is adopted, which means that all service industries are covered unless they are specifically excluded from the commitments, and the ratchet mechanism that we talked about—that all of those are very liberalising elements that are not part of the WTO GATS agreement. So it is very clearly a GATS-plus agreement.

Senator CONROY—Is it not the case that it is professional industry associations that negotiate mutual recognition of qualifications—these working parties that you are talking about? The government actually cannot unilaterally make a decision about this, can it?

Mr Deady—That is true, but the working groups can certainly facilitate those efforts. I think that is very much what we have in mind in these working groups: that both governments are committing to consult with relevant bodies to identify services that the working groups can look at to see how we can advance the processes of mutual recognition. The working groups are also required to report to the joint committee. The joint committee is the committee at ministerial level which will meet each year to review the agreement. It will look at the recommendations of the working groups, and it can look at any aspect of the agreement. But the working groups are very much designed to ensure and facilitate access and to identify areas where there is interest from Australian industry in these mutual recognition agreements, where we can develop model procedures and where we can facilitate these things happening much more quickly. All of these things are on the specific work plans of these groups. They are not insignificant. As I said, those sorts of specific commitments in relation to the working groups are not part of other FTAs that the United States have done, and they are the areas where I think over time you will see the really substantial benefits accrue to Australian service industries.

Senator CONROY—But there is no concrete change in anything at the moment as part of this agreement. There was a commitment to work towards some change but there has been no actual change.

Mr Deady—There is both. Many of these working groups certainly establish processes and procedures for advancing Australia’s interests in these areas. But the commitments in relation

to national treatment and non-discrimination against Australian service providers apply from entry into force, unless the United States have taken out a specific exception to a particular measure. Even if they have, if that is an existing measure it is bound at that level. Any liberalisation in that will flow automatically to Australia. It will not flow to other WTO partners. It will flow automatically only to FTA partners that have these ratchet mechanisms. So that is the liberalisation, and that is what is so important to service providers—that they do not suddenly face a change in regulation that impacts adversely on them compared to local suppliers.

Senator CONROY—Is the AMA involved in these discussions? Were they on one of the working groups?

Mr Deady—No, they were not.

Senator CONROY—I just won a bet. Are there any other professional associations that you are aware of that are not involved—that have said they are not interested?

Mr Deady—I do not know whether the AMA said they were not interested; that was not the question. No-one has indicated to me that they are not interested. I think there is a high level of interest amongst various professional service providers—engineers, architects, lawyers, those sorts of industries.

Senator CONROY—Which of these professions can currently work in the US?

Mr Deady—Many of them can. Many of the problems that they face—

Senator CONROY—Lawyers, for instance?

Mr Deady—Yes, they can.

Senator CONROY—I know people who are lawyers in New York that are Australian citizens, with Australian qualifications.

Mr Deady—Yes. Again, part of the issue with the United States, given the federal system of government, is that it can certainly be timely in getting those qualifications recognised in a particular state, and that is the case for an American lawyer wanting to operate in Australia. Nothing undermines those sorts of requirements that might be necessary. If you can work out recognition of qualifications and degrees, it can make it easier. Also there is the question of whether you can improve this process over time—this is a national treatment issue: many US lawyers trained in New York may have to qualify again in California or another state. It cannot solve all those problems right from the start, but it can certainly facilitate things and assist Australians in having their qualifications recognised, enabling them to work more easily in those states and in other areas.

Senator CONROY—Help me out here: accountants can already work in the US?

Mr Deady—I believe they can.

Senator CONROY—Lawyers?

Mr Deady—Yes.

Senator CONROY—Architects?

Mr Deady—As I understand it, yes, they can. Access is not really the problem. It is more this recognition of qualifications. You have to get these qualifications recognised. You may need to do additional studies. So if they can, obviously that is what mutual recognition means—

Senator CONROY—How can a lawyer work if their qualifications are not recognised?

Mr Deady—They may have to pass additional exams, just as they do in Australia.

