



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**

WEDNESDAY, 23 JULY 2003

SYDNEY

BY AUTHORITY OF THE SENATE



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**SENATE**  
**FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE**  
**Wednesday, 23 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 and Nettle

**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

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**Committee met at 9.18 a.m.**

**ARMSTRONG, Ms Gillian May AM, Lifetime Member, Australian Screen Directors Association**

**HARRIS, Mr Richard Miles, Executive Director , Australian Screen Directors Association**

**DALTON, Mr Kim Maxwell, Chief Executive, Australian Film Commission**

**IRELAND, Ms Kim, Director, Policy, Research and Information, Australian Film Commission**

**ELLIOTT, Ms Megan, Executive Director, Australian Writers Guild**

**McCROSSIN, Ms Judi, National Executive Councillor/Treasurer, Australian Writers Guild**

**LANG, Ms Samantha (Private capacity)**

**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 the room. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private.

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

Thank you all for coming. I do not have the perspective that distance lends in a bigger meeting room to take you all in at one glance, so my apologies. There are three organisations—the Australian Screen Directors Association, the Australian Film Commission and the Australian Writers Guild. I am not sure what the batting order is or whether you have agreed on one between yourselves, but it is probably appropriate for me to now invite whoever wants to lead to start and for each of you to make a brief opening statement prior to us going to questions.

**Mr Dalton**—Thank you very much for those opening remarks and introductions and for providing us with this opportunity. We have agreed that I will lead the opening remarks and then, of course, be completely open to any questions that you want to ask to follow up on what we have said, on our written submission and on various other written materials that we have provided along the way in this debate.

Our fundamental point that we want to make is that the cultural industries—and at the core of the cultural industries we believe is the Australian film and television industry—are ultimately about national identity. They are about defining Australia, about allowing Australians to understand themselves and, I think increasingly in this globalised environment in which we operate, about providing the opportunity for Australia and Australians to project themselves and their identity onto the international stage. In that sense we believe that these industries are of national importance and have to be treated with all the regard and respect that attaches because of that.

In various submissions, and in a lot of literature that the industry has prepared during these discussions about the WTO and the US FTA that we are in the midst of negotiating at the moment, we have presented a lot of information which sets out why it is that Australia must maintain certain mechanisms—a regime of both subsidy and regulation—to ensure the health and the survival of these industries. We believe that those mechanisms that have been built up by various governments over the last 25 or 30 years in Australia have been quite modest. They are quite transparent and open to regular review by governments, by the public generally and indeed by our international partners if they wish to take the trouble to look at these mechanisms. But, for all that modesty and transparency, they have in fact delivered to Australia extraordinarily successful industries and outputs in terms of culture and identity. Certainly some of the people sitting here at this table today are outputs—if I dare call somebody like Gillian an ‘output’. Some of our creative talent, the names of whom are known now around the world, are outcomes of these government policies, as are the film and television programs that they are at the core of. We believe that, as we go forward in the WTO round—but most pressingly at the moment the US free trade agreement that is under way and presently being discussed in Hawaii—the very fabric, substance and structure of those industries are potentially at threat if several fundamental conditions are not met.

The major point that we make is that, whilst we are not in any sense opposed to free trade—the Australian Film Commission and, more broadly, the industry itself does not take a position that is against free trade as such—within the disciplines and rigours of free trade, we see no reason why a commitment to excluding culture and excluding the cultural industries from those agreements would not fit very comfortably within the disciplines of free trade and that it is absolutely essential that that position is maintained.

Quite specifically, as far as the free trade agreement is concerned at the moment, you may be aware of the ‘soothing’ comments—and I used that word in my briefing notes, and I rather like it—made by the US. The US do not make soothing comments very often but they have made soothing comments about how they could go forward and live with and accept the regime that we presently have in place as far as our local content is concerned. That position in the parlance used in the trade areas is described as ‘standstill’. We believe that the arguments about a standstill position are completely unacceptable, and we have put very firmly to government and have achieved at the moment the support of government that that position is unacceptable.

It is unacceptable because we are working in an area of very fast and dramatic changes in terms of technology and production, delivery and distribution of audiovisual services. It is impossible to predict the systems that will evolve to distribute and deliver audiovisual programming cultural product in the coming years—within five years, let alone 10 or 15 years. To agree to standstill now would be perhaps the equivalent—as I often like to say to people—of



having an inquiry about radio in 1950, agreeing to lock off on certain conditions concerning radio and not being aware of a thing called television, which was about to burst on to the scene.

**Mr R. Harris**—Or a thing called FM.

**Mr Dalton**—The other point we would like to draw to your attention—and we think this is very much a tactical move on the part of the US—is that they are attempting to introduce a free trade regime into the area of what they very broadly describe as e-commerce and arguing that any form of digital exchange should in fact exist within an open and unregulated market. Of course, within Australia within 12 months or so, all delivery and reception of audiovisual material will happen via digital means; it will happen via a series of codings of zeroes and ones and you will not be able to distinguish between a film or a television program in that sense or a banking transaction. To suggest that there is no difference is once again just the beginning of fundamentally undermining Australia's right to protect its own national identity. I will leave it there.

**CHAIR**—As a comment on your last point, I was trade minister when we negotiated the Uruguay Round, where Australia had a cultural protection position. We did not lead on cultural protection in those final talks—France did—but we were in the room and supported the French position and it was really in negotiations with the Americans. It was an all day, all night negotiation. Finally, at about 4.00 a.m. the US trade representative at the time, Mickey Cantor, under constant prodding from Jack Valenty, vacated his chair and Valenty took the chair. He sat behind the American flag in the position of the American government and argued with the French. The French were delighted that he did so because it gave them an opportunity to look the devil in the eye, as they regarded it, and express their views to him directly. The US made even less progress. At the end of the morning, effectively the US folded, saying that e-commerce would take care of it all. I think that is still the view, whatever local regulation we have. It is fine to have a standstill position about that; it is the question of downloading material and the regulation of e-commerce that gets under the guard of everyone. That is a point that is familiar to me and I think to most of the committee, but thank you for making it.

**Mr R. Harris**—Essentially our points are almost identical to Kim's. I think most of those have been made pretty well. Our industry's paranoia about these free trade agreements comes from the fact that we are currently in a situation of treating Australian and New Zealand television programs the same on the Australian content stand. New Zealand programs are now counted as Australian, and that is because of a free trade agreement; it is not because of government policy. So, when we are a little paranoid about the extent to which these free trade agreements can affect our industry, that is where a lot of these fears are grounded.

We have been pleased by the government's position—in fact by the bipartisan position on this for a couple of years. The government has been saying things that are perhaps soothing, in that it is concerned and will ensure that it has the ability to set cultural policy and that it will not have its ability to do that impinged. Our concern is that any ability to do that through agreeing to a mechanism like standstill will have a serious impact on that position.

I think we also agree with the Australian Film Commission about the tactical position of the US, which is to move away from taking audiovisual issues front on and use issues like e-commerce to come around what we see as a back door. We are very concerned, having had a

look at the recent agreements with the US and Chile and the US and Singapore, at the extent to which audiovisual was almost glossed over and e-commerce was the main game. There are very broad definitions about e-commerce. We are also concerned that, at the WTO level, there is currently no clear consensus about what e-commerce is. So we think that, at least until there is some consensus at an international level about what e-commerce is, it seems crazy to lock ourselves into a definition now and give everything away on it. From the directors' perspective, it is an issue that impacts upon our members and their ability to make film and television programs into the future and to tell Australian stories. We are basically concerned that it is actually on the table at all.

**CHAIR**—The debate in Geneva, as far as the round is concerned, is whether e-commerce is a product or a process and people take differing views on that. In some cases, it is a service, as you say; in other cases, it is a product. In the grand tradition of international negotiation, particularly when the deadlines keep moving out, there is no closure to that debate. One of the concerns that we have to be mindful of in bilateral negotiations—and this is a genuine concern—is whether, in a pattern of free trade agreements, the debate in Geneva is undercut by the setting of standards worldwide by bilateral agreements that then set the scene and resolve the argument in Geneva without the global community actually coming to an agreement.

**Mr R. Harris**—The text of the Singapore agreement has basically bypassed that whole argument about whether it is a good or service and has just simply defined them as digital products. It includes everything, so we are concerned about that.

**CHAIR**—That is fine for those two countries, but there is a global community.

**Mr R. Harris**—That is right.

**Ms Elliott**—The Australian Writers Guild is neither anti-American nor anti free trade—

**CHAIR**—Neither are we.

**Ms Elliott**—but we believe that taking pride in the promotion and development of our unique Australian culture, cultural heritage and stories is not protectionist but are a way of ensuring that the Australian culture and cultural identity continue to be vibrant, unique and intrinsically our own. We also support the submission that was put forward to the Senate committee from the Australian Coalition for Cultural Diversity, as we are one of the members of that coalition.

International trade is the highest policy priority within the Australian Writers Guild. Like the AFC and the Screen Directors Association, we submit that cultural goods and services must be removed from the Australia-United States free trade agreement and that no offers be made to liberalise cultural services within the WTO. I wanted to reference the 2001 Geneva intervention, but I feel that Senator Cook probably knows all about that already having been there. I just want to remind you that our government has consistently also kept culture off the world's negotiating tables by making that intervention with the CTS in July 2001 and also by the very broad and, we believe, magnificent carve-out that was achieved within the Australia-Singapore Free Trade Agreement.

I would also like to draw the committee's attention to an interview that Mike Delaney, a US economic counsellor, had with Adam Kohler on ABC radio. As Senator Cook said, he actually states that there is a larger agenda here in terms of the US free trade agreement. I quote again:

And that is our feeling that within the WTO it's going to be very, very difficult to make rapid, good progress in the current WTO round without some competitive spur to those talks. And we feel that the way to push the WTO process along and have it avoid the lowest common denominator approach to which it is prone, is to negotiate a series of regional and bilateral trade agreements that act as a competitive spur to the WTO process. I can personally testify that if it hadn't been for NAFTA, for example, we would still be negotiating the Uruguay Round. I believe that process is going to repeat itself in the Doha Round. We're going to need some other deals in order to spur things along in the WTO.

So the AWG again, like the rest of the cultural industries that you have heard from and read about, believes that this will be used as a template in the same way that the US-Chile and US-Singapore agreements are being used and that that is a major concern in the realm of commerce as a backdoor deal, as we have already heard today.

The Australian Writers Guild believes, and you have read statistics and you will hear more about them, that Australia has one of the most open audiovisual markets in the world—63.4 per cent of all new television hours broadcast are sourced from offshore. We believe that our regulatory mix is very open and transparent and that it does not actually impede America gaining access to our market. At the moment, for us the US free trade agreement is our highest priority simply because, instead of blowing out like the time lines within the WTO, it has contracted and they want to wrap it up by the end of the year, which we find very concerning.

We would also like to point out—because the Australian Writers Guild covers members who write for theatre, film, radio and the screen—just how biodiverse the ecosystem of the Australian cultural industries is. If one element of that cultural system was removed due to internationally negotiated trade deals, or because Australia's cultural sovereignty became fettered by an internationally negotiated trade deal, the rest of the industry would suffer. If we got rid of local content quotas, then television writers would lose their ability to subsidise Australian theatre, where they are paid \$8,000 for a commission; Australian rock bands will no longer make money from their music being played on *Home and Away* or part of a *Secret Life of Us* compilation and we lose them from the Hopetoun Hotel. So it is that kind of biodiverse nature.

I would also like to remind us all that Australia remains a net importer of copyright. Although the American population is only 15 times larger than ours, their copyright industry is 40 times bigger than ours and their exports are almost 120 times bigger than ours. So while we remain a net importer of copyright, the Writers Guild concurs with some of the US demands that urge our government to increase anti-piracy measures within the free trade agreement and also to ratify WIPO Internet treaties. Indeed, by taking on these measures, our international trading partners will actually fare quite well.

I would also like to note that, within that 2001 CTS Geneva intervention, the Australian government did say that Australia will take the opportunity to reflect on the notion of the international instrument on cultural diversity. The international instrument on cultural diversity will be debated at the UNESCO general conference in September this year as to whether it is a binding agreement or merely declaratory in nature. The Writers Guild, alongside the Australian Coalition for Cultural Diversity, urges the government to become involved in this debate so that

the Australian voice and the Australian cultural industries and people are heard at this table. We would also urge government to get involved in the international network of cultural policy, which is an international network of cultural ministers. I believe that there are now some 53 ministers involved in that network and they are currently drafting a text. Again, we believe that it is very important that the voices of Australia's cultural generators are part of this international debate, particularly as we face the fact that culture still remains on the world's negotiating tables.

**Ms McCrossin**—I am the principal writer on the *Secret Life of Us*. *Secret Life* employs about 130 people full-time on our series. It hones the skills of actors and writers, directors, cinematographers, grips, gaffers, make-up artists and wardrobe people. For me, the most important part of what I do is to tell Australian stories. I am not talking about kangaroos and outback tales; I am talking about young, urban Australians who exist in a culture that is unlike American culture. We reflect their lives back to them in a way that has not been done before on Australian television.

I am sure that you all appreciate the importance of Australians seeing their own stories reflected. However, I do not write *Secret Life* because I think young Australians should watch it; I write it because they do, and we have rated extremely well throughout our history. The show has helped launch a number of careers, including my own, and has given excellent actors such as Deborah Mailman and Joel Edgerton a chance to become household names, and this has led to their own international careers.

The *Secret Life of Us* costs \$450,000 an episode. It would certainly be cheaper and easier for Network 10 to spend \$60,000 and buy one of the many American shows that appeal to this demographic. It would certainly make economic sense to them and, as you know, networks are very much into making economic sense. But what would we lose? Our actors would be trying to eke out a living in theatre and those with enough faith in themselves would move to America. The Americans would not be coming here to make their pictures because there would not be enough trained technicians to work on their movies. Shows like *Secret Life*, *Blue Heelers* and *MDA* allow technicians to work every day and, in doing so, Australian film technicians have developed a reputation for being the best in the world. Take away Australian drama and our technical pool would be almost non-existent and far less skilled. We would certainly not have the skills to crew big pictures like *Star Wars* and *Moulin Rouge*.

Without Australian TV, Nicole Kidman, Russell Crowe, Cate Blanchett may have been the big names they are now, but I actually doubt it. They needed to learn their skills on Australian TV shows—Nicole in the Australian mini series *Vietnam*, Russell in *Police Rescue* and Cate in *GP* and *Border Town*. Their experiences on Australian television led them to their international careers that they now have. What would I lose personally? As a writer, rather than writing the show I am now writing about growing up in Queensland during the Joe Bjelke-Petersen era, I would have moved to America by now and be telling their stories and not mine.

If culture is left on the table in any trade agreement and Australia is not allowed to set our own cultural agenda and regulatory mix, then we will lose the space to tell our own stories and to see ourselves reflected on screen. We would have a cultural policy that would be set by Hollywood and we would lose in droves our pool of talent to other professions and other shores. I personally think that would be a tragedy because, without our own distinctive culture, we cannot survive as our own distinctive nation.

**Ms Armstrong**—I am a film director who is really only sitting at this table because a very lucky thing happened when I was at arts school, and that was that the Gorton government decided that the Australian community—Australia as a country—needed a film industry. They set up an Australian Film Commission and provided a series of grants to encourage young talent and to set up some investment funds.

I am not here to protect my own job; I have an international career. As a film-maker and a parent there is something I care about very much, and that is an Australian culture. I do not think you realise what a fragile industry this is. I do not think you realise—or maybe you do—how easily it can go. It has gone before. I have been interviewed over the years by journalists who have said: ‘It’s wonderful; you are a role model, one of the first Australian women directors and an international director. When you were a young person growing up in Australia did you, like Stephen Spielberg, go to the movies and think, “One day that will be me; I will do that”?’ I said ‘Well, no actually I didn’t, because those movies weren’t my movies; they were American movies.’ Yes, we got TV in 1956 and I saw all American programs so, yeah, I watched *Flipper* and *Lassie* and I had no thought that I could perhaps one day do that because that was not something a young Australian ever thought of. It was not something that was even accessible.

I can still remember—and you do not want your children having this memory—at age 18 going into a cinema in Carlton and seeing my first Australian film. Do you know what I thought? ‘This is weird and this is strange because those voices up there, those Australian voices, sound terrible. That is not a real movie.’ Do you see how fragile it is? That is only 25 or 30 years ago and, at that time in my culture, I had never seen an Australian film. I did not think we could actually do them. I had never seen an Australian story, and it did not feel right and it did not feel real.

So I think it is very important that we remember how fragile this is. I am here because I believe so passionately that we should in no way ever think that culture should be in a free trade agreement, unless today we all come up with a great idea of a new language. Already the Americans take 80 per cent of our cinema. It is hard to even get an Australian to an Australian film. We now have government support, we have film schools, we have acting schools, we have writing courses and we have incredible talent, but where are they all going? They are going towards this tiny little chunk of Australian investment or they are going towards Australian TV where at least our children can actually see Australian stories, hear Australian documentaries and actually feel that there is something in this country that makes us different from America. We should not in any way ever let our culture go, and it is going bit by bit.

My other story would be my memory of when I was at film school studying the great industry that we had in the 1930s, Charles Chauvel and so on. Do you know where he ended up? Probably where many of our young film makers today will be. He ended up at Circular Quay collecting tickets because people did not think of the future. Australia had a fantastic silent industry, and the Americans came in with their money and bought up every cinema and put in sound. The Australians were left, and the Australian industry died. Lotte Lyall and all those people were unemployed. There was no industry—no industry from the 1930s until the 1970s, when I very fortunately was a young girl at art school thinking I would do something in theatre. Fantastically our government realised that the only way to help us to have an industry was to put some care, some culture, some money and some protection there. So for the sake of all our

children, unless we can think of a new language today, we must take culture out of the trade treatment.

**CHAIR**—Is that all the speaking parts?

**Ms Lang**—I have just made a film in France and, as you are all aware, France has great protection of its culture. So I went through that system and was really quite amazed to see how vehemently culture is considered not just part of the identity but an essential element of a nation's identity, as much as sport or education. It is perhaps because of their language and difference of language that they are able to protect it so much. At the end of that experience I felt very strongly that I wanted to come home and participate in creating a voice or a cultural voice both in my own work and in supporting other people's work. It is really shocking to see that that possibly may disappear very quickly.

One of the great things with being in France was watching how French people went to the cinema, how they loved the cinema; they loved watching themselves. I think it is important that we give our audiences the opportunity to watch themselves and to feel proud of themselves in the same way that we feel proud of ourselves when we watch Ian Thorpe win a gold medal or Cathy Freeman fly the flag, whichever one it is. It is really disappointing to think that that is not something that is considered valuable as part of our national identity.

**CHAIR**—Thank you very much to everyone who has put forward their supporting argument of the submission they have already lodged. We will go to questions now. I have a couple of routine questions which we ask each of the groups that come before us. Firstly, on the level of consultation, my questioning falls into two areas basically. There is the process by which our goals as a country engaging in international trade negotiations are decided, the consultation with the vested interests or interested parties that goes on as we move down our strategy towards those goals and, when we come to a sign-off point in closing a deal, the type of influence and weighting that is given to the views of Australian stakeholders. That is all process. There is a debate here—and I am sure you are well aware of it—as to what type of scrutiny there might be in the democratic process of trade deals which are negotiated by professional bureaucrats and against terms of reference set by government. So there is that. Consultation with you and your ability to influence the direction of these things is something we are interested in hearing about.

The second part of what I want to talk to you about this morning is the content part—what should go in the deal. You have made that quite plain, but there are some questions in that area as well. Just starting with consultations, can you give us your views as to the adequacy or otherwise of the consultations that the government and your organisations have had, the extent to which you feel you know what the negotiating strategy is and the sensitivity towards the issues that you have raised?

**Mr Dalton**—Speaking on behalf of the Australian Film Commission, I think that the degree of consultation with the government at all levels has been entirely adequate, and we have gone on the public record regularly to make that statement. It goes back to during the negotiations with Singapore, when the Australian Film Commission was quite involved in a consultation process right up to the final stages of the sign-off on the exclusion clause where we were consulted with in detail as to the wording and the punctuation and everything else in that particular clause. We were very pleased with the outcome.

**CHAIR**—Did you see the black letter of the deal at that stage?

**Mr Dalton**—The whole Singapore one?

**CHAIR**—No; your part of it.

**Mr Dalton**—We saw the clause. It was explained to us. We put the position to government that we actually felt that the whole area of coach culture should be scoped out. We did not win that argument. It was explained to us that the structure of the agreement was that everything would be scoped in and then there would be negative listings. We wanted to go up into the preface and have it scoped out. We did not win that argument, and we would still argue that as a point of principle, nonetheless we then moved on to the negative listing approach. We were involved in very detailed consultation with the government about the actual wording of that negative listing as it pertained to culture.

As we have gone into these negotiations over the US-Australia free trade agreement, again the level of consultation—access to the minister, access to the negotiating team including the chief negotiator, access to officials within the department, access that the department has actively facilitated between us and visiting US Congress people, Congress advisers and US policy people—has been entirely adequate. Also I should say on behalf of our own department, DOCITA, that we know that it is also resourcing their own input and working very closely with DFAT and sending teams to all the negotiation rounds and feeding back to us. At the same time we do not get invited into the actual discussions when the negotiators are sitting around the table. I guess our big concern is that, come October-November when we get to the pointy end of these negotiations, the final rounds of negotiations will take place behind closed doors and at that point in time all we would have done is to have made our arguments as strongly as possible and attempted to convince our negotiating team of the importance of our position.

**CHAIR**—Yes, although at the pointy end whatever is discussed around the table will come out of the closed session and go to a minister who will say, ‘That’s a deal,’ or, ‘That’s not a deal,’ and inform his mind, one presumes, by further consultations before he signs off on it. I will ask the other organisations here to give their views about it, because I understand you are just talking for the Australian Film Commission. Even though there are the preparatory consultations and the procedural consultations, it is the final round of consultations that is the most critical part. What you have reported is pretty much the same as what everyone has said, I might say, but my standard question to them is: what is your level of confidence that, when it comes to closing the deal, your concerns will be given weight or you will be given a chance to express them?

**Mr Dalton**—Senator, you have been involved in politics for a long time and I have never been involved in the way that you are.

**CHAIR**—That is why I am asking you the question.

**Senator HOGG**—You have a different perspective from what we have.

**Mr Dalton**—We feel within the commission—and I think people like Richard and others can speak to this—a very high level of anxiety with regard to what the final outcome will be of this treaty. We have stated why we think it is important, but we feel a high level of anxiety as to just

what will be negotiated. It goes to something that Megan from the AWG was saying. We believe that this treaty is terribly important to the Americans. It is not important in terms of market access, because they have that—they have everything they want out of Australia really—it is important to the Americans because they are slowly building a series of bilateral agreements, and this is the first bilateral agreement they are negotiating with a developed country in this particular round they are pushing into at the moment and they do not want to have on that treaty in any way something which undermines their fundamental position about—

**CHAIR**—Yes, I understand the level have anxiety, and are you giving voice to the reasons for it. In your discussions with the department, have you been given any comfort that when we do come to a deal they will come back to you and you will be able to say whether you agree or disagree and that will be decisive or influential in their deciding whether they then close it? Have they said that? Have you sought such an assurance from them?

**Mr Dalton**—They have published the objectives, and they have been very clear and the minister has been very clear in direct discussions with us that those objectives will be adhered to and we have no problem with the objectives. If they stick to those objectives we do not have a problem.

