COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Reference: General Agreement on Trade in Services and Australia-United States Free Trade Agreement

TUESDAY, 22 JULY 2003

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Tuesday, 22 July 2003

Members: Senator Cook *(Chair)*, Senator Sandy Macdonald *(Deputy Chair)*, Senators Hogg, Johnston, Marshall and Ridgeway

Participating members: Senators Abetz, Boswell, Brandis, Brown, Carr, Chapman, Collins, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Knowles, Lees, Lightfoot, Mackay, Mason, McGauran, Murphy, Nettle, Payne, Santoro, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Cook, Hogg, Marshall, Nettle and Ridgeway

Terms of reference for the inquiry:

To inquire into and report on:

1. The relevant issues involved in the negotiation of the General Agreement on Trade in Services (GATS) in the Doha Development Round of the World Trade Organisation, including but not limited to:
   a) the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation
   b) Australia's goals and strategy for the negotiations, including the formulation of and response to requests, the transparency of the process and government accountability
   c) The GATS negotiations in the context of the 'development' objectives of the Doha Round
   d) The impact of the GATS on the provision of, and access to, public services provided by government, such as health, education and water
   e) The impact of the GATS on the ability of all levels of government to regulate services and own public assets
2. The issues for Australia in the negotiation of a Free Trade Agreement with the United States of America including but not limited to:
   a) the economic, regional, social, cultural, environmental and policy impact of such an agreement
   b) Australia's goals and strategy for negotiations including the formulation of our mandate, the transparency of the process and government accountability
   c) The impact on the Doha Development Round

WITNESSES

Committee met at 9.02 a.m.

CHAIR—I declare open this meeting of the Senate Foreign Affairs, Defence and Trade References Committee. Today the committee continues its public hearings into the General Agreement on Trade in Services and the proposed Australia-US free trade agreement. The terms of reference set by the Senate are available from the secretariat staff and copies have been placed near the entrance to this room. Today's hearing is open to the public. That can change if the committee decides to take any evidence in private.

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

[9.04 a.m.]

DURIE, Mr Rob, Executive Director, Australian Information Industry Association

CHAIR—Welcome. Thank you very much for your submission. Do you wish to address us before we proceed to questions?

Mr Durie—Our submission stands as is. To give you more time to pursue questions, I am happy to proceed straight into questioning.

CHAIR—You indicate that on this matter you have provided DFAT with submissions commenting on issues relevant to the proposed free trade agreement and also on the GATS negotiations. Do you think the level of consultation by DFAT has been adequate to the circumstances?

Mr Durie—Yes, I do. We have had opportunities at several different levels to consult and be consulted. We have participated in the regular industry forums that DFAT has organised; I think the most recent one was in the last two or three weeks. We have also had private consultations going back to November last year with DFAT and with DCITA; I think the most recent one of those was last week. Those consultations have covered general issues and specific issues such as intellectual property rights, government procurement and so on.

CHAIR—For the moment I will address the US FTA rather than the GATS issues. I think it is fair to say that FTA negotiations have started now in earnest, or more seriously, given the US International Trade Commission's report to the President of the USA. Instructions have now been able to be handed to the negotiators to formally table offers and bring those talks to the sharp end and perhaps a conclusion. Are you aware of what Australia is tabling in your sector as a proposal?

Mr Durie—Just as a point of clarification, there will not be any offerings made in tariffs and traditional trade barriers because Australia and the US already enjoy duty-free trade. That is true of trade in ICT goods right across the board and globally, apart from trade with developing countries where there will be phasing down, I think, over the next two or three years. As for the other areas that are of most interest to us, with requests, for example, we are taking forward our concern about movement of people and so on and exploring access to the US government market. On the offer side, that probably falls mostly into procurement and intellectual property rights. From the tenor of discussions we have had with DFAT, I understand that they are not making any offers so much at this point as waiting to see what the US requests. I think that will be revealed either in this round of negotiations or in the next.

CHAIR—Just to be clear on this, I am concerned at the moment only with trying to get a measure of the extent and depth of the consultations.

Mr Durie—Right. For example, in procurement, DFAT have briefed us on the content of the Chile and Singapore free trade agreements. We have looked at those in terms of their possible application in Australia, which is interesting. We have gone through that process in terms of

what we might have to do in order to comply with meeting those requirements and whether that would be an issue for our industry. We have looked at how it might affect state governments and so on. We have talked through with DFAT all of those sorts of issues. On IPR similarly we have talked about things dealing with circumvention and with terms of agreement and so on. We have not been asked for nor have we given formal positions on any of those points of detail; rather we have just explored them again on the basis that they are keeping their powder dry until they know what the US are asking in our specific case.

CHAIR—Is it fair to characterise the nature of the consultations as follows—and I am only at this moment focusing on the US-Australia free trade agreement: you have had an open go in putting all of your views, you have had feedback, there has been an iterative process between you and the department, they have given you a broad indication of their attitude and their disposition in terms of negotiating approach, but you have not been advised of the black letter of what will be put on the table?

Mr Durie—That is right, and I am taking it that we have not been advised of the black letter because, in our particular case, they are not putting anything on the table; they are waiting for the US to make a request.

CHAIR—Have they told you specifically that they are not putting anything on the table, or is the broad indication that they will not put anything on the table? I am trying to get the degree of particularity in the exchange of information.

Mr Durie—They have not put in writing or in words of one syllable what their negotiating tactic will be—and I am making an assumption.

CHAIR—Were you aware in advance of the offer that Australia tabled on GATS?

Mr Durie—Again a similar process was followed—that we consulted about the issues and then they tabled the document, which we saw afterwards.

CHAIR—The document, when you saw it, was pretty consistent with the advice that—

Mr Durie—We were very comfortable with it.

CHAIR—In your submission you provide detailed information, by sector and by region, of current ICT spending across the world. You also indicate the significance of the service sector to the Australian ICT industry, which is very useful background for our inquiry. You include figures which indicate that Australian exports to the US are worth $582 million and exports to the rest of the world are worth $5.3 to $5.4 billion. Outside of the US, what are some of Australia's other important markets for exports?

Mr Durie—The primary markets are the UK, the rest of Europe, South-East Asia, China and New Zealand. New Zealand is probably our largest single market, as it is for most Australian exports.

CHAIR—No doubt you are aware of the debate that is raging about the FTA. I would characterise that debate in these terms: whether it is better to pursue the multilateral approach or

whether a bilateral approach should be developed in the event that the multilateral approach does not produce results. Sometimes it is argued that a multilateral approach is more direct or faster and more likely to produce results whereas a multilateral approach takes longer and in the end has vaguer results; there is a debate about policy. In the context of your industry, have you considered what impact a bilateral agreement with the United States might have or might signal to our other ICT export markets that are not subject to bilateral negotiations—the Asian markets and the European markets?

Mr Durie—Again, because in the case of our industry the negotiations relate to nontariff barriers, there is perhaps a little less controversy on those sorts of points. From where we sit, it is hard to see how that would disadvantage any other country in the Australian market or give Australia an advantage in other markets. For example, we do not have rules of origin issues and so on. With federal government procurement at the moment there is no discrimination on a national or ownership basis. Support for local industry is through SME requirements, and they apply to all tenderers, whether foreign or local. It is probably less clear at the state government level whether this would give the US an advantage over our other trading partners, but it is far from clear at this point to what extent the FTA would go. It is our assessment at this point that it would not have any negative impact on our trade with other countries.

CHAIR—I will put the question around the other way. You are aware of the ASEAN plus 3 initiative of trying to create a trade grouping of the AFTA nations: Japan, China and the Republic of Korea. If this were to take hold and preference were given internally—and China and AFTA are in negotiations now about a bilateral free trade agreement—would you be worried about your ability to penetrate those markets?

Mr Durie—Again all of those countries are participants in the IT agreement, which commits them to either removing or having removed tariff barriers. That has been done already in the case of Japan; and I think there are only about another three years to go before Korea and the other countries have to remove all tariff barriers for all suppliers in our industry. So again the concept of a free trade agreement as it applies to IT in tariff terms does not follow.

CHAIR—What about with government preference in purchasing?

Mr Durie—It could apply there. But again we have already struck an agreement with Singapore, as have the US, and I do not see that being an issue.

Senator NETTLE—In your submission you talk about e-commerce, which I will deal with first. We have received a number of other submissions, particularly from people in the film industry, that talk about various definitions for e-commerce. Do you have a view about a definition for e-commerce? Just to point you in a certain direction, the Film Commission's submission talks about two different definitions for e-commerce. One of those definitions was used in the Singapore-Australia Free Trade Agreement and was much narrower than the commission's understanding of what was in the US-Chile Free Trade Agreement. What do you think would be an appropriate definition for e-commerce?

Mr Durie—In the sense that for ICT we are probably covered by the narrow and the broad, we have not really looked at that in any detail. But, if I am reading this correctly, the film

industry would be excluded from and would not be covered by the definition of e-commerce in the Singapore agreement.

Senator NETTLE—Your submission states that there was no consensus within your membership about any benefits to be gained from accessing global procurement markets in the US. Can you expand a little more on your industry's concerns in relation to whether or not benefits would be provided from opening up the government procurement market in the US?

Mr Durie—I suppose the industry's concerns relate to the competitiveness of and difficulty in accessing that market. Having something written in a free trade agreement is very different from being able to secure sales. I suppose there are two levels of concern. The first level goes to the capacity of the agreement up front to secure access. With the US government procurement market, there are lots of set asides and there is the Buy America Act and so on. So the first level of concern is whether the free trade agreement could deliver a level playing field in terms of the US government market.

The second level of concern is with the difficulty of accessing the market over there. It is competitive, it is expensive and it is a long way away and so on. People think, 'Hang on a minute; we have access to our government market and there's the potential that it might become more competitive as a result of this agreement; and it is beyond our dreams to be able to access the US government market because we are such a small company.' So this is a concern coming from very small companies.

Having said that, some very small companies are very successful selling to the US government, and so there is not consensus. Individual companies from all different aspects have different views about it. But it generally comes down to a questioning of our capacity as a country to, firstly, negotiate a favourable deal and, secondly, then deliver on it in terms of getting the access that the free trade agreement would provide.

Senator NETTLE—Coming at the issue of government procurement from another direction, Senator Cook talked to you about your understanding of the offers being put on the table by the Australian government. Would it be correct to say that your understanding of offers being put by the Australian government would not involve access for US companies to Australian government procurement processes?

Mr Durie—Yes, but it is my understanding also that they are expecting a request. Presumably that will be a request along the lines of the Chile Free Trade Agreement, which essentially encapsulates the provisions of the WTO Agreement on Government Procurement.

Senator NETTLE—How does your industry view such a request?

Mr Durie—We have not yet finalised our view on that. In fact, in the next two weeks there will be meetings between our government business forum, our legal forum and DFAT to start working through the details. As I said earlier, at the federal government level it is not a question of access to tenders; it is a question of applying the administrative requirements of the government procurement agreement to the tenders being open—and the length of time they are open, what the appeal arrangements are and so on. The provisions we have in those areas do not match up with the government procurement agreement. This is quite detailed. It concerns how

many days a company has to appeal a decision and, if a company does appeal a decision, whether that means that the procurement stops until the appeal is heard and so on. In the next couple of weeks we will be working through that level of detail with DFAT to determine our views.

Senator NETTLE—Would it be possible to put on notice our getting your industry's views on this?

Mr Durie—Yes. Our initial reaction is that probably the Australian procurement system—which, I have to say, we do not think is perfect—would not be improved by applying the provisions of the government procurement act. In effect, it institutionalises appeals against decisions. The whole situation in the US in relation to government procurement is much more litigious than it is here. There have been only one or two cases here over the last decade of people going to law, whereas it is a much more common occurrence in the US.

Senator NETTLE—In your submission you also talk about whether state governments would accept an agreement that removes the power to enforce industry development through procurement requirements. Does your industry have a view on the response of state governments in that particular area?

Mr Durie—Again it is at two levels. Firstly, we probably would prefer state and federal government provisions to be much more uniform. In Australia essentially we have created nine different government markets for IT, none of which are large enough to really drive a lot of business on a global scale. That is one concern we have. Also we are certainly concerned about the way state governments apply industry development requirements. Companies cannot invest in every marketplace. When a company has made a significant investment in Australia, it is our view that that should allow it access to all Australian government markets. On the local level I think there is some nervousness—for example, among small companies in WA—about what this might mean. The degree of that nervousness is probably equal to the degree of industry development requirement that that state government applies.

Senator MARSHALL—Why are they nervous?

Mr Durie—In some states, for example, they have preferences for WA companies.

Senator MARSHALL—And if those preferences are removed?

Mr Durie—If they are removed, their fear is that they might get less business. Our view is that they should not have preferences for WA. The Australian market is so small that to have state based preferences and ID requirements, in our view, is a negative for our industry. We would be much better off having a national approach to it, but it should be one which ensures that the smaller states get their fair share of the business and investment.

Senator MARSHALL—For the smaller companies?

Mr Durie—And for the smaller companies as well. With my understanding of the way the US system works and what they would be asking of us, it would not prevent governments from having set asides or programs for small business. It would purely exclude provisions based on

ownership or nationality. For example, at the federal government level, if you win a contract worth over $10 million—I think it is—in ICT, you have to provide a certain level of business from that contract to small business. That applies to any tenderer; it does not matter where they are from. That sort of arrangement should be able to be accommodated by whatever agreement we come to with the US. If the agreement is based on size of company, that is acceptable; if it is based on nationality, that is not.

Senator MARSHALL—In effect, that would be a barrier to US small companies because of the distance and the set-up costs et cetera.

Mr Durie—And I believe they have argued that. Our advice to the government is that they should be relatively hard nosed on that point. Australia is the most competitive ICT market in the world. There are more vendors here from overseas than in any other country, particularly US vendors. So I think it would be very hard for the US government to sustain an argument that their companies have been disadvantaged in the Australian market.

Senator NETTLE—You mention the Foreign Investment Review Board. Again I ask whether your industry has a view on the role that the Foreign Investment Review Board plays.

Mr Durie—Our industry is pretty much a global industry, and so we would be pretty relaxed about any changes in that area.

Senator NETTLE—In your submission you talk about telecommunications and your view that certain commercial arrangements should not be negotiated within an FTA. As I am not familiar with this area, could you please expand on that a little more?

Mr Durie—One of the issues that has been on the table in relation to telecommunications within APEC and in other negotiations is the payments between carriers for access to the US Internet backbone. There has been a push, including from the Australian government, to have regulations introduced—perhaps through ICAN, the ITU or the WTO—to apply rules to those negotiations. The view of the companies involved in those negotiations, such as Telstra, SingTel Optus and so on, is that they are perfectly capable of negotiating appropriate rates for access to the US market without the help of government regulation.

Senator MARSHALL—Between these industries in Australia and those in the US, is there a difference in the qualifications—degrees, educational background—of employees? Do people in the industry go to the market with a series of qualifications that will be mutually recognised in both countries?

Mr Durie—No. Australian degrees are readily recognised. There is no 'professional society' element to the industry. Also, in terms of skill sets, once you get out into the industry, the most important are probably those related to individual vendors. You might be a Microsoft or CISCO certified engineer or have qualified in SAP or Oracle Financial and those sorts of things, and they are global. We are not aware of that being an issue in any way.

Senator MARSHALL—In your submission you indicate that there is no technical difference between the standards that apply in the US and those that apply in Australia.

Mr Durie—There is one difference, but we do not anticipate it being the subject of discussion in the free trade agreement. In order to protect against spiking, we have a higher technical standard for the connection of devices to our telecommunications network. For example, there is a higher requirement for isolation of a computer and modem from the electrical power that that computer plugs into.

Senator MARSHALL—Is that applied by government licensing or regulation, or is it just an industry standard?

Mr Durie—It is an industry standard that then becomes a requirement. All products sold in that market have to be tested and must get government approval from the Australian Communications Authority, I think it is. In the end it is a government approval, but the standard itself is agreed by the industry.

Senator MARSHALL—Are you at all concerned that that standard might not meet the least trade restrictive test?

Mr Durie—All I can say is that it has not been raised in any discussions about the FTA that I have had.

Senator MARSHALL—You say that at the moment there are no tariff barriers and this is a globalised business already. You also indicate that you need to get uninhibited or unfettered access to the US market. If you are unable to get unfettered access to the US market, what gains, if any, would there still be?

Mr Durie—If we are not able to get things like better movement of people and access to the US government market, we will still improve our exports to the US market because more Australian companies are looking to export as they grow. We will still have some successes.

Senator MARSHALL—But that will not be as a result of a free trade agreement.

Mr Durie—No, it will not be as a result of the free trade agreement.

Senator HOGG—What are the net results of a free trade agreement? Are you saying that they are not really tangible?

Senator MARSHALL—That is, if you do not get unfettered access to the market.

Senator HOGG—If you do not get unfettered access, there is no tangible result for us.

Mr Durie—That is right, and that is why I made that response on government procurement. Our concern is that we will have some sort of bland words in there that will not actually deliver any outcome. But, if we were able to get an outcome, I think it would be a great boost for our industry—but it has to be of substance.

Senator MARSHALL—Are there any disadvantages through having a free trade agreement?

Mr Durie—No. In our industry the US is still a technological powerhouse; the more closely we are connected with it, the better. It is certainly important for us, for example, to attract US venture capital to this market. A positive feeling in the US might be felt towards Australia as a result of this free trade agreement, and I think that would bring some benefits. But the important things for us are, as I said, the movement of people and access to the procurement market.

Senator MARSHALL—Your submission focuses primarily on the business side of the industry you represent.

Mr Durie—Yes.

Senator MARSHALL—Has your organisation given any consideration to any potential social impacts of a free trade agreement?

Mr Durie—No. We have focused purely on the business side.

Senator MARSHALL—You do not have any comments or views on that?

Mr Durie—You will have to give me a hint.

Senator MARSHALL—There is a view that, effectively, trade rules stand above the ability of communities to determine their own social standards.

Mr Durie—Again it is hard to imagine how a free trade agreement would dramatically change the nature of the connection between our industry and the US, because it is already very strong. Because of the globalised nature of our industry, the free trade agreement would probably have a less dramatic impact on attitudes. Most people in the Australian ICT industry go to the US a couple of times a year. They are already engaged in some way with the US market, even if they are not exporting there, because the US is the technology leader. So already we have a very strong connection with them. But Australia would not be alone in this: the same would be said in Taiwan, India, Singapore and even Japan.

CHAIR—One of the advantages you identify is that the US has a vibrant venture capital market, Australia, less so. Is there a concern that a number of potential Australian start-ups in the IT field cannot attract interest with the smaller pool of venture capital in Australia? Might an FTA encourage the American venture capitalists to look more closely at the prospects in Australia and get off the ground some Australian companies, particularly software companies or those with new IT ideas?

Mr Durie—I certainly think there is some potential to leverage into more venture capital flows, but business propositions will still have to pass the age old tests of whether they are going to be successful and contend with the sentiment of the market towards our industry. The major factor at the moment is probably the sentiment of the market, which right now is somewhat negative.

CHAIR—But in the main these things are expected to be cyclical.

Mr Durie—Yes.

CHAIR—Given the bubble that we have just been through and the consequent collapse, over time the market would be expected to correct the backwash of negative sentiment and begin to get a sensible appreciation of investment opportunity in the IT field?

Mr Durie—Yes.

CHAIR—While that may still be ahead of us and looking at that prospect, do you think for that reason an FTA, if it causes American venture capital companies to focus on Australian opportunity, would be beneficial? Is our venture capital market just too thin or too risk averse, as a general rule, or unversed in what is good investment in new start-ups in the IT sector—which I suppose is another way of saying 'risk averse'—to provide the type of capital injections that an industry as creative as the Australian IT industry needs to get itself up and running more effectively?

Mr Durie—The venture capital market in Australia is still thin, but it is quite sophisticated. There are a number of very active venture capital companies, some of which focus purely on IT. The issue goes more to the access to funds for those venture capital funds: where are those funds getting their investment dollars? The broader the scope they have to source funds from the US, the better. Some changes have been made by the government in terms of capital gains tax treatment of limited partnerships and so on that would make it more attractive for US funds to put money into Australian venture capital funds. For Australia to be one of the first cabs off the rank in a free trade agreement will presumably raise the profile somewhat and will act as an encouragement to US funds to look in this direction. That would, we anticipate, lead to more venture capital funds in Australia, which would have the impact that you are talking about. So it would improve the opportunity or the chances of Australian start-ups raising capital.

CHAIR—The last time I looked closely at this, venture capital was really in carry on finance; we were quite strong in that. If you had made a start and established a product profile and were looking to develop further, you could attract the funds. But the first step, getting started at all, was the really tough step. There was a thin market in being able to recognise—this is my judgment—what were good technical ideas that might be commercialised. So the hardest step of all was the first step. Is that still the case or has our market, as you have said, got more sophisticated?

Mr Durie—It is still the case, and it is still the case in every market in the world. We probably have less money at that end pro rata than the US—not because of venture capital funds, but because at that point in the market it is more to do with individual investors, angels and so on. There are far more wealthy individuals in the US with the ability to provide funds to that end of the market. There is a government program here which is to encourage venture capital companies to work in smaller deals, which would benefit the sector you are talking of. But it is a perennial problem of venture capital that venture capital funds tend to migrate to larger and less risky deals. Even in the US they have had a program now for 40 years called a Small Business Investment Corporation program, which encourages funds to keep operating at the lowest possible level. In our view, we would need that sort of continuity of program here in that area. But again at the margin my view would be that, if we can pull off a good deal with the FTA, it will have a positive impact on the flow of venture capital funds here.

CHAIR—The economic argument is that investment follows demand. Given the open market between Australia and the US, why would a government-to-government agreement mean that the private sector, operating on a commercial basis, would take a different view of Australia?

Mr Durie—Part of assumptions of perfect markets is perfect information. My view is that the free trade agreement will, at the margin, encourage a few venture capitalists who have not looked in this direction to have a look and, when they do, they will see something very positive.

CHAIR—Just generally, is venture capital a big issue for the association?

Mr Durie—Generally, yes.

CHAIR—One of the big issues I think for the Australian economy—and this issue is beyond the scope of this inquiry but, as we are in the last couple of minutes of your evidence, I am able to indulge myself—is the running down of national savings; the level of national savings has dropped quite considerably. Unless we save, we do not have money to invest; as a consequence, we bring in foreign capital to invest in local development. Is the level of national savings an issue that your association directs its attention to?

Mr Durie—It is not in our sort of top five. So probably in your terms I would have to say that, no, it is not something we have paid a lot of attention to.

CHAIR—In developing a vibrant capital market, obviously the level of national savings is a factor.

Mr Durie—Absolutely.

CHAIR—Our thanks to you and your association, Mr Durie.

[9.44 a.m.]

CHALMERS, Mr Ian, Chief Executive, Australian Local Government Association

NEVES, Mr Richard, Director, Economics and Information and Communications Technology Policy, Australian Local Government Association

CHAIR—Welcome. We have received a submission from the Australian Local Government Association. We thank you very much for that and for the trouble taken to set out your concerns. We offer you the opportunity to speak briefly to it and then avail yourselves of questions from the committee, if you would. Mr Chalmers, please proceed.

Mr Chalmers—Let me say at the outset that I thank the committee for this opportunity to provide a local government perspective on some of the important issues before you. There are 717 local authorities across Australia, employing some 150,000 people. Local government in aggregate spend around $17 billion per annum in providing services to the communities for which they are responsible. Local governments are a significant player within the Australian economy. We collect about $6.8 billion in property rates. Local governments provide a broad range of services to local communities. For example, we operate ports and airports; protect the environment; regulate development; and maintain community infrastructure, including libraries, entertainment centres and sports facilities. We provide welfare and aged care services; maintain the bulk of Australia's road network; and play an important role in the nation's health through environmental health measures, regulatory functions and waste management.