Senator CONROY—I am just trying to understand which service providers are currently excluded. I thought there was pretty much free trade in the services sector. I am just trying to get an understanding. You have made the point that you think this is a big win, to which I am scratching my head. I will put to you what I have put to a few others: show me the money. Where is the win for accountants if they are already working there? Where is the win for lawyers if they are already working there? Where is the win for architects if they are already working there?

Mr Deady—Just to reiterate, the real win is that, if there are measures that discriminate against those Australian lawyers—if there are certain things they cannot do that an American lawyer can—then those are national treatment issues and this is what this agreement is about.

Senator CONROY—But, as you said, national treatment does not mean much if they all have to be state registered.

Mr Deady—No, if there are existing measures which are inconsistent then they cannot be made more discriminatory. A lawyer or their accountant cannot set up a business and wake up tomorrow and suddenly find that they are more disadvantaged relative to a US supplier than they were the night they went off to bed. So they are real gains.

Senator CONROY—They are not better off. You have protected them from future punitive action.

Mr Deady—You have bound the status quo, yes.

Senator CONROY—Yes, you have bound the status quo.

Mr Deady—And you have built in liberalisation through these ratchets, and these are the things that impact on service providers—changes of regulations and introduction of discriminatory arrangements which favour domestic suppliers over foreign ones.

Senator CONROY—Has anything been stopping the various industry associations negotiating recognition agreements?

Mr Deady—A number of the ones we have spoken to are very pleased when they hear that we do have in place these processes which we believe will facilitate the mutual recognition of working groups. I think that this is an area where Australian service providers will very much welcome and benefit over time from the commitments that we have got. We have got to make this working group work. It is an ongoing process. This is a dynamic agreement. This is the growing part of both the Australian economy and the US economy, and this is the area where, over time, the real benefits come from the commitments and the obligations that we negotiate.

Senator CONROY—Because you have delivered standstill?

Mr Deady—We have delivered standstill. We have delivered these working groups. We have delivered, most importantly, national treatment. That it is not something that should be diminished. It needs to be understood just what this means for Australian service industries. This is what the GATS agreement is about. It is about ensuring that service providers are not discriminated against in that market, and that is what—

Senator CONROY—Currently, there is pretty much free trade in services. I look after financial services and I have not had anybody in my area—and I do not cover architects—say to me, ‘We are being kept out of the US market.’ So I say to the lawyer groups and the accountant groups, stockbrokers, investment bankers and others, ‘Tell me how your life has improved by this,’ and they all just look at me blankly and say, ‘There is no change.’

Mr Deady—We are saying that both service markets are open, and that is not really in dispute. What is in dispute, though, are the commitments that the governments take to each other to ensure that those markets remain open.

Senator CONROY—I accept that that is an important—

Mr Deady—But this is what is so important in terms of building businesses, in terms of investment. It is that certainty. That is what trade agreements are about. That is why we have been binding tariffs in the WTO. That is why we bind tariffs and move to zero in FTA agreements. That is what it is about. It is not that a 2.5 per cent tariff, in and of itself, is a barrier necessary to an Australian exporter supplying to the United States. But the great uncertainty is if that tariff is unbound and suddenly, tomorrow, it can be 15 per cent or 20 per cent. That is what trade agreements have been about. That is what this is about. It is about providing a much greater certainty to Australian service providers into the future. In addition to that, it has hard commitments that go right across service industries, because of the nature of the commitments on national treatment, the negative list. There are exceptions to that but, again, when you look at the details, we do not have pages and pages and pages of exceptions. Both countries have exceptions and they are clear. But, again, they are transparent so you get the transparency outcome as well.

One other aspect of this matter relates to state governments. Again, all state government measures are covered by these agreements in both countries. What we have done is, again, have a standstill commitment on the states, so we are not going around and making the states identify every existing non-conforming measure. I know, from talking to the states, that that would be burdensome for them. The United States do the same. So what we do is bind the status quo. We are entering into this agreement, taking a commitment that if the state has a non-conforming current measure, that is fine; that will continue, but it cannot be made more trade distorted.