**CHAIR**—What is the view of other organisations?

**Mr R. Harris**—Taking it in the three stages, first of all in terms of setting out the objectives, at the WTO level, both through the Film Commission and the Australia Council, we have been essentially kept very much in the loop about the kinds of ongoing discussions. That is a separate issue, particularly given that Australia has never put anything on the table, so there has not been an issue for us there necessarily. In terms of the US free trade agreement and the actual setting out of objectives, we essentially had nothing other than information given to us once they decided to put the free trade agreement forward. They did not come and talk to us prior to that, which is probably not surprising; I am sure a lot of industries are in that situation. In terms of the actual consultation process, I think we are in the same position as the Australian Film Commission. We have had very good access to the negotiators, to the minister and to a range of people talking about it, so we have no complaints about that. We feel that our message has certainly got through.

Although we feel that we have made our best case, that we feel we have been heard and understood and that there is a recognition of where our arguments are valid, we have a major concern about the extent to which there will be consultation before the actual lock-off of the agreement, wherever it takes place. Once a position has been taken and something has been agreed to and taken back to the minister, we have been given no guarantee about the extent to which there will be a further set of consultations and the extent to which those consultations could potentially give them a green light or a red light on whether they will lock off the agreement.

I must admit that, from my perspective, there has not been a great amount of clarity about the exact process once the agreement has been made. Part of that seems to have been because initially they were talking and they did not know how long the negotiations were going to go for. Suddenly there was a question of it not going for 18 months but for 12 months. We are very concerned that, potentially, it would just go to a committee. I assume it will go to JSCOT, but



JSCOT can only make recommendations. We are concerned about the extent to which it is financed et cetera.

**CHAIR**—JSCOT sits after the deal has been done.

**Mr R. Harris**—It makes recommendations, but the government does not necessarily have to abide by those recommendations and can still put them through. I must say that we are rather anxious about the extent of that.

**CHAIR**—Is your experience different?

**Ms Elliott**—My experience is similar. However I would like to say that, while we have been continually told that government will not do anything to impede our ability to set cultural policy, we have been given no assurance to date that culture will definitely be off the table. There was no consultation with anyone as far as I understand when they shortened the time line. We have also again not been told that we will actually have a chance to look at—I think you have referred to it as the black letter—prior to it being locked off and prior to it going to JSCOT. The Writers Guild shares the same concerns as the AFC and ASDA in those matters.

**CHAIR**—As far as e-commerce is concerned, accepting the government as standstill on cultural protection, the e-commerce issue sits there as the obvious way around all of this. What do you put to us about e-commerce in the context of the Australia-US free trade agreement? What should the government do?

**Mr Dalton**—We were in an all-industry meeting with the minister and with Stephen Deady, the chief negotiator, about four weeks ago, where Stephen Deady made an unequivocal commitment that the government would not enter into an agreement whereby the e-commerce section served to undermine in any way that level of agreement which had been achieved in the audiovisual and cultural section. Again, if they hold to that position, that is obviously acceptable to us. But our fundamental position is, as we have said before, that we do not think a book is always a book and a film is always a film and the fact that it gets reduced to digital code and can be traded via e-commerce means does not mean to say that it suddenly loses its values and its impact and effect and role as a cultural artefact.

**CHAIR**—This is the impression I have from what you have said; correct this image if it is wrong: essentially the consultations that you have engaged in with the government had been adequate; that the formal laying out of strategy and objective provides comfort to you; there is a high anxiety level because what is at play here is in fact the industry and the protection of Australian culture as a consequence—the artistic expression of Australian culture, I should say—and this game is not over so you have got no closure and you cannot see any certainty. Is that a fair representation?

**Mr Dalton**—Yes. The only thing I would add is what I was saying about the high level of anxiety that the main game is US access into Europe. That is the main game. In that sense, our level of anxiety is that Australia's audiovisual industries could end up being a pawn or at least that the Americans will seek to trade that in order to build a bit of a beachhead or whatever into Europe.

**CHAIR**—That they will build up a global set of precedents that they will assault the European market with. If you look at the size of the Australian market and the returns from it, while it is an important and significant market—and one does not deny that—in the global game it is not the most important market.

**Ms Elliott**—Also it is important to remember that, given that the US already has 90 per cent—in some years, 92 per cent—of our box office, there is not much left to give them.

**CHAIR**—That is right.

**Ms Elliott**—Again I go back to the 2001 intervention, because we did such a good job there and, again, it actually differentiates. It says that an audiovisual content service would not need to be reclassified simply because it was delivered in a different way, talking then about the difference between removing cultural content and cultural services from things like e-commerce or the Internet.

**CHAIR**—All I am saying is that, standing in American shoes and looking at the Australian side of these negotiations and your industry, and asking yourself what they really want here given the penetration of our market, the extra penetration that they might obtain is in their view—

**Mr Dalton**—Insignificant.

**CHAIR**—Yes, insignificant.

**Ms Armstrong**—To them, but not to us.

**CHAIR**—What you would have to assume they are concerned about is establishing a body of global precedent to justify holding it up to the European market and opening that. You would have to assume that that is their main concern.

**Mr R. Harris**—On your issue about the process, we feel that our message has got through. We feel that we have been given a good hearing. We are just concerned that in the actual negotiating they will know what our arguments are but that that does not necessarily mean they still will not trade part of us away and that, when it comes to the bulk of the agreement, we do not know how much consultation will happen. That is where we are at.

**Ms Armstrong**—Also, Richard, do not forget two key things: we do not want the levels set now; and do not forget the digital thing. You have to think of the future. You cannot put any structure in where, in 10 years time, we will be dealing with all our works in a digital sense and we will be stuck because of agreements made now without any foresight.

**CHAIR**—I just want to back away from your industry sector for a moment and look at the whole of these negotiations. What comes out of them is a package in which there are winners and losers, and it is the net value of the package that decides whether you go forward with it or not. One of the most significant priorities in this package is opening up the American agricultural market. You could put it in these terms: how much are we on the Australian side prepared to pay in order to justify to the US Congress voting down their farmer lobbies in the United States and

opening up their market to our products? In your discussions with the department, has the question of trade-offs between sectors come up? Have you put a view about the deal maker, say, junking audiovisual and cultural protection in order to get a sensible package? I am not proposing this is the trade-off but, if that sort of cross-trading arises, have you been given any undertakings as to what then would be the nature of the approach by the government?

**Ms Elliott**—One of the policies of the Australian Writers Guild is that, if there is a wedge to be driven between industries, we are not going to drive it. We have met with the National Farmers Federation to ensure that we are across each others views and that they understand that we believe that cultural services are not the same as any other economics good or service. They are not interchangeable; you cannot substitute Australian culture for any other kind of culture in the same way that perhaps you could trade a cup of Aussie sugar for a cup of Yankee sugar. So we are in contact with the agricultural lobbyists, and we ourselves will not drive a wedge where there currently is not one.

**CHAIR**—In the consultations you have had, has any comfort been given to you?

**Mr R. Harris**—No. The consultations essentially have been the negotiators letting us know that in fact many of the American ambitions have not been put on the table.

**CHAIR**—They are doing that this week.

**Mr R. Harris**—That is right, exactly. So we do not know yet. Essentially what they have been telling us is the same thing that you mentioned earlier, which is that it is about a whole package. They will talk about bringing everything together. They have been informing us that it is not a question of picking one thing out and just trading it across another thing. I have not been involved with those levels of negotiations, so I do not know how it happens across the table, but I would imagine it is a case of just coming back—

**CHAIR**—It happens just by magic.

**Mr R. Harris**—Yes, that is right; it happens by a series of offers and back and forth. But essentially they have been saying, ‘We don’t see it as a simple case of you giving us one bit and we give you one bit or we take away one bit.’ The comfort it offers is not a lot, but the problem is that they keep telling us that until they know what the Americans ambitions are in a lot of these areas they cannot look at the whole of package.

**Ms Elliott**—In discussions with Minister Vaile, we have spoken about individual contacts—I have been in contact with the Writers Guild of America, Richard has been in contact with the Directors Guild of America, SPAA has spoken to the Motion Picture Association, and I know that the MEAA has spoken with SAG. We are in contact with our counterparts to try to find pressure points within America—to try to lessen the ambition of the Americans—as a way of assisting the Australian negotiators, which is something that we actually discussed with the minister in the meeting that Kim was speaking about.

**CHAIR**—Are your American counterpart organisations sympathetic to your point of view?

**Mr R. Harris**—Interestingly they do not necessarily agree with all of our positions but they understand that Australians need to be able to support their own culture. They actually support it as an organisation.

**CHAIR**—Do they translate that understanding into lobbying pressure on Washington?

**Mr R. Harris**—I am not sure how actively they lobby, but they have undertaken to give us a letter to that extent. The interesting thing though is that they have said they are concerned about e-commerce being left open, and they are going to be taking that up with the Motion Picture Association of America and the Jack Valentyn lot, who interestingly call themselves a mini state department.

**CHAIR**—They probably have justifiable reasons for doing so.

**Mr R. Harris**—That is right; I think they do. They have said that they are concerned about that because, if you leave e-commerce too open, potentially it could be left open to piracy and a whole range of other things. So they have some concerns and generally they have been supportive. Is the Writers Guild the same?

**Ms Elliott**—I think I would refer you back to the submission in terms of what the creative industries in America currently have been arguing for in terms of how free trade does not actually serve the American television market either and they have been talking about market failure. I have talked about a couple of web sites and the Centre for Creative Community in the United States.

**Senator NETTLE**—You have commented on statements that Stephen Deady made in relation to not wanting to go back through e-commerce on any audiovisual commitments. Are we getting a step further in terms of the comments you are hearing from him about a commitment to a definition of e-commerce much more similar to the definition of e-commerce in the Singapore free trade agreement? Are we just getting to the point of not going back in terms of commitments in relation to audiovisual, or are we getting that step further of: 'This is our view in terms of a definition of e-commerce'? Do you have any sense of that?

**Ms Ireland**—Yes, we do understand that US and Australia have been actively negotiating their various positions on the e-commerce chapter prior to this round of negotiations in Hawaii. Our understanding is that Australia starts from its position in its free trade treaty with Singapore and that the US starts from its treaty with Singapore, which are really quite diametrically opposed positions. My understanding is that they are hoping to get into the some of the guts of the actual negotiations in this round, but certainly up till now they have been exploring those differences and maintaining their positions. Australia's essential position is that digitisation is a means of distribution and does not change the good or service—that those things should all be negotiated separately within their own chapters. The US position is, as we have discussed previously this morning, that digitisation changes everything and it should be completely open and free. That is what they achieved in their free trade treaty with Singapore.

**Senator NETTLE**—Did you say earlier that you had achieved the support of the Australian government with regard to standstill provisions not being acceptable? I am just checking on the comment you made. I am not clear whether it was that the Australian government had agreed

that standstill provisions were not acceptable or whether it had agreed to standstill provisions and there is still work to do in terms of the argument that you have put to us with regard to new technology and standstill provisions. Can you please explain that again?

**Mr Dalton**—I think I will put it in the way that Richard put it before—that I think our arguments have been heard and that there is a high level of understanding as to the problems that arise if some form of standstill were agreed to. As to whether we have had an unequivocal statement from the minister or the chief negotiator that a standstill provision will not be negotiated, I think they are saying that it is too early at the moment. They think this will be the American position, and they need to understand what the Americans need by stand-still and the implications of that. Australia then needs to think that through and try to understand how to construct some sort of negotiating position around that. Does that answer your question?

**Senator NETTLE**—‘We need more information’ sounds like the answer to that question.

**Mr R. Harris**—We will not know until we know what the ambitions of the Americans are. If they come back from Hawaii in a week or two and say: ‘The Americans are after standstill; they’ve put it on the table. We’re still considering our position on a whole range of things and now how do we deal with that,’ they may come back and consult with us on the basis of that. But we have to know what the Americans have really put forward. The Americans have been very clever. In their objectives last year they mentioned nothing about the audiovisual sector; they mentioned very little about it at all. It was not until earlier this year that they put it all on the table and said, ‘We want everything,’ and then backed off from everything in saying, ‘Well, we’ll give you a concession with standstill; there is a concession.’ I guess our worry is, in speaking to a number of people in Canberra and in the departments and so on, that people say, ‘Well, actually that’s not a bad position really; we don’t want more than 55 per cent as a quota, do we?’ Our problem is that, once you put it on the table, in the view of kind of progressive trade liberalisation agendas, they would come back in 10 years and say: ‘Well, you put it on the table then, culture is up for sale. What will you put up now?’ and that sort of thing.

**CHAIR**—That is the classic marking out of a line. Standstill is a static situation but the industry is dynamic and, if you just have standstill, you get caught by the other dynamics that emerge in change.

**Mr R. Harris**—One of the interesting sectors that we represent is the television commercials directors. There was a reduction in the regulations on television commercials, and that area has been struggling in the last 10 years because of that. That area actually underpins a lot of the Australian film production industry in a whole range of areas that I will not go into.

**Ms Armstrong**—You have probably noticed more and more American commercials on television. That has had a major effect. Basically Russell Boyd, who shot my first feature, can work for nothing on a little Australian film because he has bread-and-butter work making commercials. They are suffering now.

**Mr R. Harris**—They are now saying, ‘Look, the regulations have been reduced; we’re really struggling along.’ If their television commercial directors were to say, ‘Look, we will give you television commercials; we’ll just lock that one regulation in place and keep everything else,’ our

television commercial directors would be saying: 'That's a disaster. We actually want to potentially increase that in the future.' So that is our concern about it.

**Senator HOGG**—I have just one simple question: how many jobs are at stake right across the board?

**Ms Elliott**—They say that there are 250,000 people involved within the Australian cultural industries. The membership of the Australian Coalition for Cultural Diversity is about 220,000 people; that is how many people we represent. Given that, like all of us, you go in one industry, you come out the end and you spend a bit of time treading the boards and then you are back behind the camera, it is big.

**Ms Ireland**—We are happy to get back to you with some of the official figures from the Australian Bureau of Statistics.

**Senator HOGG**—If you could, it would be very helpful for us to understand the real extent of the employment effects if this whole area were opened up completely.

**Senator MARSHALL**—Mr Dalton, I think the record is showing at the moment that you support free trade as long as Australia maintains its ability to set its cultural agenda. Is that right?

**Mr Dalton**—I am not sure whether the Australian Film Commission actually are qualified to take a position on the whole area of free trade. I guess what we are saying is that we understand the negotiations that are going on and the arguments government puts about the potential benefits and we have engaged with that and we have understood it. We are not saying that we think there is a problem with free trade as such; we just say that, within the disciplines and rigours of free trade, we believe you have to take culture out.

**Senator MARSHALL**—I think you did say earlier on that you support free trade. I just wanted to get that on the record that it is not unequivocal support of the process of free trade.

**Mr Dalton**—I guess there are a lot of things that way do not feel qualified to comment on.

**Mr R. Harris**—I think that is probably similar to the positions that our other organisations and the Writers Guild and NASDA have taken as well, essentially. At this point we are talking from the interests of our membership and the Australian culture generally, but we have not necessarily come out in support or against free trade agreements as such.

**CHAIR**—The concept of free trade is an inarguable concept here and there is a big weight of academic opinion that says that bilateral trade negotiations are provincial or discriminatory et cetera. We will not go into that argument unless you want to express a view about it. Let us wrap up on this point. If we can say anything to lessen your anxiety, can I just say this: broadly, I can speak for this committee that we are well disposed to your arguments and sympathetic to the issues that you have raised. I think that is true even of the absent members of this committee who are the government members. The constitutional process is that the executive wing of the federal government has the power to conclude international treaties. How they do that is up to them, but they have the power under the Constitution to do that without reference to the parliament. However, any legislation that arises from that has to be carried by the parliament and

that means it has to go through the Senate. So we, if you like, are the court of last appeal if we have a view about these matters. I am not saying that we do, and I am not saying that if we had a view we would necessarily, in a proportionate response, go to blocking it—there may be other things that we want to do or discuss—but, from a constitutional point of view, that is the structure and I think that is about as opaque as I can get on the point. Thank you very much for appearing today.

[10.27 a.m.]

**RANALD, Dr Patricia Marie, Convenor, Australian Fair Trade and Investment Network**

**SOUTHALAN, Ms Louise, Policy Officer and Campaigner, Australian Fair Trade and Investment Network**

**CHAIR**—Welcome. Would you like to make an opening statement?

**Dr Ranald**—I work at the Public Interest Advocacy Centre, and I convene the Australian Fair Trade and Investment Network. We are a network of 71 churches, unions, environment groups, human rights groups, development groups and other community organisations as well as many individuals, which conducts public education and debate about trade policy and its impact on social policies. We welcome this opportunity to make a submission to the inquiry. We do support the development of trading relationships with all countries. We support the concept of trade, and we recognise the need for regulation of trade through the negotiation of international rules, but we want a fairer trade framework—one which is transparent and democratically accountable and one which provides protection to weaker countries and is founded upon respect for democracy, human rights and environmental protection.

Our submission deals with GATS and the US free trade agreement. We also made a supplementary submission which dealt with events that occurred after the original submission went in—and these were the publication of the government's GATS offer and the publication of the Australia-Singapore Free Trade Agreement and its implications for the US free trade agreement. I will confine my opening remarks to the US free trade agreement. Our major concern is that the United States has targeted important social policies like the reference price control system of the Pharmaceutical Benefits Scheme, Australian media content rules, food labelling laws in Australia and the regulation of essential services, and it is calling all of these things 'barriers to trade'. As Australia has few tariffs and other barriers to trade in goods and agriculture, the danger is that these policies and essential services will be traded away. Other witnesses have dealt with or will deal with the details of these policies, so we will not go into particular policies.

I want to deal with three major issues about the proposed structure of the agreement, which I believe could reduce the general ability of Australian governments to regulate essential services and investment. We know about these proposals because the Australian negotiators have acknowledged in testimony to the Joint Standing Committee on Treaties on 24 March that aspects of the Singapore-Australia Free Trade Agreement are being used as a model and because they feature in the US-Chile Free Trade Agreement and the US-Singapore Free Trade Agreements, which have also been published and which the US is using as models. There are three major issues, as I said. The first one is the inclusion of all services and investment in the agreement through a negative list for services and investment, except those which are specifically excluded. The negotiators approvingly call this a GATS-plus agenda as it places more restrictions than GATS on the ability of government to regulate services and investment. But we know that many essential services like health, education or water need to be regulated to ensure equitable access or for environmental or other social reasons. We are concerned that we



should not trade away this ability of governments to regulate in the public interest through the use of this negative list agreement. Secondly, I want to talk about the implications of this for both the current regulation of services and investment and the ability of future governments to regulate. The third point I want to make is about the inclusion of an investor-state complaints process in these models which empowers corporations to challenge laws and sue governments on the grounds that such laws harm their investments.

To go to the first point, the Australian-Singapore Free Trade Agreement has a negative list for services and investment. This means that all services and investment are included in the agreement except those which are specifically excluded. This was the structure of the multilateral agreement on investment, which was defeated by community campaigning in 1998 precisely because it unreasonably restricted the right of governments to regulate in the public interest. What it means is that, in the case of investment, you cannot have any regulation which is not consistent with national treatment and market access rules. For investment, this means that you cannot have something like the Foreign Investment Review Board to review foreign investments—you can have no levels of, in this case, US ownership in any industry like the media, Telstra or Qantas; no rules which favour local products like our media content rules; no requirements on US firms to train local people, use local inputs or transfer technology; and no local or regional industry development programs which favour local firms. Unless all of those things are specifically listed as exceptions, they would be inconsistent with the agreement.

If we look at the way that this restricts both current and future regulation, even the exceptions can be of two types. The exceptions are either a standstill exception or you can have some exceptions which allow future regulation but all of that has to be negotiated. If you look at the general structure of the negative list, it places a standstill on existing levels of regulation freezing them at current levels so that even existing regulations could be challenged as a barrier to trade if they are not consistent and if they have not been listed as exceptions. Future governments could be prevented from introducing new regulation in these areas. For example, if they were not exempted, our limits on foreign ownership of media could be challenged. The Howard government recently tried but failed to remove these limits. If they had succeeded and that became the existing level of regulation when a US free trade agreement was signed, a future government could be challenged if it tried to reintroduce such limits. We believe this is an unacceptable restriction of the democratic right of governments to regulate investment in the public interest.

The same negative list structure and rules would apply to services. The government has tried to reassure us about GATS by emphasising that it is a positive list agreement—that is, that it only includes what each government actively decides to list in the agreement. Community campaigning did have an influence on the government's initial offer in the GATS negotiations, where it did not include new offers on health, education, water or postal services, although this could change as the negotiations proceed.

The US free trade agreement negative list for services brings back the whole GATS agenda in a worse form because of the negative list. For example, if the government succeeded in its proposals to deregulate doctors' fees and university fees and the US free trade agreement was then signed, a future government could be challenged if it tried to reintroduce regulation to ensure more equitable access to these essential services.

The regulation and provision of public services could also come under challenge. The Australia-Singapore free trade definition of 'services' claims to exclude public services, but it has the same ambiguity as the GATS definition, defining 'public services' as those services supplied neither on a commercial basis nor in competition with other service providers. As we know, many public services, including health and education, have been commercialised or are supplied in competition with private providers. So it is not clear that they will be absolutely excluded. Even the exceptions listed in the Singapore free trade agreement, which are supposed to exclude areas like health and education, exclude them only insofar as they are 'social services supplied for a public purpose'. We believe there is still some ambiguity even in that definition, and we believe that public services should be clearly excluded from trade agreements.

I now want to move on to my final point about the empowerment of corporations to sue governments. The investment chapter of the Singapore free trade agreement enables an investor to challenge laws or regulation and to sue governments for damages if such laws breach the terms of the agreement in a way which causes loss or damage to the investor. There are similar clauses in the US-Chile and US-Singapore agreements, and this is clearly part of a template and a beachhead about investor state complaints mechanisms that the US wants to establish in terms of the global trade scene, as was discussed by previous witnesses.

The parties are meant to consult first about the dispute, but then the investor has the right to submit the dispute to a panel of trade law experts established by either the international centre for settlement of investment disputes run by the World Bank or the UN commission on international trade law. Unlike other international courts, the hearings and evidence are not public, the dispute is heard behind closed doors and the decision is final with no appeal.

Under similar provisions in the North American Free Trade Agreement, US corporations have aggressively challenged laws and sued governments on the grounds that their investments have been damaged. I will give you three examples which show the breadth of this sort of legal power. The US company, United Parcel Service, which is the world's largest express carrier and package delivery company, is suing the publicly owned Canada Post. It is arguing that Canada Post's monopoly on standard letter delivery is in violation of provisions on competition policy, monopolies and state-run enterprises. UPS is arguing among other things that Canada Post uses its public infrastructure to cross-subsidise its parcel and courier services. The public postal service and the reserved service for a standard letter enable all Canadians access to affordable postal services wherever they live. Canada Post's other operations are conducted on a commercial basis, but there is that reserve service, as we have here in Australia. Australia Post provides a similar service and could be challenged under a free trade agreement.

The US Metalclad Corporation was awarded \$15.6 million because it was refused permission by a Mexican local municipality to build a hazardous waste facility on land already so contaminated by toxic waste that local groundwater was compromised. It won that suit. Ethyl Corporation, a US chemical company that produces a fuel additive called MMT which contains manganese and is hazardous to human health, successfully sued the Canadian government when it tried to ban MMT on health and safety grounds. In 1997 the Canadian parliament did impose such a ban but, before the legislation could be finalised, Ethyl Corporation sued the Canadian government which then settled the suit by reversing its ban on MMT and paying \$13 million in legal fees and damages to Ethyl Corporation.