Given this extensive array of responsibilities, there is concern within local government about the impact externally negotiated agreements may have on the regulatory and administrative powers of local authorities. Local government supports the active participation of the Commonwealth in negotiations aimed at liberalising international trading arrangements. That said, it is important that Australia's position is founded on solid community support. At the very least, this requirement calls for meaningful consultation with other spheres of government.

I am pleased to say that, in the case of the recent negotiations relating to the General Agreement on Trade in Services, the Commonwealth has consulted quite effectively with local government. In this regard I would like to place on record our appreciation for the time and effort of officials from the Department of Foreign Affairs and Trade in both briefing local government leaders and listening to their concerns. There was, however, less time and little opportunity to comment on the proposed free trade agreement with the United States, although we do accept that many of the issues that we raised with DFAT officials during the GATS consultation are similarly applicable.

I said a moment ago that local government support the principle of liberalised trade in services. This liberalisation should lead to improvements in market access for Australian services exporters and improvements in the level and quantum of services provided to Australian communities. These are important outcomes. However, underpinning these goals, we say that the basis for Australia's negotiation position should be maintenance of the public interest. I am quite sure members of the committee will agree with me when I say that public policy regarding the

regulation, funding and provision of essential services is the sole responsibility of democratically elected governments at the national, state and local levels.

In this regard, local government strongly oppose any supranational proposal that may have the potential to undermine or weaken public governance arrangements in Australia. Specifically, local government would oppose any proposal that would reduce the capacity of local authorities to make appropriate regulations on behalf of their communities. Further, we remain on guard against any proposals that may have the potential to lower the extent, nature or quality of services provided by local authorities to the communities for which they are responsible.

This leads me to an important point. We believe the Commonwealth must negotiate on the basis that the provision of a public subsidy by any sphere of government may not be interpreted as a barrier to trade. I would be happy to elaborate on that point later, if you wish. Local government would vigorously oppose any agreement that would allow such a definition in relation to public subsidies to be enforced by the WTO or any signatory to a bilateral agreement with Australia on free trade.

Local authorities in Queensland, Tasmania and rural New South Wales are responsible for the provision of water to local communities. The certain and stable provision of water is essential to the existence of any community. We do not believe that open market mechanisms exposing this service to global competition and absent purposeful local regulatory controls have the capacity to ensure equitable access to this most basic of human needs. Local government therefore opposed the inclusion of water services in the GATS round of negotiations, and we are pleased to note that water services were removed from GATS negotiations. However, we are unaware of the current status of water services in the context of the proposed FTA.

Local government has similar concerns in relation to the waste management sector. Here I refer to both waste water and solid waste treatment arrangements. ALGA has encountered some difficulty in meaningfully determining the potential impact trade liberalisation may have on local government responsibilities in the waste management sector. Consequently, we have asked the Commonwealth to exclude these and related services from the GATS negotiation, at least until this concern can be convincingly laid to rest.

Australia's environment faces many crucial challenges, particularly in regard to reversing environmental degradation. Local government, in conjunction with volunteers and local community groups, is at the forefront of Australia's much needed environmental repair work, often operating with little or no financial resources. In this regard, local government is concerned to ensure trade liberalisation proposals do not have the potential to weaken or circumvent local environmental protection by-laws or regulations, to impede the provision of local subsidies to volunteer and community groups or to limit the capacity of local governments to source environmental protection funding from other spheres of government.

In summary, local government supports Australia's participation in transparent, accountable, liberalised global markets. In fact, Australia's future economic security, our strength, may well depend on such participation. Nonetheless, the public interest must remain at the heart of the trade liberalisation process. The path to this goal must be one of cooperation, characterised by open consultative arrangements acceptable to all three spheres of government. That concludes my opening statement.

CHAIR—Is that the opening statement on behalf of the association or does Mr Neves propose to supplement your remarks?

Mr Chalmers—That is the statement on behalf of the association.

CHAIR—I asked the earlier witness about the type of consultation which they had engaged in with the Commonwealth. You took the opportunity in your remarks and in your submission to refer to the consultation you have engaged in with the department on GATS. You lauded them—and I note that. Consultations of a lesser level of excellence, if I can put it that way, that have been engaged in between your association and the department were on the US FTA—and I note those remarks as well. In the case of GATS, were you aware of what the Commonwealth was going to put on the table, ahead of them doing so, in the GATS agreement negotiations?

Mr Chalmers—Yes, we did have a sequence of senior official level meetings with the Department of Foreign Affairs and Trade officials who were careful to emphasise to us that the information they were sharing was to some extent confidential, and we respected that candour. In that regard, yes, we were reasonably confident that we had a good appreciation of the ambit of issues that were to be discussed in the last round. I do not think any great state secrets were revealed to local government leaders, but we did feel that we were operating in an environment of no surprises.

CHAIR—So I assume that, similar to other organisations, you did not actually see the black letter of the proposal ahead of it being tabled—I am talking about GATS now—but what you were advised was consistent with what was tabled?

Mr Chalmers—Yes, we received a verbal briefing.

CHAIR—And that was consistent with what was tabled?

Mr Chalmers—Yes, that is our understanding.

CHAIR—I am not being difficult here. I want to be precise, if I possibly can. Did the verbal briefing correspond to what was tabled?

Mr Neves—At our final briefing with the Commonwealth, they explained that they would be removing the water sector from their negotiations. That was the one that we were really keeping our eye on. As to our going through it point by point to compare what the DFAT officials had told us and what got presented at the WTO, we cannot say firmly that they both match. But we can say that the particular point that we were concerned about and that we kept an eye on—the water sector—was actually what got presented there.

CHAIR—I am mindful of how you presented that—that you have not gone through them point by point to make sure they match. But I do take it from what you are saying—and please correct this if I am wrong—that there were no unfair surprises and that broadly what they told you was what was put down on the table.

Mr Neves—Yes.

Mr Chalmers—That is correct.

CHAIR—I do not want to intrude into areas of negotiating confidentiality, because I do recognise that in order to negotiate intelligently the Commonwealth require a degree of confidentiality, if in consultations they are going to show you their cards and describe to you how they are going to play those cards in a negotiating context. Firstly, do you know where the bottom line is? If so, are you comfortable with that bottom line as an association? If the pressure goes on and the Commonwealth want to cross it, will they come back to you and consult with you about those sorts of issues?

Mr Chalmers—In relation to the GATS negotiation, yes, we were particularly concerned to emphasise to—

CHAIR—That is yes to all three questions, is it?

Mr Chalmers—Yes, indeed. We were particularly concerned to emphasise to the Commonwealth our bottom line, which was protecting the regulatory powers in relation to the provision of essential community services. The Commonwealth was emphatic in its reassurance of both local government officials and elected leaders that those regulatory powers would be excluded from negotiation. We felt that we could take some measure of confidence from the emphatic nature of that reassurance. We believe that those undertakings have been held to.

CHAIR—My question is looking at it prospectively, at the outcome. These are negotiations that are on foot, that are dynamic and that have some time yet to run before they conclude. I guess the first thing about negotiating strategies is the same as the first thing about a war strategy: as soon as you engage a strategy, it vanishes and you have to improvise to some extent. Are you confident that, if the Commonwealth were under pressure—I am only on GATS at the moment—to concede some of the things that they have indicated to you they do not wish to concede, they would come back to you, consult with you about that and listen to your concerns?

Mr Chalmers—It is important to note that local government, ALGA, is not a lobby group. We are the representatives in Canberra of another sphere of government in this country. We participate as full members of the Council of Australian Governments and 11 other ministerial councils. While there is a dynamic tension between the three spheres of government in this country, we are one nation—if you will forgive me using that term—

CHAIR—I understand it is not in capital letters.

Mr Chalmers—Indeed. The collective commitment of Australian governments to advance the wellbeing of all Australians relies to a considerable degree on trust and confidence. I cannot be 100 per cent emphatic in a statement here that all that we desire and all that we understand as a consequence of our discussions with the Commonwealth will come to pass, but to the extent that a sphere of government can rely on the undertakings given to it by another sphere of government we believe that the Commonwealth will at the very least, if it runs into a roadblock directly relevant to the issues of concern to local government, come back and engage us in consultations again before a bottom line is agreed.

CHAIR—I am not suggesting bad faith on anyone's behalf. I just want to establish for the record what the nature of the strength of the understandings you have from the Commonwealth might be. Were they to be placed under pressure so that they felt a need to reconsider some of the commitments they have given you do you have an automatic comeback to then be reinvolved or not? I think you have answered that question.

Mr Chalmers—We do not have an intergovernmental agreement, but we do have considerable goodwill between senior officials in both spheres of government.

CHAIR—I assume from what you are saying that you are not concerned about the nature of that understanding; you are confident about it?

Mr Chalmers—That is an appropriate conclusion.

CHAIR—Just going to the FTA for a moment—and I need to surrender the call to some of my colleagues; I do not want to hog the microphone—were you consulted fully on the Australia-Singapore Free Trade Agreement?

Mr Chalmers—No, not at all.

CHAIR—Are you aware of the investor state clause in the Australia-Singapore Free Trade Agreement?

Mr Chalmers—No.

CHAIR—At this stage I am waiting for an answer from the minister to a question on notice about whether the minister foreshadowed that Australia would seek an investor state clause in the Singapore FTA. I have not got that answer so I cannot say categorically that he actually announced that that was part of Australia's negotiating mandate, although equally I cannot find in any of the references available to me on the record what Australia's negotiating mandate was with Singapore—that specifically we mentioned an investor state clause. I still await the minister's reply.

An investor state clause has its origin in NAFTA. It is a clause that enables private sector interests in one country to sue in their country governments—provincial governments or local governments—in the corresponding country if the view of that private sector interest is that one of those levels of government has broken the agreement. In NAFTA, that clause has been made use of on a number of occasions against Canadian governments.

We asked for that clause to be inserted in the Singapore agreement. The Singaporeans did not seek it. As far as I can tell—but I will wait for the minister's reply—we did not say that we were going to seek it, but part way through the negotiations we asked for it and the Singaporeans agreed to it and it is now part of the signed off agreement between our two countries. I have to say the only basis I can see for us raising that with Singapore is as a precedent for the Australia-US free trade agreement, where it is very likely that the Americans will seek such a clause, consistent with what they have in NAFTA and with some of the other bilateral free trade agreements.

Perhaps while I am at it I should place on the record that, while the treaties committee of this parliament has looked at the Singapore agreement and given it a tick, I disagree with the findings of the treaties committee on the subject of the investor state clause. My concern is one of process at this point and nothing more than process. The Commonwealth has the power under the Constitution to conclude these agreements. The parliament has the power to validate any legislation arising from them. If an investor state clause were to be included in the Australia-US free trade agreement based on whatever precedent—the Singapore one, the NAFTA one or whatever—it would have the effect of opening up local government to legal action by private interests if they considered local government broke any of the agreements. That is different from trade agreements under the WTO, in which action is government to government, not private sector to government. I do not want to continue this discussion any further but, in your discussions with the department, has the issue of the investor state clause arisen?

Mr Chalmers—The first thing I will say is that I look forward to the minister's answer to your question on notice.

CHAIR—I am not aware either that he has said it is part of our negotiating mandate that we are seeking such a clause with the Americans, although any keen observer of the relationship would imagine the Americans might come forward with a claim.

Mr Chalmers—That is clearly an issue that would be of very great concern to local government. In the context of negotiations and consultations with officials of the Department of Foreign Affairs and Trade, whilst the terminology 'investor state clause' was not used, there was a very clear understanding that local government had great concern about the possibility of an outcome such as the one that would be the effect of an investor state clause, although those discussions to which I refer were specifically in relation to GATS. As you have just said, GATS is a WTO auspiced arrangement, which is government to government. In the event that an investor state clause is proposed for the FTA with the United States such an intention would be of very great concern to local government. Certainly, since you have raised this issue for us today, I will be speaking further with officials of Foreign Affairs and Trade to ascertain the Commonwealth's position.

CHAIR—I should be fair to the department. The department consulted with the states in the Singapore agreement on the investor state clause. My concern was and remains that the states were not asked to agree to being exposed to potential litigation. Given that embracing such a clause between developed countries is a significant change in Australian trade policy—we have them with developing countries where we cannot guarantee the protection of our own investments, but we do not have them between developed countries—the states should have been briefed about the existence and the jurisprudence of such clauses elsewhere and asked to provide an affirmative yes or a no, to indicate whether they agree to being bound or not. I do not have a terribly old-world view of the Australian Constitution and the rights of the states, but I am concerned that the states ought to have been asked whether they agree to being exposed to potential litigation at this point. I note your answer.

Senator MARSHALL—In paragraph 24 you state:

Foreign companies disputing local regulations (made in support of community interests) on the basis that they could constitute a barrier to trade may expose local government to considerable and burdensome dispute processes.

In that respect, just so it is clear in my mind, you were talking about the GATS process, which was really about supporting government to government disputes, and that was not taking into consideration the potential for foreign companies to prosecute local government directly and seek compensation?

Mr Chalmers—This submission was made to you in respect of your broader terms of reference, which relate to both the GATS negotiations and the proposal for a free trade agreement, so you were right to identify that in that paragraph of our submission we go to the concern that Senator Cook has just raised. I think it is right for me to say that this reflects a substantive issue. It is also right to say that officials from the Commonwealth were quite explicit in their advice to us that the issue does not arise in GATS. They were silent on whether or not the issue might arise under a free trade agreement with the United States.

Senator MARSHALL—Given that the Commonwealth government by entering into these arrangements binds local government as well and exposes you to this form of litigation from transnational companies, would it be your view that you should in fact consent to the making of such arrangements that bind you legally? I understand the difficulty of getting consent from 717 individual local governments, but in terms of local government representatives on their behalf, would that be appropriate?

Mr Chalmers—You are right that the process of individual consent from every local authority in any area of intergovernmental relationships is generally not practical. That is why my organisation exists. We would be of the view that the effective processes of intergovernmental relations in this country require full consultation, and where agreements are entered into which affect more than one sphere of government then of course it is appropriate to seek and gain consent. This issue is one that I am being careful not to overstate, but it is an issue that has potential implications for local government which may well have particularly negative outcomes. We would be looking for the Commonwealth to consult specifically with us on the possibility of the inclusion of an investor state clause.

Senator MARSHALL—You may wish to make a supplementary submission in that respect prior to the end of this inquiry. As Senator Cook indicated in terms of the Singapore Free Trade Agreement, I am a member of the treaties committee and I put in a dissenting report on the basis that state governments and local governments have not had an opportunity in my view to express whether or not they consent to being bound and exposed to transnational litigation. I think it is an issue, and you may want to give some consideration to how it would be practical for governments to get the consent from local government. I would certainly appreciate a view on that.

The other thing I would like to come to quickly is that DFAT has argued in its discussion paper that services delivered by government—say, health and education—are delivered for a range of social policy reasons which are unique and that this means that the services differ from privately delivered services, even in the same sector. Therefore, it is argued that these types of government services will not be caught by GATS, because they are not being delivered in competition with private service providers. The same would go for a whole range of issues that local government provide. What is your response to that argument? I get the impression from your submission that you do not believe that necessarily to be the case.

Mr Chalmers—It is certainly correct that many community services are provided by governments because they are unlikely to be able to be provided on a commercially viable basis by private sector entities. Indeed, it is important to protect the nature of service delivery to communities such that commercial or profit motives do not shape the way in which services are delivered or constrain the quantum or quality of service delivery. In the main the services that we are talking about are services that are not market contestable, and we would be of the view that that is likely to remain the case. Nevertheless, we are not blessed with infinite foresight and we do want to make sure that the structure of agreements that are made on a transnational basis do not open the possibility at some stage in the future that, for commercial reasons, the freedom of local authorities to make regulations, to set by-laws and to subsidise the delivery of services in the community interest cannot be constrained.

Senator MARSHALL—Are you concerned that when you do set by-laws and make regulations they may not pass the least trade restrictive test that is applied by both GATS and free trade agreements? What is the basis for your concern?

Mr Chalmers—Our concern is that that test does not arise and that the powers of local government to make such regulations and by-laws and, where appropriate, to provide subsidies to local community groups should be excised from the agreement. So there will not be any question as to whether or not actions of local governments transgress some part of the agreement.

Senator MARSHALL—Have you had those assurances from the government that they will excise those provisions?

Mr Chalmers—In relation to GATS, yes.

Senator MARSHALL—Does that apply to all local government services or just water, which you indicated earlier was your main concern?

Mr Chalmers—Explicitly water, but our understanding in our discussions with Commonwealth officials is that at a more general level a capacity for local government to make regulations and set by-laws would not be threatened by the outcome of the GATS agreements.

Senator MARSHALL—I personally will be very relieved if that is the case.

Mr Chalmers—No doubt you will be as vigilant as us.

Senator MARSHALL—Thank you.

Senator RIDGEWAY—As a follow on to the last question and in relation to your faith in how the system might work once it is instituted, given the role of local government in many of the things that you described in the beginning but particularly non-agricultural, open space, recreational areas and so on, do you have any concerns that, on the one hand, the Commonwealth government may give assurances that local governments will continue to exercise their obligations as far as regulations are concerned, but then what happens in relation to dispute mechanisms under the free trade agreement? For example, if you are talking about chemicals being used in pest and weed control, chemical companies in the US or elsewhere

might be able to take action against any local government or a group of local governments if they decide to introduce stricter controls on the use of certain types of chemicals in child-care centre playgrounds in the interests of public health and safety.

Mr Chalmers—Firstly, I think it would be improper to describe my confidence in our consultations with the Commonwealth to be faith based, but we have had a series of candid and robust exchanges which do give us confidence that our concerns are noted and accepted by the Commonwealth. In relation to the specific example that you just cited, such a legal action on behalf of a foreign chemical company against any restrictions local government may impose on the use of certain chemicals would only be possible under the existence of an investor state clause. I previously indicated to Senator Cook that we would be most concerned to see the existence of such a clause, and I will be speaking with the Commonwealth about whether or not such a clause might be a possibility very soon.

Senator RIDGEWAY—In your opening statement you refer to what you would define as 'the public interest'. What do you mean by that in terms of the Local Government Association's definition of the public interest or the national interest?

Mr Chalmers—In talking about the public interest, we are really talking about two major themes. One is the provision by government of public benefits to the community; the second is the demonstrable operation of transparent public governance arrangements. With 'public benefit' it is the capacity of local government to provide services and to make regulations and by-laws which ensure the community good. With 'public governance' it is the processes of government which are open, consultative, transparent and accountable.

Senator NETTLE—We have talked about the question of subsidies with the provision and regulation of public services. I have also read the comments that you refer to from DFAT in relation to public services and GATS. Part of my concern comes from statements made by the WTO about how those issues are interpreted rather than from statements made by DFAT in particular. I will read to you a statement from the WTO secretariat that appears in another of the submissions to this inquiry. It relates to the issue of public hospitals and private hospitals and so it is not specific, but perhaps we can look at it in the context of public services generally. It reads:

> The co-existence of private and public hospitals may raise questions, however, concerning their competitive relationship and the applicability of the GATS: in particular, can public hospitals nevertheless be deemed to fall under Article 1.3?…The hospital sector in many countries…is made up of government and privately owned entities which both operate on a commercial basis, charging the patient or his insurance for the treatment provided…It seems unrealistic in such cases to argue for continued application of Article 1.3 and/or maintain that no competitive relationship exists between the two groups of suppliers or services. In scheduled sectors, this suggests that subsidies and any similar economic benefits conferred on one group would be subject to the national treatment obligation under Article XVII ...

I accept what you have said in relation to the assurances that you have received from DFAT. How do you fit those assurances with these comments from the WTO secretariat in relation to how it perceives the issues of subsidies, particularly in sectors where both public and private provision currently exists?

Mr Chalmers—I am a little hesitant to be definitive in interpreting a comment that has just been read to me. My familiarity with the hospital sector is perhaps a little better than some, but it is now a bit dated. To the best of my knowledge, in this country no subsidies are provided to private hospitals by the Commonwealth. Users of private hospitals may be insured, but it is not a necessity. Subsidies are provided to individuals who hold private health insurance in this country, but there is no subsidy by the Commonwealth or, indeed, by state governments to private hospitals. So the pertinence of the clause, which you have just read out, to the Australian health care system is not clear to me. Also, I do not see a specific parallel to any situation I can envisage in local government where we might contemplate subsidising—or, indeed, we may be subsidising—community and volunteer groups to assist them in engaging in environmental remediation works that might, in a commercial sense, disadvantage an enterprise seeking to provide those services as an alternative to volunteer activity.

I cannot draw any parallels that might help you relate that WTO comment to an Australian situation; nevertheless, I sense that you are sensitive to our concern. We want to make sure that the provision of subsidies to ensure that a service can be provided—albeit if it is only possible on a largely voluntary basis—cannot be seen to contravene agreements that Australia has made with other nations.

Senator NETTLE—Looking for examples that relate that comment to the local government sector, perhaps it could be explained in the context of the provision of water services. I am not aware of the way in which those services are provided, but are there any instances where it could relate in that context?

Mr Neves—The provision of water services has moved quite a way in terms of pricing and it has been driven particularly by national competition policy. Whereas previously the use of water was paid for via a fixed fee, with some users basically cross-subsidising others, we have now seen a movement from that particular pricing regime to one where people pay a small up-front fee—it is usually called a two-price tariff—for access to water and they then pay on consumption. So that issue of a subsidy being provided to individuals cross-subsidising each other probably is not as strong as it was a number of years ago.

However, in relation to issues of equity, I would imagine that through some sort of concession a lot of councils in Tasmania, rural New South Wales and Queensland that do provide water would subsidise individuals who basically cannot afford the full price. Even though the provision of water services is a fairly, for want of a better term, 'monopolistic' industry, it is not like electricity—although I guess it could be—where there is a grid. With the provision of water you can get an entrant coming in and saying, 'We can provide these services more cheaply and a lot more efficiently, and our competitors are basically subsidised because they are providing water on the cheap due to equity issues which bring governments into the equation.' That is perhaps a concern, but I do not think it is really that strong a concern.

CHAIR—As there are no further questions, we thank you very much.

Proceedings suspended from 10.28 a.m. to 10.50 a.m.

GARNAUT, Professor Ross Gregory (Private capacity)

CHAIR—Welcome. Thank you very much for the submission you have lodged with the committee. If you wish to, you may speak to your submission and then we will proceed to questions.

Prof. Garnaut—Thank you for inviting me to make a presentation to the committee. I have provided as a submission two papers: the first is called 'Australian security and free trade with America', which earlier this year was presented to a conference of business economists in Sydney; the second is called 'Requiem for Uldorama: a plain but useful life', which a few months ago was presented to a CEDA conference in Adelaide. I also draw the committee's attention to a couple of other pieces: an earlier paper—earlier than the first two—that I presented in 2001 to a meeting of the Australian Institute of International Affairs and which was subsequently published in the institute's journal, the *Australian Journal of International Affairs*; and a joint piece by Professor Jagdish Bhagwati and me that last Friday week was printed in the *Australian* newspaper, and I have given the secretariat a copy of that.

CHAIR—Is that this piece 'Wrong way, go back'?

Prof. Garnaut—Yes. I think Jagdish Bhagwati is, without question, the most eminent American trade economist and professor of economics at Columbia University in New York. He is also economic adviser to the Director-General of GATT through the Uruguay Round negotiations. That piece represents our joint view. In those papers, including the two you have before you, there is quite a lot of material. I will spend two minutes making some main points, and I am speaking here from a page and a half of prepared material that I hope you all have copies of.