Senator CONROY—I have got the message, Mr Deady. I can see the words ‘binding standstill’ being used extensively by me to excite and get those creative juices flowing again.

Mr Deady—But this is important. It is crucial and it is part of what we will be doing as part of the process of getting the text out there—getting around all of the states and territories and explaining this agreement. Mr Vaile has talked already about the establishment within Austrade of a task force on the US FTA, because this is a big deal and it is up to Australian industry to take advantage of it. The government can open up the access; as the minister has

said; it is up to Australian industry to really take advantage of it and make these working groups really work.

We have a framework now that can allow this to happen, and it is something we have not had with the United States in the past. We have had—Senator Cook would remember this—the trade and investment framework agreement with the United States, where we did have regular meetings at the ministerial level. Over time, it just became more difficult. There was no framework that ensured that there was a binding treaty obligation that ministers would sit down each year and meet and talk about these issues. That is what we have, and that is very real in our relationship with the United States.

Senator COOK—We did have TIFA, and the question I have about what happened is about the fact that it just fell into misuse. The ministerial meetings did not always go ahead on time and, as a consequence, what we could have got out of it was lost.

Mr Deady—I hear what you are saying and, frankly, that is my point. Here we have a binding commitment which means that every year the Minister for Trade and the US trade representative will sit down in their joint committee and review this agreement in its entirety. There will be working groups established under the various chapter standards—we have a similar sort of thing in the standards chapter, and that is probably pre-empting questions. Again, it is a working group about which you can say at one level that they are just going to go and talk. But this is about mutual recognition and about Australians in general and us being able to identify areas of concern to Australian industry and the Americans—not just whenever they feel like it but with a commitment under the agreement to sit down and work with us to resolve those issues, and that is very significant.

Senator COOK—I catch the enthusiasm in your voice, and I am not one to deride that at all, but the plain fact is that at the ministerial level the TIFA talks did not always go ahead and that is one of the reasons why TIFA fell into misuse. What is there about this that causes you to think that with that track record this government will be consistent in ensuring that these talks go ahead? They had the opportunity before and did not take it up; what makes you think they will take it up this time?

Senator Hill—I am sure that is not an appropriate question to an official—

Senator COOK—You are right, Minister, it is not.

Senator CONROY—You are right, he cannot answer that you are incompetent. It would be an unfair to ask him to favour—

Senator Hill—The question is: is the government determined to progress the process that has been outlined by the official, and I am confident in saying that the answer is yes. If you want to debate that, that is well and good, but it is not for tonight.

Senator COOK—It is pretty hard to debate what you say are your intentions. All I can debate is what your track record is, and it is a shocker.

Senator Hill—You can debate that, and obviously I do not accept that.

Senator COOK—We are not here to debate; we are here to ask questions.

Senator CONROY—I have spent a fair bit of today with a couple of industry associations, and I do not sense any great enthusiasm for the government prodding them from behind in some of these discussions. Not many professional industry associations I know like to be dragged kicking and screaming to the negotiating table by a government: are you aware of any resistance? With the AMA, for instance, have we gone and got those doctors and dragged them to the table? If not, why not?

Mr Deady—I am not sure how to answer that. No, we have not dragged anyone to any table. We have set up these groups.

Senator CONROY—So if they choose to walk away, there is nothing you can do?

Mr Deady—It does come down to industries identifying issues in the United States that they want to take up under the framework of this agreement in order to improve and facilitate their activities in the United States. So that is the opportunity that has been created by the agreement, yes.

Senator CONROY—So you cannot make someone come to the table, and anyone who is currently at the table can walk away at any time and the government cannot do anything?