In both those cases environmental laws were challenged by corporations, and I think that has quite serious implications. I can refer the committee to further references on these cases which have caused widespread public concern in Canada, the US and Mexico. There is an excellent paper by the International Institute for Sustainable Development, which I can give you the reference to. I should also indicate that the Canadian government is concerned about this and has sought changes to the NAFTA process and is not supporting such a dispute process in the proposed extension of NAFTA into Latin America through the FTAA. I can give you a paper from the Canadian government which deals with that.

Also, the US Council of State Governments, the National League of Cities—which represents local government—plus the National Labor Advisory Committee to the US Trade Representative have all, in their reports to the US Trade Representative on the Chile and Singapore US free trade agreements, objected to the investor dispute process in those agreements. Although it is slightly different from NAFTA, they do not consider it is different enough to protect against these sorts of suits and to protect against the unreasonable restriction on the right of governments to regulate. As I said, I can give the committee copies of those.

This ability for corporations to sue governments does not exist even under WTO rules. It places the rights of corporations above those of governments, which is a completely unacceptable restriction on democracy and sovereignty, and we believe that any genuine grievance could be addressed under national law. Trade agreements should not allow corporations to sue governments in a secretive process with no appeals.

Finally, I want to emphasise our points about democracy, transparency and accountability. We believe that all of these policies dealing with essential services and social and cultural policies should be democratically decided at the national or local level, not negotiated or limited in trade agreements. We believe that cabinet should delegate to parliament the power to debate and ratify trade agreements so that there can be public accountability for them. We are happy to answer questions about these issues or other points in our submission.

**CHAIR**—At 11 o'clock I must do an interview with SBS. For that reason I will leave the committee at that time and my leaving should in no way be taken as disrespect for your organisation or submission; please forgive me.

I think you were in the room when we talked to the previous witnesses about the level and nature of the consultation. I want to ask those standard questions of you but not just yet because I want to go two things that I think are quite important. We had the ACTU before us yesterday, and I asked them if they would give some thought to putting before us what they regard as the appropriate model for the consultation process and the conclusion of a trade agreement—that is, from the point at which it is conceived; the negotiating mandate is set; the involvement of stakeholders is organised and their participation in the process; how they work in that process; and then the signing off and the conclusion of it. You have placed a fair bit of emphasis on this in your submission. I wonder whether you would not mind accepting the same invitation that the ACTU has to come back and just lay out step by step what you regard as the model process for Australian democracy in dealing with this matter.

**Dr Ranald**—Do you mean now or in writing later? I am happy to say something about it now.

**CHAIR**—Please say something about it now. I think one of the things we have to give some thought to is whether the process is as appropriate as it can be for our democracy and, if it is not, what the criticisms of it are in comparison to other possibilities. A number of organisations have raised this question about transparency and openness. I have some concern about how the parliament finally concludes these things. I would appreciate a step-by-step model, if you would.

**Dr Ranald**—If you look at the US free trade agreement, I appreciate that industry groups like the media have been closely consulted, but I do not think that is true of the community in general. The negotiations were announced in November. There was then a period announced for public submissions, but that was over the Christmas period, and so it was very difficult for ordinary community organisations to make submissions. We have had one meeting with DFAT, which we requested, which a range of community organisations held in Canberra, and we have been in touch by telephone and so on since then with the DFAT negotiators.

I think that the flaw in the process is at two levels. One is that the decision is ultimately a cabinet decision and the other is that the parliamentary committee, the Joint Standing Committee on Treaties, can only make recommendations. In fact, if you look at the process for the Singapore free trade agreement, you see that the legislation to implement the agreement was introduced before that committee had had a chance to conduct its review. So the whole process was extremely cursory. They only had one hearing, which was in Canberra, and only DFAT appeared at the hearing. It was very difficult for community organisations, as the period for submissions and so on was very short.

We would suggest that we need to have a far more open process and that the decision making for trade agreements should be delegated by cabinet to parliament. I do not think that all of the aspects of the US model are relevant, but I think that we need a much more open process whereby there can be parliamentary scrutiny, including by a committee, of agreements before they are signed, and then the ultimate decision should be made by parliament and not just by cabinet.

**CHAIR**—What you are saying about the Singapore agreement and there being one hearing may well be—and I think this is right—a criticism of the committee in that it decided to deal with its reference in that manner; it may not be a criticism of the structure.

**Dr Ranald**—I think it is a criticism of the structure because at the moment the committee deals with all treaties—

**CHAIR**—I am criticising the committee on other grounds, so do not feel at all—

**Dr Ranald**—It may be both, but what I am saying is that I do not think that committee is structured to adequately deal with all the treaties that it has to deal with. The way that it works is that it deals with 10 treaties at once that are all tabled in parliament on the same day. It cannot possibly deal adequately with them. As I said, ultimately, we believe the decision should be made by parliament but, if we are looking at a different kind of committee process, I think there is an argument for having a committee that looks specifically at trade agreements, rather than trying to deal with all treaties, and which has more time and resources to do that, and there should be a much more public and open process.

**CHAIR**—The other question was about an investor state clause. I took the department through this in considerable detail at the last estimates. In the Australia-Singapore agreement, we—that is, Australia—put on the table the proposal for an investor state provision. I cannot find in the minister's statement of negotiating intent, what the mandate was and a reference that that was one of our objectives. I am waiting for an answer to a question on notice from the department as to where this statement was made to tell us that that was one of the negotiating objectives for Australia. It may be that it was, but at the moment I cannot find it and I am therefore waiting for the answer. That goes to public disclosure of our objectives in a trade negotiation. Maybe the minister did make that statement and I have missed it.

But the process seems to be, based on the evidence of DFAT, that they tabled the proposition midway through the negotiations and they recognise—and they have said this in *Hansard*—that this is a change of practice, given that we have investor state clauses in a whole range of trade agreements, but with developing countries to protect Australian investment. This is the first time we have one with a developed country—and I do not think anyone argues that Singapore is not a developed country—so we have changed our policy by making this change. It seems to me to be very clear that, while it exposes the federal government, state governments and local governments to litigation, no explicit agreement was necessarily arrived at from the state governments to agree to being exposed to litigation in that manner nor by local governments, although they were consulted and they were consulted in a way that suggested that this may be something that happens, but they were not asked necessarily to consent.

In the constitutional model we have in this country, it is an advisory opinion if they have a view whether they should or should not; it is not a binding one. But it seems to me, in a process to obtain an opinion formally from a state as to whether they agree to that exposure to litigation, it is quite an important step. For a states' house like the Senate, not that I frequently invoke that concept, that is an appropriate question for us to ask. My concern is that it popped up in the Singapore agreement midway through the negotiations in order to create a precedent in bilateral agreements that can be drawn upon in the US negotiations. While the impact of it with Singapore may be relatively benign—although there is a question mark over that—the impact of it, if that precedent is to be continued through in the US agreement, arguably would not be.

That is the explanation I make; here is the question. You have offered to provide us with examples of where investor state litigation has occurred. Speaking for myself I do not find it exceptional that, given the existence of the clause, someone takes legal action under it, although when they do an unsuspecting public utility or government is embroiled in a legal proceeding which is costly to it and thus has fewer resources to spend on its core responsibilities. I am more interested in the jurisprudence that has arisen from successful litigation, the legal dicta that can be drawn upon. I think that is a key part of the debate as to whether we should conclude such a clause with developed countries, particularly with the United States which has a tradition of litigation. Are you able to provide us with any information on the jurisprudence of investor state litigation?

**Dr Ranald**—We can refer you to a fairly detailed paper from an international environmental law centre, which does deal in some detail with those issues.

**CHAIR**—If you do have some list at hand on all of the legal actions that have been taken—as comprehensive as possible—and if you happen to know whether they have succeeded, the

manner in which they have succeeded or whether they have been dismissed, we would appreciate that as well.

**Dr Ranald**—That paper has a certain amount of information on the ones that have been initiated. Some of them are still under way; for instance, the Canada Post one has not been concluded yet.

**CHAIR**—Yes, it is on foot.

**Senator NETTLE**—I have some questions about the definitions of ‘subsidy’ and ‘public services’. We had some evidence yesterday from the Australian Local Government Association, and they were particularly concerned about water services. They expressed to the committee that they had some sense of confidence in the discussions that they had had with the government in relation to GATS—not in relation to the free trade agreement—about water services not being part of the offer that the Australian government were putting up. I know you have added more detail about that in the subsequent submission that you have put in. I wonder whether you could comment on this. I was concerned when I heard them speak yesterday about their sense of assurance in relation to the comments that they had had from the federal government on GATS—and, of course, in the progressive liberalisation sense, that continues to be a concern. I wonder whether you could comment on that issue, the capacity for an organisation such as the Local Government Association to be able to feel that they have that assurance from the government on those sorts of issues, and in relation to GATS, but perhaps you could also comment in the context of the FTA in terms of public services in that realm.

**Dr Ranald**—I cannot comment on meetings that they had with the government, because I was not there. The thing to be said about the initial offer in the GATS negotiations—and the government said this itself when it published the offer—is that it is only the initial offer; it can be changed at any time in the negotiations. We were pleased to see that certain things, like water for human use, were not included. However, Australia had already made commitments on things like sewage treatment—we made those in 1994—and on certain other waste management activities. The problem for water services is how you separate water and sewage. It is good that we have not made commitments on water for human use, but we have already made commitments on sewage treatment and, as I said, they were done in the past. It is not absolutely clear what the implication of that is for a lot of public water services which handle both drinking water and water for human use more generally and sewerage services.

In terms of the US free trade agreement, all of those issues are again up for negotiation because the US negotiators have said very clearly that what we want to do is to remove any restrictive regulation in relation to trade in services. That is a very wide ambit, and we have yet to see what they are asking, but the danger is that both parties want to use this negative list model. That means that, if we do not want things like water and sewerage services to be included, there has to be a very detailed exception. My fear is that the parties may not be committed to making those sorts of exceptions precisely because, when the negotiators were questioned about this when they gave their evidence to JSCOT, they saw the negative list as giving them the opportunity to do what they call ‘have a GATS-plus agreement’; in other words, to go further than GATS. That goes back to the point that these agreements are being used as a precedent to go one jump further, to leapfrog over what has been agreed in the GATS context. I do think that in the services area all of these issues are still on the table in the US FTA, and what

we have committed to in GATS is no guarantee that more will not be committed to in the US FTA.

**Senator NETTLE**—In your submission you have a quote from the WTO secretariat in relation to subsidies for public hospital and private hospital services. I wonder whether you could comment on the nature of that particular quote in relation to how subsidies may be defined and how services provided in that mixed environment may be treated by the WTO. Also, could you contrast those comments with the assurances that the federal government have made in relation to how they perceive services that are provided by mixed public and private sectors to be perceived in relation to subsidies? To me they seem contradictory: the statement from the federal government in relation to how they view subsidies and mixed sectors and then the comments that you have quoted in your submission in relation to the WTO secretariat.

**Dr Ranald**—I think there are two separate issues here. One is the definition of ‘public services’, which is ambiguous because it says that they are services which are not supplied on a commercial basis or in competition with other service providers, and we know that many public services in Australia are now supplied in those two contexts. The particular quote from the WTO secretariat acknowledged that, for instance, the hospital sector in many countries is made up of government and privately owned entities which both operate on a commercial basis. It seems unrealistic in such cases to argue for continued application of this particular definition or to maintain that no competitive relationship exists between the two groups of suppliers or services.

That comment worried us in terms of interpreting the definition and therefore protecting public services. The issue about subsidies is slightly different in that the definition of subsidies under the GATS is being discussed in a committee dealing with GATS rules. What is being discussed there is whether government payments to entities like hospitals or schools should be defined as a subsidy and, if they are defined as a subsidy, should the rules of national treatment and equal access be applied to those subsidies? In other words, should private providers be automatically given the chance to have access to government payments in the areas of health and education or should there be some kind of compulsory competitive tendering system, which would ultimately lead to privatisation of those services? Those discussions are still at an early stage in the GATS negotiations.

We are very concerned that the government very clearly takes a position that says that it will not agree to any definition of subsidies which could allow that to happen. The reason for that is that we believe that the decision about whether education, health or other public services are supplied by government or are competitively tendered to private providers should be made at the local or national level and not determined through a trade agreement. At the moment, public opinion in Australia is overwhelmingly in favour of having those services publicly provided but, whatever the public opinion is, we believe the decision should be made at the local or national level and not through a trade agreement.

**Senator NETTLE**—Do you have an indication of the government’s position in relation to that definition of subsidy within that committee at the WTO?

**Dr Ranald**—In the GATS offer which they published they did make a reference to that issue and they did say that they would not support any proposal which undermined the ability of governments to provide or fund public services. So they did make a general statement about it.

But, again, that was their initial offer in the negotiation so it could change at any time. We believe they made that statement because of the public discussion and public pressure that has gone on about it, because in their initial discussion paper they did not refer to it at all.

**Senator NETTLE**—And it was a general statement rather than a specific position in relation to their understanding of the definition of subsidy?

**Dr Ranald**—Yes. It was a very general statement.

**Senator MARSHALL**—Firstly, I want to thank you for your submission. I have done a number of public meetings in Melbourne and I also attended some interstate and I think your submission has captured in a large way a lot of the public concern that I have been gathering through that process, so thank you for that. There has been some general criticism of your organisation, and organisations that have raised questions about the GATS process and the free trade process, as simply being politically and ideologically opposed to trade. I did note in your opening remarks that you said that you were not opposed to the trade process, but I would ask you to respond to those sorts of criticisms.

**Dr Ranald**—The principles that we base our organisation on make it very clear that we are not opposed to the concept of trade, and we believe that Australia should develop fair trading relationships with all countries. We also believe that there should be international rules for trade to restrain the most powerful economies and the influence of corporations on the process, which is very great and we have given examples of that in our submission. What we are saying is that we do want changes to the existing trade framework. We want what we call a fairer trade framework—that is, one which gives a lot more voice to developing countries and one which pays a lot more attention to the principles in UN conventions on human rights, labour rights, protection of the environment and cultural rights, as we have heard discussed this morning. We do not believe the current trade framework pays enough attention to those issues and in some cases can undermine them, as was discussed earlier.

**ACTING CHAIR (Senator Hogg)**—Do you have a view as to whether multilateral versus bilateral is more preferable?

**Dr Ranald**—As we have said in our submission, we believe that Australia as a medium-sized country has a better negotiating position in the framework of multilateral negotiations. However, having said that, we also have specific criticisms of the current multilateral framework through the WTO and we did spell out those criticisms in our submission. Our specific concern about the US free trade agreement is, firstly, that it is a very unequal bargaining position for Australia to be in and, secondly, that the main things that we have to offer in the negotiations seem to be social policies, which we do not believe should be negotiated in a trade agreement.

**ACTING CHAIR**—What about the role of, say, APEC? Do you see that as being more desirable as a means by which to push our trade agendas, rather than through either the bilateral or the WTO? Should we be getting our agenda up through APEC and then using that as leverage for our bargaining within the WTO?

**Dr Ranald**—APEC is a regional trading forum, but it is not really regional because it includes about three different subregions and it has its own set of problems. Some of those problems are



similar to the WTO framework, in that APEC tends to be dominated by the stronger players. The other main difference between APEC and the WTO is that APEC is a much less binding framework than either the WTO or other regional trade agreements. Its agreements are not legally binding in the same way. For those reasons, it is a more flexible forum but it has also probably become a less relevant forum, particularly since the East Asian crisis of 1997. So I would not want to say that APEC was preferable to other fora.

**ACTING CHAIR**—I was just trying to find out if there was a model that you preferred. Given that there is no perfect model, is there a more desirable model that we should pursue?

**Dr Ranald**—We have argued for specific changes to the trading framework which could be applied both to the WTO and to APEC and they go to a much more open and democratic structure—much more voice for developing countries in particular—and to safeguards which ensure that governments retain the power to regulate in the public interest and that a whole lot of issues which we believe should not be negotiated in trade agreements should be clearly excluded, and they go to essential services, culture and social policies of the type that we have been talking about. They are some of the aspects of what we believe a better trade framework would look like.

**ACTING CHAIR**—Specifically on the Australia-US free trade agreement, what level of consultation was your organisation offered?

**Dr Ranald**—We sought consultation from DFAT in February.

**ACTING CHAIR**—You sought consultation, but were you offered any?

**Dr Ranald**—We made a written submission to the DFAT process, which took place over Christmas, as I said. We asked for a meeting with DFAT in February and had a meeting with a range of church, union and community organisations with DFAT. We have had some telephone contact with DFAT since then.

**ACTING CHAIR**—There have been no subsequent offers of consultation as to where the process is going?

**Dr Ranald**—No. We will seek further consultation after this round of negotiations, but we have not had—

**ACTING CHAIR**—Is there an indication that they will consult with you as a result?

**Dr Ranald**—They have agreed to meet with us in the past but I think the hard truth is that, if you are not an industry group, it is more difficult to get into the loop of the process with DFAT. We seek consultation and they agree to meet with us, but it is a slightly different process from some of the industry groups.

**ACTING CHAIR**—So they do not see you as having a legitimate part and role to play in the process per se?

**Dr Ranald**—I think they see general community interest in trade agreements as being, I suppose, at a slightly lower plane than some of the industry groups, whereas we would argue that there is a legitimate role for general community organisations to express their views about these agreements because they impact on such broad areas of social policy which affect everybody in the community.

**Senator MARSHALL**—Did they take on board any of your concerns and agree to pursue those on your behalf throughout the negotiations?

**Dr Ranald**—Not as such. They listened to our views; they did not give us any undertakings.

**ACTING CHAIR**—Just as they listened to your views, there is no undertaking that they will come back to you and report as to where your views might have gone?

**Dr Ranald**—Not at this stage, no. But we will seek consultation with them, as I said.

**ACTING CHAIR**—Would you expect to see the final agreement that is signed off on by the negotiators?

**Dr Ranald**—I do not think anyone is going to see it before it is signed off. There may be consultation with particular industry groups about particular clauses, but I do not think anyone is going to see the whole agreement, because that is not what the process is about.

**ACTING CHAIR**—But in the social policy area where you have some grave concerns, would you expect to be consulted?

**Dr Ranald**—We would certainly hope that we will be consulted.

**ACTING CHAIR**—But the reality is that you will not be.

**Dr Ranald**—At this stage, we are not aware of any process that would enable that, but we will certainly seek more consultation.

**Senator NETTLE**—I want to talk with you about how the community deals with the level of secrecy that surrounds the negotiations in terms of being able to have input. I will use as an example the Pharmaceutical Benefits Scheme. As you would be aware, the Senate has asked the Minister for Trade and the minister for health to provide us information in relation to negotiations in the free trade agreement around the PBS. There are two security classified documents from Washington that the government have decided not to provide to the Senate because they do not believe it is in the public interest to provide that information. How do you see then any opportunity for community groups to have an involvement, firstly, in knowing the status of the Pharmaceutical Benefits Scheme in the free trade agreement and then being able to have input into that process and negotiation with regard to putting forward community positions?

**Dr Ranald**—I think the whole discussion about the Pharmaceutical Benefits Scheme has been very limited by, firstly, the lack of information and, secondly, the standard response which has come from government, which is: 'We're not talking about abolishing the scheme.' We all know

that. We all know that we are not talking about abolishing the scheme, but we also know that the US pharmaceutical companies have quite specifically targeted the price control aspects of the scheme, which are the things that keep prices low for medicines in Australia compared with the US. I would say that that is a very good example where, firstly, there is not enough information available to the public; and secondly, the official statements have actually obfuscated the process rather than clarified it by attempting to say, 'We're not thinking of abolishing the scheme so don't worry,' whereas in fact there are detailed discussions going on about the price control mechanisms.

**ACTING CHAIR**—On that note, we will stop otherwise we will blow our program out for the rest of the day. Thanks very much for appearing before the committee this morning.

**Proceedings suspended from 11.14 a.m. to 11.32 a.m.**

**HERIOT, Mr Geoff, Chief, Corporate Governance and Planning, Australian Broadcasting Corporation****WATTS, Ms Robyn, Director of Enterprises, Australian Broadcasting Corporation**

**CHAIR**—I welcome Mr Heriot and Ms Watts. You have lodged a submission with us. I invite you to address that submission and then we will ask you questions about the ABC's position.

**Mr Heriot**—On behalf of the corporation, I thank you for this opportunity. We appreciate the consultation process. Our particular interest in this issue is, in a sense, a limited one. Our submission as you would have noted has not addressed, and we do not think it is our place to address, the broader issues associated with negotiation of GATS or a free trade agreement. We have restricted our submission to those issues relevant to the legislated role and the purpose of the ABC in the Australian broadcasting system. Obviously, we are a producer of content. We co-produce a lot of material with the independent production sector in Australia. We purchase and sell content. We broadcast content. To that extent, we have a broad interest in maintenance of the sectoral balance and the vitality of the overall broadcasting system in Australia because it is something of an ecology.

Our capacity to fulfil our charter role—informing, educating, entertaining an audience in Australia in a way that contributes to development of Australia's national identity, which reflects cultural diversity, which is innovative and so on; all those values and requirements that are provided for in the ABC Act—depends on a range of interrelated factors. Obviously, we depend greatly on direct funding from the parliament. We do, as I said, depend on the sectoral balance between the national, commercial, pay and community broadcasting sectors. To that extent, we depend considerably on the independent sector itself, both as a pool of creative talent and as a source of co-production investment in order to achieve the diversity of ideas and output in Australia that we believe to be critical to the nation's broad, social and cultural agendas. In turn, the independent sector itself is very dependent upon a range of financial—direct and indirect—supports to itself, so any risk to that structure of support for the independent sector poses a risk to the overall health of the industry and therefore the range of diversity of views, ideas and creative expression that may be possible.

Finally, may I say that, overall, given our particular interests in these matters, we take some reassurance from the positions articulated so far by the government and indeed certain reports we have seen of the American position in relation to the free trade agreement that the government retains a commitment to preserve its right to regulate on social and cultural policies affecting the audiovisual sector. We have observed with interest the successful negotiation of the Australia-Singapore Free Trade Agreement, which we think probably represents the best case of a model of such agreements if they are to eventuate.

**CHAIR**—We will have a number of questions, but I will just ask you a couple of routine ones that we are interested in. From an ABC point of view, is the consultation that you have had with the government about the US-Australia free trade agreement adequate to your needs and have you felt confident that you have been fully consulted?

**Mr Heriot**—As I said at the outset, we appreciate this opportunity for consultation. In terms of the overall matter, to my knowledge we are satisfied to this point with the progress of the government's position; in other words, I have no reason to be concerned on behalf of the corporation at this time.

**CHAIR**—We are the parliament inquiring into the government's actions. We are interested in your view as a stakeholder in this. We are interested in whether you have been adequately consulted by the government in establishing its mandate for the negotiations, whether your views have been heard and been taken on board to guide the government about your interests in the negotiations and the commitments they may make at the conclusion of talks when it comes to setting in place an agreement and the sense of input or influence you have over that. Given that slightly more extended explanation, is there anything that you want to add to your earlier answer

**Mr Heriot**—I am not in a position to sensibly say anything further about the government's consultation process.

**Senator HOGG**—I have a question on the Singapore-Australia Free Trade Agreement, which you seemed happy with. Were you consulted on that prior to it being signed off, or are your comments made in hindsight having seen the agreement?

**Mr Heriot**—My comment was made in hindsight. I am not aware of what consultation there may have been. We could certainly advise you on that later.