CHAIR—We have distributed those remarks.

Prof. Garnaut—Thank you. These papers of mine make a case that a free trade agreement with the United States of the kind currently under negotiation is likely to damage Australian economic interests and will possibly damage Australian security interests through the tensions that it may introduce into relations with the United States. I say that from the perspective of someone who has spent the last 35 years arguing assiduously for and carrying a lot of the debate on free trade in Australia and as a long time supporter of the American alliance.

The economic case has the following elements. The negotiation of such an agreement at this time would accelerate the weakening of the multilateral trading system that is currently in process by adding to momentum for development of discriminatory free trade areas and by diverting focus from multilateral trade negotiations. I first made that point early in 2001 at a meeting of the Institute of International Affairs. It might have been thought of as almost theoretical then, but now you can see the consequences.

There has been a proliferation of discussion about discriminatory free trade areas around the world, most importantly in our region over the last two years. The Doha Round of multilateral trade negotiations, which was launched with great promise in November 2001, has run into the

sand. One of the reasons for it lacking oxygen is that the energy of major players—including Australia, the United States and Japan—has been focused on small-group and bilateral free trade agreements rather than multilateral negotiations. To get a pretty good feel for the nature of the problem, one only has to compare the effort that the Australian government put into organising support amongst Western Pacific countries during the Uruguay Round with the focus of attention on trade policy discussion at the moment.

The second element of the economic case is that the negotiation of such an agreement would weaken Australian trading performance in its most important export region, East Asia, including by encouraging the emergence of free trade areas in East Asia that discriminate against Australia. This would be of great important in agriculture but also in other sectors. Again this might have seemed a fairly theoretical point when I first made it a couple of years ago, but it is now a deeply practical point. Australia's main export markets for everything in total but particularly in agriculture, where world markets are so difficult, are in East Asia. Trade discrimination within East Asia with Australia being excluded—for example, giving Thai and Philippine preferences in the Chinese, Korean and Japanese markets—would be devastating for Australia, and discussions are now under way to do precisely those things. Any potential gains in the United States market from the bilateral agreement would, on analysis, be trivial compared with the potential losses of our main markets and main growth markets in East Asia. I am not saying that we would lose all of those markets, but we now are at risk of discriminatory arrangements being developed in East Asia that will exclude us, which will be very damaging.

Senator MARSHALL—Is that under way already?

Prof. Garnaut—Yes.

Senator MARSHALL—Will that happen, regardless of whether we proceed now with a free trade agreement with the US?

Prof. Garnaut—No, I do not think so. I think our trade policy changes and America's trade policy changes—and these two things are closely interrelated—are an important causal element in what has happened to East Asian trade policy. It has really gained momentum in the last two years—and especially in the last six months, where even hold-outs for multilateral free trade like Hong Kong and Malaysia have now given in to the discriminatory free trade route and are negotiating bilateral arrangements; lots of discussions are under way. So that is what has happened. Not much has actually happened yet in the way of completed agreements. So, while the position has deteriorated a lot, there is still some hope that, if Australia and the United States recommit themselves to the priority of the multilateral system and cease supporting discriminatory free trade arrangements, at least some major East Asian players could be brought back into the game and momentum could be developed in a different direction.

I have a little bit of hope of that occurring from private discussions I had a couple of weeks ago with the lead Chinese negotiator through their entry into the World Trade Organisation, Long Yong-tu. He accepts that the politics of the multilateral system have gone bad and that Chinese leaders—in response to changes in direction in Japan, Australia and the United States—now accept that, if everyone goes bilateral, they need to too, and they have initiated discussions with the ASEAN countries to that effect. But Long Yong-tu thinks there is still the understanding

that China's prime interests lie in multilateral trade and that there is some hope of rescuing the commitment as part of an international refocusing on multilateral trade.

Senator HOGG—Is multilateralism dead?

Prof. Garnaut—No, but it is in crisis. Multilateralism is crucial for a relatively small country in the international system, like Australia. It is absolutely crucial for agriculture trade, where the only constraints on subsidies and complete corruption of world markets are multilateral constraints.

Senator HOGG—When you speak of multilateralism, what vehicle or vehicles do you speak of in particular? Do you have any in mind?

Prof. Garnaut—I speak first of all of an acceptance of the idea that the first principle of international trade should be the 'most favoured nation' principle—that you treat other countries on a comparable basis. If you give a concession to one country, you give it to all countries. This was the great principle that Roosevelt and his Secretary of State, Cordell Hull, embodied in the international system following Bretton Woods in 1944. At the time there was quite a debate between Roosevelt and Hull on the one hand and Churchill and Keynes on the other. The Americans won that debate. The British were trying to keep a role for empire preference and keep freedom to expand a role for empire preference. The Americans won that debate on the grounds that the breakdown of the world trading system into discriminatory areas in the 1930s had exacerbated the Great Depression and also been a cause of war. The Secretary of State and the President of the United States managed to carry that argument in the international system.

The most favoured nation principle became the first article of the GATT. A shared understanding that trade relations should be on a most favoured nation basis is really the first vehicle for carrying forward this idea. Institutionally, the idea is embodied in article I of the World Trade Organisation, the most favoured nation clause, which is based on the old GATT. Of course the GATT included article XXIV, which was to provide an exception to the most favoured nation clause. That exception was introduced to keep open the possibility of developments in Europe that were desirable for political reasons—the developments that became the European Union. But the founding fathers—I think they were all fathers, not mothers—of the GATT and the WTO never envisaged that article XXIV would become the main game. It was always seen as an exception in special circumstances, but over recent years it has become the game that is getting all the energy.

The third element of the economic case that I have been making is that the rules of origin associated with this and other free trade agreements would raise transactions costs in international trade, increase business costs and, in the process, lower productivity. Professor Jagdish Bhagwati and I made that case in our article in the *Australian* on 11 July—last Friday week. To illustrate how that works, at the moment an Australian manufacturer in Brisbane or Melbourne can take a decision on where to source inputs on the basis of what is the best quality and what is the lowest price. In the free trade agreement, with the complicated terms of origin that America have been insisting on in their other free trade agreements and which we hear they will be insisting on in the free trade agreement with us, a manufacturer in Brisbane or Melbourne exporting to the United States can only get duty-free access in the United States if no more than

a certain percentage of value added comes from anywhere other than the United States or Australia.

At the moment a manufacturer in Brisbane or Melbourne would as a matter of course draw quite a lot of inputs from Asia and New Zealand, especially since the CER in New Zealand. Those decisions have been taken on purely commercial grounds. Now a manufacturer will have to take care that the amount of New Zealand inputs into a product—the amount of parts coming from New Zealand, China or Indonesia—does not exceed a certain amount or the product will not qualify for free trade in the United States. When that type of bureaucratic intervention is proliferated in a whole lot of free trade agreements, life becomes a nightmare for a real businessperson seeking to minimise costs. Of course it is a delight for a bureaucrat—it gets the bureaucrat back into the boardroom—and heaven for the lobbyist, who will negotiate special arrangements case by case.

In the United States' free trade agreements with other countries they actually have different rules of origin for different products. The percentage of inputs from different countries varies according to the product, and that is the result of different lobbies having differing strengths. In the case of the powerful textile lobby, in the free trade agreement between the US and Mexico the rules of origin provide that you cannot get duty-free access to the United States for a garment unless the garment is made from cloth woven in the United States or Mexico and made out of materials produced in the United States or Mexico. The rules of origin increase transaction costs and reduce business productivity. Of course that goes in exactly the opposite direction to the developments associated with Australia's movement towards free trade in the past 20 years.

The fourth element of the economic case is that the acceptance that agricultural subsidies will be outside a bilateral free trade agreement—as is likely—would be WTO-minus, a development that would corrode the position of free trade agricultural exporters in the international system and negate any benefits from increased market access to the United States. In the last WTO multilateral negotiation, the Uruguay Round, at last after decades of trying by Australia, with help from the Cairns Group, a number of Asian countries and some Latin American and Eastern European countries and with support from the United States and Canada, established that there had to be some constraints on subsidies—that free trade at the borders meant nothing if you could distort incentives for production by subsidising your own production. There was no point in having market access if one of the countries could subsidise its producers. That was a radical development in the Uruguay Round. The Uruguay Round did not go very far. It was always understood that the principle was established then and would be given sharper and sharper teeth in subsequent rounds. So the question of reducing agricultural subsidies is part of the in-built agenda of the Doha Round of trade negotiations.

In some discussions of the Australia-US FTA it has been said that subsidies will not be included. That is a big step back from the principles of trade agreements that have already been established in the WTO. On the issue in the international trading system that is more important for Australia than any other, this would be a WTO-minus agreement if it did not control subsidies and it would be a dreadful precedent for other negotiations. I have heard from continental European and Japanese trade policy people that they are delighted by what they hear about the US-Australia FTA because it will not lead to constraints on subsidies. They say that is how the world should be—agriculture is different, everyone should be free to subsidise agriculture and that is a good precedent. I say that is a disastrous precedent for the world system,

for Australia and for development in developing countries, because the developing countries are victims of agricultural subsidies.

Senator MARSHALL—That is such an important point. Are there subsidies applying in the US to areas outside agriculture?

Prof. Garnaut—Yes, there are some, but they are very small compared with the agricultural subsidies. Some of the subsidies for export credit for large-scale manufacturing have some effect, but they are relatively small. They used to be bigger than they are now; the US Export-Import Bank used to be much more active and subsidise more heavily than it does now. The big subsidies are in agriculture, and they are huge. They are worse now than ever with the new Farm Bill. Even if we had completely free access for sugar, beef and dairy in the United States—and I am afraid we cannot take that for granted—a small tweaking of the subsidy system could negate the effect of that on the international system. So if there are no constraints on subsidies not only does that negate gains in the United States but also that takes away what I think looked like realistic prospects of getting real constraints on subsidies internationally through the multilateral system.

My fifth point is that, regrettably, the processes of policy making with this free trade agreement so far have been very damaging to trade policy processes. As I said, I have been involved in trade policy discussion in Australia for over 30 years and, over that period, have worked closely with people on both sides of politics who have been seeking trade liberalisation. Because I was Bob Hawke's economics adviser, I suppose in the public mind I am associated more closely with that position than with any other. But you should read John Hyde's story of the dries; I have had a lot of contact with people on all sides of Australian politics who wanted open trade and higher productivity in the Australian economy.

The big breakthroughs in Australia came as a result of open, transparent and independent analysis of trade policy options. The old protectionism in Australia, around the decisions of the old Tariff Board through the twenties, thirties, forties, fifties and sixties, reached its most elaborate heights during the time that John McEwen was trade minister. It was all based on closed deals between protected interests and government. In Australia we were able to turn things around and become a more open and productive economy because we opened up the process. It took a long time. It really began back in the sixties, with Rattigan as head of the Tariff Board, and then continued. But the idea took hold that trade policy was no longer to be formulated through special deals between politicians and beneficiaries of protection and the principle was established that independent, transparent analysis would be the basis of trade policy making.

So far that is not the way this discussion has gone. From what I hear, no real economic analysis was done even in the closed circles of the Public Service prior to the initial commitment to seek a free trade agreement with the United States in December 2000. Some ex post facto economic work was done but by consultancies under quite specific and narrow terms of reference, which did not ask the question, 'Would this free trade agreement be good for Australian economic welfare?' Those terms of reference specified a lot of assumptions and then asked, 'What are the implications of these assumptions?' That negates transparent, independent analysis, which was the key to Australia becoming a more open, productive economy in the last decades of the 20th century.

Bill Carmichael is the justly eminent and respected former chairman of the Tariff Board or Productivity Commission—I think it was called the Industries Assistance Commission in his day. For a long time when Rattigan was chairman, Bill was Chief Executive of the Tariff Board. He and I were so concerned about this aspect that a few months ago we wrote to the Prime Minister expressing our concerns. The Prime Minister gave a thoughtful reply in which he agreed that transparent, independent analysis and widespread public understanding of what was going on was essential to good trade policy. Our letter to the Prime Minister and the Prime Minister's reply are appended to the paper called 'Requiem for Uldorama: a plain but useful life'. The points I make about the problems of these discussions for the Australian trade policy making process are brought out in that exchange of letters with the Prime Minister. Mr Chairman, I will leave my remarks there.

CHAIR—Going back to first principles, one of your points is that the proliferation of free trade agreements in the world is undermining momentum for the current round and undermining the multilateral trading system itself. I note that that view formed a cover story for the *Economist* magazine last year and it has been frequently written of as well by the trade correspondent for the *Financial Times*, Guy de Jonquières. As far as I can see, it is a general view by commentators on the global trade situation.

I want to go back to Bretton Woods and to first principles. It seems to me that at Bretton Woods after the Second World War the developed nations of the world effectively said to themselves that, in economic terms, the Second World War was fought over trade issues—certainly the First World War was—and that dividing the world up into trade zones or regions creates conflict between those regions and that removing those barriers, opening up the globe to unfettered trade, has a virtuous advantage of ending conflict and, by the effectiveness of comparative advantage, enables countries to prosper. So at Bretton Woods, as I read it, they said in 1946, 'We'll set up a multilateral trading system for the purposes of bringing to an end global conflict that in at least two world wars was generated by trade concerns, and open up the world for a more prosperous future.'

What we now witness, over 50 years on from that, if I might put it this way, is that, after the high point of the Uruguay Round, there is a move to refocus on regional trade or bilateral trade agreements, going back to that situation that existed prior to Bretton Woods. Is it fair to say that, as a consequence, we are facing or we are likely to face the emergence of the same global tensions that applied prior to the Bretton Woods agreement?

Prof. Garnaut—These are very important matters and I think that the breakdown of the multilateral system at the moment has some points in common with the breakdown in the 1930s. Obviously it is not the same; we do not now have the 30 per cent unemployment in Germany that we had in the period that gave rise to Nazism. We have learned a lot about fiscal and monetary policy since the 1930s, so hopefully we will never again see a macroeconomic disaster like we saw in the thirties. But serious economic historians have no doubt that both the rise of protectionism and the breakdown of the world trading system into imperial blocs exacerbated the Great Depression and was therefore an exacerbation of the tensions that gave rise to the collapse of democracy in the central European powers and the drift towards militarism in Japan.

In addition, the intensification of discrimination within the imperial trading blocs did increase political tensions. In our region in the mid-thirties—I cannot remember the exact date; 1935 or

1936 I think—there was a major initiative of British Empire countries. It was in the period when unemployment was still high as countries came out of the Great Depression; some countries were not coming out very fast. The British Empire took a decision deliberately to divert trade, to divert imports from third countries to other British Empire countries. We raised tariffs on nonempire products and reduced tariffs against Britain. It was called the trade diversion episode. That was its name in Australian trade policy making. That made it more difficult for Japan to emerge out of the Great Depression.

One must be careful not to excuse in any way the terrible elements of Japanese leadership that gave rise to militarism, the invasion of China and the Pacific War, but there is no doubt that the resentment of deliberate exclusion from markets in not only the British Empire but the Dutch empire in the Netherlands Indies and the American empire in the Philippines helped the militarists make the case for war in Japan.

CHAIR—Is this what Cordell Hull, Roosevelt's Secretary for State, meant when he said: 'If goods can't cross boarders, armies will'?

Prof. Garnaut—Yes. I think Cordell Hull was one of the great figures of 20th century history. Working closely with Roosevelt and working very closely with the top economists in the United States at the time, he laid the basis for the postwar multilateral system. It is their work that led to article 1 in the GATT—and now the WTO—being the most favoured nation clause. Could the rise of small group free trade areas today give rise to similar tensions? One has to be a terrible pessimist to think that anything could again happen to compare with the horrors of the war in Europe and the war in the Pacific 60 years ago. But, if trade discrimination becomes the norm and if one decides who to favour and who to exclude, partly on political grounds—countries that seem to be political friends at a point in time—there is a danger that political divisions will be entrenched and deepened. There is a danger that at this time, when more than ever we need trust and cooperation across the civilisations of the world to defeat the scourges of terrorism, we will entrench some important divisions in the international community.

In our region there is a danger that we will end up over time—not tomorrow but over time—with a division down the Pacific, with us being part of a block with the United States and most of East Asia having discriminatory arrangements amongst themselves that leave us out. That would obviously have horrific economic consequences for us. The economic consequences would be much smaller for the United States and Europe, but they would be huge for us, because they are our main export markets. In addition, there is a danger that that would make cooperation more difficult on the many things that we have to cooperate on at this difficult time in the world.

CHAIR—Looking at all of the literature, it seems to me that the impetus of the Australian government's current push for an FTA with the United States—and we were the initiator of that, not the US; they were late coming to an agreement to pursue it—came from an analysis of what we should do to commemorate the anniversary of the ANZUS treaty, which is a security based treaty. Throughout the seventies, eighties and nineties the weight of argument was about how we could improve the economic wellbeing of the community. Since 9/11 it is fair to say, I think, that the dominant argument has been the security argument: how you protect yourself from rogue states or terrorist organisations. So security has overtaken the economy as the dominant theme.

Against that background, it is possible to say that the security hawks, even motivated by the best intentions, considered that a way of deepening and strengthening the US alliance was to add a trade dimension to it, and thus the idea came that Australia should pursue that to mark our anniversary with ANZUS. The idea then later took flight on its own that we must pursue a free trade agreement with the United States, and we justified that by talking about a two-tiered approach—if we cannot succeed multilaterally, we will succeed bilaterally—and justified it with the argument that one can set the pace to capture some gains that can then be translated into the multilateral arena, although I have not seen much evidence that that theory actually works.

My point goes to this: do you have any views about whether the assumption that, from a security point of view, the alliance can be strengthened by adding trade is, in fact, a fair one? Let me put my neck out. It seems to me that Australia is a competitor with the United States in many areas and that all the conflicts in the bilateral relationship are in the trade and commercial area and that, in fact, the security assumption that maybe trade strengthens the relationship is not true at all; that the reverse is the fact: that the trade relationship can weaken the alliance and not strengthen it. Do you have any comment about that view?

Prof. Garnaut—I think that history is on your side. It just happens that Australia has a comparative advantage internationally in a whole lot of areas in which the United States has high protection. At a meeting in Washington DC with a former special trade representative in the late eighties, at a time when tensions over trade issues were high between Australia and the United States, the United States minister said to me, 'I just want to make things clear. It is just by accident that our highest protection and subsidies are on all the things that you export.' He made that comment in all seriousness because, if you look at the areas of high protection in the United States, they happen to be agriculture, steel, the high effective protection associated with tariff escalation in a number of nonferrous metals—a number of areas that are very important to Australian exports.

That anecdote reveals a structural challenge in Australia's relations with the United States. The United States trade policy is not made by the administration; it is made in the Congress. There is a long tradition—and not a very elegant tradition—of United States trade policy being bought and sold in the US Congress, and administration views on security priorities do not always hold sway in the US Congress. So people who give high priority to a good political relationship and to the ANZUS alliance have always taken pains to separate the alliance relationship from the trade relationship.

This tradition goes back to Menzies and McEwen. There was no tougher, nastier negotiator on trade issues than Jack McEwen. But in the fifties, when the US tariff on wool was a major problem for Australia, it did permanent damage because it meant that the US became a user of synthetic rather than woollen apparel, unlike Japan and Europe. That was very much the result of protection decisions in the United States in the early postwar period. There was a lot of anger about that in Australia, and Menzies and McEwen said very strongly, 'We're not going to put those issues into the centre of the relationship; the ANZUS alliance is too important to bring the trade issues that divide us into the centre of the political relationship.' That position has been taken by Australian leaders at a number of important points in history.

In the 1980s, in retaliation for European agricultural subsidies, the United States government under Reagan introduced the Export Enhancement Program. The program had a devastating

effect on the viability of Australia broadacre farming. It cut the heart out of broadacre farming in Australia because of what US export subsidies did to world grain prices and the prices of some other products. At the time, one of Australia's solid conservative constituencies, the farming community through the National Farmers Federation, was asking the Australian government—at the time it was the Hawke government—to tie the continuation of American access to the bases, the communications facilities—

CHAIR—Pine Gap.

Prof. Garnaut—conditional on a fair go with export subsidies. Hawke and Hayden took a very strong position that there was no way that the ANZUS alliance would be put at risk for a trade issue. We would be kidding ourselves if we thought that trade issues have got any easier. You just have to read the proceedings in the Congress and the sensitivity of the protection issues on dairy, beef and sugar to know that genuine free trade in agricultural products between the United States and Australia would be really tough and nasty politically in the US. They might agree to a few more tens of thousands of tonnes of dairy and beef—maybe hundreds of thousands of tonnes of access—but, as I mentioned before, without the constraints on subsidies that would be a Pyrrhic victory in terms of real improvements of conditions for Australian farming. For us to get genuine free trade would require the cutting of some terribly tight political knots. I think that putting the cutting of those issues right at the centre of our relationship weakens rather than strengthens the political relationship. My own view is that the alliance is of great importance for Australia. I think the positions of Menzies and McEwen and of Hawke and Hayden are as valid now as they were then.

CHAIR—Yesterday in the *Australian Financial Review* there appeared an article entitled 'What price free trade?' in which it was argued in the subheading that 'behind the scenes an economics battle royal rages' over the issue of free trade agreements and the multilateral system. Reading the article one could assume there are two camps here. Can you tell us what your view is of where economists stand on this issue?

Prof. Garnaut—On the issue of discriminatory free trade in general, economists have long recognised that a discriminatory free trade agreement like Australia is discussing with the United States has elements of free trade and of protection. Viner set this out in 1950 when he was asked by the Carnegie commission to report on the effects of the European Union—it was not the European Union being discussed then, but the movement towards a customs union in Europe—on the international system. I have a quote from Bhagwati, citing Viner, at the beginning of my paper called 'Requiem for Uldorama: a plain but useful life'.

In principle, without knowing anything about the detail, one cannot say definitively one way or another that a free trade agreement will be good or bad. It will have protectionist elements and it will have free trade elements. In the end it depends on the detail. I read that article in the *Financial Review* yesterday and there is one caution I would make about it. It says that the economist who did the paper for DFAT—and my friend and colleague—Warwick McKibbin, was a supporter of the FTA. I will leave Warwick to speak for himself, but that paper done for DFAT was based on a commission that did not ask the question: would this free trade agreement raise or reduce Australian economic welfare? It did set out a number of restrictive assumptions and said, on these assumptions, what would be the consequences? Warwick has incomparable modelling skills and so he worked that out, but, in his conversations with me, he has never

equated answering those questions with answering the question: would the free trade agreement that is currently being negotiated in the particular shape that it will take on balance be good for Australia? So that is a caution about reading that article.

Another caution is that none of the five main reasons, which I introduced earlier, why I think that economically Australian welfare is likely to be damaged by a bilateral free trade agreement are amenable to modelling. Every one of those sorts of points was excluded by assumption when DFAT commissioned the Centre for International Economics to do their study. They excluded by assumption those five points. Those five points are the big ones. If you exclude those points and say, 'Let's forget about those but what would a free trade agreement that does not consider any of those things do?' there is still a debate. In this morning's *Financial Review*, two parts of that debate are presented, but I think that is a smaller debate than questions related to the five points I made earlier.

Senator RIDGEWAY—I want to follow through with some of the views you have expressed, particularly in relation to what you see as a poor outcome in relation to subsidies being set aside or dealt with outside of a free trade agreement. What do you think the real issue is then? In comments made last week, Stephen Deady spoke about the key issue being about access to the US markets. Given that Australia's economy is, I am told, the size of Pennsylvania's, and in the context of things in terms of access to the markets alone and setting aside the question of subsidies, will that or will that not deliver results in terms of benefits and services for Australian exporters and Australian manufacturing sectors?