Mr Deady—With the working group, certainly the obligation on us and the United States is to consult with the relevant bodies and work with them. If there are areas that they want to take up as part of these working group discussions to advance, improve and facilitate something—whether it be mutual recognition and other aspects of the activity in relation to their service industry in the United States and vice versa—we have established this framework to advance those interests.

Senator CONROY—I think Senator Cook and you had a little bit of a discussion about this. Will the deal address visa arrangements into the US, including the potential for spouses to work in the US?

Mr Deady—No. The agreement does not cover temporary movement.

Senator CONROY—That was one issue I thought you identified to me, in one of our many conversations about this, that was part of the big outcome you were looking for.

Mr Deady—The government had objectives in the area of temporary movement. We certainly pressed those on the Americans through the process. The United States was unable to include in the trade agreement any further commitments on temporary movement for people. There were some issues that emerged following their negotiations with Singapore and Chile that meant that they were unable in these negotiations to—

Senator CONROY—Did they think you looked like a terrorist?

Mr Deady—The issue is about temporary entry to business people, about spouses working. They are not immigration issues that we are talking about or discussing, in any event.

Senator CONROY—I understand Senator Graham was particularly concerned about the people movement aspects.

Mr Deady—There were issues on the judiciary committees.

Senator CONROY—I am hoping they thought you were a terrorist fighting for us, but—

Mr Deady—I do not think they did. This was an issue that we continued to talk to the United States about throughout the process to see what could be done in those areas. We certainly had ambitions in this area. The point I would make is that we are continuing to talk with the United States on these issues to see whether, if there are problems, there are other ways that these can be improved between us.

Senator CONROY—So there is a chapter that says, ‘Temporary entry of business persons—talks ongoing’?

Mr Deady—There is no chapter on temporary entry.

Senator CONROY—Singapore got a chapter and we did not?

Mr Deady—That is correct.

Senator CONROY—Do you have any idea why Singapore or Chile did?

Mr Deady—The issue arose following the negotiations with Chile and Singapore and it was a jurisdictional issue. The judiciary committees, following those negotiations, expressed concern to USTR that including chapters like this in the FTAs was going beyond its jurisdiction. So there has been a jurisdictional issue between USTR, the administration and the judiciary committees. That is why they were unable to negotiate on temporary entries.

Senator CONROY—That is Senator Graham’s committee, is it?

Mr Deady—I think it is.

Senator CONROY—I understand that subsidies and grants apparently are excluded from the services chapter. How broadly is that defined? For example: are grants of Crown land to Australian service providers covered by the exclusion?

Mr Deady—I will have to take that on notice.

Senator CONROY—Sure. As Senator Cook indicated, we do not expect you to be a human encyclopaedia on all 22 chapters.

Mr Deady—If there are such things as grants of Crown land to Australian service providers then that is revenue foregone—that is a subsidy and, yes, that is excluded from the agreement. So I can answer that.

Senator CONROY—You could take on notice the rest of the question.

Mr Deady—If there is anything wrong with that, I will certainly get back to you.

Senator CONROY—Sure. The question really was: how broadly are subsidies and grants defined?

Mr Deady—They are defined very broadly; they are defined fully consistently with the WTO definitions of subsidies but, of course, subsidies are not covered in the GATS—the services agreement of the WTO. But certainly they are defined very broadly in this agreement—all subsidies, grants and revenue and all aspects of government support.

Senator CONROY—Are government subsidies to Australian consumers of services—for example, tertiary student allowances or concessionary rate loan schemes—covered by the exclusion or are they otherwise outside the scope of the FTA?

Mr Deady—They are covered by the exclusion.

Senator CONROY—For what services does Australia agree to give market access commitments in the FTA and, to borrow your language, GATS plus?

Mr Deady—I should take that on notice.

Senator CONROY—I am happy for you to do that. For what services has Australia given a national treatment commitment by commercial presence under the FTA beyond our commitments under GATS? I am happy if you need to take that on notice as well.

Mr Deady—These questions, because of the nature of the negative list, are too detailed to answer, so I will need to take them on notice.