**Senator HOGG**—I would be interested in that.

**CHAIR**—One of the other issues that has come before us is the inclusion in the Singapore agreement—and it is a matter of active speculation as to whether a similar clause will be included in the Australia-US agreement; we do not know at this point—of the investor state provision. This is a gloriously indefinite title for a clause which does this, in rough order: it enables private individuals, institutions or corporations to sue a federal, state or local government or agencies of governments if those private corporations believe that governments or agencies are not complying with the letter of the trade agreement and to get a judgment and damages against them. This is an investor state clause. Australia has them in around 19 different trade agreements with developing countries and we have them to protect Australian investment against expropriation in developing countries or where the rule of law is questionable. We did not have them with developed countries until we concluded one with Singapore. The US has one, quite famously, in NAFTA with Canada and with Mexico, and a body of litigation has been built up under that trade agreement between US corporations and Canadian institutions in the main. Has the ABC been consulted about the impact of that clause if it were to be included?

**Mr Heriot**—Not to my knowledge.

**CHAIR**—Do you have any views that you would care to offer us if such a clause were considered? From an ABC point of view, what would your view about it be, if you are in a position to give us one?

**Mr Heriot**—I think I would need to take advice on it. It is not something that I have investigated.

**CHAIR**—I am not in the business of trying to ambush you either but, when you do take advice and if you have a view to offer us, would you please let us know?

**Mr Heriot**—We shall.

**Senator NETTLE**—On that first question that Senator Cook was asking you in relation to the consultation that you have had on both GATS and the free trade agreement, you indicated that you were not in a position to provide us with any more detail about that consultation. Could you take that on notice and let us know what level of consultation the ABC has had with the government with regard to their position on both agreements—the free trade agreement with the US and GATS—and whether there is any subsequent information that you want to provide to the committee in relation to that?

**Mr Heriot**—Yes.

**Senator NETTLE**—I have two other questions. One relates to your understanding of the risk to the funding that the ABC receives from government through the free trade agreement or through GATS. What is your assessment of the risk to that funding in the current situation?

**Mr Heriot**—At the moment we do not have a serious concern about the progress of the negotiations to this point. All we would wish to do would be to articulate those risks that might flow from a greater degree of liberalisation than we would expect there to be, given the current state of negotiations. First of all, we would see any move to eliminate Australian content rules as representing a potential risk to diversity of content and culture in Australia. It is a fairly self-evident one.

Following the second round of discussions between Australia and the United States, we noted that the US negotiator indicated to media that they would be prepared to accept the retention of the existing regime of Australian content. That was in itself an encouraging signal, although a related risk that we would identify would be that a preservation of the existing scheme only could suggest that it related to the existing technology platforms. Obviously our interest would be to argue that the underlying principle not preclude new and emerging media platforms. So that is one obvious issue. Perhaps less likely, but given the government's interest in modifying the cross-media and foreign ownership regime, were there to be at some future point a combination of liberalisation of the ownership regime and abolition of the local content rules, the risk would be that there would be an even more significant impact on diversity within the Australian community. That is perhaps not a significant concern in terms of probability, but it is one that we note.

Furthermore, any outcome which led to the removal of financial subsidies or indirect benefits to the independent production sector would also be a risk to identify. Again, because there is that ecology in the industry, a shrinkage of the independent production sector, of the creative pool, of opportunities for co-production investment would have potentially a detrimental effect, especially in the case of public broadcasters where our interests are in the creation and broadcasting of distinctive content and material—material that is often less effective in terms of a mass market interest. Clearly, if the sector shrunk and it were more and more commercially dependent without that assistance, the chances of being able to support that diversity would be diminished. In the very extreme case, any judgment that came out of these negotiations that saw

public investment in national public broadcasting as some kind of distortion of the market would be also a concern, but that seems highly unlikely.

**Senator NETTLE**—There is one other issue that I wanted to ask you about. We had submissions this morning from a range of different cultural industries. One of the issues that they have raised with us is the definition of e-commerce in relation to previous free trade agreements that the United States have entered into where they have defined e-commerce as digital products and that they therefore have the capacity to include audiovisual services within that definition. It was something that they expressed a concern to us about, in terms of a way of undermining commitments that have been made by the government in relation to the safety of audiovisual services in the current FTA negotiations. Is that an issue that has been raised within the ABC? Is it something that you are equally concerned about in terms of its impact on audiovisual services specifically?

**Mr Heriot**—In so far as an agreement embodied the principle of support for social and cultural policies of a government that was technology neutral, perhaps that concern from our point of view would be satisfactorily addressed.

**Ms Watts**—The only thing I would add is that the ABC is reliant on funding from the sale of its programming and so on, and if that interfered with that source of funding then that would be a concern for us.

**Senator NETTLE**—In relation to your comment about technological neutrality, do you have any understanding that that is the basis on which you understand the negotiations in the FTA will take place? Or is your view of the situation at which it may not be a concern, rather than necessarily your understanding of the negotiating position of the Australian government?

**Mr Heriot**—Specifically, I am not aware. As I indicated earlier, we took some comfort initially from media reports about the expressed view of the US negotiator, Richard Ives, and we have taken some comfort from the published positions of the Australian government. Beyond that, I do not have specific information.

**Senator MARSHALL**—Does the free trade agreement or GATS actually open up opportunities for you to market programs into other countries, or are those markets already open? I am just looking for what advantages there may be. I know programs like *Bananas in Pyjamas* and *The Wiggles* are already exported around the world and, having young children, I probably get to watch them more on the ABC than anywhere else. Are there problems with marketing your programs that these agreements may unravel, or will there be no change in respect of that?

**Ms Watts**—I think the issues associated with the marketing of our programs are really outside the possibilities of the free trade agreement. They are to do with Australian accents, and they are to do with whether or not the ABC's programming is suitable for networks overseas and so on. I do not think they would have an immediate positive impact on the ability to sell.

**Senator MARSHALL**—So there are no trade restrictions, quota restrictions or anything like that?

**Ms Watts**—The only area where there is a concern is in Europe with the European content quota, where you do have to work around that quota to try to sell programming.

**Senator MARSHALL**—The *Bananas* will not help?

**Ms Watts**—Generally the European quota applies to prime time and *Bananas* would not be screened in prime time, not in its current version anyway. The ABC itself has not had problems because the kind of programming that we screen here in Australia is not necessarily suitable all the time in a prime time situation in Europe. However, I am sure there are some distributors of Australian programming who would find the European content quotas a problem.

**CHAIR**—I want to follow up on one of the questions that Senator Nettle asked you. Are you saying that the ABC's ability to deliver its mission as set out in the ABC Act about representing Australia, Australian culture and Australian values would be undermined or inhibited significantly if anything happened that reduced the capability of the independent production industry to function? That is, would a loss of critical mass, leaving you as the sole standing survivor, inhibit you significantly in delivering your mission statement as set out in the act?

**Mr Heriot**—We believe there is a risk of that, yes.

**CHAIR**—Thank you.



[11.57 a.m.]

**BARNARD, Dr Peter, General Manager, Economic, Planning and Market Services, Meat and Livestock Australia**

**McCALLUM, Mr Andrew, Manager, Trade Policy, Meat and Livestock Australia**

**CHAIR**—I welcome Dr Barnard and Mr McCallum, from Meat and Livestock Australia. Thank you for your submission. Your submission is marked confidential. In honouring the confidentiality, to what extent are we able to refer to your submission in questioning publicly?

**Dr Barnard**—I am prepared to go on the public record and indicate if I think we are straying into areas that we would regard as confidential. We are mindful that we are in the middle of a negotiation here, so we have to be careful about revealing our hand. If we are straying into areas that we believe should be treated confidentially, I will indicate, if that is appropriate.

**CHAIR**—That is appropriate, and then we will consider whether we want to press in those areas and, if we do, whether we should move into a confidential session. I now invite you to address us on your submission.

**Dr Barnard**—We appreciate the opportunity to appear before you to express the support of the Australian meat industry for an Australia-United States free trade agreement. I must mention at the outset that the support for an appropriately constructed free trade agreement not only stems from my organisation—Meat and Livestock Australia—but it also has the support of all other prominent Australian meat industry organisations. In addition to Meat and Livestock Australia, the FTA is supported by the Australian Meat Council, the National Meat Association of Australia, the Cattle Council of Australia, the Australian Lot Feeders Association and the Sheepmeat Council of Australia. That support is conditional on free trade in agriculture being an integral part of any outcome.

The Australian meat and livestock industries have for a number of decades been strong advocates of freer trade in agriculture. That advocacy is hardly surprising. Australia is the largest beef exporter in the world and Australia is the largest sheepmeat exporter in the world. Access to overseas markets represents the lifeblood of our industries. We see an Australia-US FTA as being important for two reasons. First, it holds the potential for freer trade into one of our larger markets. For beef, the United States is traditionally our second largest market by value, but last year it was our largest market in both volume and value terms. Last year we shipped 386,000 tonnes of beef to the United States, worth \$1.6 billion. The United States is also our largest sheepmeat export market. Sheepmeat exports to the United States last year totalled 45,000 tonnes, worth \$282 million.

**Senator HOGG**—Is that in Australian or US dollars?

**Dr Barnard**—Australian dollars. Those sheepmeat exports have grown enormously over the last 15 years as we have developed that market. We do face a number of trade restrictions in supplying the market. For beef there is a quota of 378,214 tonnes, which Senator Cook was

instrumental in negotiating during the Uruguay Round. I remember memorable nights in Geneva.

**CHAIR**—Indeed.

**Dr Barnard**—Within this quota, a tariff is applied of US4.4c per kilogram. Outside the quota, a 26.4 per cent tariff is applied and, for some categories of product, the actual tariff is above that level because safeguard provisions come into play. The restrictions for sheepmeat are less. Normally, there are tariffs of only US0.7c per kilogram to US2.8c per kilogram applying to that trade. However, as we witnessed in 1998, I think from memory, those tariffs can be increased considerably in some circumstances. So that is the first reason that we support a FTA—because it opens up the opportunity of freer trade into the largest beef market in the world and a growing sheepmeat market.

Second, we believe that an Australia-US FTA could place useful pressure on the WTO process. I was in Geneva about three weeks ago and the WTO process in our view is proceeding far from satisfactorily. We are particularly concerned at some of the market access outcomes emerging from those negotiations. Just consider this: we believe that a successful negotiation between the United States and Australia—two advanced economies with politically sensitive agricultural sectors—on agriculture could act as a real beacon for WTO negotiations on market access. It would be a real tool to take to Geneva and seek a better outcome on market access.

**Senator MARSHALL**—The reverse laws are true though—if you are not totally successful in the free trade agreement, that actually sends a very bad message to those negotiations.

**Dr Barnard**—We certainly believe that we need to be seeking a good outcome on agriculture in the FTA negotiations with the United States. We are not going to walk away from the WTO. As Senator Cook would be aware from his time in the trade ministry, we as an industry put an enormous amount of effort into WTO negotiations. We export to over 120 countries around the world, and the only way we can get simultaneous surety in increases in access to all of those markets is through the WTO.

Senators would no doubt be aware that one of the US groups expressing some opposition to a FTA is the National Cattlemen's Beef Association. As an industry, we are concerned that debate in the United States on the FTA occurs in an information rich environment. So we have been active over there just presenting comparative facts on the two industries so that congressmen, in particular, can come to an informed decision when hopefully later on next year they vote on a FTA.

There are enormous differences between the Australian industry and the US industry. The US industry is worth \$US57 billion; the Australian industry is worth \$US5 billion. The United States has a cattle herd of 96 million; we have a cattle herd of 27 million. The United States produces 12 million tonnes of beef a year; we produce two million tonnes of beef. So you can see that we are of minnow sized proportions when compared with the US industry. The message there is that we do not represent a threat to the US industry. The US industry is much, much larger than the Australian industry.

**Senator HOGG**—So why do they fear us?

**CHAIR**—Are we more productive?

**Dr Barnard**—No. We produce different types of beef. We tend to produce grass fed beef. Certainly the beef that we send to the United States is virtually entirely grass fed beef. A lot of it is mixed with the fattier trimmings off US feedlot cattle, and that goes into hamburger patty production in the United States. The NCBA have said that they are not opposed to it per se, but they see no gains. That is their trouble. When it comes to free trade agreements with Chile and free trade agreements with other countries where they would see gains for their industry, they are fully supportive of their FTAs, but they see little by way of gains for their industry in terms of a FTA with Australia. So they are advocating that a FTA is not pursued independently from the WTO negotiations.

My final point by way of opening remarks is that we are actively involved in the United States getting those sorts of messages across. We do believe that a free trade agreement should mean just what the name implies—that is, free trade in all commodities and all services between our countries. We see the elimination of those quotas and tariffs applying to beef and sheepmeat as an important outcome in the FTA process.

**CHAIR**—I have a couple of questions. There is a routine one which I will not ask now but will leave to the end of our discussions. That question is about the nature of your consultations with the government—whether they are adequate, whether they can be improved, do you think you have access to all of the information, do you have a sense of where they are going into the negotiations and then, when it comes to a sign off, what right of last appeal or comment do you have? I will put aside that block of questions for the time being because I want to go to the sexier questions. Firstly, do you have a position on the headline debate that is going on between economists in the main about whether it is in Australia's interests to pursue a bilateral, preferential or discriminatory trade agreement—which is how they describe a free trade agreement—or whether it is better to persist with a multilateral agreement through the WTO?

**Dr Barnard**—We do, and that is that those options are not mutually exclusive. I think we can do both and ought to do both. It represents an enormous opportunity for Australia to be able to forge a free trade agreement with an economy as large as the United States, and we believe it can be used positively in the WTO context. We do not believe that they are mutually exclusive options.

The other factor to take into account here is that we do not want to be left behind. Whether you agree with it or not, the fact is that free trade agreements are being negotiated almost daily around the world. There are a number of countries now lining up to sign free trade agreements or negotiate free trade agreements with the United States, as there is interest in negotiating free trade agreements with other major economies, particularly the European Union. I believe we have to make sure that we are not isolated as an economy on this issue.

**CHAIR**—In your remarks to us you have said that you support an appropriately structured free trade agreement with the United States. You have also said it has to contain free trade in agriculture and it has to be a good outcome. I think they were your words, and they are all quite reasonable. What does that mean, though, in practical terms? What type of outcome are you looking for?

**Dr Barnard**—I think, ultimately, it means absolutely free trade between our two countries. There are various mechanisms by which one might arrive at that outcome, but to me that has to be the outcome. We as an industry would have to seriously question a FTA that did not deliver that outcome.

**CHAIR**—The NFF yesterday put to us that they want it to apply without long phase-in arrangements—so that you do not just agree in principle now but phase it in on the never-never. Do you have a view on that concept?

**Dr Barnard**—We would absolutely concur with the view of the NFF in that area.

**CHAIR**—Isn't there a tactical problem here in that the agreement at Crawford on the US President's ranch between the President and the Prime Minister that they would get this done this year or early next year, before the US goes off the screen with the presidential elections, means that you are likely to be in a position come Christmas or shortly after Australia Day of having in front of you a firm proposal on the US FTA but, given the progress being made in Geneva on agriculture, which is the stand-out of all of the sectors under negotiation as the slowest moving, least optimistic of all, having to respond to a firm proposition on a bilateral issue which, if you do accept it and if Australia then accepts it by virtue of our chairmanship of the Cairns Group, in fact de facto sets a benchmark for the multilateral negotiations?

**Dr Barnard**—I think to a degree you do set a benchmark; that is true. That is why it is important to set a good benchmark as a result of this free trade agreement. As I indicated in my opening remarks, we believe that a good FTA between Australia and the United States could really act as a beacon for these WTO negotiations. I believe that a good outcome could act as a fantastic benchmark for those WTO negotiations. The problem at the moment is that the benchmark for those WTO negotiations is a benchmark set by the EU and the EU's benchmark on market access is a repeat of the Uruguay Round outcome on tariffs and no increase at all on quotas. That is the current benchmark that is being set for those WTO negotiations. We believe that it is an unsatisfactory benchmark and that a better benchmark must be set. I think the FTA can play a useful role in that area.

**CHAIR**—Let us just go to the detail. So what the Europeans are saying on their agricultural position is not acceptable to you?

**Dr Barnard**—Absolutely not.

**CHAIR**—What Stuart Harbinson, the chairman of the agricultural negotiations, has tabled as a negotiating proposal is not acceptable to you?

**Dr Barnard**—It requires further improvement. It does not deliver anything in some of the areas, and we have indicated that to Stuart Harbinson and others.

**CHAIR**—So, in the form it is before us, that is not acceptable and needs improvement. Is what the United States have tabled in Geneva as their agricultural offer acceptable to you?

**Dr Barnard**—It almost mirrors precisely the Cairns Group negotiating position. It mirrors it absolutely precisely on tariffs. There are some differences on the explanation of quotas. There is

no doubt that the United States proposal is an aggressive proposal and in fact in some areas it is more aggressive than the Cairns Group proposal, because the United States have included a clause in their proposal that all tariffs should be phased out completely on agricultural products, and that was not a phrase included in the Cairns Group's proposal.

**CHAIR**—Is that a yes that the US proposal is acceptable?

**Dr Barnard**—I think it is a good aggressive proposal.

**CHAIR**—But it is not one you would agree with?

**Dr Barnard**—Ultimately we would all like free trade tomorrow but we recognise that there has to be a transition path to get there. I do not think the US proposal is a bad transition path to get there. At least it sets the final objective, which is free trade.

**CHAIR**—I am not wanting to press you into saying anything that is inappropriate, given the fact that these are current negotiations, but do I understand you to be saying that what the US has tabled in Geneva is a basis for further serious negotiation?

**Dr Barnard**—Absolutely.

**CHAIR**—But in its current form it is not necessarily something you would agree to?

**Dr Barnard**—I think it is a pretty good proposal. It is certainly light-years ahead of the European proposal and the Harbinson proposal.

**CHAIR**—That is true; you are absolutely right. I take those remarks as being remarks which soften the harder edge of my earlier statement. Does that mean that, if in a bilateral negotiation the US table bilaterally with Australia something less than they have on the table in Geneva, you would walk away?

**Dr Barnard**—I think in a free trade agreement we would be looking for an outcome that set a high benchmark. If you look at the other free trade agreements that the US have negotiated, you see that they have set a reasonably high benchmark. I think in the free trade agreement with Canada, the free trade agreement with Mexico and more recently the free trade agreement with Chile they were more aggressive in many areas than the proposal that the United States have tabled in Geneva, and I think that is appropriate.

**CHAIR**—Are you looking for something bilaterally in these negotiations with the United States that effectively mirrors what they have put on the table in Geneva?

**Dr Barnard**—No. I have got to be cautious here because we are in the midst of negotiations. We are looking for an aggressive outcome on market access with the United States.

**CHAIR**—What do you say to the argument which was put to us strongly yesterday that, because a FTA cannot deal with subsidies paid to US farmers under the US Farm Bill—quite large subsidies—even if you get open access to the US market, it is a distorted, corrupted market

by virtue of the subsidies their farmers are getting which our farmers do not get and, unless you can deal with both access and subsidies, you do not get a fair playing field?

**Dr Barnard**—It is true that you do not get a completely level playing field unless you can deal with all aspects of the three pillars, as they are called—domestic subsidies, export subsidies and market access. But to our industry—and this is true in WTO negotiations as well—by far the most important objective is improvements in market access. It might not be a completely level playing field but it levels it a hell of a lot. We believe that we can compete against subsidised product when there is open access. We at the moment ship product to both Korea and Japan. Both those countries subsidise their domestic producers. Domestic subsidies—and at some other stage I can show you evidence of this—tend to inflate cost structures in an industry.

**CHAIR**—That is a fairly well-known economic phenomenon.

**Dr Barnard**—Yes. Therefore, they are not the nirvana that many producers might believe them to be in those subsidised countries. The other element that I ought to mention is that the beef industry in the United States is largely free of subsidies. That is not so true of the sheepmeat industry. The sheepmeat industry got enormous benefits as a result of the safeguard actions. But the beef industry is largely free of subsidies. It does pick up some subsidies in environmental areas through grain subsidies and so on, but it is not as subsidised as some other agricultural commodities in the United States.

**CHAIR**—This is an unfair question, and I say that in advance: if you get a good outcome but we get far less than a good outcome in the key areas that we are pursuing in sugar and dairy, is that a deal as far as you are concerned?

**Dr Barnard**—That is an unfair question and, if it is possible, I will decline to respond.

**CHAIR**—It is entirely possible. It is a question, though, that obviously needs to be asked because it goes to the nature of the trade-offs at the end of the day. This is my observation and I am not asking you to agree with it. Given that it is unlikely that in all areas everything will come up roses—and some will do better than others—that will create an internal debate within the agricultural export industry as to whether this package is a sensible package. It is in that context that I asked the question.

**Dr Barnard**—Let me just make one observation. I do not want to go into details here, but I have emphasised in my previous remarks that I think that a free trade agreement should deliver free trade between two countries. Then it becomes a debate about how you get there. I would be disappointed if the agreement did not deliver free trade between our countries.

**CHAIR**—Your emphasis has been on an appropriately structured, good outcome free trade in agriculture and it has to deliver a free trade agreement. Once you get that agreement it is a question of how you get there, and that is the art of the negotiation perhaps. But if it is less than optimal, is it the position of your organisation that you would say, ‘No, don’t conclude this package’?

**Dr Barnard**—Almost invariably these agreements are less than optimal. An optimal agreement to us would be the removal of all barriers tomorrow, but we accept that the

negotiations may well deliver a different outcome to that. Then we as an industry will have to make a pretty hard-nosed judgment as to whether the deal is acceptable to us and the parliament clearly will have to make a hard-nosed judgment about whether it is acceptable to Australia as a whole.

**CHAIR**—But you are not putting to me that you would take anything and be happy?

**Dr Barnard**—Absolutely not.

**CHAIR**—So is there a point at which it is conceivable that you would say, ‘No, this is not a deal’?

**Dr Barnard**—No. There would be certainly some outcomes where we would be saying to government, ‘Look, we just don’t think this is good enough.’ We have said that in the WTO context too. I indicated very firmly to our negotiators and David Spencer, our ambassador in Geneva, that with the current outcomes on market access in the WTO we would prefer to walk away than accept a less than optimal outcome.

**Senator NETTLE**—In relation to beef exports to other countries beyond the USA, what are the other main markets?

**Dr Barnard**—The other main markets pretty much in order are Japan, Korea, Canada and Taiwan and then you are getting into some of the smaller South-East Asian markets.

**Senator NETTLE**—I note in your submission that, in relation to the idea of the northern Asian markets, you outlined that Australia will continue to provide services to those markets and will not desert those markets in terms of establishing a FTA with the US. Could you give the committee some understanding of what you think may be the response of those particular governments to a FTA negotiated between Australia and the US?

**Dr Barnard**—I have been asked this question in the past. It is not an area that I profess to have great expertise in but, from my dealings with the industries and governments in those countries, I do not believe that it will materially affect our relationship. I think everybody accepts that FTAs are just part of the landscape these days. I just do not believe that it is going to substantially affect our relationship with those countries.

**Senator NETTLE**—What about the capacity of the beef market in Australia to be able to export to an expanded US market as well as continue commitments in north Asian countries?

**Dr Barnard**—One of the points we make very strongly to our US colleagues is that we have a beef quota into the United States of 378,214 tonnes. We do not hit that in many years, so we do not even ship up to our current quota in many years. Nevertheless, having free trade is important to us for two reasons. One is that, even when you do not hit the quota, the very existence of that quota tends to distort the market. The market speculates on whether the quota will be reached and exporters will concentrate more on their quota positions rather than marketing the product. Senators involved in the recent inquiry into the quota arrangements for the Australian beef industry would have been able to detect the enormously distortive nature that that can have on an industry and the sorts of difficulties it imposes. That is one reason. The US industry goes through

cattle cycles. There are some years where demand is good in the United States where we could supply our customers with a little extra product. As I say, it is not going to be every year but there will be some years that we do that. So for both those reasons we see the agreement as being important.