Prof. Garnaut—If Stephen Deady said that what matters is market access—and I did not hear that—I presume he meant that what matters in this negotiation is market access. The subsidies are what matter for Australian farmers. If we got another 300,000 tonnes of beef into the United States market, that would not improve the condition of the Australian beef industry if there was a small increase in subsidies to American producers. Sure, some Australian beef would go in and the US would import less from Argentina and then Argentina would export more into our market somewhere else and there would be no real gain.

When you look at the economics of protection, subsidies can completely negate any welfare gains from improved market access. So, unless you are looking at the two things together, you will not get an accurate picture. I think it is impossible to answer the question 'Would even complete free access for Australian produce to the United States have a net benefit?' without being able to answer the question 'What will happen to the subsidy regime?' at the same time.

In yesterday morning's *Financial Review* I think—that same article to which the Senator has referred—I did see removal of subsidies in a list of things that Australia wants. If that is the real game, it is different. If in this context the US did remove subsidies on agriculture, even though a lot of the other problems to which I referred would still be there, you would have to say that the gains to Australian farmers would be considerable. But that would be a very different free trade agreement from the types of free trade agreements the United States has signed with Chile, Mexico and Canada.

I suppose, in all honesty, I should declare an interest here. My family has substantial farming interests and, if Australian farm industries are damaged by an FTA with the United States, our family interests will be damaged. So I declare that interest.

Senator RIDGEWAY—Thank you. As a follow on to that, Stephen Deady also hinted at the possibility of transition arrangements. Really I think what that means is yet to unfold. I am not sure whether you are aware of the article—I think it may have been in yesterday's paper—by Peter Corish, President of the National Farmers Federation, who basically rejected on behalf of his members the idea of a transition arrangement. Given that you were prone to making forecasts some years ago about how this might unfold, how do you see this unfolding, given your concerns about the diversion from Asian markets and the tensions that might be created as a result? You have mentioned the European Union and I think they have made a decision not to revisit agricultural subsidies until 2015. Is there some coincidence, for example, that there is talk of transition arrangements, looking at what has happened in relation to Chile and Singapore and the other various free trade agreements? What do you see in the case of Australia in that sense?

Prof. Garnaut—I am not privy to what is going on in discussions of transitional arrangements. I did not see that article yesterday, but I have seen other articles from senior figures in the National Farmers Federation opposing transitional arrangements. If there are any gains from increased market access, then obviously delaying those gains reduces their value, both directly and because of the precedent that it establishes for other trading relationships. So any gains will be reduced by that process. But I go back to my earlier point: whether there are any gains at all from increased agricultural market access depends on what happens to the subsidies regime. So it is only if the subsidies are being removed that you can be certain that you are making real gains, whether they are phased in or introduced all at once.

You asked about the effects of that precedent on the international system. The precedent unfortunately is already there in other arrangements that the United States has negotiated. But I think that because Australia is such a high profile supporter of agricultural trade liberalisation, Australia entering these arrangements with the United States would be more influential than Chile or Mexico entering these arrangements. So its demonstration effect would be costly, but even more important would be the demonstration effect of our accepting a trade agreement that did not provide a good model for subsidies.

Senator MARSHALL—Coming back to the rules of origin—and I take what you said in your introductory remarks—I need to have this clarified in my mind: are you suggesting that we should not have any rules of origin provisions if a free trade agreement proceeds?

Prof. Garnaut—I do not think you can have a free trade agreement without any rules of origin. That is one of the problems of a preferential or discriminatory free trade agreement. Genuine free trade does not have this problem at all. When we reduced most of our protection from very high levels to something between nought and five per cent we did it across the board so that we did not have to have the industry department and the trade department checking on whether businesses were deciding to purchase too large an amount of some supply from particular countries. That issue just does not arise if you trade on a most favoured nation basis. It only arises when you have some preferential arrangement and the rules of origin are necessary to confine the privileges that you are giving out to the people you intend them to go to. So rules of origin are inevitable if you have these discriminatory free trade agreements. It is one of the problems of free trade agreements, perhaps the biggest problem. It is why this is not the way to go. It is why leading economists all around the world emphasise that free trade should be multilateral free trade, to maximise everyone's welfare.

If in a world gone wrong you do have lots of discriminatory free trade agreements, you have to have rules of origin. If you have to have them, the higher the proportion of value added that is allowed from outside the area while still qualifying for free trade privileges, the less distorting it is going to be. At the same time a uniform set of rules of origin will be less distorting and above all less vulnerable to corruption in the policy making process than rules of origin set differently for every product—so that campaign donations and pressures from vested interests end up determining what the rules of origin are in particular cases. Unfortunately that is the model that America has had in the past. I hope we will resist very strongly going along with that model. Inevitably, if we do have this free trade agreement, there will be problems with the rules of origin, but let us hope we minimise those by having simple uniform rules of origin across all commodities.

Senator MARSHALL—The Singapore-Australia Free Trade Agreement has introduced investor state provisions, and we are told that the Singapore-Australia Free Trade Agreement will be the template for the negotiations in that respect for the US-Australia free trade agreement. Do you have any comments about the investor state provisions that potentially will be there, based on the Singapore model?

Prof. Garnaut—My main comment is that issues like that should be decided on their merits and not as part of a bilateral negotiation. If they are good for Australian welfare, in general we should do them. To introduce them into some relationships and not others is distorting. My main point about that would be: let us take decisions like that on their merits; let us evaluate whether that is a good principle and, if it is a good principle that would raise Australian economic welfare, let us do it for everyone. It will raise our welfare more if we do it for everyone rather than only for some.

Senator HOGG—In respect of the modelling you refer to the benefits that it is perceived will come out in terms of dollars. There is talk of $4 billion, and then after that you say, 'Actually nearly $US2 billion'. Elsewhere in your statement you refer again to the $4 billion that it is claimed will come out as a benefit by 2010 actually being a bit over $3 billion at present exchange rates. It seems to me that $1 billion has slipped around the place somewhere. But elsewhere I thought I read in your submission that the benefit could be virtually zero. What in dollar terms are the actual benefits to the country in terms of the US-Australia free trade agreement and what are the benefits in terms of employment for this nation?

Prof. Garnaut—I set out five elements of an economic case here. None of these types of points—and these I think are the really important ones—were covered by the modelling exercise that DFAT asked for. DFAT set down the assumptions, and it excluded what I think are the most important points. It did not ask the question: will this be good for Australian economic welfare? If they had asked that question, these points would have been addressed.

Senator HOGG—So you are saying that the $4 billion is just a figure that is plucked out of the air.

Prof. Garnaut—It is based on particular assumptions which happen to exclude the main points. What I am doing is talking about those assumptions.

Senator HOGG—Those assumptions are in place.

Prof. Garnaut—Yes.

Senator HOGG—Are you then saying that the $4 billion is not $4 billion but really $3 billion or $2 billion? That is what I am trying to arrive at.

Prof. Garnaut—First I am saying that that $US2 billion is now $A3 billion just because of exchange rate effects. Long after the exchange rate moved, people kept talking about $4 billion, rather embarrassingly I would think for the government, but following my remarks I think people have referred less to $4 billion. But, when you analyse that $4 billion, a major part comes from our removal of our own protection against United States products.

Senator HOGG—That could be there unilaterally, couldn't it?

Prof. Garnaut—Use of the same model, use of Warwick McKibbin's model, shows that the gains would be hugely more if we unilaterally removed protection against everyone and not only against the United States. So that is one point. Amongst the trade liberalisation measures of our own that give us a lot of those benefits is liberalisation of access to our services sector, including telecommunications and banking. There are a couple of references in the paper that was done for DFAT to other studies that happen to have been done by other colleagues of mine at ANU about the economic gains from liberalisation of services. Those other studies were not based on liberalisation just of United States access but on general access. For example, if we got rid of the four pillars policy and allowed our banks to be taken over by foreign banks, there would be certain efficiency gains. If we got rid of the restrictions on ownership of Telstra, there could be some productivity gains.

When you look not in the paper itself but at the papers that the CIE paper relies on, they are looking at the effects of complete liberalisation of access to the banking sector not only by American banks but by any banks, and they include access to ownership of communications facilities not only by American investors but by any investors. Those two things at the time I was writing the paper—removal of restrictions on ownership of telecommunications and banking—were contrary to express government policy at that time. Since then there has been some change in relation to telecommunications, but I do not think there has been a change in relation to banks. So any productivity gains we would get from liberalisation of access to our service sector would be bigger if they were done generally and not just restricted to American investors. But for us to get the gains you would have to change some major elements of Australian policy. So it is a rather glib assumption that says we are going to get those gains because we are going to change the policy. One has to face up to the fact that you have to change the policy before you get the gains; and the gains will be bigger if you do not restrict foreign ownership to American ownership.

Senator HOGG—So can you place a figure on the gains, based on the DFAT study, at this stage?

Prof. Garnaut—If all of those assumptions were followed—if you had the complete removal of all barriers to agricultural trade, if you had the complete removal of the restrictions that they assume are removed in the services sector—then you might get gains along those lines.

Senator HOGG—In what order—$US2 billion, $US3 billion?

Prof. Garnaut—I think to even answer that question gives a misleading answer.

Senator HOGG—I would rather you say that.

Prof. Garnaut—Because the questions are so constrained that they leave out all of the important issues, and the important issues are the ones I covered in my introductory remarks. Regarding all of those issues, which are potentially very damaging for Australia—especially damaging for Australian agriculture, but damaging for Australia in general—the DFAT assumption said, 'Don't look at those.'

Senator HOGG—The other issue that is important to me is the issue of gains in terms of employment. Does the model that has been considered by DFAT and the agreement envisage substantial employment gains for Australia as a result of a United States-Australia free trade agreement?

Prof. Garnaut—In the type of model that was used there is an assumption of full employment anyway and so, by definition, there cannot be positive or negative employment effects.

CHAIR—The Centre for International Economics study—that study commissioned by DFAT—said that the advantage to the US would be in automotive components and the advantage to Australia would be in dairy and sugar. So the advantage to the US lies in value added products and the advantage to Australia lies in less value added products or no value added products. The other thing that struck me, reading the study, was that our bilateral trade deficit with the United States would widen as a consequence of the FTA and not narrow. Are you in a position to comment on either of those two issues?

Prof. Garnaut—On the second of those, these numbers we are talking about are rather small in the context of all capital flows and trade flows in Australia and you have to look at what is happening to the exchange rate, which changes with a change in domestic interest rates and so on. So I would not put much weight on changes in the trade balance.

On the automotive point, this is potentially important and this was an issue that came up when I presented a paper in Adelaide some weeks ago, and I have noticed the discussion about Toyota decision making. The main point I would make here is that it is much easier to argue the political case for open trade if you are doing it on a nondiscriminatory ground. I remember when a government of the day in the eighties was removing the quotas on manufacturing imports; it was removing the quotas on cars and reducing protection on cars. Politically it was tough.

At the time I was economic adviser to Bob Hawke, and I do not know how many times I had John Bannon, the then Premier of South Australia, in my office saying, 'This will have terrible effects.' The government was able to say to the South Australian Premier, 'What we're doing will have productivity raising effects in the economy as a whole. There will be some winners and some losers, but the winners will be those who are best able to manage their businesses to take advantage of opportunities for productivity gains, and there is no reason to think that the car industry will not be one of those winners. You will get the same benefits from the general liberalisation that everyone gets and your car industry will have a fighting chance.' They were tough, hard discussions, but the government of the day decided that the Australian national interest in trade liberalisation was more important than the worries that some state premiers had.

It was important to that argument that the government was able to say to affected interests, 'You're in the same position as everyone else.' With discriminatory liberalisation, that cannot be done.

For example, there was some discussion about Toyota shifting production from Melbourne to the United States. That may happen—and the last person you would ask about whether it will would be the manager of the Melbourne plant; I noticed that some people ran off and asked the Melbourne plant if that would happen, but that decision will be taken in Nagoya on the basis of what maximises global profits for Toyota, as it should be. But if that happens and Toyota in the United States becomes the supplier to the Australian market, Toyota therefore becomes more competitive in the Australian market and puts pressure on other producers. You cannot say to the other producers that they have been given an equal chance, If Mitsubishi is forced to close in South Australia, you will not be able to say that it is because they have not been as good as the others at taking advantages of the opportunities to raise productivity. They will be able to say that the discrimination in favour of the United States weakened their competitive position, and who will be able to say that they are wrong? That will make the political process of avoiding pressure from affected interests more difficult to manage. I think that is quite an important political economy point.

CHAIR—Just for the record, when we were talking earlier about subsidies being in or out of this free trade agreement, on page 5 of the transcript of the media briefing by Stephen Deady in Hawaii, provided to us by the Department of Foreign Affairs and Trade and dated Friday, 18 July, Mr Deady is quoted as saying:

I've made the point before that the primary focus of bilateral free trade agreement negotiations is market access, that other aspects of the US support arrangements for agriculture are beyond the scope of FTA negotiations. We are not seeking in the FTA reductions in subsidies on the Farm Bill. That's why the Government's position is so clear on the importance of the multilateral negotiations, the importance of agriculture in those negotiations.

Quite clearly subsidies are not part of the FTA negotiations—at least from Mr Deady's point of view. Thank you, Professor, and thank you for the documents you have provided. If we have further come back questions, can we pursue you relentlessly with those?

Prof. Garnaut—So long as I am around, I am happy to appear here to answer questions.

[12.04 p.m.]

HARDWICKE, Ms Leanne, Director, Public Policy Unit, Engineers Australia

HURFORD, Ms Kathryn, Policy Analyst, Public Policy Unit, Engineers Australia

CHAIR—Welcome. You are probably familiar with our format. We invite you to address the submission you have so kindly lodged with us and then to be available to take questions.

Ms Hardwicke—Ms Hurford will be giving our opening statement.

Ms Hurford—Engineers Australia is the peak body for engineering practitioners in Australia and represents all disciplines and branches of engineering. With over 70,000 members Australia wide, Engineers Australia is the largest and most diverse engineering association in Australia. A number of issues specific to trade in engineering services are important to both the GATS and FTA negotiations. Firstly, there are many regulatory regimes maintained by local, state and territory governments in Australia that have come into existence because of the absence of a comprehensive national registration system for professional engineers. Engineers Australia believes that a national registration system has the potential to be a successful regulatory instrument and a key negotiating tool in the GATS and US FTA. The absence of a national registration system in Australia is proving a significant hurdle in negotiating mutual recognition agreements with other countries. For example, professional associations in the US are reluctant to enter into mutual recognition agreements with Australia, because US nationals are generally able to work in Australia without registration. In contrast, compulsory licensing systems operating at a state level in the US dramatically limit the ability of Australian nationals to gain registration and thus access to the US market. Engineers Australia believes that the Australian government should re-evaluate the domestic regulatory environment for professional engineers in light of the current GATS and FTA negotiations.

Secondly, Engineers Australia has worked to ensure that accredited Australian qualifications and overseas engineering qualifications are recognised through formal mutual recognition agreements with engineering accreditation bodies in a number of countries. These agreements include the APEC Engineer Register, the Washington Accord, the Sydney Accord and the International Register of Professional Engineers. Given that significant work has already been done to create a multilateral registration system to facilitate trade in engineering services, Engineers Australia believes that commitments from WTO members under the GATS should be sought to support and enhance these existing arrangements.

In terms of the US FTA, Engineers Australia would like to see commitments from state governments in the US to facilitate the recognition of overseas qualifications and registration at a national level, allowing Australian engineers to practise in all jurisdictions after one application process. This would be a significant step forward, as an engineer wanting to practise in more than one US jurisdiction has to obtain registration in each separate state or territory. Engineers Australia believes that the FTA should look to build on existing multilateral agreements like the APEC Engineer Register to facilitate the movement of professional engineers between Australia and the US.

Overall the most significant barriers to trade in engineering services remain the nonrecognition of engineering qualifications and onerous registration systems, often operating at a state government level. The Australian government should concentrate on reducing these barriers in future GATS and FTA negotiations as a priority. The government should also re-evaluate the domestic regulatory environment for professional engineers.

CHAIR—Thank you. Have you been part of the consultations that the government has undertaken on GATS and on the FTA?

Ms Hurford—Yes, we have put a number of submissions into DFAT on both of those issues, we have also been involved in their round table meetings and we have had an individual meeting with Milton Church regarding the US FTA.

CHAIR—Have you been comforted by the outcome of those meetings that the issues that you are concerned about are going to be addressed?

Ms Hurford—We believe that DFAT is trying to deal with the issues and that they understand where the issues lie in terms of engineering services. Unfortunately, the FTA that they are negotiating at the moment has limited potential, because the US federal government is unable to negotiate on behalf of the states. Issues dealing with trade and engineering services to the US happen at a state level, so the outcomes will probably be minimal for that reason.

Senator HOGG—Can I get an understanding of your problem? It seems to me that you have a problem here in Australia itself, in that you do not have a single system of registration. Are you pursuing that, to have that overcome? What are the barriers internally within Australia to overcoming that problem in the first instance? It seems to me that, having corrected that, you then have the other problem at the other end.

Ms Hardwicke—The problem is that in Australia only Queensland has a comprehensive registration system for engineers. Other state governments have been extremely reluctant to introduce it, particularly since all the competition policy reforms came in—and the idea of deregulation and those types of issues. We have been pursuing it constantly with all state governments, and they have basically brought in piecemeal registration for engineers in various areas, particularly in the building and construction industry, and some states still do not have any registration systems for engineers in those areas.

We have got around that on a professional basis by setting up our own registration system, a national register which is separate to membership of the institution of engineers. It actually has government representatives on it from all the different states. On this board that oversees the registration system, the National Professional Engineers Register, we have industry representatives, community people and representatives of the profession.

Senator HOGG—Does that have international recognition?

Ms Hardwicke—It does under the APEC Engineer Register, but our big problem is that, because it is does not have government backing—it is not a government system—other countries' governments cannot recognise it. So it is recognised at a professional level but it is not recognised by governments, because there is not that government to government interaction. For

instance, we have just been in some negotiations with Japan about liberalising trade in engineering services in that respect, and they are having some enormous difficulties. They are quite willing to accept the standards that we have put on our register, but because it is not a government body they cannot negotiate with the profession in Australia.

Senator HOGG—What benefits will the Australia-US free trade agreement bring for engineers in Australia?

Ms Hardwicke—If you could get a provision in the free trade agreement that says, for instance, that there is one application process for engineers, instead of their having to go to every state to be registered—if there were some kind of recognition that a certain standard of engineer would be able to become licensed in every state—there would be some benefit. As it stands at the moment, there is very little benefit, because an engineer going to practise in the United States has to jump through so many hoops, particularly if they want to work in more than one jurisdiction.

Senator HOGG—So that really goes to that list of nontariff barriers that you have listed here.

Ms Hardwicke—That is right.

Senator HOGG—That seems to me, having been involved in another inquiry in this place—into APEC—to be a very comprehensive list of hidden trade barriers that need to be negotiated by the likes of your organisation.

Ms Hardwicke—That is right.

Senator RIDGEWAY—I presume some of your members have experienced these difficulties in having qualifications recognised in the US and other countries.

Ms Hardwicke—Yes.

Senator RIDGEWAY—Would you say that it is a high percentage of your members? Are they looking at most work being done offshore as opposed to domestically?

Ms Hardwicke—No, a large proportion of our members restrict their work to the domestic environment. It is the larger companies that want to be international and practise overseas. There has been a trend over the last five to 10 years for the smaller operators to merge into medium sized firms and for the larger firms to then take over the medium sized firms. You are finding that there is a lot less competition in engineering services than there used to be a long time ago—and it is becoming much more prevalent now with the current insurance crisis for engineers. It is almost impossible for a sole practitioner to get insurance cover—or to get it at an affordable price—so they find they are becoming employees.

One of the interesting things we have found that gets around this issue of exporting engineering services is the use of technology to do it. They do the work here in Australia and send it via the Net—this is particularly for design work and not so much for other types of engineering—anywhere across the world. Of course they do not have to be registered to do that. Another engineer in that country signs it off and does whatever they need to do. That is one of

the benefits of new technology for engineers. A significant proportion of engineers export their services but not the largest proportion.

Senator RIDGEWAY—I presume this would be a problem for many professions, not just engineering?

Ms Hardwicke—I assume it would probably be similar for unregulated professions. I am not sure how accountants get on, but architects are registered in every state in Australia. It is so similar in every state that it is easier to be recognised as an architect, for instance. Lawyers are registered. Doctors are registered. So practically all of the professions have some kind of legislative registration system. Engineers have never had one—except in Queensland.

Senator RIDGEWAY—I presume that you have relations with bodies in the United States that are similar to the Institution of Engineers in Australia and, if you do, that these issues have been raised there. My question is more about whether your American counterparts experience the same type of problem in accessing the Australian market? Are there requirements, for example, that mean that if they wish to work here they pretty much have to go through the same hoops, or is that not your experience?

Ms Hardwicke—They do not. They can just come to Australia and hang up their shingle and start work immediately. There are no hoops, other than in Queensland: they have to be registered with the state board if they want to work there. It is certainly not the same registration process as the one they have to go through in the United States. It is quite simple: you just have to show that you have had five years experience and have a recognised qualification and then you are on the list. So it is much easier. The relationships between the Institution of Engineers and other bodies is more about membership—mutual recognition of membership—and we have different grades of membership, not related to competencies. It is not about our National Professional Engineers Register. Those two things are separate.

Senator RIDGEWAY—What about the response that you have been able to get from the Department of Foreign Affairs and Trade or any other parts of the government in relation to this issue? Has that been favourable or has it not been taken up as an issue in the context of GATS, a free trade agreement or anything else?

Ms Hardwicke—In the context of the free trade agreement, we believe that we have had very fruitful discussions. We believe that DFAT is certainly putting this issue forward for us and recognises that it is an issue that needs to be overcome. In one of the discussions in relation to the free trade agreement, we talked about the fact that there is quite a nice provision in the NAFTA agreement about recognition of engineering services. However, on further investigation, even though that is in there, none of the states in America have taken it up. In their view, it has never affected them and they have never complied with the provision. So in practice it does not work, but in theory it is a good provision to put in there. But what we would be looking for is something that will work in practice.

CHAIR—Can you tell us whether there is any difference in the standard or the quality of engineers from the United States compared with those from Australia?

Ms Hardwicke—I believe that the standard of engineering is extremely similar, and that is probably evidenced by the Washington Accord, which Kate mentioned before. It is called the Washington Accord in Australia, and it is something that America is certainly a part of. It is in recognition of our education and engineering degrees, saying that our degrees are at the same level as their degrees. So the level of education for Australian engineering is certainly the same. We believe that in practice, once an engineer has received their degree and started to practise, the quality of engineers in Australia is certainly more than equal to the quality of American engineers.

Ms Hurford—The majority of US states recognise Australian engineering qualifications as equivalent. The problem is the other hoops that you have to jump through. There is a gap between recognising qualifications and recognising the ability to practise. There are differing requirements regarding how many years you need to practise unsupervised. Some states also have good character and reputation requirements, and the number of references you need differs. Different states require US citizenship or residency. So recognition of education in the US is not really the issue; the actual registration is the key thing.

CHAIR—How do they justify the existence of those regulations at state level?

Ms Hurford—Because these powers have been delegated to the states in the US constitution, they come under what they call 'public health, safety and welfare', which is a state issue. Each state has always regulated engineering. It is not only a problem for Australian engineers trying to get in; US engineers also have difficulty travelling and practising in other states. We hope that there will be a lot of internal pressure to have those barriers removed. The biggest issue is that an Australian engineer has to register in 55 different states or in each state they want to practise in, and while there are some similarities in what they have to go through it is the other, smaller things like residency, differing years of practise and different areas that they can practise in that make it very difficult.