Senator CONROY—I appreciate that. I am happy for you to take them on notice. Australia's secondary and higher education services commitments under GATS are limited to private education services. Has this limitation been reproduced in the FTA?

Mr Deady—Again, rather than wasting your time I should take that on notice.

Senator CONROY—I have a supplementary question, subject to the answer to the above being no. Does the FTA mean that US-owned campuses in Australia are entitled to be treated as favourably as TAFEs and public universities in respect of services offered by the public institutions, either on a commercial basis or in competition with private providers? Again, I am happy for you to take that on notice, given you do not know the answer to the previous question.

Mr Deady—I will take that on notice and we can give you the definitive answers on all those questions.

Senator CONROY—That is all I have for tonight.

Senator COOK—I have a couple of questions. I will go back to where we started, if I may. We were talking about when the up and down vote might occur. You said that your best guess—so no-one is holding you to this, because you well and truly qualified that—is that it was about the third week in July. Is there any sort of go-first understanding? Does Australia have to adopt the implementing legislation before the Americans will vote on the package?

Mr Deady—No, Senator.

Senator COOK—Therefore, there is no go-first arrangement?

Mr Deady—No.

Senator COOK—So the US Congress is marching to the beat of its own drum and not paying any attention to what we do?

Mr Deady—That is right.

Senator COOK—Is there any time limit on our adoption of this package, so that if we go beyond that time the package is brought under question again?

Mr Deady—No, the only requirement on both sides is for the legislative processes to be concluded and then an exchange of letters to establish the date of entering into force.

Senator COOK—One imagines that the legislative processes are to be concluded as expeditiously as reasonable.

Mr Deady—Yes, but again there is nothing in this that says that.

Senator COOK—Even that is not expressed?

Mr Deady—No.

Senator COOK—So there is no pressure on our parliament to truncate any of its considerations of legislation or regulations in this package?

Senator Hill—I do not know about pressure on our parliament; it is—

Senator COOK—There is no deadline.

Senator Hill—We believe it is in Australia's interest to get the agreement into effect as quickly as possible and, therefore, it is in Australia's interest to progress its part of the legislative requirements as quickly as possible.

Senator COOK—That is not my question. I understand what you are saying, but the question is: as a consequence of this agreement, nothing between the two nations imposes a deadline by which we must do this legislatively?

Senator Hill—No, except that if it is not done, we do not bring the agreement into effect and we do not get the benefits.

Senator COOK—I am not debating that; I am just trying to establish whether or not there is a condition in the agreement, and the answer is no, there is not.

Senator Hill—No. There is no condition in the agreement.

Senator COOK—No, that is right.

Senator Hill—But you seem to be implying from that that there is plenty of time for cruising, which is not the position of the government.

Senator COOK—That I am implying what?

Senator Hill—That there is time for the parliamentary process to cruise along.

Senator COOK—I am not implying anything. It is interesting to me that you should read an implication into a question.

Senator Hill—I am sorry if I misinterpreted you.

Senator COOK—I do want to be very careful that there is no implication that we should truncate our normal legislative consideration of any implementational bills or regulations as a consequence of this agreement. The answer, as I understand it, is no.

Senator Hill—That is right, isn't it? There is nothing in the document that sets a time frame?

Mr Deady—No, there is nothing in the agreement.

Senator COOK—What was the deadline to complete these negotiations? What did the President and the Prime Minister agree on?

Mr Deady—In May when they met in Crawford they talked about a target—they never set a deadline as such. They certainly talked about concluding the negotiations by the end of 2003. As I say, that was the target that was set for the negotiations.

Senator COOK—As we got closer to that target, it became clear that there was going to be a spillover into early 2004?

Mr Deady—That is correct.

Senator COOK—But there was a serious effort on both sides, it seems to me, in trying to reach that target.

Mr Deady—Certainly, there was a considerable effort on the part of both countries. Both countries certainly understood the targets set by the leaders and, yes, the negotiators worked away to achieve that target.