**Senator NETTLE**—Going to some of the questions that Senator Cook was asking you before, we had quite an extensive discussion between the committee and the NFF yesterday in relation to their position and at what point—as Senator Cook was discussing with you a moment ago—they would say this is not acceptable. I understand you have indicated that, as we are in the process of negotiation, there is a need to be careful about where you are prepared to draw the lines in terms of what are the boundaries. So I am not wanting to go into the detail of that, but I want to get some sense of the general areas of concern that you would be looking at in terms of whether or not an agreement were acceptable to your industry. Are we looking at long phase-in as being the basis of one of those areas of concern? Broadly speaking, what are the other areas of concern to the industry?

**Dr Barnard**—Broadly speaking, I think it is the size of initial instalments and the length of phase-in.

**Senator NETTLE**—Are they the potential stumbling blocks or areas of concern?

**Dr Barnard**—I think so.

**Senator MARSHALL**—You have indicated that US negotiations take place in an information rich environment. I take it from that that you accept that in Australia they do not take place in that sort of an environment. Do you have any comments about whether that is a positive element to final negotiations and healthy negotiations? One of the issues the committee is turning its mind to is the whole process of negotiation and the transparency aspect. Also, before you answer, you did note that parliament actually has to make a hard-nosed decision on whether the trade agreement is good enough or not. In actual fact parliament does not get to make a decision at all on this matter.

**Dr Barnard**—You might have misunderstood my remarks about an information rich environment. My remarks were directed at the need for the Australian government and Australian industries to disseminate accurate information to congressmen and key administration people in Washington. We as an industry have been active in trying to provide congressmen, in particular, with information about the Australian industry because we did not think that they had enough information about our industry and that it would be helpful if they had more information.

With respect to the more general issue that you raise, however, about the degree of information with which we are provided in Australia, I think that the Department of Foreign Affairs and Trade over the last five years perhaps, perhaps longer, has made a real conscious effort to try to provide industries with information on the state of negotiations and where they are headed in terms of objectives. Certainly we have close contact with the WTO section of the Department of Foreign Affairs and Trade, the trade negotiations section, the US FTA people and also the individual desks within DFAT. I must say that as an industry—and I am sure that I speak for all of industry on this issue—we believe that our consultations with the Department of Foreign Affairs and Trade are at a very satisfactory level.



**Senator MARSHALL**—That is at an industry level. Do you believe that we would be better served if we had the same open and transparent process of developing the claim, negotiating the claim then determining the agreement through their parliament? Would that be a better process there? There has been quite a level of public discontent about these agreements. Some of it, I admit, may be ill-founded but much of it is very well-founded. But I guess it is aggravated by the fact that, unless you are one of the industry groups directly involved, there is no information sharing from DFAT or from the executive arm of the government.

**Dr Barnard**—Again, I think that DFAT have made a conscious effort to try to draw the broader community in on some of these trade issues. I was involved in an exercise that was conducted at the beginning of last year. They held a number of seminars and forums around the country that people were invited to participate in. There were general advertisements in which departmental officials heard the broader community views on trade issues. I know that at the one that I attended in Sydney there were pretty wide ranging views expressed at the seminar there.

I would really have to think about the issue you have raised about the involvement of parliament in these trade negotiations. Certainly in the United States, the involvement of Congress is limited. The administration have found that it is simply not possible to negotiate trade agreements without confining the role of Congress. Nevertheless, Congress does have the final yes or no answer on it, as you would be aware. I do not mind answering that but I would just like to think about it before I give you an answer.

**ACTING CHAIR (Senator Hogg)**—What about ticking off on the final things that might be agreed in any set of negotiations? Would you expect to get a look at those beforehand?

**Dr Barnard**—Yes, I would.

**Senator MARSHALL**—Do you have a commitment from the government to do so? Just putting that into context, will they come back to you and say, ‘This is what we’ve been able to negotiate. Will you give this a tick or won’t you?’ What would your expectation of them be if you do not give it a tick?

**Dr Barnard**—I accept that the final decision on these issues must reside with government. Clearly, an industry has a myopic view of the broader trade negotiations. Nevertheless, government officials during the negotiations can often gain considerable benefit from talking to industry about the state of those negotiations. I am sure that that is why they do consult our industry. I am sure they derive benefit from those consultations and they are able to finetune their negotiating capacity by talking to industry. We have been involved with the Department of Foreign Affairs and Trade as an industry—not just MLA but as a broader industry—on numerous trade issues: for example, on taking Korea to the WTO; on taking the United States to the WTO; and on the general US lamb case. I first met Senator Cook in Geneva. I was posted in the latter stages of those negotiations by my industry to be in Geneva so we could be close to the negotiations. I think that is a mutually beneficial arrangement.

**Senator MARSHALL**—I am really getting at whether there is an understanding between your organisation and the government that they will proceed if you are unsatisfied. I say that because I recognise the point you made earlier that, if we send a bad result and then use that as

the precedent for the WTO negotiations, that has very serious consequences. I am just looking for what emphasis the government will put on your agreement and others.

**Dr Barnard**—I do not think they will look for a formal sign-up from us. We will be close to the negotiations right the way through, so we will know where they are headed and we will know what the outcomes are likely to be. The final call has to be from the government. If they make a final call that is not acceptable to our industry, the government wear the odium of public criticism of their position from our industry. That is a decision that the government have to make.

**ACTING CHAIR**—While the Singapore-Australia Free Trade Agreement might have been in a different league, were you involved in that at all?

**Dr Barnard**—Just ever so slightly. We did not have major issues with Singapore, but we were consulted from time to time.

**ACTING CHAIR**—As a general rule of thumb, how well are you consulted in terms of the various free trade agreements that the government might wish to enter into?

**Dr Barnard**—I think the level of consultation is of an amount that we would require in each case. I do emphasise this in other forums, but I think there is some obligation on the part of industries and other groups to seek consultation with DFAT. I do not think you can expect the Department of Foreign Affairs and Trade to proactively try to engage every group in the community on these sorts of issues. I think there is some obligation that goes the other way—that interested parties in the community ought to seek consultations with DFAT. It has been our experience, because we do actively seek consultation with DFAT on all of these issues, that they have been responsive and receptive to such requests.

**Senator NETTLE**—I want to ask a little more on that issue. You made a comment before about your understanding of the level of community consultation that DFAT have. I recognise that this is not the situation that you are in in your consultations. This is something that we have been exploring with quite a few groups who have come before the committee. Could you give us a perspective in terms of what you see are the differences in the consultation from DFAT with industry groups as opposed to other sections of the community?

**Dr Barnard**—I am not au fait, at least in detail, with the sorts of consultations that are held with other community groups. I am aware of attempts from time to time by DFAT to address consultations with other groups and I am also aware of criticism of DFAT for not doing enough in those areas. From my contact with the Department of Foreign Affairs and Trade, I would be surprised to hear of any refusal by staff there to consult with community groups if they had a reasoned position to place before the department and before negotiators. We have certainly always found them to be receptive.

**Senator NETTLE**—We heard comments earlier today from groups who have requested consultations with DFAT and have been able to secure meetings. Some of my questions go to the structural basis on which DFAT does the consultations. As you said, there are proactive responses made to DFAT, but there are also the institutional patterns of consultation taken by

DFAT. I am interested in that because you raised the issues about that comparison between the community groups and yourself.

**Dr Barnard**—Let me just tell you what we have done as an industry. We have a lot of informal consultation with the department. About 18 months ago, we set up a forum called the Meat Access Forum, which involves widespread representation from our industry and also representation from a number of government departments, most particularly the Department of Foreign Affairs and Trade and the Department of Agriculture, Fisheries and Forestry—Australia, particularly the AQIS people in that department. We sit down about once every six months and go through all of the access issues facing the meat industry at a particular point in time. Unfortunately, there are often lots of them. Once every six months, we will review where those access issues are at, we will develop action plans that involve both industry action and government action and then we will pursue those actions and come back four, five or six months later and review progress. That has been an initiative of the industry but it has had the full cooperation of, particularly, the agriculture and foreign affairs departments. That is why I say that I think there is an obligation on not only the department but also other groups to consult.

**Senator NETTLE**—We have heard a little bit about that today. From what you have described in terms of the consultations that you have with DFAT from an industry perspective, as we expand the nature of issues dealt with in the trade agreements would you see that it would be appropriate for similar forums to exist for other groups who are concerned about particular issues?

**Dr Barnard**—Probably. The National Farmers Federation set up a forum that deals with agriculture generally that the negotiators come to. They then report back to the entirety of agricultural industries on the state of the negotiations. I certainly see the scope for similar sorts of forums in the other spheres covered by the free trade agreement.

**ACTING CHAIR**—As there are no further questions, I thank Dr Barnard and Mr McCallum for appearing before the committee.

**Proceedings suspended from 12.46 p.m. to 1.40 p.m.**

**DAVIES, Ms Anne, Member, Media, Entertainment and Arts Alliance**

**GAILEY, Ms Lynn, Federal Policy Officer, Media, Entertainment and Arts Alliance**

**WARREN, Mr Christopher, Federal Secretary, Media, Entertainment and Arts Alliance**

**WHIPP, Mr Simon James, Assistant Federal Secretary, Media, Entertainment and Arts Alliance**

**LETTS, Dr Richard Albert, Executive Director, Music Council of Australia; and Member, Australian Coalition for Cultural Diversity**

**KARVAN, Ms Claudia (Private capacity)**

**CHAIR**—Welcome. Today the committee continues its public hearings into the General Agreement on Trade in Services and the proposed Australia-US free trade agreement. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private. This is a general statement I am formally required to make, so it is not aimed at any one witness. Witnesses are reminded that the evidence given to the committee is protected by parliamentary privilege. It is important for witnesses to be aware that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. If at any stage a witness wishes to give part of their evidence in camera, they should make that request to me as chair and the committee will consider the request. Should a witness expect to present evidence to the committee that adversely reflects on a person, the witness should give consideration to that evidence being given in camera. The committee is obliged to draw to the attention of a person any evidence which in the committee's view reflects adversely on that person and to offer that person an opportunity to respond.

Witnesses will be invited to make a brief opening statement to the committee before the committee embarks on its questions. We have witnesses from two organisations here before us now, and a witness appearing in a private capacity. I do not know if you have agreed on a batting order. If you have, whoever is the opening bat may now start.

**Mr Warren**—I do not know whether we have agreed but I might jump in.

**CHAIR**—We are not meeting in Canberra where you usually sit about 100 metres from where I am sitting. We are up close and personal here, so you are right in front of me. Why don't you start.

**Mr Warren**—Yes, it is a very intimate gathering. I think the number of people who have come to this hearing reflects the very real importance that people in our industries give to these issues. I do not intend to go through our submission in any way, because of course you have it and have had an opportunity to read it. I think it is a very detailed submission that covers the issues.

Broadly, the Australian cultural industries—and by ‘cultural industries’ I mean the media and the entertainment industries broadly defined—are sustained and enlivened by a reasonably complex web of subsidies, quotas, ownership rules and regulations, great public institutions and particularly great public broadcasting institutions. It is in the interplay of those different public policy decisions and actions that Australian creators and the people who inform and entertain Australia are able to make the very important contribution they make to Australian cultural life.

We believe it is important that free trade agreements strengthen that fabric rather than undermine it. I think that is an accepted given in this process, and the debate is obviously how trade agreements can act to strengthen Australian cultural life rather than weaken it. This is not about Australia being a closed society. It is clear in our submission that Australia is culturally one of the most, if not the most, open societies in the world. It has a far larger amount of foreign content and it is a large importer and exporter of cultural product, and we believe that should continue. That cultural interplay and that enrichment from foreign sources and the enrichment that we then give to foreign communities and to foreign societies are a very important part of the Australian cultural life.

In terms of the US agreement, US cultural material—entertainment and media product—is very important in enriching the Australian cultural life, as has Australian cultural export, as a result of this complex web of government support, been able, I think, to quite strongly enrich American cultural life. America as a cultural society is not as open to other influences as Australian culture is, but I think that, if we continue with this support, hopefully we can change that process.

This morning, Claudia Karvan is going to talk particularly about the entertainment and arts side of the impact of agreements; Anne Davies—who, as you know, is a journalist—is going to talk briefly about the impact on media industries; and Simon Whipp, who is the Assistant Federal Secretary of the Media, Entertainment and Arts Alliance, is going to talk very briefly about the nut of this issue, which is, as we see it from the comments made by the trade negotiators, the potential impact of a standstill agreement on this process. It really seems to us that that is where the discussion is currently at, and we are obviously concerned about that.

**CHAIR**—That process is fine by us. This is an opportunity for you to put your views to us as a parliamentary committee. We are oversighting what the government is doing. Speaking only for myself—because everyone here speaks for themselves—there are two parts to this in my mind. There is the process part: how does a government acquire a mandate to negotiate, under what authority is the mandate constituted, how does it consult with the stakeholders to obtain views from the community and to be sensitised to the issues, how does it resolve its negotiating strategy and the priority of objectives and what say do the stakeholders, the interested parties and the broader community have when the sign-off point comes in a final package?

Given that these packages are packages, there are some winners and there are some losers. The judgments to be made about these packages go to whether the net value of the package is worth ticking or crossing, how those judgments are arrived at and what political or public scrutiny there is. So that is one thing that is in our minds. We are not at a point, as we were discussing informally just before we resumed the hearing, of actually being able to judge the nature of the final outcome yet, so we are paying some attention to the process and any views that people have about that process.

The second part is the content. Your format for discussing that with us is fine. I do mention, though, that the Australian Screen Directors Association, the Australian Film Commission and the Australian Writers Guild appeared before us this morning and covered similar ground. I concluded—and I think this is a view that reflects the attitude of the committee, even the government members of the committee who are not here—that basically the committee is sympathetic to the point of view you are putting. The process is that the government as the executive has the authority to sign an international agreement, but the parliament as the legislative body has the authority to legislate any consequential changes to legislation that become necessary.

In the arts area, there are a range of legislative items that, if there were any substantial changes to the current settings, would need to be amended. That is where the parliament and indeed the Senate have a particular say. So our report in the context of process has some value in informing Senate debate on those issues. I mention that because the earlier argument was about the level of anxiety that there is in the arts community about what is at risk here—there was considerable anxiety about that. There will be debate about how adequate the checks and balances are, but it does have some in the process. I mention that in order to give you some degree of comfort that there are some checks and balances, and I mention it for that reason only.

**Mr Warren**—We might quickly run through it and then perhaps I will say something about process at the end.

**CHAIR**—Absolutely.

**Mr Warren**—I will also say something about the concept of the package. I do not want to take you out of context—

**CHAIR**—People frequently do, but I do not invite them to.

**Mr Warren**—The concept of a package agreement is obviously one of the things that causes concern in the cultural communities.

**CHAIR**—Understandably.

**Ms Karvan**—Thanks for the opportunity to put my views to you today as an Australian performer. Australians like to watch, hear and read about Australian stories and Australian points of view but, let's face it, most of them are pretty keen to watch and read US produced media and entertainment as well, which is just as well because America already dominates our market. To just take films as an example, in 2000, of the 250 feature films released, 67 per cent were from the United States and they accounted for 90 per cent of box office takings.

The point I would like to make is that our cultural markets are already remarkably open. The majority of the overseas programs on Australian commercial free-to-air television are already from the United States, with the balance principally derived from the United Kingdom. In 2002, for example, 63 per cent of new programs on Australian network television were from outside Australia, and only 28 per cent of new hours were from non-US sources. Conversely, in the US, 98.5 per cent of new programming was generated inside the US. In the UK, the figure is 95.7 per cent. So there is not much space left for us.

It is far from a fair playing field when it comes to the economics of film and television production. When you face all that, Australian performers just do not have the same commercial clout. We all know that US and UK television product is sold into the Australian market at a fraction of the real cost of production. A \$US1 million per hour series fully financed out of the American market can be sold to an Australian broadcaster for \$A20,000 to \$A65,000, which is a real bargain, because an Australian drama series will cost between \$350,000 and \$500,000 per hour to produce in Australia. So it is not hard to do the maths.

There is quite an incentive already to fill our screens with American voices and American stories—not that there is anything wrong with that, because *Charlie's Angels* was pretty good fun and Jennifer Aniston is fun in *Friends* and it is hard to miss that Arnold Schwarzenegger is pretty popular. It is just that there has to be a place on Australian screens for the world of *The Secret Life of Us* and *All Saints* alongside *Sex and the City* and *Frasier*. Movies like *Lantana* and *Shine* resonate with us because they have Australian faces telling Australian stories.

Of course, it would be nice if some Australian films had the budget of an average American film, which would be \$A100 million. Instead the budget of an average Australian film is \$A5 million. Either way, we want to see local news alongside CNN, and we laugh and cry at Australian dramas as well as blockbuster American ones. So while it is good to see a few Australian faces on American screens, they would never have got there without an opportunity to shine in Australian productions and Australian stories.

In short, one message that I want to deliver today is that Australian cultural markets are already wide open. If Australian cultural products were to be deregulated any further, we would have to compete with even less support, and lots of Australian stories that should and could be told would just fade away, and that would be a very great shame.

**Ms Davies**—As you would probably know, the Media, Entertainment and Arts Alliance has taken a very prominent role in arguing the case on media ownership over the last 15 years, yet those rules are now up for review again. I suppose our concern is that, if we trade off foreign ownership of media in a trade negotiation, we will take away one part of what is a very complex and delicate piece of regulation that is designed to encourage diversity of viewpoints. We would really caution against giving up one.

We have had rules about ownership of newspapers for many, many years administered through the Foreign Investment Review Board. Those rules explicitly recognise that there is a national interest in who owns newspapers—for instance, the rules we used to stop Robert Maxwell buying newspapers in Australia. At the time that seemed quite controversial but, in retrospect, it proved to be quite a wise decision because it was later discovered that Robert Maxwell had run into some financial difficulties in England and there was a whole inquiry into what happened with his companies. I would caution against trading away that arm of policy that is so vital to the whole mix of encouraging media diversity.

I am not exactly sure how much of the issue of public broadcasting funding is up for grabs in these negotiations, but perhaps I can just say that any attack on the funding of the ABC and SBS would, from a journalist's point of view, be a problem because they are two of the big training grounds for quality journalism in Australia. If that funding is at risk, we would be very, very worried to see that traded off.

**CHAIR**—I do not think it has been said that funding per se is subject to negotiation. That is a government decision at budget time—and we all have a view about whether it is adequate. I think the argument arises if government subsidies are used or protective barriers are used to unfairly advantage Australian product over foreign product—in this case, American product. If the government moves to accept that argument then it becomes an issue in that way.

**Ms Davies**—Again, I would just say that those organisations have been incredibly important in the training of journalism in this country.

**CHAIR**—The ABC were here before lunch and they made the point that their concern is a reverse one—that, if the private sector is less able to produce its product, their ability to deliver on the core objectives of their act about reflecting the Australian character and providing a voice for Australia as a public broadcaster is diminished because the cost of their production, given a shrivelled private sector, becomes higher.

**Ms Davies**—Yes. The only other thing I would like to mention is this idea that perhaps new forms of media might be opened up. It is instructive to look at how quickly the media industry has changed. For instance, 23 per cent of households in Australia now have pay TV. So that has become a really important new medium. It has some content regulation, as you know, but it is hard to foreshadow where that might go, particularly as it is becoming more and more apparent that we might have to revisit the decisions on digital TV and HDTV to make it work in the consumer environment.

The newspaper that I work for, the *Sydney Morning Herald*, now has some 1.2 unique visitors a month to the web site. We found that there is not all that much overlap between the print and the digital version of the newspaper. So, although there are no content rules that apply for print and Internet, it is just a way of illustrating how fast people's habits can change. I would really caution about trading off all of those areas when we do not know how important they will be in terms of informing Australians in the future.

**Mr Whipp**—I propose to talk about the issue of standstill. Much has been made in recent times of comments attributed to the US trade negotiators and representatives of the motion picture production association that the United States may not be seeking the removal of local content rules on Australian television or, more broadly, that the United States may not be seeking the removal of any of the measures Australia currently has in place to support Australian culture in the current negotiations between Australia and the United States for the free trade agreement. What is, however, not said is that the United States would be prepared for Australia to introduce at any point in time in the future new or different measures to support Australian culture which respond to the needs of the time. Without the addition of the second assurance, the former assurance is of little value.

Without commenting on whether the attributed comments accurately represent the position of the US government, I want to focus on why that is the case. To demonstrate that, I would ask you to consider some history. If these negotiations between Australia and the United States had occurred 110 years ago, radio would not have been a reality. Australian performers such as Savage Garden, Silverchair and Natalie Imbruglia have wowed Australians and the world with their performances, but without a local content quota on contemporary radio stations such



success may not have been possible. If standstill had been agreed 110 years ago, there would be no local content quota on radio today.

If these negotiations between Australia and the United States had occurred 70 years ago, funding for the Australia Council would not have commenced. Australian performers such as Dame Joan Sutherland and Zoe Caldwell and cultural institutions such as Opera Australia and the Melbourne Theatre Company have dazzled us with their consistent world-class work as a result of government funding provided through the Australia Council. Without the Australia Council, companies such as the Melbourne Theatre Company and Opera Australia, and the performances that these companies make possible, would not exist. If standstill had been agreed 70 years ago, there would be no Australia Council today.

If these negotiations between Australia and the United States for a free trade agreement had occurred 60 years ago, television would not have been a reality. Australian performers such as Guy Pearce and Kylie Minogue started their careers in Australia but have gone on to create performances respected around the world. Programs such as *Stingers*, *All Saints* and *Neighbours* allow Australian viewers to see our culture and hear our accents on screen and affirm that our stories, our lives and our culture are important. Without a local content on network television stations, such stories may not have been possible. If standstill had been agreed 60 years ago, there would be no local content quota on television today.

If these negotiations between Australia and the United States for a free trade agreement had occurred 25 years ago, the Australian Film Finance Corporation would not have been formed. This institution, the major investor in Australian films, invests each year in films such as *Priscilla: Queen of the Desert*, *Muriel's Wedding*, *Lantana*, *Wog Boy* and *Shine*. These films allow Australian culture and life to be portrayed to the world. Without the Australian Film Finance Corporation, there would be no Australian film industry. If standstill had been agreed 25 years ago, there would be no Film Finance Corporation today.

If these negotiations between Australia and the United States had occurred 15 years ago, pay television would not have arrived in Australia. As we speak, the Australian Broadcasting Authority is conducting a review as to whether pay television documentary channels should be required to show a minimum amount of Australian documentaries. If standstill had been agreed 15 years ago, such a proposal would not be possible. If standstill is agreed now, such a proposal will never be possible. If standstill is agreed now, what we are left with is what we have got—measures which are relevant to late 20th century and early 21st century technologies and methods of cultural dissemination. But what of the future? Will local content rules on Australian network television in 50 or 100 years time deliver the cultural outcomes that they do today? Who knows? I think that is the point.

The only thing certain about tomorrow is that it will be different from today. The only thing certain about 2010 is that it will be considerably different. The changes which may take place between now and 2100 are unimaginable. The guarantees for Australian culture in the recently finalised Australia-Singapore Free Trade Agreement recognise this and put the government in a position with respect to Singapore to do anything that needs to be done at any point in the future to support and promote Australian culture. As a minimum, the same language must be included in any free trade agreement with the United States.