CHAIR—If the justification is on health or public safety grounds and the qualifications are recognised as equivalent, where is the argument, apart from length of experience?

Ms Hurford—I think personally that there is no difference between an Australian engineer and an American engineer; in terms of the hurdles they have to jump before they are able to practise they are comparable. The problem is that there is no incentive for US registration boards to liberalise in terms of Australia because US nationals can already practise here unfettered.

Ms Hardwicke—It is also historical. These types of registration acts came about around the 1920s, sometimes earlier, and they have always used that as the basis of the argument for having a registration system to keep unqualified people from practising. However, we believe that Australian engineers are qualified and therefore should be able to practise.

CHAIR—Which is the basis of my question. If the qualifications are recognised as equivalent and the argument justifying these barriers is based on safety or health issues in the main, we are talking about the country of origin as being the point of difference, not the level of qualification. There may be an argument about length of experience unsupervised, or something of that nature, but these are just trade barriers, aren't they?

Ms Hardwicke—Yes, exactly.

CHAIR—Your case, as I comprehend it, is that, because we do not have any, they feel comforted by the fact that they can have access to our market and there is no countervailing pressure on them to provide equivalence to their market.

Ms Hardwicke—That is right.

CHAIR—Mutual recognition has been a key theme of the APEC negotiations over a long time. What has been said in that context about mutual recognition of Australian qualifications in the US? Anything?

Ms Hurford—Recently the US signed on to the APEC engineer agreement.

CHAIR—But that just means that at national level the US government commits to the agreement; effectively at state level nothing happens.

Ms Hurford—That is right, and you will find that the only state that signed on to that mutual recognition agreement in NAFTA was Texas. All other states made no commitment at all.

CHAIR—So it is a Pyrrhic win, isn't it?

Ms Hurford—Yes.

CHAIR—But surely someone has then said to the United States, 'This is meaningless in practical terms; what do you intend to do about providing equivalence of access?' Surely that question has been put. If it has been put, I wonder what the answer has been.

Ms Hardwicke—I do not think we have received an answer.

Ms Hurford—I am formally in negotiations with the APEC Engineer Register. The US is represented by the national council of examiners for engineering and survey licensing and they have a model law document that they would like to see put in each of the 55 jurisdictions, so that there is at least a common law document and there is one registration process. So there are moves in the US for that to happen, because it is a barrier to US nationals moving between states to practise. The problem is that there is not the same incentive for that national or model law to be favourable to Australia, because there is no incentive for them to offer that to us, because they can already work in Australia.

CHAIR—On page 10 of your submission, you say 'nonrecognition of Australian qualifications', 'mandatory requirements for membership of local professional associations'. Does that mean an Australian engineer has to join, say, the Cincinnati Engineering Association?

Ms Hardwicke—That is right.

CHAIR—I do not know whether Cincinnati is an offender here; I just plucked that city out of the air. You mention government procurement policies—what is the nature of that obstruction?

Ms Hardwicke—It depends on the nature of the government, but in some government areas they have local preference requirements, so that they will pick—

CHAIR—If you are a foreigner, you do not get the work?

Ms Hardwicke—That is right; that is basically it.

CHAIR—In your submission you mention restrictions on the formation of companies: does that mean engineering partnerships in Australia cannot be established in the United States?

Ms Hardwicke—They have to set up an American company to work in there, and usually it is along with the residency requirement that most of the business is conducted within that particular state.

CHAIR—Not to mention the modern dilemma of all small operations, professional indemnity insurance. Is there any concern about piracy of Australian engineering designs in the United States?

Ms Hardwicke—That is something that we do not have a lot of information on, but there is a little concern about those types of issues. But trademarks and patents have been an issue for engineers for a long time, because we feel that the Designs Act does not cover engineering designs, because engineering does not fit within the definition of a design under that. It is not properly covered by the Copyright Act and the patent process is a bit too expensive for all engineering designs to be put through—even the new innovation patent does not quite fit the bill. I can send you some information on that, if you would like.

CHAIR—It is just that tomorrow we are talking to the arts community, particularly film makers and writers and so forth, and we will be talking about that in the context of the cultural protection provisions that they are concerned about. Although there is a view now that, irrespective of what cultural differentiation countries want to express in trade agreements, e-commerce overrides the lot, and the ability to sell things on the Net can get behind national barriers or national arrangements, no matter what. That is not just film or television or music, it is also design, architectural plans, clothing design; anything that is sort of almost patentable can be bought off the Net and used, undermining local industry to some extent. I am not trying to make a case; I am just saying that these are issues that have been raised with us. Do you have any comment about those issues from an engineering point of view?

Ms Hardwicke—No, other than to say that I believe that that type of thing does happen in relation to engineering design and the best that we do for our members is to try and give them information about how best to protect their interests. But this is now an issue that goes across the board, I think—and, yes, it does apply to engineering.

CHAIR—I have heard many war stories of Australian small businesses trying to protect themselves on patent in US courts before US juries, where the pirates wrap themselves in the flag and the Australians are the foreigner. Good luck is the best advice you can offer.

Ms Hardwicke—That is about it.

CHAIR—Thank you very much.

Proceedings suspended from 12.28 p.m. to 1.32 p.m.

BAMBRICK, Ms Hilary, National Centre for Epidemiology and Population Health, Australian National University

BROOM, Dr Dorothy, National Centre for Epidemiology and Population Health, Australian National University

QUINN, Mr Casey, National Centre for Epidemiology and Population Health, Australian National University

GILMORE, Ms Victoria Martha, Federal Professional Officer, Australian Nursing Federation

ILIFFE, Jill, Federal Secretary, Australian Nursing Federation

LAUT, Ms Pieta-Rae, Executive Director, Public Health Association of Australia

KELLY, Ms Kathryn Margaret (Private capacity)

CHAIR—I thank the Australian Nursing Federation, the Public Health Association of Australia and the National Centre for Epidemiology and Population Health for attending today. All of you are welcome, and we thank you for making yourselves available. Since we have almost a roundtable here but nevertheless a constancy of theme, normally we would ask the author of the submission to address us briefly and then be available to take questions. In the format that we are in now, I propose to stick to that principle but also to ask representatives of the other organisations present to speak as well. If there is a better idea, I am open to hear it; if there is not, we will proceed on that basis.

Jill Iliffe—We would like to do three brief presentations and then have the committee direct questions to whomever they prefer. Is that all right with you?

CHAIR—Yes, sure. Please proceed.

Ms Laut—The PHAA put in a general submission strongly endorsing the submission made by NCEPH. We have come to the table today basically wanting to continue to support NCEPH in its submission and also wanting to point out some of the process issues that are really bothering us about how this free trade agreement is being negotiated. In particular, we are very concerned about the tactics to avoid open debate that have occurred in the development of the free trade agreement so far. Unlike the American President, who had to identify areas of possible discussion to congress, our government has not done that to parliament. We therefore find ourselves in the position of being unable to speak on specific issues within the negotiations.

The most common statement that has been made to us about the negotiations—and made generally by government officials—is that nothing has been taken off the table. That makes it very hard to take seriously the odd reassurance that the basics of the PBS, for example, will not be affected by a free trade agreement, because it looks to us as though semantics could be very important to what ends up in the free trade agreement. We think that this has been clever politics,

but basically it is a means of advancing what is potentially an unpopular policy, or steps in an unpopular policy, without the benefit of democratic debate. We welcome this inquiry as being one place in which there seems to be some capacity to have some debate about the issues.

However, we are concerned that the process for the actual negotiations has left structured democratic debate out of the process altogether. We believe that this approach has been deliberately adopted by the government and it makes it very hard for non-government organisations or individuals in our community to model propositions or alternatives and stifles any hope of real debate. As a consequence of thinking about that, we are very concerned to ensure that principles for negotiation of free trade agreements are put in place.

On a world scale, there is sufficient evidence around that free trade agreements have diminished the prospects of widespread health and prosperity by concentrating the accumulation of capital and power in a few hands or in transnational corporations; fostering the increased use and consumption of resources which stress the environment; and diminishing the ability of national governments to attain their social goals as they compete for global capital investment by substantially reducing spending, forcing wages downwards, weakening environmental and labour legislation and relying on aggressive consumption taxes.

The PHAA believes that negotiations of free trade agreements should be based on a set of principles, and we suggest some of these as being needed to be incorporated in any future principles to guide negotiations. The first is that the regulation of international trade should be directed at enhancing the development of healthy societies as well as healthy economies on a national, regional and global scale. The second is that trade agreements should include internationally agreed minimum standard of human rights, labour conditions and democratic practice. We believe that they should be based on environmental protection, which is integral to international covenants on trade. The inclusion of tariff or non-tariff barriers should be allowed where they are justified on the grounds of developing or maintaining broadly based self-reliance nationally. The disclosure of the broad areas of negotiation should be made to the Australian parliament for democratic debate and that debate should be extended to the wider community.

We have four recommendations for the negotiations. The first is that research be undertaken before any trade negotiation is commenced or continued to evaluate the effects of potential trade agreements on the health of Australians, our trading partners and developing countries likely to be affected by the agreements. The second is that such research be made publicly available for consideration in public debate. Currently, the Department of Foreign Affairs and Trade have undertaken research into the trade effects but not the health or social effects. We believe that they are important components of negotiating a trade agreement. The third is that the negotiation of any trade agreement be contingent upon the adoption of a set of principles, as outlined above, and broad community debate. The fourth is that the inclusion of specific areas in the negotiations be contingent upon parliament's approval rather than the government's approval.

We would like to reinforce the point that at this stage we see ourselves as being under severe limitations in what we can present to the committee because we do not have any specific knowledge of what the government is negotiating about. This makes it very hard for us to model the effects or look at alternatives. Our submission clearly states that we are concerned about equity and efficiency in regard to health services. We would like to hear our NCEPH colleagues

talk more about that in terms of specific examples and areas. I remind you that we strongly endorse the NCEPH submission.

Dr Broom—As was the case with our submission, which was a jointly authored document, I and my three colleagues will speak briefly to elaborate on points in our submission. Before we do so, I make two points of clarification. Firstly we appear as public health academics and advocates, not as trade lawyers. Secondly, although our submission refers chiefly to the GATS, most of the points we make can also be applied to the Australia-US free trade agreement that has been proposed, and our recommendations would be relevant to all proposals for trade liberalisation. However, we point out that any bilateral agreement lacks certain potential checks and balances that might be available in the GATS and other multilateral agreements and could expose Australia to highly unbalanced negotiation. Let me touch briefly on several key, overarching points before my colleagues develop more specific themes.

As a small player on the international stage, Australia cannot wield very much economic power but can exercise valuable independent leadership functions by giving priority to protecting health and the environment, both for its own citizens and internationally. The need for such leadership is illustrated by a recent *New York Times* editorial which we have tabled. That editorial shows the deleterious effects on poor nations of the nearly $1 billion per day combined subsidies from the US, the EU and the Japanese to their agricultural sectors. Public health can be an accidental casualty of trade liberalisation, since health is not the aim of trade agreements. Indeed, health may be almost invisible in such agreements. For example, the GATS schedule for health and related social services omits dental services, which are listed under professional services, as well as medical, nursing and midwifery services not supplied in hospitals, which are classed under 'business', and health insurance, which is in 'financial services'. The marginalised status of health is illustrated by the fact that it must be mentioned as a specific exemption or exception, as it is in GATS article XIV(b).

Because many of the health effects hinge on the adjudication of complaints and the resolution of disputes between parties, national governments cannot reassure their citizens that public goods will not be eroded or completely lost by trade agreements—that is, the interpretation of the agreements is not the prerogative of the Australian or any other national government but of disputes tribunals. For example, the regulation on alcohol marketing and distribution is known to have diminished alcohol related harm in Australia, but such regulations may be classed as unnecessary restriction on trade under the GATS; hence, we endorse a recent non-government organisation submission to the World Health Assembly, which we have also tabled. That document puts the issue succinctly, and we subscribe to its four concluding recommendations. Applying them to Australia, we say that Australia should, firstly, make no GATS commitments in the health sector or other health related sectors; secondly, conduct a comprehensive health check on any other GATS commitments proposed by WTO trade negotiators with the active involvement of the health department and civil society; thirdly, call a halt to current WTO negotiations on rules governing domestic regulation; and, fourthly, call for a change to GATS rules which restrict countries from retracting commitments already made under the GATS.

It would be paradoxical in our view if the effect of a trade agreement were cheaper cigarettes and more expensive pharmaceuticals, but both of these are likely outcomes. Australia's public health infrastructure, the PBS, Medicare and public health services, clean air and water, and safe food are resources that are highly valued by all citizens and must not be jeopardised. I will now

introduce my colleagues, who will elaborate briefly on specific points covered in our submission. Kathryn Kelly will speak first about water, then Casey Quinn will address the pharmaceuticals and Hilary Bambrick will conclude with some comments on quarantine.

Ms Kelly—I would like to endorse the comments that have been made about the dangers of umbrella organisations like GATS and the free trade agreement where different sectors of the economy or industries can be traded off against others. As Pieta pointed out, this makes it very difficult to have adequate consultation or address the implications of the agreements for particular areas. I want to focus particularly on water services, environmental standards and protection of the environment.

There have been strong calls coming from the European Union in particular to open up the water services area. They are home to two of the largest water companies in the world, Vivende and Suez, so their inclination to have more access to that area is understandable from their point of view. But, if Australia includes water services as an area to be opened up under GATS, it will lead to an overwhelming push for the privatisation of our water services. Privatisation or leasing of the water services or even significant components of the service is completely inappropriate for Australia as one of the driest continents in the world and principally because water is essential to human survival and to the survival of the physical environment.

Water has also been recognised as a human right. Dr Peter Gleick from the Pacific Institute in the US has done a lot of work on this and on the dangers of privatisation of that human right. That should preclude it from being treated as an economic good like TVs or cars. It is also essential, as I mentioned, for animal and plant life; therefore, the role of water in the environment demands a broad and long-term precautionary perspective if it is to be properly managed. I think in the ACT we have a very good example at the moment with the drought—and it is not just the ACT obviously that is suffering a drought; a lot of Australia is suffering from a long-term drought. The fires that occurred in the Canberra region have made that situation even worse. The ACT government has had to decide to buy a $40 million filtration plant to filter the water for the city. That sort of situation cannot really be foreseen and written into contracts easily.

A lot of work has been done on the problems of commercial contracts, particularly in the water services area. The development, management or termination of contracts for such major endeavours has been shown to be the source of major problems in water services elsewhere. Transparency, regulation, corruption and confused responsibilities between government and the company are some of these problems. I would like to table a document from the Public Services International Research Unit in the UK from the University of Greenwich there which details some more information on financial and other problems with water services.

Experience around the world has shown that there are very many problems with water supplies in private hands. At least 30 municipalities around the world have rejected privatisation of water services as an option and more than seven locales have had to terminate water contracts because private firms failed to deliver an affordable and safe service. The best known of these failures occurred in Cochabamba in Bolivia where the private contract was terminated after one youth was shot and killed by police during public demonstrations against the water company. The problems have not been restricted to developing countries. One recent rejection of a proposed water privatisation occurred in New Orleans, USA just last year. Also in Detroit, where

the water supply has been privatised, residents are subject to an aggressive debt collection policy by their private water company which resulted in more than 40,000 water cut-offs in the 2001-02 financial year and with water valves being cemented closed to prevent people getting access to the water. The human right to water is clearly ignored in circumstances where people are refused access to water because of the inability to pay. In Britain a number of water companies have been named as amongst the worst polluters in the country and have been prosecuted on 128 occasions.

As I have also mentioned, private water companies have been engaged in corruption and anticompetitive behaviour. With contracts worth billions of dollars, the temptation to corruption must increase. Between 1996 and 2001 at least six water companies' subsidiary executives were successfully prosecuted for corruption—two in the US, one in Italy and three in France. Because there are so few large companies involved in the global water business, anticompetitive behaviour is also evident. Suez and Vivende were found by the French competition council to have abused their position of market dominance and the numerous joint ventures internationally between water companies seriously limit competition, so the promised benefits of free trade giving consumers better prices cannot eventuate.

While a privatised service relies on consumption for revenue, responsible water management in a dry country relies on conservation of water and sharing water between multiple users and uses. The way forward for Australia must be to focus on water conservation at both the micro or domestic level and macrolevels—regional and national. This is contrary to a revenue based approach. Problems in Australia have already been identified by Christopher Sheil in his book *Waters Fall: Risks with Economic Rationalism* in relation to the cryptosporidium outbreak in Sydney and the big pong problem with Adelaide sewerage in relation to maintenance standards by private companies having responsibility in those water service areas.

The contradiction between a private management profit-driven approach and looking forward to the future providing adequate funds for maintenance and infrastructure is clear, I think. With the complexity of managing Australian water resources for urban and rural residents, agriculture, industry and, importantly, the environment, long-term private sector water management, even on a leasing arrangement, would not be in the interests of Australians.

Jill Iliffe—Mr Chair, I am getting a little concerned about the time because there are many people still to speak. Is that a tabled document?

Ms Kelly—It is not.

Jill Iliffe—Could you try to finish very quickly because we need time for debate and discussion.

Ms Kelly—I just want to give a few examples in relation to environmental standards as well. In the US there have been a number of situations where processes which are related to environmental protection—for example, in the fishing industry, there is the tuna dolphin case, the shrimp turtle case and quota limits for salmon and herring—were all excluded from being considered in the trade of products because they are not considered to be related to the actual product itself. The environmental protection is not allowed to be taken into consideration. I think

this has implications for things like our long-line fishing practices to protect the albatross and bluefin tuna quotas.

In other examples in the US, the World Trade Organisation outlawed US clean air act regulations to reduce air pollution. Also, the US department of agriculture has declared meat inspection systems of 43 countries to be equivalent to the US system, even though some of these nations did not meet US requirements. There is an example of where a US corporation was awarded $15 million because it was refused permission by a local Mexican municipality to build a large hazardous waste facility on land already contaminated by toxic wastes. There is also another example where a US company, the Ethanol Corporation, which produces a fuel additive containing manganese, a known human neurotoxin, was prohibited from selling that additive in Canada, and they were awarded $13 million in damages. The Canadians reversed their ban on that additive because of that case.

All these examples demonstrate that the environment is put very low on the agenda in the area of trade. We know that the global situation in relation to environment protection is critical. Environment and health implications must be given a high priority and that must be a greater priority than they are given at the moment—and these trade agreements will not do that.

Mr Quinn—My statement is here for tabling, along with some references that I think are very important. I will try to speak quickly.

CHAIR—Perhaps you could make your tabled document available to us while you make your address.

Mr Quinn—Yes. My statement is an economic corollary to a submission you also have from the Australia Institute on the pricing implications of the free trade agreement. I will be talking about the PBS and the pharmaceutical market generally.

The PBS in Australia ensures that prescription drugs are accessible and that the market price for a given drug reflects its therapeutic value. The pharmaceutical market controlled under the PBS is controlled from a perspective of supply rather than demand, in that the listing of a new drug and reference pricing are therapeutically and evidence based, so the worth of a drug must be demonstrated rather than left to a less informed market to decide. However, US trade representatives have labelled this practice insidious and stated a preference instead for a cost base or patent based mechanism for pricing so that the price of a new drug reflects not the therapeutic value of the drug itself but how much was spent on its development. The PBS has long been a target of US trade representatives who refuse to rule out its inclusion in the free trade agreement, nor will Australian trade representatives or the minister state that the PBS will not be considered in negotiations, which I think is very important.

In Australia's pharmaceutical market, firms complain about the Commonwealth's use of monopsonistic purchasing power to gain lower prices than are commonly found elsewhere in the world and so distort the pharmaceutical market; however, two facts contradict these complaints. First, conditions required for perfect competition do not exist in the pharmaceutical market, which means that if you remove the monopsony of the PBS you will not end up with competition, you will end up with a monopoly or an oligopolistic market. Additionally, although firms earn smaller profits in Australia than elsewhere, they still do earn profits, which means that

they will always participate in the Australian market. Their profits might not be as large here as they get elsewhere in the world, but I think we should insist on valuing the health and wellbeing of our citizens more highly than the economic profits of commercial firms.

These two facts can already be seen in pharmaceutical firms marketing their products to doctors and GPs in Australia with detrimental results, and such nonprice competition is already characteristic of imperfect competition and firms capturing consumer surplus and earning what is called 'abnormal profit'. The US trade representative in relation to this point has demanded that Australia allow direct-to-consumer advertising. As the Australia Institute's report shows, more is actually spent on marketing in the US than on research and development. Marketing differentiates a new drug from therapeutically equivalent and cheaper competitors and helps firms gain monopoly power and again capture abnormal profits.

However, evidence shows that direct to consumer advertising results in health adverse decisions by consumers as well as quite costly decisions, since brand loyalty means that demand becomes nontherapeutic and price inelastic, and it also obscures the actual returns on investment in the pharmaceutical industry. Direct to consumer advertising also promotes pharmaceutically dependent interventions in health rather than lifestyle changes where they are necessary. Particular examples are obesity and smoking. It is analogous in fact with not simply giving a man a fish rather than teaching him how to fish, but with selling him a fish.

The US pharmaceutical lobby Pharma has stated that the practice of evidence based acceptance of a drug on to the PBS and reference pricing must be discontinued and direct-to-consumer advertising permitted. Such changes would in fact transfer effective control of the market from the PBAC and the Commonwealth to commercial firms and convert consumer welfare into producer surplus and profit. Without the supply and pricing controls of the PBS, the market for pharmaceuticals is simply one with monopoly power for firms. Monopolists are characterised as underproducing and overcharging, which leads to welfare losses for both society and the economy. These welfare losses come from charging higher prices for the most needed drugs, which disadvantages the sick, the poor and the elderly by pricing them out of the market for some drugs altogether. This is opposite to the designs of the PBS ever since its inception in 1948.

As to any suggestion that the PBS should be a component of trade negotiations—in this case with the US, but with any country—through subsidisation, the PBS gives priority to consumers and social rather than just economic welfare in Australia's market. A free trade agreement is designed to also increase consumer surplus by increasing competition in contestable monopolies. But if the PBS were eroded, monopoly powers would exist in most therapeutic areas, even with international trade. Competition in the market overall would decline and consumers would inevitably lose. Because of the welfare efficiency of the PBS, all Australians would lose. If the aims of the free trade agreement are to increase competition and market access for Australian patients and consumers, then the PBS must be retained as a part of that agreement. Anything less will result in less competition, less access and welfare losses, such as are detailed quite precisely in the Australia Institute's submission.

I will conclude with some comments on the more general discussion surrounding GATS. The Commonwealth must also retain autonomy with regard to regulation of all industries and markets pertaining to public health. These include Medicare, the MBS, health insurance and in

fact all aspects of health system financing. When any of these are managed according to economic profit maximisation rather than consumer and social welfare, two-tiered systems of health care result. They have arisen in this manner all over the world when free trade precipitates the devolving of government regulations that defend consumers from noncompetitive practices.

While all of the points here are largely in reference to the free trade agreement with the US, this agreement is simply an attempt to pre-empt the same commitments that are being made under GATS with the World Trade Organisation. Our pharmaceutical and health services markets are not threatened by some malevolence of US firms; they are simply markets in which the health and environmental welfare of Australians has to be protected and that can only be protected by commitments from the government.