Senator COOK—In your negotiating framework did you have a set of objectives that had to be reached for this deal to be acceptable? Did you set out in advance in your negotiating arrangements what was a satisfactory level to be reached?

Mr Deady—The government established, and Mr Vaile released prior to the first round of negotiations at the beginning of last year, Australia's objectives for the negotiations. We worked toward those objectives. We worked to a mandate provided to us as negotiators by the government as part of the negotiating process.

Senator COOK—But you never had any 'must achieves' to say, 'Hey, if we get this, it is a good package'?

Mr Deady—We had a set of objectives and a mandate that we worked towards through the negotiations.

Senator COOK—The mandate was to do the best you could, not to achieve particular things. Is that right?

Mr Deady—The objectives were set and the mandate was given to us to negotiate a comprehensive deal and, yes, that was the mandate we were given and those were the negotiations that we engaged in.

Senator COOK—When you closed the deal, were you in a position to know what value this package might be to the Australian economy?

Mr Deady—We negotiated right through that period and then very intensively in the last three weeks, continuing to build as big a deal and as balanced a deal as we could. Mr Vaile was there right through that last two weeks of that process. We continued to press, right through that process, our offensive interests. We were very mindful also of the defensive interests that again the government had established as part of the mandate. Our objective in the negotiations was to build as big and as balanced a package as we could through that process. That is what we achieved in that period—as big and as balanced a deal as we could.

Senator COOK—I have got no doubt that you worked very hard, and I mean that sincerely because I have seen this sort of thing from the inside in the past. It takes a lot of effort; it is very arduous; concentration and so forth has to be spot on all the time. My question was not whether you were conscientious—I have no doubt about that. My question

was: did you have access to any information which would have told you what the value of this package was to the Australian economy when you closed the deal?

Mr Deady—I think you have to look at the process that we did engage in throughout the negotiations and that certainly involved the government in very close consultations with all stakeholders—Australian industry; state governments, as we have talked about; NGOs; and others—right through the process. The government was informed by all those consultations. It was informed by the objectives of the mandate that ministers considered through the process also. That is the knowledge that we took into those negotiations. That is the background and the information that informed us as we negotiated this final outcome with the United States.

Senator COOK—Let me put the question to you in another way, Mr Deady. Can you tell us now what the value of this package is to the Australian economy?

Mr Deady—The government has said very clearly that this is a very substantial outcome for Australia. It is a very big deal right across all sectors of the economy—

Senator COOK—Yes, I have heard them say that.

Mr Deady—with the biggest economy in the world. The minister also indicated just yesterday in the House that, as part of the processes, the government will be undertaking some further economic analysis of the deal to inform the public. That will take place through the joint standing committee processes and through the Senate inquiry that has been established. This information will again inform that decision. If you are looking for a number, there will be modelling as an element of this; there will be further economic analysis as part of that process. But the deal that was negotiated in Washington was a very substantial one across all sectors of the economy. That was the deal that was negotiated; it was the overall package that was considered by the government.

Senator COOK—I am not someone who worships at the font of economic modelling. I think there are a lot of obvious mistakes people can make by glibly citing extrapolations from economic models, but are you not able to tell me—I just want to be careful on this point—what the value of this package is by the government's economic modelling when you closed this deal?

Mr Deady—There was no modelling done when we closed the deal. What was certainly done was to look at the reality of the overall package right across, the board, starting with agriculture. You can look at the very concrete access improvements that we gained on beef and you can quantify those. Things like that were done. Dairy was involved. The agricultural sector was there with us right to the end of the process. These are the things that do inform the decision on the basis of the package that is developed and negotiated in these processes.

Senator COOK—I spoke to you at the National Press Club about three weeks ago when Minister Mark Vaile launched the services roundtable and made his first appearance in Australia in a media setting after the negotiations. In the Q&A after his presentation he was asked by a journalist whether he could guarantee that this package did not exacerbate the trade deficit we have with the United States. Are we in a position to say categorically whether it will or will not exacerbate the trade deficit?