**Dr Letts**—I am from the Music Council of Australia and the Australian Coalition for Cultural Diversity. The coalition is a coalition of 20 organisations, including MEAA and others from pretty much across the cultural sector. We have made submissions to you and to other relevant government entities about this. I do not want to spend a lot of time presenting the general case, because one way or another it has been presented already today. I will just make a couple of points.

Chris said in beginning his presentation that he would like to see agreements of this sort strengthen Australian culture. I have yet to hear how the agreement with the US might do that. We have met with the negotiators from DFAT a good number of times and they are constantly asking us to give them something that they can go for with the US. Generally speaking, we can find nothing. I do not claim any expertise in this area, but my impression is that, in the cultural area at least, it is about a negotiation concerning government interventions on behalf of culture and removing them in the interests of free trade, and the US has very few such interventions compared with us. I think probably the US government's funding to culture would be less than the Australian government's funding—and the US population is 15 times our population. Basically the US government, over many years now, has had only a grudging role in support of culture. I think it has difficulty in understanding why other countries give governmental support to culture.

**CHAIR**—They have an economy of scale that no-one else has, and their second biggest export industry is Hollywood and the music industry together. That is the second biggest export earner for the United States.

**Dr Letts**—Yes. It seems to me that the negotiations are about removing the governmental distortions to the market and, because we have much greater governmental activity of that sort, we have much more to lose and very little to gain. The sorts of obstacles that our culture has in succeeding in the US are not about US government interventions but about the size of its market compared with the size of our resources.

I would like to make a few points about music. We met recently with Minister Vaile, who was actually surprised to learn that there are local content requirements for music on radio. The emphasis, probably because of the US interest, has been on film and television. Given that we do not yet know what the US is asking for, we do not know whether it is going to include content rules on radio in any request; although as a matter of principle I guess it would if it is asking for that in the case of television—

**Senator MARSHALL**—Now that you have told them, they will.

**Dr Letts**—I would like to briefly describe the content regulations and their importance. It is a so-called self-regulatory regime, but it probably would not be there had it not been for its prior history of government regulation, and now it is instigated by government. The broadcast stations basically negotiate a regime with the record industry, and that has resulted in percentage requirements that vary by style. There is a 25 per cent requirement for music broadcast time to be devoted to contemporary rock by the stations that broadcast that, as opposed to, at the other end, a requirement for five per cent Australian jazz—were there a commercial station that broadcast Australian jazz. There is a similar requirement, but without the stylistic differentiations, for the community sector.

The rationale under the ABA has been about developing Australian identity. The effects are that Australians everywhere have access to performance by Australian musicians. The broadcast creates a market for Australian recordings, which makes it possible for record companies to record and release Australian artists. So there is activity by the record companies that follows on from this requirement for broadcasting. It also builds the market for live performances and it creates an economic base for Australian musicians in Australia, allowing the development of standards and financial resources to support increasing exports of Australian recordings. There has been about a 150 per cent increase in export income from royalties over the period 1995 to 2001. It is not an enormous amount of money. In 2001 it was \$71 million—but that is \$71 million that we are not importing.

If we lost the quotas, we would obviously lose the benefits. If after 60 years we lost the quotas, would not the industry voluntarily continue to broadcast Australian music? We have no confidence that it would. The broadcasting industry has been vigorously opposed to this since its inception and in quite recent meetings has said so. There is increasing foreign ownership of Australian radio, so they do not necessarily have the interests of broadcasting Australians. Finally, we have some doubt about the continuing commitment of the major record companies, because they are transnational companies, foreign owned and, while they have been protagonists for the quotas, until relatively recently—they have gone rather quiet lately and of course they are all under tremendous financial pressure now because of the pirating of recordings one way or another—head office could easily propose to the Australian managers that it would be more profitable simply to import the music rather than to produce it locally.

I will just mention briefly the e-commerce issue, which I am sure has come up already. At this point already the entire process of music production and dissemination is digital and could come under the US prescription of what constitutes e-commerce. Music is created and produced digitally. Most film and TV scores, for instance, are now totally digital. A lot of popular music is totally or partially digital. Recording is digital. Broadcasting will be digital. Music is transmitted digitally online. Even amplification of live performances is digital. So if the government were to accede to free e-commerce on the American definition as found in its agreement with Chile, it basically would be prevented from supporting most musical activity in the country.

**CHAIR**—I will try not to unnecessarily cover ground that has been covered before. The earlier evidence we got from the Australian Screen Directors Association, the Film Commission and the Writers Guild came to me in this form: that the government consultations with them as stakeholders was ‘adequate’—I think that was what their word was. They had been consulted, they had been brought into the discussion, the issues had been talked through, and they described that process as adequate. Their concern was with to what extent they could influence outcomes in a package deal setting or when it came to the sign-off of a formal agreement. They wanted to register with us the huge level of anxiety being felt by people who work in the industry—and should be being felt in the wider community—about the fact that our cultural future is on the negotiating table. I think they were the points they made. In any of your answers, you might want to take a few moments to say whether that is your view of it in summary as well or if you differ with the way I have described the conclusion.

At the risk of boring my colleagues, who have heard this story now several times, I was the trade minister who negotiated the Uruguay Round outcome. We had an exception on cultural protection in the Uruguay Round. In those negotiations Australia did not lead on cultural

protection; France did, and we supported them. The negotiations were with the US and they went all day and all night. At about four o'clock in the morning Mickey Kantor, who was the US trade negotiator and minister, gave up, stepped aside and surrendered the official government chair behind the US flag to Jack Valenti from the industry. Incredibly, the industry took over and then proceeded to negotiate, on behalf of the government, with the foreign governments in the room. I might add that that delighted the French because at last the monster that they were worried about was sitting directly opposite them and they took every opportunity, in typical Gaelic ways, to make their views known colourfully, and the negotiations ran into the sand after that. The point of that story is that as a result the cultural protection provisions are there and that is what we are talking about largely when we talk about standstill. The response of the US negotiators later in the morning was, 'Well, at the end of the day we don't give a bugger because'—I think these were the words—'we'll get the frogs on e-commerce.'

The issue is not so much about standstill but about changing technologies in delivering product and how those technologies ought to be regulated, and the argument on e-commerce is that it remains unregulated. Given the presentation of 'the Australian government is committed to maintaining cultural protection', blah, blah, blah, the gaping hole here is the position on e-commerce, because the technology platform has changed. If you want to express a view to us about how the e-commerce part of it should be regulated—if that is your view—to provide cultural protection, I would like to hear it. That is the first point. The second point is that one of the forceful points made to us this morning was about the greater percentage of foreign-made commercials appearing on television and the impact on directors of commercials and film-makers involved with commercials and the impact on the industry in providing the critical mass and occupational opportunity of players in the industry as a consequence of that regulatory change—which is a domestic regulatory change and not forced on us by any trade agreement.

The third point—I am sorry to try and rush through all these—is a sort of residual point in a way and goes to the structure of an agreement. We have been through this with the government in some painstaking detail but, at this stage, given that we are at the critical point now, it appears that they intend to lay out the agreement in the body of a document containing the agreed issues. There will be two annexes. One annex will be on issues where Australia and the US would reserve the right to toughen protection. There will be another annex on issues that might still be able to be brought on and pursued; issues that could not be concluded in the formal negotiations but which are still alive between the parties—issues that might be able to be dragged out and negotiated in the future. There would be a list of those issues.

My only question about the structure is: to what extent have you given thought to seeking assurances from the government about your concerns in annex 1—that is, issues that might be included where protection could be toughened? They are the three points that I want to put to you. I know that giving them to you in an omnibus form is a bit hard, but if you could comment on those things I would be grateful.

**Ms Davies**—Could you just clarify that? Our understanding is that annex 1 reservations, as they are currently contemplated, will be standstill provisions and annex 2—

**CHAIR**—I am not sure that I have got the annexes the right way around.

**Ms Davies**—Our understanding is that annex 1 would be standstill and annex 2 would be full reservations.

**CHAIR**—I am recalling from a defective memory on my part. My memory is that they presented it the other way to me. But it does not matter; the fact that they exist, however they are numbered, is the important point.

**Mr Warren**—Perhaps I can run through a few of those points. In terms of process, yes, there has been adequate consultation in the sense of being informed of the process, opportunities to meet and express our view to the negotiators and to the government. Indeed, processes such as this are an important part of that process.

**CHAIR**—Sorry, it is not. This is a very different process. They have carriage—they are the executives; we are the parliament.

**Mr Warren**—I understand the difference, but to us they are all important parts of the process. There is a broader question here which actually is not about trade; it is about, when you are dealing with international instruments, the extent to which it should be in public, the extent to which it should be in private and the relationship between the executive and the legislature. I think that is an issue on which Australia and indeed the world are groping towards different practices. But, in terms of being told what is going on, I would say that the consultation has been adequate. I am looking forward to being invited to the negotiating chair to put our points of view on cultural matters.

**CHAIR**—That only happens at four in the morning if you are in America, apparently!

**Mr Warren**—I am happy to wake up then! I guess our concern about the process comes down to this question of packaging. Put crudely, the real concern within cultural industries is that at the end of the day we are going to end up with key cultural concerns being traded off for some other important part of the package. That is the process part that concerns us.

**CHAIR**—Are you saying that your concern is that the priority in these negotiations is to break through on agricultural access to the US market and that you are concerned—I do not want to put words into your mouths, so correct even the mistaken nuances of this, as we are dealing with a particularly important question now—that your industry may be a tradeable pawn in order to capture the queen of agriculture? Is that what you are saying?

**Mr Warren**—As I think you can hear from the audience, that is a really widespread fear. Having said that, I accept that the government have always said the right thing on this issue. They have said that their view is that their ability to do things in culture should be unaffected, that the wording of the Singapore agreement should be the agreement in this. We noticed in the press conference following the last discussions that the Australian negotiator went out of his way to correct the alternative point of view that was being put by the American negotiator.

Having said that, I think that, in a sense, that is an easy position to have held up until now. I do not think this is just a view held within the cultural industries; I think there is really widespread concern within the Australian community about Australian culture and about the ability to protect and take actions to promote Australian culture. Our concern is that, as we get closer and

closer to the pointy end, we are more and more likely to see something happen. This is an important issue for American negotiators as well, and I think your story illustrates that to a certain extent. We tend to think: why would the Americans possibly care about getting a bit more product on Australian television?

**CHAIR**—I think in money terms they do not, but in precedent-setting terms they do.

**Mr Warren**—That is right, and they are trying to use these agreements, as they have used them elsewhere, to wind back those international protections. The industry that is most affected by them is the American industry because, as you say, it is such a large export industry.

We think that there are things the government could do separate to the American process. There is the International Network on Cultural Policy, which a number of other countries—Canada, France and others—have set up. There is a push being made by Canada, France and some other countries for there to be an international cultural diversity instrument through UNESCO. They are the sorts of things that should be being done in parallel with this process. That has tended to be lost a bit in this process.

So, yes, we have been consulted in the process. I think the processes tend to be a bit monofocused, and there is this concern that, as the focus gets to the pointy end, something like this can very easily get squeezed out.

**Mr Whipp**—I would add just one point on the issue of process. I think that, from the perspective of both the negotiators and the government, there is an unrealistic expectation that the industry will come up with some offensive measures which we can put on the table with respect to the negotiations and say, ‘We want you to remove whatever barriers you have in place for our product.’ What we have talked about today is that it fundamentally fails to understand the gross disparity between the size of the American market and our market. The American market does not have these barriers in place and it does not need them. Our market does have them in place because it needs them. The expectation that we will be able to put on the table offensive positions is, I think, a fundamental misunderstanding about that reality.

**Dr Letts**—And, were we to do it, we possibly would have to trade off some of our own defensive positions in exchange.

**Ms Davies**—And, that being so, strengthening antipiracy is actually more likely to determine real money outcomes for America than anything we might give up in any other area. That goes to your point, which was that what America wants out of this is not so much monetary as precedent-creating for the EU.

**Dr Letts**—I would add something to Chris’s point about the international instrument. The government has made a lot of quite fine statements nationally and internationally about protecting the cultural sector. As I understand it, the primary thrust of the international instrument as proposed is to preserve the rights of governments to support their own cultural sectors. It is very difficult to see why this government has chosen not to participate in that. It has actually chosen—not simply overlooked the opportunity—not to join the INCP. My understanding is that, when the proposal went to the UNESCO board about UNESCO taking up

this international instrument, our government's support was lukewarm. It did not oppose it but, on the other hand, it could act later not to have a strong instrument or whatever.

**CHAIR**—Are you putting to us that we should in our report point that out to the government?

**Dr Letts**—Yes.

**Mr Warren**—In many ways that is going to be the important part of this process—not so much in the US-Australia free trade agreement but certainly in relation to the Doha Round.

**Ms Davies**—Could I take up your question about annex 1 or annex 2?

**CHAIR**—Yes.

**Ms Davies**—Our position in the past was that we preferred positive listing agreements for bilateral agreements. That was going to be the case with Singapore until the government changed its mind and moved to a negative listing model. So, presupposing a negative listing model, our preference would be for an annex 2 reservation rather than an annex 1 reservation. Particularly given that it would appear that the American position on annex 1 reservations is that they should not incorporate ratchet provisions, the reservation becomes less than a genuine standstill in that it inhibits the ability of the government to remix a package of support.

**Mr Warren**—That is right. The impact of the ratchet provision of standstill is obviously a real concern. On e-commerce—Lynn might want to say a bit about this as well—our view generally is that cultural protection should be technology neutral, for a whole host of reasons: because of the enormous technological change that we are currently going through but also because there is technological change that we cannot even foresee. What we do know about technology is that it almost always has a cultural use. To use the framework of e-commerce as a way of effectively excluding new technology or new delivery platforms from cultural protection would leave us with basically a standstill by default.

**Mr Whipp**—In relation to that issue, Richard was also at the recent meeting that we had with Minister Vaile; a number of other organisations in the cultural sector were represented there. The clear undertaking given by the chief negotiator in that meeting was that the government was aware of the issue in relation to e-commerce and would do nothing in the e-commerce area which undermined its ability to deliver cultural outcomes. In other words, any provision in the e-commerce chapter would be subject to the reservations with respect to cultural industries.

**CHAIR**—And that is an assurance that is adequate for you?

**Mr Whipp**—Yes. If the e-commerce chapter is subject to—

**Dr Letts**—I think the issue was: what we do not know is what would be in the reservations.

**Ms Gailey**—And what should be said on top of that is that, from our point of view, with e-commerce—picking up what Simon just said—if Australia takes a position where you unpackage content from delivery, that is what we want to see achieved. But it is not just e-commerce, because nobody knew about e-commerce 30 years ago. We might have g-commerce

by the end of the decade. So the position that we think is appropriate is the one taken in Singapore—which is that it is completely technology neutral and irrespective of delivery platforms, whatever they might be.

**CHAIR**—You know that the debate on e-commerce in Geneva, on the world level, is whether e-commerce is a service or a product. It is probably both at different times. If you take the view that it is a product, then you protect the service delivery and keep the product aside.

**Dr Letts**—If it is a product, does it still come under GATS?

**CHAIR**—Yes. Part of it does, I think.

**Ms Gailey**—That is also why language is so important. You can look at the way in which America has, in the past few years since Uruguay, tried to redefine culture as filmed entertainment, for instance, and has now moved to its digital agenda and, in that way, tried to take audiovisual out of the arena of culture—and similarly has used GATS, GATT and NAFTA as the need arose. So, for instance, they basically cherry-picked the split-run periodicals argument to find out which trade agreement would suit their purposes best, which is why it is really important that we just take culture clear out of the arena of trade negotiations.

**CHAIR**—We are getting into the headline debate now as to whether we support bilateral trade agreements or multilateral negotiation. The argument here is that by the US doing a web of bilateral agreements, they set the standard for the multilateral agreements and deliver a fait accompli to the WTO round.

**Mr Warren**—What we have not responded to is the question of foreign-made commercials. This is often a complex issue. When the Productivity Commission looked at broadcasting regulations, this is one of the things that it raised as well. We say that this is actually part of the complex web that I talked about at the opening. Although on the face of it you think, ‘Who cares where a commercial is made,’ it is an important part of providing the industry infrastructure that enables a film industry to survive. Our view is that, if there were not a requirement to have a significant proportion of Australian-made commercials, the Australian film industry would not have the depth of skills, experience and talent that enables it to make the public face of its programs, like *Shine* or *Lantana*, for example.

**Ms Gailey**—The crossover to the other cultural sectors is really important as well—and commercials are the obvious example. The effect of fewer opportunities for musicians and composers, who might be working in live performances for the rest of their working lives rather than in film and television, is profound.

**Senator NETTLE**—I have a question on e-commerce. The other groups this morning also talked about the meeting that you referred to with Minister Vaile and the comments made by the chief negotiator. I want to ask you what I asked them. The commitment from the chief negotiator sounded like a commitment to not try to undermine audiovisual services through the negotiations on e-commerce. Did you perceive from them the step further, which I see as a definition of e-commerce which is as restrictive as the one in the Singapore free trade agreement? I understand from what you said that there is a commitment from the negotiator to say, ‘We won’t undermine it.’ Did you have a sense that you also got the commitment?



**Mr Whipp**—No. That commitment was not given.

**Senator NETTLE**—That is interesting, because when I asked that question this morning, the Film Commission indicated that they thought that they had got—

**Mr Whipp**—There were two commitments given, that I recall—Richard might have a different recollection—although they are not really commitments. That was: ‘We are aware of your issues in relation to audiovisual industries and the cultural industries. We are aware that they overlap to a certain extent with the issues of e-commerce. We will not allow anything that we do in e-commerce to undermine our objectives that we are trying to achieve with respect to the cultural industries.’ They did not give us any commitment about the scope of the definition of e-commerce in the agreement. I have no recollection of that.

**Senator NETTLE**—Distinct from commitments, do you have a sense of what the Australian government’s negotiating position is with regard to the definition of e-commerce?

**Mr Whipp**—Not at this point, no.

**Dr Letts**—No, I did not get that.

**Ms Gailey**—Other than to surmise on the basis of the Singapore agreement.

**Senator NETTLE**—That being the position of the Australian government, the one in the Singapore agreement, are you are happy with that? I suppose the negotiations continue in terms of whether that definition changes.

**Dr Letts**—The solution he put to us was that basically, however culture was defined in this agreement and put into an annex or reservation, that would have priority over whatever was said in the e-commerce agreement. So we really did not need to discuss what would be in the e-commerce agreement if that was the formulation, I suppose. I think the government has at least been reported as making some absolutely forthright statements about health, for instance. In fact I remember one in the newspapers where Minister Vaile basically said, ‘We won’t put health on the negotiating table, and the government will negotiate in such a way as to realise its fundamental policy objectives in culture.’ I am thinking of core promises and what ‘fundamental’ means. With this whole process of negotiation, where we are told that nothing can be taken off the table—except health—and then a bit of soft-edge stuff in the discussions with the negotiators, you are not quite sure just where they stand. I had the impression that a bit could be negotiated away—but who knew what? They really did not know either but they had not brought down an iron door against cultural concessions.

**Senator NETTLE**—I do not know that I would feel quite as firmly as you that they have taken health off the table. I think in the context of GATS negotiations—certainly where you have a progressive liberalisation agenda in place—to say something is taken off the table in this round of negotiations is not necessarily to provide any assurance to industries that it will not subsequently be put on the table.

**Ms Gailey**—Which is why Chris’s point about Australia being involved in the INCP and taking a role in the development of any instrument on cultural diversity is so important.

**CHAIR**—That concludes this session. Thank you very much.

[2.42 p.m.]

**HARRIS, Mr Brian William, General Secretary, United Services Union, New South Wales**

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

**CHAIR**—Welcome. I ask you to address us on your submission.

**Mr McLean**—I am from the Australian Services Union. I have with me this afternoon Brian Harris, who is from the union's national executive and is secretary of our largest branch here in New South Wales. The reason for the ASU placing a submission before the committee was based upon primarily its concerns in the GATS rounds of negotiations and what was being considered by other governments and also by the Australian government at the time. The industries that we are involved in cover a wide range, from the utilities sector through to local government, child care and railways—everything from road and bridge footway construction through to pool maintenance in local councils. Our concern was raised primarily because of information we received from Public Services International and information provided by other community groups such as AFTINET.

Our submission was based around our concerns for what implications the GATS rounds of negotiations could have for services provided by primarily local government, the water sector and the electricity industry throughout Australia. Those sectors are covered by way of regulation at a state based level and there are even some local regulations in place by councils. There is also the opportunity for councils to make their own decisions in consultation with their communities about such things as contracting out of services. We know there have been mixed results with respect to that in Australia, and my union has a particular position in respect of contracting out of services in the public sector areas.

Throughout Australia and those great regionalised areas of New South Wales, Queensland, Victoria and also the other states, we find that there are thousands of our members working and serving the community in local government areas in everything from cleaning the streets through to community services and pool maintenance and in the electricity industry. Many of the areas that they are concerned about were flagged by the European Union in the first round of documentation that they floated out.

When our members first saw that information they asked some pretty simple questions. They asked us why the European Union wanted to list such issues on their agenda as a government—or how they saw them as a government. They very quickly realised that they were putting two and two together and believed that it had a substantial amount to do with who the constituent parties were in those communities. In other words, they saw multinationals or large companies based within the European Union or the USA as using their governments as levers to list GATS issues that would then be the subject of trade considerations for the Australian community. They were quite staggered to think this could actually take place.

After we had discussions with them and reminded them of the case of the Tasmanian fisheries and other cases that came to mind, they realised that these are issues that are not too far away

from us and can actually turn up on our doorstep. We looked a little bit further, including at local government in the United Kingdom—employer associations expressing concern about town planning possibilities, simply because town plazas, shopping centres and roads perhaps do not consider what some of the large US based supermarket chains might see as appropriate to be able to get in and market their goods and services. So all of this meant that we were starting to look at issues of concern.

We discussed it within our union and with our union's national body, our peak body. At the union's national conference held in Canberra last year, we resolved to look very closely at GATS and undertake a campaign to inform our members and also the employers in our industry. We were quite surprised at the feedback we received. Conservative councils, labour councils and councils with a mix of political backgrounds all expressed concern at what GATS could do in their local communities. The local government associations in each state, the peak national employer associations for local government, also expressed concern, including to the Australian government. We also wrote to the Australian government, and we were pleased to see a substantial response from the minister's office.

We met with officers from the minister's department and office and also with representatives from DFAT itself. We have since that time met with some of the officers at DFAT for further information on the negotiation process and issues that they see coming before them. We looked upon this as an opportunity to inform our members as to a broader debate out there in the community—a debate that they readily inquire about and are interested in. But perhaps the most interesting part was that we in the national office wrote to all of our branches and asked branches such as that of my colleague Brian Harris here from New South Wales to write to the employers in their state. There are about 650 traditional councils and about 750 total councils in Australia if you take into consideration the Indigenous councils, so local government is quite broad across this country.

We understand that quite literally hundreds of those councils wrote back to the minister's office or the department expressing their concern at the fact that these negotiations were taking place and that local government, as locally elected organisations, had only realised that these negotiations were taking place by way of information forwarded to them from, of all things, the industry union. Councils that we have traditionally argued with on a range of issues when we have represented our members who were seeking salary increases, seeking recognition of their work in the community—wrote back to us thanking us for bringing this matter to their attention. So I would suggest to the committee that local government out there throughout Australia was not totally aware of what this could mean to their communities.