Ms Bambrick—Because of the time constraints I will stick to my main points. First of all I will state the obvious: Australia's careful quarantine measures have placed us in the enviable position of having a relatively safe domestic and export food supply. So, if we are to continue to depend on an agricultural industry and be a world leader in food safety, we must rigorously maintain our right to impose quarantine. Quarantine directly protects public health and it does this through limiting the importation of potentially contaminated food. For example, at the moment Australia primarily imports cheeses made from pasteurised milk and cream. Unpasteurised products carry the risk of mycobacterium bovis or bovine tuberculosis, which can cause tuberculosis in humans. Listeria is also another problem with this. Australia is under pressure to lift these importation bans from countries such as France, which has different—and one could perhaps say lower—food standards in this respect.

So Australia's quarantine laws are sometimes labelled as an unfair, illegitimate barrier to trade. Recent multilateral agreements seek to limit the use of quarantine as a trade barrier by harmonising national with international standards. National standards which go beyond these must justify their higher standards on scientific grounds. But even science is not immune to influence from particular economic and political agendas, and the legitimate criteria for acceptable risk may vary between countries. So Australia is therefore expected to lower its food standards to those of other countries. To fail to do so means that Australia risks losing any dispute settlement process and will have to pay restitution.

So my main point for today is that quarantine is actually being threatened through the backdoor. Quarantine does not need to be on the table to be severely eroded by the outcome of negotiations. It has been quietly undermined through the dispute settlement process. Just in case you are thinking that this is simply conjecture, it is actually happening already. For example, the Philippines have recently applied to bring Australia before the WTO's dispute settlement board in a case involving tropical fruit. Import restrictions apply to some fruits from the Philippines because they do pose a disease risk. The Philippines are claiming that Australia is breaching international regulations, that Australia's system of quarantine is not scientifically based and, most importantly, that Australia's quarantine system is not in line with international standards. This last point is strongly emphasised by our trading partners who ignore that these international standards are the very same standards that allowed BSE, or mad cow disease, to take hold in a number of countries while Australia remains BSE free.

The EC has also brought a dispute case against Australia to the DSB. According to the EC, Australia's quarantine requirements are much more restrictive than necessary. A number of other

countries have asked to join these proceedings, including Chile, the Philippines, Canada and India, to increase pressure on Australia to back down. As this particular dispute calls into question Australia's quarantine standards per se, the potential for watering down these standards is tremendous. Furthermore, a bilateral agreement with the United States would lay Australia bare for more such charges. The US, while lobbying for free trade elsewhere, remains fiercely protective of its own industries, as evidenced by its recent defence of heavy import tariffs on steel, which they call safeguard duties. The US also heavily subsidises its farmers, creating a highly effective trade barrier even in an ostensibly tariff free situation.

While the outcomes of the dispute settlement are public, the processes that generate them are conducted in private. The public is not party to the pressures that are exerted on smaller trading partners. In this case Australia is by far the weaker party in the current bilateral negotiations. So even if quarantine in an official regulatory sense is not eroded during these negotiations, it may still be weakened significantly through the dispute settlement process. The solution to this is that, rather than force Australia to lower its own standards, the government should be working to increase Australia's position to that of the internationally accepted standards. This would create an international level playing field without compromising the health of Australians. Australia's regulations would no longer be perceived as restrictive and food safety in many parts of the world would be improved.

I have a few key points. Trade is not everything. The Australian government must not risk public health for the sake of a few trade dollars and, indeed, the potential damage to the agricultural sector would seriously deflate Australia's export capacity. Government has an obligation to protect the health of its public. Any free trade agreement must come second to Australia's practical and science based quarantine concerns. Any potential import should be subject to a risk evaluation at a suitable level to protect health. Not all countries have food standards of comparable quality to those of Australia, nor do they have the relative disease free status of Australia's agricultural industry. We must not lower our own standards to keep others happy. So, although quarantine cannot operate on the basis of zero risk, the Australian government must not knowingly act to increase risks to public health or the agricultural sector. This is what a free trade agreement with the United States will do unless quarantine is explicitly excluded from the agreement.

Jill Iliffe—In the interests of time and so that you have the opportunity to canvass further the really important issues that have been raised by my colleagues, I will make three comments. I will not repeat comments that have already been made. The first is that the Australian Nursing Federation wants to express its concern at the context in which decisions are being made and issues are being considered. I give nursing as a case example. The Australian Nursing Federation represents 125,000 nurses across the country at all levels. The limited discussions that we have had with the department and with ministers have demonstrated not just a very minimal understanding of the structure of the nursing profession in Australia—which you would be really concerned about—but a minimal understanding of nursing education in Australia and very little understanding of nursing regulation and national competencies that underpin nursing regulation, the nursing scope of practice and the existing arrangements that are already in place for nurses who are educated overseas to be able to work in Australia which are open, accessible, fair and transparent and not restrictive in any sense.

It concerns me that decisions are being made in this environment—an environment of ignorance. If this is so for the nursing profession which makes up almost 50 per cent of the health work force, what does it say for other occupational groups and services? That is a real concern. There has been insufficient consultation. We have had one formal consultation with the department over trade issues, despite the fact that we have sought other meetings. I must say that the consultation we did have was very positive and there was a very positive attitude from the department. I understand that they have a lot of things to consider, as far as occupational groups and services are concerned. But we are talking about the health of the Australian community and about nursing, which makes up 50 per cent of the health work force. I think it is really important that we have confidence that there has been adequate consultation.

The last point I make has been made already, and I know that I said I would not make points that have already been made. But I would just emphasise that the lack of transparency, the lack of substance for us to comment on, is a real concern. If there is nothing to hide, if consultation and the best outcome are what the government want, then it is in their interests to put everything on the table.

We are aware that there have been requests to the government in relation to opening up the Australian market to nurses from countries. I say to the committee that the market is already open. There are no barriers to nurses who are educated overseas to practising in Australia, provided they meet the competency standards, and there are processes in place to support them along that way. We cannot have two levels of health service provision in Australia for safe care and safe practice.

I give you the example of the mutual recognition agreements that were negotiated between Australia and New Zealand. Part of the negotiations discovered a loophole, in that nurses from the South Pacific who would not normally be automatically accepted under a mutual recognition agreement for practise in Australia were accepted in New Zealand. It took some time for New Zealand and Australia to work together so that the loophole was closed and so that the nurses from the South Pacific were supported to raise their standards to the level that was comfortable for the negotiation of the mutual recognition agreement between Australia and New Zealand. That is certainly the last point that was made: it is not the lowest common denominator. We should be working with other countries so that Australia's standards are maintained.

CHAIR—On that last point about mutual recognition, your comment was that foreign nurses, if they meet the qualifications standards for Australia, have their qualifications recognised and can come and nurse in Australia. What is the situation with the United States, do you know? Can Australian nurses have equal access to the US market, as US nurses may, under that configuration, have to the Australian market?

Jill Iliffe—There is a reciprocal arrangement with the US, Canada, the UK and certainly with New Zealand—and it was with South Africa but I think the education process has changed in South Africa. In countries where the nurses registration authorities are confident that the standard is the same, there are reciprocal arrangements. We are very fortunate in Australia: we are the only country in the world that has the same standard for registered nurses right across the country and the same standard for enrolled nurses right across the country. In the US, as you may be aware, each of the states has their own regulations and they have not achieved what we have achieved in Australia, although there may be four or five that have. For those that have a

reciprocal arrangement with the Australian registration authority, there is no difference. For those that have not, Australian nurses sit the same test that any other nurse going to the US would.

When I say that nurses are able to practise in Australia, they must meet an English language test—that is one of criteria—they must have the correct visa that allows them to work in Australia and they must meet the same competency standards that the nurses in Australia must meet. There are courses, and supervised clinical experience in hospitals is arranged for them so they can demonstrate that they meet those competency standards. So it is not automatic except for a few countries.

CHAIR—Just before we broke for lunch we had the Institution of Engineers here, and they were talking about professional engineers. Their argument was that professional engineers from the United States can come and practise as professionals in Australia. Although at the national level in the United States we are recognised as being equally competent from an educational point of view, it gets Australians trying to do the reciprocal thing in the United States at the state level. Each state has different standards, and those standards go to a range of criteria which do not appear to be related to the competency of professional engineers—thus they are disbarred from working. So the traffic is one way and not the other way, not both ways. Getting into the United States and being accepted for residency is one hurdle for workers. But, assuming that hurdle has been legitimately cleared, does the same discrimination operate against nurses at state level as, for example, what the engineers have complained of?

Jill Iliffe—No, I do not think that it does. We have a very vigorous, although small, migration of nurses temporarily and permanently to the US, as we do to the UK. I just make two comments. The reason I raised the Trans-Tasman Mutual Recognition Agreement is that there was about 12 months of consultation between the regulatory authorities in Australia and the regulatory authorities in New Zealand. It seemed like a tedious process but in the end we have got a good outcome. It would be very hard for me to be critical of a state in the USA for wanting to set their own standards when I am saying that Australia should maintain the right to set its own standards. With a lot of occupations, certainly with nursing and with engineers as well, you have a public interest in having safe practitioners for the good of the public and also for the good of the work force. So that really has to be what drives things.

CHAIR—I understand that argument, but the argument in trade terms is not so much about setting fair community standards; it is a question of whether the standards are artificially configured to create a disadvantage when ordinarily, if they were fairly configured, everyone would be equal.

Jill Iliffe—It certainly does not apply in relation to nursing. I do not think you could say they are artificially configured.

Senator MARSHALL—Have you had assurances from DFAT that that is going to be the case, that the competency standards you are talking about are not going to be—

Jill Iliffe—No.

Senator MARSHALL—So it is your view that they are not there as trade barriers but it is not necessarily anyone else's view.

Jill Iliffe—I haven't even any confidence that there is enough understanding to know that the competency standards exist and what that means. All of the education programs in Australia must demonstrate that they meet those competency standards, so it is the education programs that are credentialed to meet the competency standards. That is the point I was making about insufficient consultation and a lack of awareness about the context in which decisions are being made. I know there is an awful lot for people to get their head around, but these are really important issues as far as safe care and safe practice are concerned.

CHAIR—I accept that point. My usual opening questions are about the level of consultation you have enjoyed. You have directed some remarks to that in your address to us just now, so I will skip those questions. Before I ask any of my colleagues to ask questions, I will go to something that is, frankly, not within our brief but is broadly in the issue of trade at the moment. As you know, the Doha development round is being negotiated and one of the features of the round is to try to give developing countries access to markets in the developed world. One of the issues that are of great contention that is holding up the negotiations is the question of access of developing countries to pharmaceutical drugs: that is, generic drugs, drugs that are protected by patent. It seems that the only significant objection to ticking off an agreement on that item is the United States at the present time. The dispute centres around whether the list of drugs tabled by the developing countries is a fair list and whether it includes drugs that ought to be considered. The typical example is Viagra and whether that should be considered for a developing country or not. I must say I do not know whether Viagra is on their list. My understanding of the Australian government's negotiating position is to support the argument of the developing countries. Do you have from a health point of view any comment about that issue?

Jill Iliffe—I will make one comment and then perhaps our expert on the PBS might like to make a comment. Earlier this month I was at a meeting of the Commonwealth Nurses Federation, and I found it particularly distressing when we were talking about transmission of HIV from mother to child to hear my nursing colleagues say, 'There is no point in us providing all this education if we cannot offer treatment to our community.' In terms of who makes decisions about what drugs are reasonable and what drugs are not, it seems to me that it is the local community that would be in the best position to say what drugs they need and what drugs they do not. Something really does need to be done to give developing countries access to quality pharmaceuticals at a cost that they can afford and to ensure that they are not being manipulated. People are dying while we sit and talk, and it is really unacceptable.

CHAIR—It is not just HIV-AIDS drugs; it is a range of drugs that go with underdevelopment and poverty.

Ms Bambrick—Anyone who doubts the benefits of generic drugs only has to look at the example of Brazil and the HIV generic drugs that they have been using. They have really dropped infection rates dramatically.

Senator NETTLE—I have a question about the PBS. I know that Senator Cook has said previously that we are not in a position to be able to talk about specifics because we do not know what is on the table. We need to just go by the comments from the US pharmaceutical industry in

terms of their concern about PBSs and the reference pricing that you talked about. Given the public understanding about the concerns that the US pharmaceutical industry have about the PBS, if we imagine that they are able to advocate for their position, what would be the impact of those changes in terms of the ability of the PBS to provide cost-effective medicines to low-income earners in Australia? Could you draw for us that picture if they were to get their way, so to speak.

Mr Quinn—I do not want to sound too cynical, but I think you could take the position of Pharma, the pharmaceutical representative group in the US, as representative of what the US trade negotiators would want. The two aspects of the PBS that they would most like devolved or altered—the trade negotiators have said time and time again that they are not interested in having the PBS removed, but they then qualify that by saying that they just want as much information about it as they possibly can—are, as I said, the direct to consumer advertising and the reference pricing.

In the latter case, it pretty much rewards a pharmaceutical firm on the therapeutic worth of its drug, which means that if there is a generic equivalent then it will be priced according to the price of that generic equivalent. The pharmaceutical firms do not like this because they say that that form of pricing does not reward the research and development that went into that drug. As for direct to consumer advertising, if you read the submission that came from the Australia Institute, they have some interesting statistics there on advertising and marketing expenditure by US pharmaceutical firms, which is in fact much greater than their research and development costs. That is why I said that hides the returns on investment, because the profits in the US really do not reflect the returns on research and development. They probably reflect more the returns on clever advertising.

In terms of what that would mean to the Australian market, the Australia Institute pointed out that their most optimistic analysis was a 14 per cent increase in the concessional copayment. That is based upon only a $1 billion increase in total costs for the industry and having half of that $1 billion assumed by the Commonwealth budget. Their own analysis is actually that the increase in costs will run anything from $2 billion to $2.4 billion. Then, depending on how much of that the Commonwealth is willing to share, the results on concessional copayments actually run very, very large. That can or cannot be a problem.

A lot of people complain that the PBS is thought of as a welfare mechanism when it should not be, and to some extent they are correct but only on the margins. That means that, if the concessional copayment as it did last year goes up by $1, you can make the argument that if costs in the industry are increasing then a $1 increase is not unreasonable. But that only works as long as cost increases have no income effect, and that does not hold if you increase a copayment by $5 because that does have an income effect because it will alter what people can and will spend on pharmaceuticals and on other things. It also means that removing the concessional copayment or forcing it to be removed by just overloading it with costs also has a very adverse welfare effect.

The problem with that, as I said, is that the PBS is the most welfare efficient mechanism there is because the sick, the poor and the elderly do get priced out of pharmaceutical markets. It happens in the US. Fortunately, it does not happen here because of the PBS and because of reference pricing and the way it manages the market in that it provides subsidies to consumers

while still allowing pharmaceutical firms to regain the monopoly profits that they would ordinarily expect. In the papers I submitted, Professor Laing has said that, with regard to the PBS, Australia is the one country in the world that has got it right. Richard Zeckhauser has called it ingenious. It is basically perfect for what it does and any move away from the PBS as it currently stands will be adverse to the market generally because prices will increase and pharmaceutical firms will capture more profits, and that does not really fit with the way the pharmaceutical market is managed here.

Ms Gilmore—I am a member of the Australian Pharmaceutical Advisory Committee, which is the advisory committee to the minister and includes health professionals, pharmacy representatives, consumers groups, Medicines Australia and also the generic industry. It was agreed at the last meeting a couple of months ago to write to the health minister in relation to free trade agreements and the PBS and request that they are not considered as part of the negotiations. It was a unanimous decision at that time. I certainly cannot talk about the detail, but my understanding is that a letter has gone to the minister in relation to that because of the issues that arise with the PBS in trade agreements. It was a very strong stand that was taken.

Mr Quinn—I think we have sent one as well, haven't we?

CHAIR—The actual sharp end of the negotiations commenced in Hawaii just this week, but my understanding is that the Americans had said and we had said that the PBS is not likely to be an issue. One always has to be careful about general statements, but at least the signal is a more positive one.

Senator NETTLE—It is probably worth noting on that point that there was a Senate return to order in relation to documents around the PBS and the free trade agreement to which there were several documents that were not provided, including security classified cables from Washington that the government did not believe were in the public interest. So, as Mr Quinn said before, while there continues to be comments that it is not up for negotiation, clearly there is a tremendous amount of information being shared about the workings of the PBS.

CHAIR—There is no doubt about that.

Mr Quinn—Unfortunately, nobody in any position of authority has actually come out and said that it will not be. The Americans have offered very vague assurances at best. If it is not going to be negotiated, it is a fairly simple matter for an Australian trade negotiator to say, 'No, it's not going to be negotiated.' So far they have refused to do it, even under direct questioning to that effect.

Senator NETTLE—I understand that.

CHAIR—My only point is that we are inquiring here into something that has not happened yet. The negotiations are coming to the sharp point in which you will see fairly soon the issues that are being seriously pressed. That is the only comment I need to make. Kerry, you have the call.

Senator NETTLE—I wanted to direct a comment to Kathryn in relation to the privatisation of water. Earlier today, the committee heard from the Australian Local Government Association

which expressed concerns they had about water being a part of the GATS negotiations. They said that they had heard assurances from DFAT that water would not be put on the table by Australia in relation to GATS negotiations. They expressed to the committee that they were quite confident with that assurance they had received from DFAT. Given the comments that you have made in relation to the privatisation of water, can you shed some light on the basis for your concerns?

Ms Kelly—I guess the basis for my concerns is that I have not heard that reassurance that they would not be included and also I am aware that there is a big push, particularly as I said from the EU, to have them included in the GATS. So I think there is still a real risk that they will be unless, as has been talked about with the PBS as well, somebody comes out and definitely says, 'No, we will definitely not include them,' and I have not heard that. As well as the water privatisation, there is the issue of environmental standards and the push to the lowest common denominator, which is a general issue of concern as well. I am sorry, but I cannot shed any greater light on that. I think there are still real concerns that it could be included.

Dr Broom—Even if it were not included in the current round, the committee will be aware that the wording of the GATS requires what is perhaps euphemistically called progressive liberalisation, which makes it sound very safe and positive but that means that it could be up again and again and again in future rounds. We are looking for the Australian government to rule it out, to explicitly exclude it as a human rights issue not a trade issue.

Senator NETTLE—I have one last question in relation to labour standards that we were talking about earlier and the indication that you made that countries were keen in the GATS negotiations for that to be a part of the process. Do you have any knowledge about whether that is being put on the table by either Australia or the United States in relation to the free trade agreement negotiations?

Jill Iliffe—One of the difficulties is the separation of labour standards generally to labour standards as they apply to occupational groups specifically. Because there is this lack of transparency, lack of openness and lack of consultation, discussions are being held and decisions are being made over here which may have an impact on other things that are being excluded or given reassurances about—and I do not believe any reassurances unless they are in writing and signed in blood—so that is the difficulty. If you make some decisions in relation to labour standards that have a negative effect on regulated occupations, you are caught in a real bind. The regulations as they relate to nursing are an issue for us but labour standards generally are also an issue for us. As far as we are concerned, nurses are workers and the two go hand in hand. Until we can see what is being discussed on both sides of the table, we cannot make an informed comment and we cannot contribute positively to the debate.

CHAIR—Thank you very much. Unfortunately, we are a little over time, but thank you for your submission and thank you for your attendance and remarks.

Jill Iliffe—Senator, would you like the witnesses here to leave their speaking notes?

CHAIR—Yes, please. Your comments will be recorded in the *Hansard*, but if you have written notes that amplify any of your points, it would be appreciated if you tabled them.

[2.35 p.m.]

BURROW, Ms Sharan, President, Australian Council of Trade Unions

MURPHY, Mr Ted, Australian Council of Trade Unions

CHAIR—I welcome the ACTU. You have the call, Sharan.

Ms Burrow—Thank you. I am sorry, I think we have omitted to put Ted Murphy's name on the list. Ted is employed part-time by the ACTU as a trade expert, so he is here to answer all the hard questions. Thank you for the opportunity, Senator Cook and the other senators. We are clearly very interested in, and concerned about, elements of both GATS and the US-Australia free trade agreement, or the potential for such. I will make a few general comments and then try to go very quickly to the issues that you want to raise, because we have put in a written submission and I think you know our views about this.

The issue I would put right at the top is transparency. We will be looking to this committee to make some recommendations about the way we do business in Australia around trade agreements. In regard to transparency, in a colloquial sense—as I have said to the press today—it is time to end the secrecy. As a democratic country, we really do need to know what is on the table, we need to have the kind of research base that provides for broad based debate in the community and we need to be able to model the ambit claims, if you like, in terms of winners and losers. To do anything less is, frankly, to allow a bureaucratic approach that sees negotiations conducted in secret without an understanding of who wins, who loses and how we make those decisions.

In the case of the GATS environment, while we have a summary of the government's initial position, there is no understanding from us, apart from again a summary of what other countries have requested, of which countries have asked for what. We do not have the details. We cannot do the detailed research around what that might mean in either a bilateral or a multilateral sense.

In regard to the US FTA, we want to know what the claim is. What are they actually putting on the table in Honolulu right now? Until we know what the claim is, while we have our suspicions, it will be very hard for Australians and Australian industry—whether it is employers, unions or other interested parties—to do the work that is necessary to work out winners and losers and to ask you as senators, and indeed other parliamentarians, to protect our interests.

The final piece in the transparency question is just that. At least in terms of the US, as minimalist as it might be, there is both an oversight committee which has parliamentarians represented on it and a debate in the house that has to at least vote up or down the ultimate outcomes of trade negotiations. Unfortunately, in Australia we see executive government fulfilling those roles with few or no checks and balances. It seems quite ludicrous to us that the treaties committee has power only after the event and therefore, with due respect, is essentially powerless.

I think our position on GATS in general has been well stated. I will just raise a couple of issues that really do worry us: the capacity for domestic regulation disciplines to be extended and therefore provide little or no protection; the necessity test, which we can go into detail, which can be negated—despite a country's ambitions—in the light of a panel judging that it does not meet the least restrictive trade environment; and our general concern that Doha, GATS et al face a huge challenge in terms of stagnation. On the one hand we might think that is a good thing; on the other hand we would much rather see a fair and open debate about what constitutes fair trade—in a global set of rules that encompasses aspects of international law in regard to human rights, labour standards and environmental standards—than see the spin-off.

Zoellick's words in our media in the last few days make it quite clear—almost, I think, at the level of a threat—that, if there is no movement in the Doha Round, bilateralism will reign supreme and the US will pursue its interest in other ways. I find that fairly frightening. If we are going to manage and civilise a globalised environment, fair trading rules must sit at the heart of that. We need to move forward rather than backwards on what those rules may look like in regard to protection of people and their communities.

I do not need to go into the question of positive versus negative lists—you would know our views about that very well. The negative list approach, in our view, not only does not provide for a very clear and constrained debate but limits us from negating demands around future environments or constructing national policy in regard to future environments. So we would simply argue, on the question of GATS in particular, to be vigilant against any move towards a negative list approach. In terms of the US FTA we are opposed to negative lists, and I will come back to that.

The thing that worries me even more about GATS when I read the words of the trade negotiators from the US is that there is clearly a very limited approach to agricultural liberalisation expected. That means that, once again, the burden of liberalisation will be borne by those sectors that we see being most dramatically affected by job losses in Australia—the manufacturing sectors in particular, and I would argue increasingly services, before we have had a chance to think about what emerging services might indeed look like in Australia.

In regards to the US-Australia FTA, I think it was a deep irony to again read today Mark Davis's article in which he makes it clear, as we have been saying all along, what will happen when the government has two research reports and one promotes a breathless $3 to $4 billion outcome based on total liberalisation—which is a fantasy, not to mention the fact that the assumption would appear to suggest that, by embracing US-Australia business models, we will do very well in terms of competitiveness in the services sector. For us—and I would not want to suggest that we are paranoid—that could mean more downsizing, job losses and intensification of work and the like. I think that we are well aware of US business models. I have to say that from corporate governance through to the impact on working Australians, in the main, we are not enamoured of them and certainly do not see them as leading edge or the basis of humanity that we hope would underpin a civilised world of work. On the other hand, you have the ACIL research, which you well know suggests that we could even lose potential GDP in the short term.