Mr Deady—I am not able to answer that question because, as you know, the factors that influence the size of the trade deficit overall with the trade deficit with an individual country is the combination of a number of factors. What we have negotiated as part of this deal is a very significant improvement in access into the US market. It is certainly true that, in areas where Australian industry is particularly competitive in the US market, there are quantitative and other restrictions in agriculture, limiting our access to that market. We have certainly improved that as part of this deal. You can look at other areas that have got a lot of attention. An element of the US tariff structure that is different from that in Australia is that there are still many more tariff peaks in the United States. We are two open economies. There is a 25 per cent tariff on light commercial vehicles and a 35 per cent tariff on canned tuna. There are a number of tariffs above the five per cent level of our average tariff or maximum tariff—apart from TCF and PMV—that are in the six, eight, 10 and 12 per cent range, on metals, minerals and chemicals.

There is that range of industries in which we are competitive and efficient producers and in which we compete with Canada in many cases, or with developing countries that might have other preferential access arrangements with the United States; so we have levelled the playing field there. They are all the factors in terms of the access gains that we now can take advantage of. The dynamics, the growth of the Australian economy and the development of our trading relations with other countries are all factors that determine overall trade balances, including bilateral balances. That is my answer to that question.

Senator COOK—We are not in a position to know whether or not this deal will exacerbate the deficit?

Mr Deady—You are asking a question that I really cannot answer. I cannot answer that sitting here. It is really a static question, because you would have to make all sorts of assumptions. All other things being equal, you might be able to make such an answer; but you are looking at a dynamic process over a number of years.

Senator Hill—With respect, it is an unfair question, because even on the trade issues alone it depends on the extent to which the new opportunities are realised—and that is not just in the hands of government; it is primarily in the hands of the private sector.

Senator COOK—I know, but with respect, Minister, some of your colleagues on the frontbench bandy around figures as to what this deal is worth. They bandy them round fairly freely and emphatically; one just has to look at them and arch the eyebrow and say, ‘They just do not know what they are talking about.’

Senator Hill—It seems to me that you can bandy around the value of opportunities—for example, the figure that is put on the extent of the US procurement market. But whether our businesses are going to be good enough to win significant deals—even a small niche would be wonderful—is yet to be seen.

Senator COOK—I do not intend to press this any further tonight, but I can also say equally that, when you look at the agreement itself, it is possible to form an opinion as to whether or not it is more likely that the deficit will widen or narrow. That is a reasonable judgment that can be made. One cannot do it with absolute pinpoint certainty; but one can say, given the nature of it, whether that is likely to be the case.

CHAIR—Senator, the time is approaching a quarter past nine and the formal arrangement was that we would not go for much longer than two hours.

Senator COOK—There is no point in us spending too much time here, because we are going to participate in an inquiry.

Senator Hill—You have got at least two more inquiries.

Senator COOK—It would be nice if we could think of some way in which the two inquiries could save the department a lot of energy and perhaps deal with the department all together, rather than have the department go and speak to one inquiry and then another inquiry, and then have all this argy-bargy about whether the answers were different or the same or whatever. There must be some way of rationalising the process, but that is an expression of my opinion. My last question is this: is it at all clear at this point when any implementing legislation or regulations might be presented to the parliament?

Mr Deady—We are still talking to other agencies. There is an interagency process going on. In fact, we are meeting again later this week to talk about those implementation issues, but there is nothing more definite than that that I can say at this point.

Senator COOK—Do we have any idea at this point how many bills there may be?

Mr Deady—We have looked at this and I think, without being definitive again, perhaps five or six is the maximum we would be looking at, but those are the sorts of things agencies are still looking at.

Senator COOK—Thank you.

CHAIR—Thank you, Senator Cook. I thank the witnesses and the minister.

Committee adjourned at 9.14 p.m.