I have addressed a wide range of councils, from Merimbula Shire Council to Wollongong City Council. My colleague Brian can probably tell you about the amount of correspondence we have received from quite a range of councils throughout New South Wales. That was repeated in Queensland and in other states where local government is concerned and acknowledges that this is an important issue.

In the last two weeks I have met with the minister for water in Queensland, and yesterday in Hobart I met with the minister for water and local government in Tasmania, Mr Cox. At those meetings we discussed with those state government ministers issues such as GATS and what that can mean for regulatory frameworks. When we see remarks made in the press in the USA about

GATS being a great thing for the American economy because of how many jobs it will bring to the American economy, we ask where those jobs will come from. Some of our concerns have been about the possibility of job migration of the owners of those companies. We have already seen issues such as the effects of privatisation upon the utilities sector, and we have seen some governments in Australia step back from privatisation of the utilities sector. But as they step away from privatisation they are allowing some degree of competition to come in within those regulatory frameworks—and I emphasise ‘regulatory frameworks’.

The issue of regulation is also an item that has been raised within the GATS negotiations. We now know and have seen that, even in the USA, the Californian government is walking back rapidly into re-regulation of its electricity industry. States such as Massachusetts, Ohio and others are walking back into regulation of their electricity industry rather than going for a totally deregulated environment. In discussions I have had about the electricity industry with my colleagues in Canada, they have expressed grave concerns about the effect of the electricity and water industry reforms that are taking place in their country and which are being driven by the North American Free Trade Agreement. So we are seeing the effects of trade agreements on sectors other than the ones our members work in being readily sought after as issues to be put forward.

Another issue that we were also concerned about was community consultation. We are now starting to see the community ask questions about GATS, about the US free trade agreement and about trade—questions we previously would never have thought they would ask. We now find our organisers going out to yard meetings in depots and talking to a wide range of employees—from waste refuse collectors, pool superintendents and council labourers through to people working in council parks and gardens—who are now asking questions about what GATS means. They are also asking questions about what happens in other countries and how people there deal with those issues.

They have also raised questions with me as to our understanding of how other governments deal with trade negotiations. We understand that in the USA, for instance, the government has a joint house committee. Officers seeking to negotiate on behalf of the government go before that committee and unfold what they would like to negotiate around. Parameters are established, they report back and then legislation is considered arising out of that.

The members we represent who are employed in those utility sectors, local government and other areas would like to feel that local government, state government and important community groups and community organisations are able to speak out on behalf of their community. They consider their union also to be a community based organisation and feel that we should be able to represent and put forward a view on behalf of the members we represent. I do not know whether we talked about an ongoing tribunal such as this, but we would certainly like to see the creation of an entity that Australian citizens, community organisations and, for that matter, even business can come before and outline their concerns in talking about impacts on Australian jobs, on contracting out, on the movement of profits out of privatisation and on the movement of profits out of BOO and BOOT schemes—a range of issues which raise all sorts of questions in connection with what say the local community has in respect of GATS.

We also find that we are linking up very closely with our trade union colleagues across the globe through Public Services International, which represents about 20 million public sector

workers worldwide. We will be represented by that organisation at the next round of negotiations when they take place in Mexico in September. Public Services International will also be convening in September in Geneva—two weeks before the next round takes place—a global meeting of its officials or representatives dealing with world trade, so that the organisation will be up to speed on the issues that are considered of great importance to public sector workers globally.

Our concerns come pretty much around the public sector areas and the utility areas, but we must not forget our members involved in the airline industry and in rail transport, cargo, shipping and other infrastructure areas who can also feel as though they are going to be impacted by GATS and trade arrangements. We are also not wanting to say that there should be no trade and wanting to close our minds to it. We realise that this is an important issue. Perhaps the thing that comes best to mind to me is that, when my eldest daughter was born, I went out and bought a second television set for \$450, a small portable. Today, some 13-odd years later, you can buy a much larger television set for \$450, and \$450 is a different amount of money. So there has been some benefit to the Australian community in trade by being able to purchase manufactured products. We know that as a trading nation we depend upon the exports of our agricultural sector, so we are not turning our mind blindly to it and saying no, but we are saying: please proceed forward with a degree of caution and much consultation.

On behalf of my union, I thank the senators of the Australian parliament for taking the opportunity and the initiative to establish this committee of inquiry. We think it is a very valuable contribution that is adding to the opportunity of organisations such as mine to be able to step forward and put forward a view, have it listened to, have it considered and know that we can say to our 140,000-odd members throughout Australia that we have been able to put forward a position, we have been able to have some discussions and we are encouraging the parliamentary members to listen to the community and take on board their concerns with respect to GATS and the current trade negotiations.

**CHAIR**—Are you happy with the level of consultation that you have been afforded by the government leading up to this stage of the GATS negotiations? I take it that you have addressed only GATS and not the free trade agreement?

**Mr McLean**—That is true.

**CHAIR**—Are you happy with the level of consultation? Do you have any comments to make about the process side of this—what the processes are and whether they can be improved? How do you evaluate the assurances you have been given thus far in response to issues of concern to your organisation?

**Mr McLean**—I will start with the assurances. Just as I was coming into the room, a remark was made—and I am not certain whether it was from one of the community members or someone on the parliamentary side—about the list of matters that are on the agenda today and GATS being an ongoing matter, but who knows what will be on the agenda in the future. Being a union official, you are always aware that what you walk into a room to negotiate on is not necessarily what you walk out of the room with; sometimes the agenda changes.

**CHAIR**—That was a comment made by the arts alliance.

**Mr McLean**—When people go away to negotiate an agreement on behalf of an organisation, there is always a concern about what they will come back with. In my organisation, we come back to the rank and file of the workplace, and they stick up their hand and tell us whether they are going to accept it or send us back in again. I do not know whether in trade agreements you quite have the luxury to do that; I somehow think you do not.

**CHAIR**—Under the Constitution the executive wing of government makes the decision and, if there is consequential legislation, the parliament decides on that.

**Mr McLean**—We would rather see a broader group of people having influence over that discussion because, if you are going to send people off to negotiate a document, you want to make sure that what they come back with is what they said they were going away with. That is an important issue.

The process is an important issue. We were first made aware of this, as I said, by other organisations, and we started to make some inquiries on it. The first correspondence I sent off was to the office of the Minister for Trade, and I received a prompt reply to that. I received an invitation to meet with officers of his department, his office and also officers from DFAT for what I would describe as a one hour and 40 minute frank discussion on issues my organisation was concerned about. I found that refreshing, but I felt as though I was going out looking for the process and asking questions, rather than there being a big sign up there saying, ‘Hey, here’s your opportunity to say something.’ So, unless you actually inquired about it, you did not find out about it.

Having said that, I am pleased to now see such things as the statements that have been put on the DFAT web site about matters that are in the negotiation process and the information that is now starting to be put on that web site. It has, however, occurred a little after the fact; in April last year we started to see what I would describe as ‘information’ starting to arise from the European Union that was already globally circulating on the Web. In downloading that information, you started to look at the sectors we were concerned about, and it would have been very healthy to see the Australian government putting some information out at the same time. So I would suggest that the process needs to be opened up more.

However, one of the meetings I have had since was with the people from DFAT—and I do not have their names with me today. But I met with them in their offices in Canberra, away from Parliament House. One of them was frank enough to say, ‘We really think this is pretty good that you are actually asking questions like this, because some of us have been talking about it for a while, but there haven’t been a lot of inquiries made on the matter and on the information.’ So while people have been working busily on behalf of the Australian community and the Australian government, with the very best of intentions, I think all people on all sides would like to see the process opened up more, more information available, greater community consultation and an opportunity to be heard. Does that answer your question?

**CHAIR**—Certainly.

**Senator NETTLE**—In talking about models and ways in which you think it might be appropriate for that consultation to happen—and, indeed, the comments that you have made in relation to the role that parliament might play in that process—we have asked other witnesses

who have appeared before us if they would be interested in developing a model which we could use in the process of the committee report, so we could look at a variety of models for what community groups and others think is an appropriate way for those consultations to happen. I think it is probably worth making that offer to you as well and asking whether you are interested in being part of that process.

**Mr McLean**—We would be not only interested but also very pleased to put forward a simple model. I would suggest that we would also be interested—as an organisation that has put forward a submission—to see what other models are being considered and perhaps see a consultation process talked about as to how the consultation process might be in the future. In other words, if we are going to establish a framework, let us try and get it right from the first go.

**Senator NETTLE**—On that basis, for your information, the other groups that have indicated that they will be taking on board our suggestion of bringing a model back to the committee are the ACTU and AFTINET. They are the two groups that have indicated they would also be interested.

**Mr McLean**—We have kept contact with AFTINET quite closely. My organisation is an affiliate of AFTINET, as we are an affiliate of the ACTU, and we have also been aware of that debate. We have also said that, whilst we will be involved in the ACTU issues, we still as an organisation reserve our right to make comments as we see fit and appropriate—separately or in conjunction with the ACTU.

**Senator NETTLE**—I know you have addressed your submission in relation to GATS rather than looking at the US-Australia free trade agreement. Given the nature of the comments that you made—and there is much similarity in terms of those comments transferring—do you want to make any comment in relation to the things that I am particularly interested in? You have raised questions about public services and particularly about the potential job losses amongst your union members as a result of the GATS negotiations. Have you had any opportunity to look at potential job losses for the people you represent because of the US-Australia free trade agreement?

**Mr McLean**—Firstly, we spoke of a report that we originally sent in, but we also sent in a second report that was not identical but very similar to the report. Our latest version says ‘Commonwealth free trade agreement—new GATS round and negotiations for Australia-US free trade’. So it is a similar or the same document.

In respect of job implications, we have seen substantial job reductions take place in most areas of Australia that have been subject to micro-economic reform. Sometimes that has provided benefits in efficiency. Sometimes it has simply provided the lowest common denominator by contracting out work. Sometimes it has attacked occupational health and safety standards—the cheapest way rather than the quality way, if I could say that. When we talk about job losses, let us think about employment losses in local communities. Employment losses in local communities are very important. One of our branches has done some work on the number of job losses. It investigated whether every job lost in local government means we actually lose other jobs in local communities. People in regional Victoria will be able to provide you with information on that, having seen what took place there with contracting out.



It is not just those public sector employment opportunities. There are also a couple of other things that start to get technical. When we start thinking about contracting out services in local communities in Australia, we need to think a little differently to a lot of European countries. I say that because those local councils that have bulldozers, large motor vehicles and road graders do not use them just for road works and maintenance; they use them to protect that town when it comes to bushfires, flood mitigation and other services. If privatisation or large-scale contracting out takes place, I do not know whether the contractor is going to be as keen to have their equipment running off fighting bushfires—or for that matter whether they will even be located in those towns.

So it is not just about the jobs; it is also about the maintenance of equipment and services to serve those local communities. The quality of the services that are there today in local government also have other spin-offs for the Australian community. Whether it is local government services out there in rural New South Wales weighing wheat trucks to make sure they do not damage the roads or it is the maintenance of the swimming pools at Sutherland in New South Wales where Ian Thorpe learnt to swim and still swims, these are all benefits that flow through our whole society. When you think about contracting out and moving those services, you have to also think about the jobs.

If you have a local sewerage and water treatment plant infrastructure locally, it is not only that the jobs are there; it is where they buy their truck from, it is where they buy their plumbing goods from and it is where they buy these other services from. If they are sold out to, say, multinationals or if multinationals move in and compete and take those services away from those communities, those vehicles will not be purchased in Wagga, Dubbo, Yass or other regional areas; they will be purchased in the western suburbs of Sydney. So it will be the car yard that will move. If you look in rural New South Wales and rural Australia, you do not have to look much further than the local government building in most places to see the biggest employer in town.

**Senator NETTLE**—You said that one of your branches had done modelling on the impact of job losses. What branch was that?

**Mr B. Harris**—It was in Victoria as a result of the government's decision to amalgamate the services in Victoria. The biggest implication was the social impact on the community within Victoria. I do not want to repeat what Greg has said but, whilst we lose all the facilities for emergencies and those types of things, I suppose the biggest implications are the loss of the community in total. Some years ago in regional New South Wales we had various services—electricity suppliers, generators, a PMG, Telstra or whatever. All those types of organisations have gone. If you take out local government, there is nothing left. If Australia moves down this path, we will be all seashore dwellers. There will be nothing in the country areas of Australia. Our membership is quite obviously very concerned about that. We represent in New South Wales alone 28,000 local government workers. The range of workers we represent includes not only the blue-collar but also the white-collar and everyone up to the general manager in an organisation.

Just to reinforce what Greg was saying, the biggest concern we have is the secrecy of the whole arrangements. Had we not made local government New South Wales aware of what was happening, I do not think there would have been very much input from regional New South Wales because there was nothing out there. Whether that is sufficient at this stage, one would

doubt. I believe there should be further consultation with the regions throughout Australia. I personally see that that is where the real implications are going to be—within country Australia, not just New South Wales.

We are not suggesting that our people in local government should have a free ride. We have gone through processes of structural efficiencies and what have you and we believe that we are very competitive in what we provide today. I believe we provide a good service. I believe that opening that up to organisations outside of that community coming from major cities or even overseas would decimate the whole fabric of country Australia, and that does concern us. I will not go any further because I think Greg has covered it very well.

**Senator NETTLE**—I have one more question. We had representation to the committee yesterday from the Australian Local Government Association. Their particular issue of concern with respect to the GATS negotiations was around water. They gave us some sense that the assurances they had received from the Commonwealth government had satisfied them that water was not on the table. I am wondering whether you have received similar assurances and whether you feel equally satisfied. Or do you have a different view?

**Mr McLean**—I perhaps should have gone on a bit more when Senator Cook asked the same question on that. I probably did not address it in enough detail. We have received those assurances from government, from DFAT, that we will not go any further than what the regulatory framework says. However, there are two issues. One, we understand that with GATS you have to list the services and with the US free trade agreement you have to list the exclusions. So, unless you are very careful, you are going to have a problem. The other issue that comes from that is that when you go into negotiate you can be given assurances, but there can be bigger issues that come out on the table and you can be forced to compromise those positions unless you are answerable to someone. I think the real issue for this committee is to ensure that the Australian community is protected and, if there are commitments made, that those commitments are maintained.

In respect of the water industry, commitments can be made but I understand that water has been included with waste services, and waste services are a bit of a mixed bag. When we have a look at those large multinationals that are dealing with the water industry, we think about companies like Veolia, which used to be called Vivendi, we think of the large European companies and think, for example, of USfilter. There are a range of these companies that employ monstrous amounts of people. Companies that are involved in waste services such as Collex, Connex and others are also involved in the development of water treatment plants. These organisations employ 240,000-plus people world wide. They are large organisations with substantial influence. We would be concerned about that. We would be concerned not about what can take place today but what can take place in five years time. A guarantee given today is a guarantee that is different.

I sat in this very room and had an argument with Michael Egan over an issue called electricity privatisation some years ago. Governments have got issues they need to consider. We had a healthy debate on that matter and there was a community outcome on that issue—and that is fine, we can move on. But we know that governments get pressure put on them to make changes to whatever their landscape is. Whatever you put in place must address those concerns because commitments made one day can be modified because of other factors on another day.

**CHAIR**—We will have to conclude at this point. If we require further information from you, are you available to help?

**Mr McLean**—Most definitely. We are happy to attend anywhere the committee meets. I would just remind the committee of the ASU web address where we have a link to our GATS campaign page which has some of the issues and areas we are concerned about. Also, if you look at some of the stickers we have produced, we took very much a solid line on our concerns for the community. As I said, we were very pleased with the response from the community. I would like to thank the committee very much on behalf of the members we represent for taking the initiative to establish this inquiry. We consider it is a great step and a great thing to do.

**CHAIR**—It is an initiative of the Senate, but thank you very much.

[3.16 p.m.]

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

**KENTISH, Mr Alister, National Research Officer, Australian Manufacturing Workers Union**

**CHAIR**—I welcome witnesses from the Australian Manufacturing Workers Union. I invite you to address your submission and then we will proceed to questions.

**Mr Cameron**—We welcome the opportunity to make a submission to the Senate inquiry. We have submitted a detailed written submission that includes 10 recommendations on the issues. I will go briefly to them because there have been developments since our submission and I would like to deal with some of them.

We say, firstly, that we should not enter a bilateral free trade agreement with the United States basically because of the inherent disadvantage of size, influence and strength in our bargaining position against the US. Secondly, we reject the proposal that has been advanced that we should adopt US corporate culture and that US corporations should more influence the operation of business within Australia. Thirdly, we reject any overt or covert link between trade and security. Fourthly, we say that civil society and the trade union movement should have time to analyse and respond more effectively to the calls for submissions on issues as complex as free trade agreements. We say that the secrecy surrounding trade agreements and the systematic exclusion of union and other civil society representations are undemocratic and unacceptable. I do not care how it is put, but that is the reality. We do not believe that the amount of consultation is real. It is a real ‘Yes, Minister’ approach when you are dealing with the department.

We say that the parliament should have legislation similar to the United States legislation where the parliament should look, firstly, at whether it grants negotiating authority to the executive and, secondly, at the cost and benefits of any proposal, including social and economic audits. Access to a wide range of expertise should be available before we actually go down the path of negotiating these agreements. In the third stage, we say that the parliament should either accept or reject any agreement.

I heard you talking earlier about a process. We say that there should be a parliamentary trade agreement committee established. That committee should be able to commission multidisciplinary research not only from neoclassical economic theorists but also from community groups that are being affected, the local governments and the trade union movement. There should be an agreed statement at the commencement of the negotiations negotiated by this trade agreement committee. There should be full trade union representation on any of the overseas negotiations that take place and discussions. We say there are no grounds for including manufacturing in the current US free trade agreement proposal.

Our 10th recommendation is that we should include environmental and core labour standards in the agreement. That would mean some changes in terms of our industrial legislation, because we do not meet the requirements under the conventions that we have signed up to in a range of

areas. Any dispute resolution in a proposed agreement should be transparent and we should not enter any treaty that restricts our capacity to limit foreign ownership or develop a strategic industry development policy. The basic core services that strengthen Australian society and its culture—such as health, education and the media—should be excluded from any free trade agreement.

That is very briefly the recommendations that we have put up to the Senate inquiry. Since our recommendations, a significant debate has ensued publicly over the benefits or otherwise of the proposed agreement. The academic debate has focused on critiques of the econometric modelling, the pros and cons of bilateral versus multilateral trade agreements and the effects of trade diversion. The AMWU are not unabashed supporters of Ross Garnaut, the professor of economics at the ANU, but we certainly believe Ross Garnaut's paper, which I think is before the inquiry, is a very important paper in terms of an analysis of the so-called models that have been put up to justify the \$4 billion benefit. Actually, it was not a \$4 billion benefit, but that has become another one of these givens. When you hear the trade minister or any of the shadow ministers talking about what this trade agreement is going to do, they talk about \$4 billion benefits. As you would be aware, that is not correct. We take the view with Garnaut that these benefits have been based on restrictive assumptions in the GTAP modelling.

We also agree that the CIE study was based on analogy and not analysis and that the ACIL Tasman report was initially suppressed from the public because it differed from the analogy approach that was put forward. We agree there are contradictions between the removal of barriers to trade and the retention of United States subsidies—and I will talk about United States subsidies that will not be affected by this free trade agreement. We certainly agree that you would need to suspend disbelief about the United States accepting clean free trade in agriculture; it is just not going to happen.

We agree with the conclusion from the CIE that a free trade agreement with the United States is not worth the effort. Export growth from both Canada and Mexico after NAFTA is well below the world average and in Canada's case is closest to the lowest in the world. Chinese imports from Australia over the past decade exceed by a factor of five the whole of the anticipated increase in annual export to the United States as a result of this free trade agreement. So we have on our doorstep an economy that is providing right now five times the benefit in terms of our exports to that country. The issue of trade diversion within a free trade agreement cannot be ignored, and we certainly agree with the analysis of Ross Garnaut about the mistakes and misrepresentations made by Alan Oxley—which seems to be a *modus operandi* of Alan Oxley. Wherever he is he does misrepresent and make mistakes in terms of his analysis of where this is going.

We also would draw your attention to the Productivity Commission research that was reported in the *Australian Financial Review* on 26 May that made five points. Firstly, that most preferential trade deals negotiated over the past four decades have depressed rather than expanded trade. Secondly, preferential trade deals divert more trade from non-member countries than they create between countries signing the agreement. Thirdly, 12 out of the 18 bilateral free trade agreements had reduced the value of exports even after allowing for the factors that influenced trade flows. Fourthly, agreements that reduce trade include some of the most liberalising and they quote the European Union, the Australian-New Zealand closer economic relations agreement, the Mercosur agreement between Argentina, Brazil, Uruguay and Paraguay.

Fifthly, some of the more prominent preferential trading agreements have not even succeeded in creating more trade amongst members. I think this is a pretty devastating critique of a free trade approach on a bilateral basis between countries as it stands now, and we cannot see anything in this proposed US free trade agreement that would break that mould.

We are very interested in what has happened in Canada. Like the ASU, we have close relationships with the Canadian unions and we talk to them regularly. They have drawn our attention to an Industry Canada Report by Duncan and Murphy that reports that, between 1989 and 1997, 870,700 export jobs were created but imports destroyed 1.147 million jobs in Canada. So Canada has a net deficit in terms of jobs. Canadian trade has become more concentrated with the US. They have moved from 74 per cent of their exports to the US to 85 per cent and they have diminished their overall exports around the world. So they are tied very tightly to the US economy, and we do not believe Australia should go down that path. The growth performance in the nineties for Canada was worse than any other decade in the last century except for the 1930s. Average per capita income fell steadily in the first seven years of the decade. They have this agreement with the US and the US grew 14 per cent during that period. Canada has noticeably become a more unequal society in the free trade era. NAFTA has contributed to rising income inequality, suppressed real wages for production workers, weakened collective bargaining power, reduced fringe benefits and reduced ability for unions to organise.

We have a copy of that briefing paper from the Economic Policy Institute in case you do not have a copy. They go into some analysis of how NAFTA has affected Mexico, the United States and Canada. It is a very interesting document in the context of your investigations now. It goes on further to look at Mexico. There are academic papers that I have read recently that talk about a new phenomenon in Mexico, and that is with the free trade agreement with the United States. We are seeing increased productivity and increased growth but we are seeing net reductions in workers' wages and welfare. That is a phenomenon that is happening clearly in Mexico as part of the NAFTA process. In fact, in Mexico, workers lost more than 21 per cent of their purchasing power between 1993 and 1999. Manufacturing wages declined by almost 21 per cent in this period. The minimum wage fell 17.9 per cent. With average self-employment incomes—lots of people say, 'Well, you don't have to be a wage slave; you can become self-employed'—what NAFTA has meant for the self-employed in Mexico is that their incomes have fallen. At one stage they were 17 per cent above salaried workers; they are now 19 per cent below salaried workers. After seven years NAFTA has not delivered the promised benefits to workers in Mexico. There is a story in the briefing paper about the United States as well where manufacturing economies or states are losing out.

I will turn now very briefly to the United States non-tariff barriers to trade, which is something I think this committee has to be well aware of. The United States has global sourcing policies that are implemented through government. We cannot see any way that that will be addressed or that America will give that up for a free trade agreement with Australia. There are any number of state assistance packages to bring industry to the United States. One example I can give you concerns Alabama. The support they give to the Hyundai assembly plant was estimated to be between \$US123 million to \$US253 million. That will not disappear under a free trade agreement. Some \$US240 million a year goes to partnerships for a new generation of vehicles program.