The point about this is that we do not know who the winners and losers will be. Again, we come back to our claim: tell us what is on the table so we can actually have a debate that is in the interests of Australians in understanding the bottom line. I add that, as a union leader, if our

constituency did not understand the claim that we had on the table with employers then I am not sure that we would be in good stead to be re-elected. So I suspect that there is some democracy to play out here. The Prime Minister could well heed those messages, but coming from you in a report about the fundamental rights to transparency and debate in a democracy would be well respected.

The question of labour standards in the US environment is interesting because, while we continue to have debates about the global arena and despite opposition from many trade negotiators around the world, we do not believe you can have an environment where trade or the corporates that drive the shape of globalisation—and indeed the governments that support those corporates—are not respectful of labour standards. When you come to the US-Australia environment, the irony is that language around labour standards, and indeed environmental standards, is required. It is in other agreements. We remained sceptical that there was no appropriate information or modelling that was opposed to the US-Australia free trade agreement, and indeed we are very fearful for a range of sectors, which is well detailed. It goes from manufacturing to service standards to the threat to the film and television industry, particularly in terms of future requirements for local content in that industry that we might want to see emerge.

In terms of the PBS and others, you well know our concerns. But on the question of labour standards, it intrigues us that there is a growing voice in the business community on both sides of the respective masses of water that says, 'We have equivalent laws and therefore there is no need to have this language that would underpin any trade agreement.' The irony is that Australia does not even have fundamental collective bargaining laws. There is no commitment anywhere in our legislation to a core ILO labour standard on collective bargaining. When I point this out to some of the trade advocates from the US they are somewhat shocked. But that is the reality, and so we will certainly be working with the AFL-CIO. The Vice-President of the AFL-CIO, Linda Chavez-Thompson, will be here in a month or so. She and I will be making an appropriate joint statement about our intention on this and other matters in regard to this set of negotiations.

I will finish by saying that the economics of cutting tariffs but not appropriately reducing the subsidies and other market access barriers makes no sense to me. It just seems to be very foolish: we are all seeing tariffs put up there as the bogyperson—I should say bogyman because no sensible woman would engage in these sorts of strange economics!

CHAIR—That sounds a bit sexist!

Ms Burrow—I apologise, Senator. It is my terrible sense of humour. Where there is a tariff and it is seen to be justified, we at least return an amount to consolidated revenue. When you eradicate tariffs, and industry support and even protectionism in a range of nations is therefore put in place in other ways, where does the onus shift to? It shifts to the taxpayers. It is actually taxpayers who pay, so the cost to our revenue base can be exorbitant in some industries. We are seeing this despite my own complicit approach and that of other representatives of the ACTU in arguing for what we would call corporate welfare—for good measure, I might add, in terms of retaining jobs and industries. Nevertheless, it makes no sense when with the Singapore-Australia Free Trade Agreement alone we have lost $35 million to government revenue. Goodness knows what it will add up to in the case of a US FTA or, more generally, in the global WTO framework.

For all sorts of reasons we say to you as senators, 'Thank you very much for taking the time to understand the issues.' They are detailed and complex—you know that. We are happy to try and answer questions both the political and the general; I have gone to a few of the general issues in my opening statement. But our overall position is that, if we are going to see changes in the way the world works in terms of trade in services, investment, product and people—which is a subject that never gets a big run in any of these debates—then we want to see fair trading rules. In the US-Australia FTA, we see that not only is there no set of assumptions that would give you confidence in it but that, as we suspect, there is more of an extension of a military alliance than a genuine commitment to decent trading arrangements.

CHAIR—Does Mr Murphy wish to speak at this stage?

Mr Murphy—In respect of the necessity tests on GATS, in the ACTU's submission it is made clear that the argument is not that licensing requirements may not be used by other countries as trade barriers; the argument is that there is a difference between having a discipline that says you shall not introduce licensing requirements as a disguised trade barrier—that is, a discipline which is gathered towards dealing with those countries who introduce licensing requirements not to achieve a particular policy objective but basically, primarily and intentionally as a barrier to trade—and a discipline that says that your licensing requirements, technical standards or qualification requirements shall be least trade restrictive in impact. The latter is a much stricter obligation and circumscribes the abilities of governments nationally to weigh up the efficacy of particular licensing requirements in terms of meeting policy objectives, whereas the former would be useful in dealing with those countries which are simply using this for the intention of blocking trade. So it is a proposal that Australia has put forward that we find excessively onerous even in terms of the objective that underlies the proposal from the Commonwealth.

On the US-Australia free trade agreement, our understanding from negotiators is that the current session that is going on in Honolulu from 21 to 25 July is where they are putting the flesh on the bones, but that the architecture of the agreement itself has been talked about to date. Both the US and ourselves have come to the table with an agreement on a negative list approach for services, for example. I only want to comment on this basis. I think it is appropriate to say that, even where some of the major concerns about our US FTA outcome may not be fulfilled, you can end up with intermediate outcomes which are still a problem from an Australian social policy point of view. You do not need to dismantle the Pharmaceutical Benefits Scheme in order to erode the effectiveness of PBS as a price capping mechanism by changing the criteria used for the reserve pricing policy.

So, whilst we are grateful that the US chief negotiator, Ralph Ives, has said we are not out to dismantle the PBS, when we see statements that the criteria that are used for listing products and for setting prices are under scrutiny we are worried. If you made certain changes to those criteria with a view towards recognising the R&D costs and the intellectual property embodied in 'innovative US pharmaceutical products', you are actually saying that the degree to which our current PBS genuinely tests a new product in terms of its health benefit against an existing product and the price and the level of subsidisation for an existing product can be eroded—the effectiveness of the scheme can be eroded—in capping prices. Therefore, you can increase the total cost of the PBS with consequences in terms of domestic political attitudes towards the PBS. So the fact that the full demolition of the PBS scenario may not be an outcome of the agreement

does not alter the danger of intermediate outcomes that would still be adverse from an Australian social policy perspective.

The other area is audiovisual services. As we understand it, there is a likely outcome or a foreshadowed outcome of standstill on audiovisual services: namely, that we would retain the right to maintain the existing 55 per cent local content requirement for free-to-air television, but would not be able to increase that in the future to 60 per cent if we thought that was appropriate, nor be able to introduce new local content requirements for pay television or deal with issues such as children's television advertisements or, depending on how you write up your local content requirements, deal with the delivery of audiovisual product through new technology. So whilst standstill would be far better than the agreement simply removing local content requirements, we would still argue, for the reasons we have just outlined, that we should retain complete national policy sovereignty in the area of audiovisual services, local content requirements.

On the issue of government procurement, we understand that the US is offering federal government procurement in 37 states in return for federal government procurement and a proportionate state procurement response from Australia. The issue from our standpoint will be whether any procurement outcomes retain the ability of the Australian governments to use procurement mechanisms that have been used to encourage a domestic IT industry and whether procurement outcomes allow Australian governments to take measures which enhance the ability of small and medium business to get access to procurement contracts. Even though that may appear to be an attractive offer from an Australian point of view, there are still some risks of that sort of outcome unless there are certain limitations on procurement. We would expect—knowing the US attitude towards procurement—that they probably have some limitations on theirs.

I will make one other point about labour standards. The US Department of Labor advised the ACTU in a meeting that all they are seeking is a labour standards clause that says that neither party will reduce or fail to enforce their existing domestic labour standards in order to achieve a trade advantage. Frankly, we would prefer a labour standards clause that incorporated the core ILO conventions, but I am still at a loss to explain—given the nature of the US proposal—why, according to the US, the Australian government still has not agreed to any labour standards clause. To reject even a clause of that kind suggests a degree of paranoia about labour standard clauses per se, given that the clause itself would only render disputable action by either party to reduce or fail to enforce domestic standards for a trade advantage.

CHAIR—Thank you. Do you have anything to say on rules of origin?

Mr Murphy—We understand that the US has put up a whole range of product-specific rules of origin that goes into hundreds of pages, rather than the across the board 50 per cent approach. Our main concern on rule of origin has always been, if you use the 50 per cent across the board approach and you are measuring processing in the US as a proportion of the total allowable cost to manufacture, about the risk if some of the goods are processed in a low wage export processing zone, such as in Guam, Saipan or South-East Asia, because a number of US companies have established plants there. Because of the difference between labour costs and market values in the US and those other zones just mentioned, there is a risk that you could achieve the 50 per cent. If the 50 per cent does not actually measure the proportion of the good that is manufactured in the US, or for that matter in Australia, it would measure the overheads

and the cost of processing at US market values relative to the total allowable cost of manufacturing. If you are using low wage processing zones at low wage labour market values and market values generally, you could end up passing the 50 per cent test although the vast majority of the manufacturing occurred offshore. That is the concern we have about that.

CHAIR—I suppose that applies as well to goods manufactured in a privatised prison system.

Mr Murphy—Yes, I think that is the case. Our general view is that even the 50 per cent needs to be reviewed where you are dealing with companies that are using offshore low-wage export processing zone manufacturing.

Ms Burrow—In addition to the general issues around what is a genuine test of local content, we have real issue with the verification processes. I do not think we have yet seen a model that would give us confidence that it is a fair dinkum approach.

CHAIR—I have questions in three areas. The first is on the process that has been engaged in to lead to and conclude an agreement—whether it is GATS or the FTA—and goes to the questions of transparency and consultation that you raised. In the case of the FTA it goes to the structure of the package, and then in the case of both of them it goes to issues of detail—that is, the content of the package.

Just so that I am clear about this, in your submission on GATS and I think in your submission on the FTA you raised questions about consultation and process; you made some complimentary remarks about the WTO consultative committee and so forth. What I am looking for—and maybe this is a matter to take on notice if you want to come back; I do not expect an off the top of the head answer to this—is this: what does the ACTU consider to be the appropriate processes for consultation about, decision making on and concluding a trade agreement, be it a multilateral one or a bilateral one? Do you have a model that we need to look at?

Ms Burrow—We do. We will take it on board in case we miss something. Fundamentally, while we cannot in all honesty say that we do not have access to the respective DFAT negotiators, it is really at the level of superficiality. It is often after the event, not before the event. To be fair to the negotiators, they are operating in a context which has a nature of secrecy that I talked about. There is access, yes; substantive detail, no. That needs to be revved up.

We also need to, as I have said, know what it is that is on the table, and that is at the level of an ambit claim so-called. There is no point coming in after the negotiations are concluded. By then—you know what it is like—you have a complex set of deals, one of which relies on the other. The Australian people need to understand what it is that is being asked of them, and who is asking it in the case of multilateral talks because that will vary the impact from country to country. In the case of bilateral talks, they need to understand what is being asked of them and what we are putting on the table.

We are very interested in—I was going to say cleaning up; I suppose that is fair—progressing the parliamentary role within all of this. It would be terrific to at least retain some capacity for the Senate to have inquiries like this and to be able to travel around talking to people. It seems to us that without at the very least something like the US environment, where you have an

oversight committee and a genuine debate on the parliamentary floor, then we are not operating with an appropriate democratic process.

We are not now talking about treaties that might be ratification of international standards that have gone through numerous processes of discussion; we are not talking about treaties around the sorts of the debates that might go on between countries pursuant to international standards or rules or indeed in a defence environment; we are actually talking about the shape of Australia's economic and social future. I think we would argue other treaties need something similar but treaties concerning Australia's economic and social future seem to us to require a much more broadly based environment. I would hope that out of your report we can pick up recommendations that at the very least we can lobby around in the context of future elections, when we might have political groups that will make commitments about appropriate democratic and open government.

Senator MARSHALL—Do you see a role for state and local governments, given that the treaty actually binds them?

Ms Burrow—It is a good debate, isn't it? Depending on how you interpret our Constitution, I imagine that you could have a field day with lawyers who would say that the states' rights are actually being trampled on in many instances, particularly in an environment where services for which they are primarily responsible are actually traded in some form—for example, GATS, and indeed there are bilaterals where that is the case. I might take a slightly different view about a national approach but, whatever the relative arguments about the constitutional rights of state governments, there is no doubt that state and local government services in particular are being dealt with without appropriate consultation and without appropriate rights—absolutely. Whether they should go to the extent of veto rights is a good debate to have.

The fundamental question beyond services is: what role is there for communities? That comes to state and local governments again. Take the car industry sector. In the US FTA negotiations, despite the gloss that is put on it, that is one of the industries that will face immense competition. In the current environment, not only do we put a lot of taxpayers money in to support an industry assistance scheme but the car industry is actually a substantial part of at least two regional economies—or one state economy, namely Victoria, and another regional economy in terms of a smaller South Australian outcome. Of course there must be a role for local and state governments in a genuinely open and transparent process. The legal or constitutional base of that would be an interesting one on which to take evidence from lawyers.

CHAIR—In terms of the process, a number of unions in various industry sectors and other community organisations have said to us in their submissions that the consultation is not adequate. Some have said that that is not a criticism of the department—in many of the same words that you have used—but that the structure of the consultations is not appropriate. One of the things that we need to turn our mind to as a committee is, if it is not up to scratch—if we accept that argument—what is a model consultative process? If you could offer us one, we would be grateful for that.

Ms Burrow—We will come back to that. One thing that I omitted was that consultation is one thing, but I think the lack of genuine research that actually gives Australians a sense of winners

and losers, that enables you to make decisions, is appalling. We are actually shaping a future with a level of research that is scandalous.

CHAIR—In the last round of estimates we discussed with the department what the structure of a potential FTA might be. They talked in terms of an agreement in chief and a number of annexes that might be attached to it. One of the annexes would contain a list of items that were not agreed but could be called up during the life of the FTA for further consultation and possible agreement. Another annex would contain a list of items that we could lock in as not going down, but could reserve the right to lift our barriers in those areas. Do you have any comments about the structure, the format, for this agreement?

Mr Murphy—As I understand it, the standard two-annex model—and I think you have just given us the three-annex model—is having one where you have standstill outcomes, where you are able to maintain your existing trade restrictive measures for the nominated sectors. The other annex is where you retain full national sovereignty and you can introduce new trade restrictive measures. You can actually have a third annex, what in trade union terms we would call leave reserved for negotiating in areas where you are unable to reach agreement, but most of the structure—

CHAIR—I understood from the departmental answers in the estimates—and I will go back and check this if there is a concern about it—that an annex would have a reserve list of matters for ongoing discussion, or matters that may be brought forward for discussion later.

Mr Murphy—I am not contradicting that. Within the Singapore-Australia Free Trade Agreement, in a sense there is a reserve annex insofar as there is a provision for additional commitments or additional exceptions to be negotiated following discussion with state and local government. But our main concern about the structure of it has been the shift from the GATS model of positive list to the bilateral model of negative list. The primary problem with a negative list approach is that all future services that have not been created—have not been developed, have not evolved—are automatically liberalised with a negative list approach. That has been admitted to by DFAT, particularly by the chief negotiator Stephen Deady, that that is the effect.

We find it difficult to understand the logic of precluding the regulatory options of future governments for future services whose dynamics and needs are not known. At least with a positive list approach, whilst there may well be arguments between unions and governments about what should and should not be included on the list, you are not foreclosing the future for future regulatory needs. That is our main concern about the structure that has been proposed. As we understand it from talking to the department, both Australia and the US come to the table with a negative list approach. The testimony of the department was that, in the Uruguay Round, it also had a preference for a negative list approach for GATS but that that was not persuasive in terms of the final outcome. That is our main concern.

The other problem with a negative list approach is that with your existing service sector you have one opportunity to get it right—the first time—in deciding what provisions need to go on that annex that retains the ability to introduce new trade restrictive measures and what sectors go on that annex that only allows you to maintain your existing trade restrictive measures. They are the two concerns we have with that structure.

CHAIR—Your submission sets out the detail quite fully, so I do not need to go to that. In relation to the headline debate about multilateral versus bilateral, we had evidence today from Professor Ross Garnaut, who obviously argued strongly for the multilateral approach against what he would term a discriminatory trade agreement. Does the ACTU have any input into that debate?

Ms Burrow—We do. Leaving aside CER—Australia and New Zealand are two of the most integrated economies in the world—as that is a different debate, while we have great reservations, you know through our international union structures and the UN family structures such as the ILO and other bodies that we argue vigorously about the shape of global rules that underpin multilateral trading arrangements. Nevertheless, if your ambition were to shape a fairer society on a global scale, we would argue—not that we think the WTO does this; on the contrary—that to civilise global corporates as governments have done traditionally through their own rules and regulations at a national level, a multilateral set of rules—particularly where they promote fair trade with the attendant human rights, labour standards and environmental standards underpinning them and where there is a prosecution or a grievance regime that is open and transparent and which people affected have access to—is the way you go about arguing, debating, finding and shaping a future.

The rampant bilateral free trade ambitions at the moment seem to us to be like political notches on leaders' belts; they are simply out there notching up yet another free trade agreement. We did a map this morning as part of some other work that we are doing in the region. When you look at what is going on in our region you see that it is a mess; it is an incredible mess. In the context of regional discussions, let alone the bilateral discussions that cut across those, nobody has really got a handle on what we are doing here. We intuitively have an opposition to setting rules between effectively two leaders who have got some ambition that is not in the interests of a fairer set of rules internationally.

CHAIR—I can put the ACTU down on the multilateral side of the argument.

Ms Burrow—I think you would have to put the ACTU down as being highly sceptical about the WTO framework generally, as you know. But, if you are talking about whether we are interested in jobs and investments and a fairer world, it has got to be a multilateral system we put energies into, not the sort of side deals of bilateralism.

Mr Murphy—I think bilateralism makes sense where you are talking about moving towards a single market economy. The relationship between Australia and New Zealand in CER is one and, although the Canadians will probably query this, you can understand the logic to a greater extent of the Canada-US Free Trade Agreement and of the European Union.

But bilateralism, as a broader strategy beyond that situation, runs up against three problems. One is that the parties to the negotiations do not have the advantage that you have with multilateral negotiations, where the negotiating power of smaller parties or countries is equalised to some degree with that of larger ones. Secondly, with rampant bilateralism—which is what we have at the moment—you end up with the likelihood of increased complexity for business because of different rules of origin and the treatment of different service sectors; therefore, you end up with a potential increase in export costs.

CHAIR—And a loss of productivity.

Mr Murphy—And loss of productivity. Thirdly, bilateralism carries a risk that multilateral outcomes do not carry: that increased trade will be due to trade diversion from parties that are not party to the bilateral process as distinct from genuine trade creation. So we think that there are very strong arguments for the multilateral approach, outside the special category that we talked about, and moving towards a single market economy.

Ms Burrow—I will just raise another question. We would dearly love to be able to sue the odd corporation within the WTO framework—I think that is an appropriate future because that is where the difficulty and exploitation lie for our members more often than not. But I find it just amazing that we have the potential for a free trade agreement with America that would allow a corporation to sue an Australian government. So, for all sorts of mad reasons, Senator Cook, I guess we are in your camp.

CHAIR—I know full well that you are not unqualified in that area.

Ms Burrow—Mind you, I would not mind suing this Australian government on a few issues, but we will leave that aside.

Senator NETTLE—I know that you have said that you are going to get back to the committee in terms of models that you are looking at. I would be interested to hear more of your comments on the US oversight committee and any potential applications of that for Australia. In your submission you talk about the leaked e-document from the European Commission about requests with relation to personnel services. Do you have any more information about where that may have proceeded to?

Mr Murphy—It is a GATS service category personnel placement and supply. My understanding, from looking at the initial offer, is that we are not likely to make any movement in that particular area. So what we were highlighting was that there appeared to be a slight divergence between the lists of requests that were contained in the DFAT summary—without identifying countries making the request—and the EU document itself. We were particularly highlighting the problem of how you classify the Job Network, because it is obviously personnel placement and supply.

I also point out the staff recruitment activities of entities under the GATS classification structure, whether they be public hospitals or education institutions. In the case of education, education services do not include the staff selection and recruitment activities of the human resources department of a school or university, let alone the administration activities or indeed the library within the school or university. Education services are defined very narrowly as, effectively, the teaching activities of the institution. So you also need to look at any commitments made under personnel placement and supply as to whether they have any consequences for those functions performed by entities that are otherwise not on Australia's list of service commitments, such as health and education. It has a broader significance than I think has been properly debated today.

Ms Burrow—More broadly, we would simply point out to you that, whenever these discussions are held, there is in fact very little discussion around the mobility of people—the

mobility of labour, in particular—and the mode for negotiations. It seems to us to have been dealt with on a very narrow scale. Migration generally, with all of the attendant continuum pieces from refugees to the migration of labour, will be on the ILO agenda next June. It is a very complex area, but you can no longer talk about a world in which we have global trade and investment services, product et al and not deal with the questions of people.

CHAIR—Thank you. I think you are going to come back on process. We will look forward to that.

Ms Burrow—We will bring you back a model. Thank you and good luck.

CHAIR—Thank you.

[3.20 p.m.]

FARGHER, Mr Benjamin, Trade Policy Manager, National Farmers Federation

CHAIR—Welcome. As you are probably well aware, the format is that you have given us a written submission, for which we thank you, and you now have the floor to address us on it if you choose, ahead of taking questions from the committee.

Mr Fargher—Thank you. The National Farmers Federation welcomes the opportunity to talk with you today. My comments will be with regard to the free trade agreement with the United States and not the GATS agreement. Thank you for the opportunity to outline the position of the National Farmers Federation. As indicated, it is articulated in the submission you have before you, and I would like to draw your attention to a couple of headline points. The National Farmers Federation policy with regard to the US TA is as follows: the United States market is a very important market for several major agricultural industries in Australia. In that regard, the NFF will support the negotiation of a US FTA, on the condition that agriculture is at the heart of the negotiations and the final agreement. What does 'at the heart' mean; what are we seeking? As I say, the US is an important market, but we do face several restrictions into the US for several of our commodities. The NFF seeks the elimination of tariffs and tariff rate quotas on agricultural exports to the United States. We seek this elimination upfront when the agreement is signed—not subject to long time lines.

Importantly, farm trade reform through the World Trade Organisation remains the NFF's No. 1 priority. The multilateral framework is where we believe the major gains are to be made. So many of our industries do not export to the US. If they do export to the US, they are also exporting to many other countries around the world. The WTO is our focus. In that regard, we believe it is so important that an FTA with the US include a comprehensive agreement on agriculture so that we send a strong message to our friends in Europe and North Asia that agriculture can be addressed in trade talks.

We believe that there are horizontal issues across the FTA negotiations that may impact on agriculture. We are very interested to keep a close eye on those issues. We are very familiar with what is happening in the agriculture negotiating group, of course. But all these negotiating groups may discuss issues—such as investment, competition policy, intellectual property and the environment—that could impact on our members, so we are very keen to keep a close eye as the negotiations progress this year. In terms of our internal process, the National Farmers Federation has set up a working group of agricultural commodities to look at FTA negotiations. This working group is an inclusive group. Individual commodities all have their own negotiating position and their own priorities. They are talking direct with government about these priorities. The NFF does not seek to duplicate them. That is why we have not articulated individual commodity positions in the submission in front of you.

Just to reaffirm, agriculture must be at the heart of the negotiations and the final agreement. We want full access to the United States market. We seek that access up-front—not subject to long time lines. The World Trade Organisation talks remain our No. 1 priority. The multilateral forum is where the major gains and the benefits of trade liberalisation are to be had. Thank you.

CHAIR—I take it from your submission that the NFF does not feel as if it has been not adequately consulted or involved in this process. Is that a correct conclusion?

Mr Fargher—We set up the working group up early in the process, when we had to submit our submission to DFAT by 15 January. Australia's lead negotiator, Stephen Deady, and his team have briefed the working group on numerous occasions. They have been very open with their time at those briefs and our people have been very appreciative of that communication process.

CHAIR—What understanding do you have as a consequence of the consultations you engaged in so far of what say or exposure you will have to the final package when it comes down?

Mr Fargher—We understand from negotiations so far that there have been two face-to-face meetings. We have met with Mr Deady before those meetings. We understand that negotiations this week will be the first time market access is on the table. Our working group, as a result, met last week. Mr Deady briefed that working group leading into this week and we understand that Mr Deady and his team will be briefing not only NFF but NFF's individual commodity members when they return from Hawaii this week about the US offer and about the process moving forward. We intend to have another working group meeting after Hawaii. We will invite Mr Deady to that, and all indications are that he will attend. We know the time line is quick because of the commitments made by the President and the Prime Minister moving towards Christmas. Our members are not so concerned with time lines. They are concerned with an outcome, that outcome being agriculture. That is our position on the negotiation.

CHAIR—I understand all of that. But do you have any understanding as to whether, before the government closes the deal, you will be consulted as to whether you are satisfied with the agricultural component of the deal?

Mr Fargher—To reiterate, we understand that in the process moving forward we will be in close consultation with Mr Deady. Obviously our President, Peter Corish, will be in consultation with the Minister for Trade. I cannot give you an exact time line—

CHAIR—I am not asking for that. Do you have any reservation in your discussions with the government that they would give a full exposure to you of the final package and seek your agreement to it, or is it a matter of them simply advising you of the final package and making a decision as to whether they think it is acceptable?

Mr Fargher—We have been happy with the consultation to date. We would obviously be extremely keen to see the final package on agriculture. We hope we would be consulted on it so that we can make a decision as to, and advise the government on, whether we thought it was in the interests of Australian agriculture.

CHAIR—But you have no understanding with the government that you will be given that opportunity?

Mr Fargher—The consultation has been good to date. Exactly how that will work in the next couple of months, given when the meetings happen, I cannot say with clarity.

CHAIR—Sure. That is something that is for the future but there is nothing on the books between you now. I accept what you say about the consultations that the government has engaged in thus far, but it is the business end of this that gets really interesting. In your submission you say that the NFF will strenuously and publicly oppose any approach and outcome which compromises the interests of Australian agriculture. That is a fair statement and one that I would have expected from the NFF. What do you regard as compromising Australian agriculture?

Mr Fargher—A free trade agreement with the United States that did not have agriculture at its heart we believe would not only be bad in terms of our access in the United States but it would also send an extremely dangerous message to the WTO. If the United States and Australia cannot do an FTA with agriculture at its heart, given how similar our proposals are in the World Trade Organisation, that sends a very dangerous message to Europe and to our friends in North Asian countries like Japan with protectionist sentiments.

As we go further down the track this year, if we see a draft agreement on the table that does not have, in our members' views at that time, agriculture at the heart and our members advise that that outcome is not satisfactory, then perhaps they will make a decision at that time to oppose the agreement. At this time I cannot say at what level that will be, because negotiations started only yesterday.

Senator HOGG—Does it go to issues like quarantine? For example, let us say that there is a settlement in relation to quarantine issues which does not satisfy members: would that be sufficient ground on which to oppose the agreement?

Mr Fargher—Quarantine is certainly a very important issue in the US FTA and our position on this is extremely strong. We support Australia's transparent science based system for determining our quarantine arrangements, as stipulated under the World Trade Organisation rules. You cannot come to a bilateral agreement on quarantine. We do not think that is appropriate; it would contravene WTO rules. We see no indication that the government would attempt to bilaterally negotiate quarantine or trade off quarantine. If that did occur, it would be a major concern for our members and it would have major ramifications for all Australian industries. That certainly would be a concern but, as I said, we have been given an assurance by the government that they would not engage in any bilateral trade-offs, so to speak—for want of a better word—on quarantine.

CHAIR—If I can come back to not compromising the interests of Australian agriculture, what you have said is that the NFF wants full access up-front. Therefore, do I understand correctly that, if it were anything less than full access up-front, it would not meet the commitment about not compromising Australian agriculture?

Mr Fargher—To be clear on this, our members are seeking full access to the United States market and they are seeking that outcome up-front. What they will finally accept further on this year I cannot answer at this point. All I can articulate is what they are seeking and what they want, which is full access up-front.

CHAIR—I am asking a difficult question—I acknowledge that—but I am not trying to put you on the spot. What is the strength of this demand? You are saying that you will strenuously

and publicly oppose anything that compromises the interests of Australian agriculture. I am trying to get in my mind where the limitations on this might be.

Mr Fargher—Our members believe free trade means free trade, and we believe that to make a free trade agreement with the United States we should have open trade in agriculture between our two countries. That is the view of our members. What they will finally accept—for example, any transition periods—I cannot say. All I can say is that we are now seeking full access up-front. As I said, it is important that we have a comprehensive and ambitious free trade agreement with the United States on agriculture, not only for its own sake but for the message that sends to the world trade organisations, which are at a very, should I say, important stage.

CHAIR—Clearly, subsidies are not on the table in these negotiations. We heard evidence earlier today—I think Professor Garnaut addressed himself to this question—that, even if you had open access to the US market, the fact that significant subsidies under the US farm bill are paid to domestic producers of the US distorts the market grotesquely—that is my word; I do not think he used that word; that is the image it created in my mind. It substantially distorts the market in the United States, meaning that the competition is still not fair between Australian domestic producers and US producers. Does that give you pause as to whether the best course for Australian farmers is to pursue an FTA rather than put your substantial effort into the Doha Round?

Mr Fargher—Thank you for that question; I will make two points about that. Our substantial effort is in the Doha Round—that is our No. 1 priority. We have told the government that. That is where the majority of our resources go. Our No. 1 priority is trade liberalisation through the WTO round exactly because of the reason you state: the United States farm bill—the subsidies that are paid out through the farm bill—damages Australian farmers, and we are unlikely to see a dismantling of the US farm bill because of the free trade agreement between our two countries. That is why the WTO is so important.

We understand there is language around subsidies and export subsidies in the United States-Chile agreement, so we have asked our government what language will be in this agreement around subsidies or export subsidies. We will be very interested to see as we go further on in the year. But I think it would be fair to say that our members are under no illusion that the farm bill will be totally dismantled in these FTA negotiations. Because of that, because so many of our industries are hurt by those subsidies, whether they have market access restrictions or not, the WTO is the key. So I would emphasise that our resources and our priority are on the WTO.

To finish, the NFF president, Peter Corish, and I have just come back from a trip to Geneva to meet with Dr Supachai and Stuart Harbinson, the chairman of the WTO ag committee, for exactly that reason: to explain to them that Australian farmers have waited long enough for trade reform; to explain to them how much we and our other friends in exporting countries—many of which, I might add, are developing countries—are hurt by protectionism and why we need to make a good, ambitious outcome in the WTO.

CHAIR—In your next paragraph to the one I have just been quoting you talk about the need to add to and not detract from Australia's priority on world agricultural trade liberalisation through the WTO. This is the timetable that you are caught with, by virtue of the Crawford Ranch agreement between the President and the Prime Minister to try and wrap this up by

March. US politics tend to get a bit crazy from the point of view of issues of this nature. Because of that tight timetable and because of the fact that the glaring laggard in the Doha Round is agriculture, you are likely to be jammed in a situation whereby, assuming some concessions are made on agriculture by the US in the FTA, you have got a proposition before you in the FTA which is less than what you want out of the round. If you accept that proposition, Australia as chair of the Cairns Group sets the benchmark for the round, at least in the minds of all those countries you have to negotiate with. That is a real problem, isn't it?

Mr Fargher—If the outcome in the free trade negotiations is full access to the United States market then that is a powerful message in the round.

CHAIR—Indeed, and that is a positive message which is consistent with the two paragraphs in your submission I have referred to about not compromising our interests and adding to the multilateral round. So in trying to define where the NFF stands on this, do I assume from what you are saying that anything that is less than full access is not acceptable?

Mr Fargher—No, what I am saying is that our members are seeking full access and are seeking it up-front. What we would accept in December or whenever this agreement is negotiated in terms of a bottom line I cannot say at this time. That is hypothetical. The market access negotiations only started yesterday. For example, from inference there, if we had full access but it took two days, not one day, are we going to oppose the agreement because it takes one day longer—

CHAIR—I understand that point.

Mr Fargher—I cannot say that. Perhaps our members will say, 'Two days is too long; oppose it.' All we can say is what our members want, and that is what they want: full access up-front.

CHAIR—But you are mindful that it may well be the case that you will be presented with a trade outcome on the FTA well ahead of being too much light at the end of the tunnel for the multilateral round and then you are in a position of having to make a decision as to whether you accept the outcome, albeit less than you might want, from the bilateral negotiations knowing full well that that is very likely to set the benchmark for the multilateral round. That is a dilemma for you, isn't it?

Mr Fargher—We are aware of the ramifications that a poor result in the free trade agreement with the United States would have on the WTO. That is why it is so important that we get it right.

CHAIR—Is the NFF prepared to walk away from the free trade negotiations if they do not meet the standards that you have laid down?

Mr Fargher—It is hypothetical, and it will be based on the views of our members, but if our members tell us that agriculture will be hurt by the agreement and agriculture has not been at the heart of the agreement at the end of it and they advise us to walk away, then that is what we will do.

CHAIR—So you are not ruling it out but you are not necessarily saying it is likely.

Mr Fargher—That is correct. We are not ruling it out. We know what we want. We are engaging in the consultations to try and add value and get a good outcome for our members. If at the end of the day we cannot do that and they say to us, 'It is not good enough,' that will be the result.

CHAIR—I have seen statements by several of the farm organisations in the United States to the US government and across their bows to us in Australia which are quite strong, to the point of being—I would say—over the top, about what the government in the US can and cannot do. If you put them together, depending on which farm organisation you listen to in the United States—and all have varying degrees of influence—effectively the US government is not to do anything much at all other than obtain from Australia concessions on issues like quarantine. Do you have a bilateral dialogue with the farm organisations in the United States?

Mr Fargher—Yes, we do have a bilateral dialogue with our colleagues in the United States, the two umbrella farm organisations, the United States Farm Bureau and the National Farmers Union. We know both of those organisations and we talk to them. We are aware of their concerns about the United States free trade agreement. But I will make two points, if I may, in regard to your question. Firstly, in regard to quarantine, several US farm groups have indicated that Australia somehow uses quarantine as a non-tariff trade barrier. We are aware of those concerns. We are aware that it appears that some people in USTR accept that. We reject that. We believe Australia's quarantine system is based on science and must continue to be so. We do not believe that it is in the interests of the US or Australia to break down the science based nature of our quarantine system.

Secondly, in regard to some of the assertions US farm groups make about the potential impact on their members of a US-Australia FTA—statements like, 'If we had a FTA with Australia, Australian product would simply flood our markets and put all our producers out of business'—we have been actively trying to indicate on a factual basis to US farm groups that that is simply not the case. Australia would not have the productive capacity to flood the US with product if we had full access to their market. Even if we would like to, we just do not have the productive capacity. Australia is not Brazil. So much of our continent is very dry or desert. We would love to, but we do not have the capacity to flood their market.

Additionally, for some of our products—like beef—the product we export to the United States is of a complementary nature. It is mixed with their product to fulfil their customer requirements. It is a complementary product, not a competitive product. Further, the major benefits for US farm groups are in market access and in getting an outcome in the WTO. That is our priority, too. We want to work together with our US counterparts and our friends in United States agriculture in the WTO forum to try and get market access into countries like Europe and North Asia. We are aware of their concerns, we talk to them and we have many similar priorities in the WTO. We believe some of their concerns are unfounded.

CHAIR—So do you accept the argument that has been put to us that even if we had open access to the market we could not meet the demand that might flow for our goods at our present levels of production?

Mr Fargher—In some situations, that would be the case, given our productive capacity. On the back of the worst drought in the nation's history, that may well be the case, depending on

production cycles, on pricing and on other markets. Another myth is that we would somehow, if we had full access for Australian agriculture to the US, divert all our product away from other markets like Asia to the United States. That is simply not the case. If you look at the beef market, our high value market is in Japan. Why would we divert high value product from Japan into the United States? That is why the WTO is so important.

CHAIR—Going back to the statements by the US farm organisations, I think you would agree with me that these are—I was going to us the word 'hysterical', but that is probably too strong—very intense statements of opposition.

Mr Fargher—The statements by some groups have been extremely strong.

CHAIR—Do you see any chance of them moderating with the bilateral discussions the NFF have been able to hold with them?

Mr Fargher—I would like to think so, because when we sit down with our colleagues in the US and we talk about the challenges that are common for us, the list is long. We talk about retail dominance, declining terms of trade, drought, the loss of young farmers from the bush, increased regulation—these are challenges common to farmers all round the world. So we have a lot of similarities with our friends; we have the similarity in priority in terms of getting a good outcome in the WTO. I think that that relationship building between the United States and Australian farm groups can only strengthen the outcome.

CHAIR—Isn't the big difference though that we are a very efficient, basically unsubsidised, producer while they are less efficient and heavily subsidised, and, in a fair contest, we are more likely to win on price as well as quality? Isn't that the problem that they are worried about?

Mr Fargher—I do not want to generalise but I have travelled to the United States and I know that US farmers are not to be underestimated. Yes, they certainly do receive a lot of subsidies through the Farm Bill 2002, but they are resilient like farmers all around the world and their uptake of technology, for example, is something to be admired.

CHAIR—On the second page, you have a list of three points that you are monitoring the progress of. The first is the environment. Are GMOs the issue here?

Mr Fargher—No. The reason why we raised that is that we are aware that, under US Trade Promotion Authority provisions, the US must talk about environment and labour standards in any bilateral discussion. We obviously have a lot of environmental challenges in Australia that we are dealing with at present and so we would not like to see additional, unjustified burdens placed on Australian farmers because of any US demands. We have no reason to believe that that is occurring, but it is certainly something that we are monitoring that would be a concern to our members if it did occur.

CHAIR—You have mentioned environment and labour standards, but you do not mention labour standards in your list. Does that mean that we should assume that you are not concerned about the possibility of labour standards being included in a bilateral Australia-US free trade agreement?

Mr Fargher—In the broader context, I am not sure if labour standards are going to be. I am not an expert in that area. We just do not believe that there are any labour issues between the two countries in regard to agriculture that we can foresee. But of course, in environment, there could be, and that is why we raise it there.

Senator NETTLE—Picking up from what you have described as potential environmental pressures to come from the FTA, can you give the committee an idea as to what sorts of environmental pressures you are envisaging?

Mr Fargher—I do not have specifics, but I will just explain it this way. As you would be aware, Australian farmers are facing many environmental challenges at present—and have been for many years. These are issues around water, dry land salinity and soil degradation, and they are challenges that are very close to our hearts. Because we are aware that the United States also has environmental legislation in place, we ask how that impacts on any environmental legislation in Australia. We are not sure; we would just like to know if there is any potential impact. If there is any way that the United States would try and impose environmental legislation on Australian farmers that would hurt our members, that is of interest to us. I am not saying that that is happening; I am not saying that we are aware of it, we just raised it as an issue of concern, along with a lot of other horizontal issues. We would just like to keep a close eye on them. Obviously, we are extremely familiar with what is happening in the agriculture negotiations—we meet with them often—but we also need to keep our eye on what is happening in other negotiation groups, because those issues may impact on agriculture.

Senator NETTLE—Have you identified any specific environmental legislation in the United States that you are particularly concerned about?

Mr Fargher—No, we have not.

Senator NETTLE—I know that this may be difficult to answer because you explained before that different sectors are doing their own analysis, but I wonder whether there are any differences in the attitudes towards the FTA that are being presented to you by your members, dependent upon the size of the farming operations that they covered? Are you seeing that in the representation?

Mr Fargher—Thank you for that question. Not with regard to farm size. Our different industries have different views on the US FTA, based on where their priorities are, where their major markets are and whether or not they export to the United States, but there is not a disparate view among the membership based on farm size. Obviously, individual farmers will have their own views on these matters—they are entitled to—but we have not seen that come through the membership to our policy forums.

CHAIR—I have a couple more questions. You are familiar with the ACIL group's report *A bridge too far.*

Mr Fargher—Yes, we are aware of it.

CHAIR—How do you view their assessment that an agreement which excluded agriculture would actually lead to a shrinkage of Australian agriculture because of the twisting of the Australian economy caused by selective liberalisation?

Mr Fargher—I cannot give you a definitive view on that point. We are aware of the ACIL work. ACIL are a well-respected organisation and we have worked with them for many years. We are aware of their analysis and their modelling, but we are also aware of a lot of other analyses that show that there would be benefits for agriculture in FTA. If I could take the liberty to go further, there is modelling around showing benefits and there is modelling around showing negatives. We have not gotten into the econometric arguments between the two groups. We are being pragmatic and engaging in the negotiations in terms of trying to get a good outcome for our members.

CHAIR—The ACIL report is based on the agricultural sector, isn't it? It is about agriculture.

Mr Fargher—I believe a fair proportion of the report is about agriculture. I think they look at other cross-sectoral issues.

CHAIR—Yes, but essentially that is its focus.

Mr Fargher—Right.

CHAIR—What other modelling are you aware of that deals with agriculture per se?

Mr Fargher—I am aware that there was an agricultural component of the CIE analysis.

CHAIR—That was on the assumption that the market is completely open.

Mr Fargher—Right.

CHAIR—I know it is what you are insisting on as being your claim, but in your presentation today you have left some room for a consideration of something that comes close to that. The value of the CIE model is that there is a complete market opening, and if there is anything less than a complete market opening then the value of the model is far less. Is there any other modelling that you are aware of?

Mr Fargher—Not broad based econometric modelling specific to agriculture that I can think of. I know several of our commodity groups have done their own modelling with regard to the benefits of the FTA. I apologise that I am not be able to articulate those numbers off the top of my head today, but I am aware that many of them have submitted proposals to you and perhaps the models are found within those. They have done their own work on the potential benefits of an FTA to their industries and we are aware of the broader modelling in the community, whether it is through CIE, ACIL or economists' discussions, such as the one with Professor Garnaut, or the Productivity Commission's report. As I said, there is a lot of modelling analysis around. Some people see a negative, some people see a positive; some people say the FTA is a stumbling block, some people say it is a building block. Unfortunately we are not able to judge which is right. All we can do is try and add value and get a good outcome for our members.

CHAIR—This is a question that I think you will need to take on notice. I wonder if the NFF might consult with its commodity groups and, to the extent that they have done modelling, see whether they would be prepared to make that information available to our committee for those commodity sectors.

Mr Fargher—I can certainly take that up with our members.

CHAIR—What is raging in the papers now is an economic debate that has been going on for some time, but is now reaching a bit more of a highlighted focus, about bilateral versus multilateral as a policy choice for Australia. Does the NFF have a view about that debate?

Mr Fargher—All I could say in answer to that question is that it is clear from our membership that the multilateral process, in particular through the World Trade Organisation, is, and must remain, our priority. That is where the major gains for Australian agricultural liberalisation will be, because we export to so many countries around the world and we face so many restrictions in those markets to which we export. We export 65 per cent of our production, so it costs us money. It would mean real money in producers' pockets to get liberalisation. So that is our focus. The Australian government has decided it will negotiate a free trade agreement with the United States. If we can get a good outcome for agriculture and that sends a positive message to the WTO and strengthens the WTO, that would be a favourable outcome. We do not have policy in any more depth on that issue. The WTO is our focus; the multilateral process is our focus.

CHAIR—Do you have a view about the argument that the *Economist* magazine made as their cover story last year—which is written frequently in the *Financial Review* and was raised with us by Professor Garnaut again this morning—that the proliferation of regional or bilateral trade agreements is sucking oxygen out of the multilateral round and is part of the reason, but not the only one, why the multilateral round is now in trouble?

Mr Fargher—I would not be able to comment on that report or whether those assertions are right or wrong. What we would say is that the WTO is at an extremely critical stage. It is a very important stage for us—I use the word problematic—given the intransigence of some of the protectionist countries to move towards a liberalisation basis. If a bilateral arrangement—for example, a bilateral arrangement with the United States—could demonstrate to countries like Europe or countries in North Asia that the sensitive issues of agriculture could be dealt with, then perhaps that would strengthen their resolve. We would certainly hope that that was the case.

CHAIR—Let me offer up as the last question, from me at least, what, if we were playing cricket, would be called a gift ball and around here is known as a dorothy dixer. We have let the Europeans off in this discussion without any comment. Does the NFF have any views to put to us about what the Europeans have decided on agriculture in their most recent decision? What is your view about so-called reform of the Common Agricultural Policy that has just been agreed in Europe?

Mr Fargher—The Common Agricultural Policy, as distorting as it is, hurts our members. The Europeans, as you rightly say, have offered some modest reform recently in regard to decoupling. Any decoupling of support from production must be seen as a positive step, but how much mandate that will give the Europeans to be able to negotiate in the context of the WTO

negotiations, either around the Harbinson proposal or as we lead towards Cancun, we are not aware. We understand, in fact, that the Australian Bureau of Agricultural and Resource Economics is modelling the impacts of the recent CAP reform and what that will mean for Australian agriculture. We are going to be extremely interested in looking at that analysis in detail.

One thing I will say is that the recent reforms of the Common Agricultural Policy centre around domestic support. But one of the major priorities for our people in the WTO negotiations is market access and the question of how much mandate the recent CAP reforms will give the Europeans on market access. To give you an example, when Doha ministers met and signed the Doha declaration to launch the round, they talked about substantial improvements in market access. Under the proposed Harbinson models, which are currently sitting within the WTO, many of our commodities would see no improvement in market access. Under the Harbinson tariff rate quota proposals, we would see no more sheep meat exports or access to the EU and no more Australian sugar to the United States market. So we feel justified in saying to our government, 'No more access is not a substantial improvement. This is not good enough. It is not ambitious enough.' Australian farmers have waited long enough for reform and we are not confident that the recent CAP reform is going to overcome that problem. That means that we do have a problem in the lead-up to Cancun.

CHAIR—So the recent CAP decision is not a basis for a settlement on agriculture as far as the NFF is concerned?

Mr Fargher—Absolutely not.

CHAIR—And the Harbinson proposals that have been tabled are not a basis for settlement either?

Mr Fargher—They are not a basis for settlement. NFF supports the Cairns Group position that would see ambitious reform across the three pillars of support: domestic support, export subsidies and market access. We support the Cairns Group position and we have told the Australian government to continue to support it.

CHAIR—That would mean that the US proposals on agriculture are not acceptable to you either.

Mr Fargher—The US proposals on agriculture are somewhat similar, particularly on market access, because we are both proposing a progressive cut in tariffs—a Swiss formula, in effect—to a coefficient of 25. So we are close to our American friends in regard to market access. That is good but, as I said, my only comment is that we support the Cairns Group proposal. The Harbinson proposal is not acceptable to us.

CHAIR—If in this bilateral negotiation the US came back with a proposal that exactly mirrored what they have put on the table in Geneva for the multilateral round, but on a bilateral basis—which would mean subsidies are not included—would that be a deal as far as the NFF is concerned?

Mr Fargher—Our members have only told us one thing in regard to what they are seeking in regard to the US FTA, and that is full access.

CHAIR—Thank you very much. That concludes our hearing for the day.

Committee adjourned at 4.02 p.m.