The Jones Act restricts our ability to export our ships. State-of-the-art ships from Incat and Austel cannot be exported to the United States. The Trade Agreement Act 1979 prohibits sourcing of goods of service from nations outside of the United States unless they meet certain conditions. There is a Buy American Act 1933 that governs federal agency purchasing policy. There is a Balance of Payments Act that restricts procurement of goods outside of the US and there are three new proposals—a proposal for a job protection act 2003 with a 3½ per cent tax subsidy for American companies to be able to compete with foreign corporations; there is a proposed American competitiveness and corporate accountability act that will impose tax penalties on companies that are setting up in the United States and they will introduce tough accounting compliance rules—a non-tariff barrier, in effect; and there is a proposed 10 per cent tax credit on US manufacturing goods sold overseas. I am sure that with some analysis this committee could find out more than we have found out in a very short analysis about what is happening there. It is a very significant situation that has to be taken into account by this committee when we look at that whole issue.

I will hand out another document which we put together for the committee's consideration. It is an addendum to our initial position. It is entitled 'Why Australian manufacturing needs a proactive interventionist trade and industry policy and not a FTA with the USA'. I will summarise the main points in the document. We say that, if zero tariffs were introduced with the recent exchange rate changes, it would give American manufacturers a 25 per cent competitive edge over their Australian counterparts. We have a situation where the Chinese currency is tied to the American dollar. America will squeeze us at the top end of manufacturing and the Chinese will squeeze us at the bottom end. Our manufacturing industry will face severe problems if this free trade agreement goes ahead and we simply face competition based on the American situation. American manufacturing has got much greater economy of scale and much larger plants that give them a far greater competitive advantage than we have. American manufacturing has invested much more in research and development and venture capital, giving them a significant competitive advantage over Australian counterparts. The US is way ahead of Australia in new emerging manufacturing opportunities, such as information and communication technology, and has a much stronger technological infrastructure.

There has been no growth in Australia's elaborately transformed manufactures to East Asia for seven years. A US free trade agreement will divert even more attention from Asia, and we believe that is not in the long-term interests of the Australian economy. There is no proactive interventionist industry and trade development strategy in place to support manufacturing, and the potential of a free trade agreement to limit that is a very worrying position.

For all these reasons, we say we should not have a free trade agreement with the United States. I will not take you right through this document, but you will see that there is more capital per worker invested in American manufacturing workers than in Australia. Value added per worker in the United States is by far greater than in Australia. Our manufacturing exports have collapsed under the current government and something needs to be done about that. We under invest in innovation. Our competitive advantage will decline if we enter this free trade agreement. The superior infrastructure of the United States will make it almost impossible for us to compete in a fair way with the United States.

We say that it diverts from our core position where we should maintain a manufacturing industry. We should be supporting our manufacturing industry. We should have an industry

development policy. We should not look away from Asia and simply deal with the United States as it is. We do not support this free trade agreement in any way, shape or form. We say to the government, if you are negotiating a free trade agreement, leave the manufacturing industry out of it.

**CHAIR**—In your presentation you have essentially covered a number of the things I would normally ask about, and I do not need to go over them. As far as the automotive industry is concerned, the Centre for International Economics undertook an econometric study—and I know the criticisms you have made of it and I understand those; in fact, I have made many of the same criticisms myself. Just accepting that study for the moment, one of its findings, from memory, was that on the American side the export of automotive parts would grow by 44.7 per cent. One of the big benefits to the US from a zero tariff on manufacturing in this agreement would be that they would grow their exports to Australia of automotive parts by 44.7 per cent—I think that was the figure—and other metal manufactured goods. According to the study, the big benefit to Australia—assuming that we get absolute penetration on agriculture—is that sugar and dairy would be the big winners but by a vastly lower percentage increase than the manufacturing increase would be. According to the government's own study, value added wins would go to the Americans, low value-added primary products wins would go to the Australians. So you would assume that the job intensity or skill factor in both occupations, if this equals out, is that automotive component parts workers in Adelaide and Melbourne would get jobs as would those in the Gippsland dairy industry and the Queensland sugar industry. So far, so good.

My question is: have you had any discussions with your counterpart organisation in the United States about its views on a free trade agreement? If you have, can you share with us what its views are? If you open up the market for American cars and componentry, what pressure does that put on Japanese manufacturers here to buy their componentry from the United States rather than from Australia and/or to insist on the removal of tariff protection for Japanese imports and, by extension, Korean and European imports in the automotive industry?

**Mr Cameron**—And the Chinese?

**CHAIR**—I guess that will be the next round.

**Mr Cameron**—Firstly, I think the assumptions in the CIE study in a range of areas are wrong but, even in their analysis, the implications are quite clear about the downside for Australian manufacturing. We are heading here for abandonment of the goal of having a high-skill, high-knowledge economy. Also we will not be able to engage in the information economy in the future unless we have a manufacturing base that allows us to develop our manufacturing capacity.

Secondly, I do not think enough has been said about the limitations on agriculture as a growth industry in this country. The environmental issues will become more and more acute as each year goes by. In my view, from the limited analysis that I have made of it—I do not consider myself to be an expert in it; I am just an interested observer—I do not think we have the capacity to base our economy on agriculture in the long term because the agricultural processes we use are environmentally destructive and not sustainable in the long term. So we need to be able to engage in a cleaner, more effective manufacturing industry—a knowledge based manufacturing industry—to take the pressure off our environment.



We have had brief discussions with the United States unions and are now exchanging information with them. They are extremely parochial in terms of their position—and I do not think that is any revelation to this committee. They do not want any free trade agreements anywhere. They want their economy serviced by American jobs, and I can understand that and I am not critical of it. But I think that is a reality for where we are at. At this stage they have not given us any great insight into their view. Our national president, Julius Roe—he is on the executive of the IMF—is dealing with them now, but we do not have any final answer on that.

We think the impact on the component sector will be huge. As I have said, the Chinese currency is linked to the US dollar and so, as our dollar is starting to firm and is staying firm, they have a significant advantage. Toyota, in a moment of honesty, recently indicated their concerns about the US free trade agreement; after being jumped upon suddenly by the government, they started to moderate their position.

**CHAIR**—Ross Garnaut said to us yesterday that it was Toyota International that made the statement and the media ran to Toyota Australia for the rebuttal. Of the two, he would believe what Nagoya said is their global view rather than what the Melbourne based arm of Toyota would say.

**Mr Cameron**—That is right. We have had some discussions with the car companies. I understand that, with the Australian dollar at US65c, Toyota's position becomes very difficult in terms of getting more venture capital in to increase investment in research and development and the like. You may have heard this but that is what I have been told. I think that would be a significant problem for Toyota.

**Senator NETTLE**—I do not have anything to ask, but I have a comment on the inclusion of labour standards in the free trade agreement. It is clear from your submission that you are talking about far more extensive labour standards in relation to the ILO than anything that the government is proposing. We heard yesterday in evidence from the ACTU that the government's version of including labour standards in the FTA was to say, 'We won't water down the rights of workers in our existing domestic regulation,' and that is it, rather than going to anything beyond that. I do not have anything to ask.

**Mr Cameron**—There is a longstanding debate about labour standards and trade that Senator Cook and I have engaged in from time to time. We take the strong view that, once you commit to an international treaty, you should actually implement the treaty, and this government is actually breaching those treaties now in terms of labour standards. It is quite interesting that America have got a position where they call on their trading partners to implement certain labour standards but they have not signed off on them themselves. It is a weird position, but they strongly advocate labour standards from the trading partners. I hope they do that. That might be one benefit in this free trade agreement if it ever comes around because we should be committing to our international obligations and the labour standards should be there.

I know there is some academic debate about the efficacy of labour standards in trade agreements—that is fine—but in reality, over the history of International Labour Organisation deliberations, labour standards have been an important part. It is not only a very important symbol of fairness in trade that labour standards should be included; it is also a practical goal that we should be working towards over a period of time. It will not happen overnight but it

should happen. If the ILO believes it should happen, it certainly should be there. We have got a view that the WTO and the ILO should have a joint position on labour standards in the WTO. I am not a fan of the WTO. I think the whole thing should be looked at—the IMF and the World Bank. I think there has to be an analysis of how effectively those organisations are working, and that is why we are now have this hub and spoke position from the United States that says, ‘We will develop our own alternative to the multilateral trading system.’ I think from our position we would be better having a multilateral trading position but a multilateral position based on fair trade not free trade.

**CHAIR**—You will not get any argument from me about labour standards. As industrial relations minister, I adopted more ILO conventions than anyone else.

**Mr Cameron**—I wasn’t going to remind you of that.

**CHAIR**—I am quite proud of it. We could actually have a discussion about this for the rest of the day; there is no doubt about that. You have provided us with a wealth of material, and we are on a tight timetable so we might leave it at that point. If we need to come back to you, we will contact you. I am mindful that the negotiations are proceeding in Hawaii this week. We have come to the point in the negotiations where the offers are being tabled, so the serious part of the talks commences now. In the next week or so, one hopes that we will see what the nature of those are and be able to make some sort of assessment about the likely shape of any final package. It may be that, after we see what the offers and proposals are on the table, we will need to come back and talk to you about some of the detail of that.

**Mr Cameron**—We would be pleased and keen to do that. I hope the head turning offer is not on the back of workers’ jobs in the manufacturing industry.

**CHAIR**—Thank you.

[3.46 p.m.]

**DUBROW, Mr Christopher Walter, Campaigner, ATTAC Australia**

**CARMAN, Ms Marina Isobel, Trade Campaigner, AID/WATCH**

**O'CONNOR, Mr Timothy Ryan, Aid Campaigner, AID/WATCH**

**CHAIR**—Welcome. I apologise for keeping you waiting. We will try to provide sufficient time for you to do justice to your own submissions. Mr Dubrow, would you like to address your submission?

**Mr Dubrow**—Thank you for giving me the opportunity to speak today. I will be tabling a bunch of new references. I will not just be referring to my submission, as you have already got that.

**CHAIR**—You might actually tell us a bit about who you are.

**Mr Dubrow**—I represent ATTAC Australia, a non-governmental organisation that is part of the international ATTAC movement which is now across some 40 countries with over 90,000 members. ATTAC primarily campaigns for the reassertion of democracy and transparency over the global financial markets and trade systems. So we are basically a wing of the larger NGO. ATTAC is concerned about globalisation. We are not anti globalisation, nor for that matter anti trade. We recognise the importance of a fair and equitable global trade system that is regulated to uphold existing human rights, labour rights and environmental standards. We do not agree, however, that the prevailing economic theory of market liberalisation and deregulation automatically works best for the global economy. Governments like Australia need to be able to regulate where the market fails.

As I have said in my submission, we are very concerned about the impacts of both agreements that are being discussed at this inquiry. Unlike in my submission, I will not be referring to individual domestic sectors affected—there is no need to repeat what the experts have said—instead I want to go through the global implications of such agreements. These agreements do not exist in a vacuum. One country's position on GATS cannot be isolated from the impacts on other negotiating nations. Australia's position is substantially interconnected with other negotiations within the WTO structure. For example, we found that leaked EU GATS requests demand access for their service providers to the developing world in exchange for the lowering of agricultural subsidies. Meanwhile, as a result of the stalemate in WTO negotiations in agriculture, developing countries are reportedly holding back on their GATS positions—so it is all interconnected.

Similarly, at the FTA level, the US-Australia FTA affects other nations due to the interconnected geopolitical context of these trade agreements. This is made clear by comments from US trade representative Robert Zoellick. He has stated that a free trade agreement with Australia, for example, is strategically important to the US due in part to our leadership role in the Cairns Group. He also said that for FTAs the US seeks from prospective countries

cooperation or better on foreign policy and security issues, and also that the Bush administration's reinvigoration of America's drive for free trade globally, regionally and with individual countries has created a momentum that strengthens US influence. This will to strengthen US influence shows the explicit link between WTO negotiations and the large amount of free trade agreements the US is currently negotiating.

As the list of missed negotiation deadlines for the Cancun ministerial grows, it is clear that for the US, the FTAs are like an efficient alternative. Such an attitude is of significant concern around the world, as it represents yet another move to what is perceived widely as unilateralism and away from what we believe is a far more secure road of international cooperation—just like the US approach at the UN, the Bretton Woods institutions, the International Criminal Court and the Kyoto protocol. Consequently, we believe Australia should not be party to such a process. Rather, we should emphasise to our trusted ally the importance of cooperating with the international community through an equitable, multilateral agreement.

We have heard concern that the FTA may negatively affect other significant trading partners, such as New Zealand and other nations. These interconnected agreements also impact on the world's poorest nations. To understand the GATS negotiations, we must look at the WTO level and at the development objectives from the Doha Round, where the ministerial declaration says that special and differential treatment for developing countries shall be an integral part of all elements of negotiations. Yet there have been serious concerns amongst developing nations that their concerns are simply not being heard. On this note, I would like table a document prepared by a large group of civil society based organisations, particularly from a base in the developing world, called *A memorandum on the need to improve internal transparency and participation in the WTO*. It is a really interesting document. The first paragraph says:

Through this Memorandum, several non-governmental organisations and civil society groups wish to highlight the serious problems of the lack of internal transparency and the lack of participation of developing countries in decision-making processes in the World Trade Organisation.

Australia could play a significant role in addressing such issues; however, it appears we are travelling in the opposite direction.

Recently, a large group of developing countries requested some very basic rules of procedure before and during WTO negotiations, including for GATS. They requested things like consistent procedure for decision making; that drafts should be based on consensus; that there be enough time to consider any changes; and that the secretariat and meeting chairpersons should remain impartial to the various positions. In relation to this request, one commentator from the developing world stated:

It is disturbing that a supposedly rules-based international organisation ignores, flouts or invents procedures on the spot in order to suit the situation that will produce an outcome that is in the interests of the minority of its most powerful members.

This is pretty disturbing stuff to ATTAC; however, it was Australia that led the group of developed countries that outright rejected these simple requests common to other global institutions, citing the need for flexibility in negotiations. It is this kind of flexibility that is available only to nations with the resources to keep up with what some argue is deliberately

engineered confusion. It also could be argued that a similar flexibility would be lost if we lock into the FTA.

The developed nations, such as the EU, the US and Australia, cannot claim to be the models for democracy at the national level while refusing inclusive transparent democratic principles at the global level. Australian WTO negotiators are in a unique position to address the concerns of developing nations. The Cairns Group connection potentially places us in the centre of the trade-off with developing world concerns between, for instance, agriculture and GATS.

Australian negotiators should be pursuing a fair and transparent multilateral trade system for the benefit of all, but instead we are creating an exclusive bilateral FTA with a nation with outrageous agricultural subsidies. This is very significant for the developing world, as agriculture is the one area where many of these poorer countries have a competitive advantage. While Australian farmers and agribusinesses are some of the loudest lobbyists for the FTA in some regards, this agreement cannot touch these subsidies; only the relatively minor tariffs and quotas.

As I mentioned in my submission, and as we know from the leaked documents, in this regard the EU is just as bad as the US. The GATS example of EU access demands for their water service providers in exchange for lowering of agricultural subsidies is not a fair and transparent approach to negotiations. It amounts to blatant lobbying on behalf of corporations at the expense of democracy.

Back in Australia, these significant agreements that have the power to transform the core values of our society cannot just be left to the whims of cabinet or even the Joint Standing Committee on Treaties; they must be thoroughly and transparently publicly discussed and debated. So far as the FTA is concerned, Australia is a very different nation to the USA with very different standards. We have very different standards of what is in the public interest. An example useful for both the FTA and GATS that we all hear about is that most Australians believe that it is very fair that we have effective cross-subsidisation of postal and telecommunications services to protect those in the bush. Compared to the USA, we have very different standards of the importance of universal health care and very different standards of what makes a meaningful plot in a movie.

For GATS and the FTA, one size does not fit all. Australia's competition rules show that one type of political persuasion, such as that of neo-liberal economics, is not always the most effective, equitable or just way of organising our society—yet these arrangements lock us into that view. Australia and other nations must be able to compromise such agreements to suit our cultural and political needs. These agreements should not compromise us.

**CHAIR**—I now invite AID/WATCH to address us.

**Mr O'Connor**—AID/WATCH is a not-for-profit organisation monitoring and campaigning on Australian overseas aid and trade policies and programs. We receive no government or corporate funding and therefore operate completely independently of their interests. AID/WATCH would like to recognise the Senate and the very important role it plays as a legislative check on the Australian parliament and thank the Senate committee into foreign affairs, defence and trade for

undertaking this very important inquiry that has vast ramifications for Australia and the relationships we have with our regional neighbours.

AID/WATCH recognise that trade is an important contributor to the international and national economy and acknowledge the benefits that are to be obtained from engaging in this age-old practice. We support the call for a fair trading system that weighs the social, cultural and environmental impacts of development equally with the economic.

We are here today because we are concerned about the ramifications of the current GATS agreement and the proposed Australia-US FTA and indeed all the current trade negotiations that Australia is involved in within the WTO and bilaterally. The implications these negotiations have on how Australia both views and is viewed by our region are far-reaching and pose a number of vital questions for the future of this country.

What we aim to do here today is, firstly, raise the issue of Australia's much discussed national interest and broaden its definition beyond just the economic interests of Australia by pointing out the many facets that impinge upon what has become this government's favourite catch-call. Secondly, we wish to raise the undemocratic nature of modern-day trade negotiations. My colleague, Marina, will do this by referring to the current economic agenda of this government and then go on to discuss the evermore interlinked security agenda. Thirdly, we wish to raise the issue of how entering into these negotiations sits inconsistently with other governmental policy. Fourthly, we will be supporting many of the other submissions you have received and presentations you have heard which threaten the social fabric of this country in areas of health, media, investment and agriculture.

We believe that the current negotiations for a free trade agreement with the US need to be seen within the context of Australia's broader economic trade and foreign affairs agenda and within the dynamics of international trade negotiations. AID/WATCH considers the history of trade negotiations carried on through the World Trade Organisation, the recent history of other bilateral agreements negotiated by the United States in combination with the policy preferences of the current government equate to a situation where the interests of the developing world and other disadvantaged peoples within the developed world will be sacrificed in the quest for trade liberalisation. The Australian government, by currently undertaking GATS and the current FTA negotiations, is posing a significant risk to public services in Australia and development and our relationships with developing countries, particularly in the region.

I will now focus on the area of national interest. There has been considerable debate over whether a proposed FTA with the US will further Australia's national interest. Little discussion has ensued with regard to what the national interest actually entails. The Australian government and the current predominant ideology promotes economic objectives above all others. In this section, we will outline broad issues which we will return to throughout our submission.

Firstly, 'national interest' must be more broadly defined to include social factors, cultural concerns and environmental considerations. These matters are fundamentally important in gauging the long-term impact of the proposed agreement on Australian society. Central to this issue, and of immense importance to this inquiry, is the relationship that Australia has with the Asia-Pacific region. Currently, 61 per cent of the total of Australia's trade is conducted with countries in the western Pacific region. These countries constitute our immediate geographic

neighbours. I will quote from the Simons review, which is a review, as you probably well know, commissioned by the Australian government in 1997 and is the most recent independent review that looked at the aid program. It states:

The prosperity of the developing world is clearly in Australia's national interest not only for regional stability but also for our own economic future. In an increasingly interdependent world, the people of the developing world are our future partners in business and in trade.

While several detailed studies have failed to actually agree upon what the economic benefits will be of the proposed US FTA, there has been inadequate consideration of what the agreement will mean for our relationships with Asia. The second point here refers to the undemocratic nature of the closed door negotiations that are characteristic of contemporary trade negotiations. This is completely unacceptable and contravenes what is in the national interest of the Australian public. All meetings on the negotiations on the US FTA, GATS or other WTO negotiations must be completely open, transparent and accountable. All minutes must be presented to the public for full and open discussion, and all positions adopted by our elected representatives must be openly publicised.

The following is an example which illustrates this very point. It comes from a recent article in the *Australian Financial Review* by ex-chairman of the industry's assistance commission and CEO of the Tariff Board, Bill Carmichael. He summarised the patronising nature of the bureaucracy while negotiating this agreement. On the one hand, the Prime Minister, Mr Howard, is quoted as saying, 'The dynamic supporting trade liberalisation in democracies will only succeed if communities in each country believe that it is in their interests to do so', and he called for 'informed public discussion of the economy-wide effects of major trade initiatives'.

On the other hand, Carmichael quotes Ashton Calvert, secretary of DFAT, who suggests that those expressing very real concerns that are raised in a number of the aforementioned studies and by other civil society groups and individuals have frozen minds and out-of-date ideas. Carmichael goes on to list DFAT's failure to offer sound economic advice in the past and thus asks why we should settle for their 'we know better' bluster now. This attitude adopted by DFAT cannot be considered to be in the national interest. There is another example of this that further illustrates the diplomatic expedience of AusAID, which is amongst the documents we are tabling today, and I can discuss that further if requested. The question remains: is a policy that has highly contentious economic advantages and purposes unknown and poses unknown threats to the relationships with our immediate neighbours really in Australia's national interest?

I will now look at the aid policy implications and policy consistency with the current negotiations. In total, the Asia-Pacific region will receive \$1.1 billion of the 2003-04 aid budget, accounting for 87 per cent of Australia's total direct bilateral foreign aid. The central aim of Australia's foreign aid program is the promotion of Australia's national interest. As the committee will be aware, AusAID is administered under the Department of Foreign Affairs and Trade. This in itself exposes the complex political nature of how aid is delivered. Aid in the Australian context is therefore inherently linked with trade and does not have the same philanthropic nature that many people perceive aid should have.

AID/WATCH has been critical of Australia's aid program and particularly the focus on promoting the interests of private Australian companies to conduct the contracts funded by

Australian taxpayers, administered by AusAID. Our research has revealed that Australia is giving a substantial amount of aid money that is not focused on alleviating poverty or promoting sustainable development, as AusAID suggests are secondary objectives, but in furthering the very narrow view of what the Australian government perceives as Australia's national interest. While this corporate welfare approach funded by our aid program is good for a handful of Australian businesses, it is having a drastic affect on the communities that many of these projects are acting upon. The effectiveness of the aid program can be gauged by the ongoing problems in the Pacific, with particular reference to the current situation in the Solomons and the so-called arc of instability.

While this committee, with its recent trip to PNG and the broader Pacific, will be very familiar with the term 'boomerang aid', it is also true that some of our aid money is delivering some significant outcomes. AID/WATCH believes these positive outcomes and the important relationships they in turn promote will be undermined by a US FTA and the implicit policy objectives that are associated with it. This mixed message Australia is sending is having a serious effect on how Australia is perceived by our aid recipients. Our concern with the aid implications of the US FTA is that, by compromising Australia's economic and security interests in the region, it will effectively negate the positive outcomes that AusAID suggests we are attempting to achieve through Australia's aid program. This has adverse ramifications for both the recipient of Australia's aid and Australia itself. Through diverting Australian trade away from Asia and the Pacific, which Marina will discuss, the FTA will undermine the positive outcomes of Australia's aid program in attempting to foster sustainable economic growth and poverty alleviation within the region. This in turn impacts negatively on Australia, whose national interest is best served by a robust regional economy. Thus the proposed US FTA directly contradicts and compromises Australia's regional aid program.

**Ms Carman**—For the hearing today we have prepared a written submission which starts to tie together a whole range of these different areas that we are discussing. What I want to do in the next section of our submission is to look at two further areas where I want to question the idea of national interest. The first is our belief that the current negotiations are being pursued with a particular economic agenda. We have written in the paper that, in general, the Australian and US governments are publicly committed to a policy of 'free trade' which involves the progressive removal of tariffs and government restrictions on trade in goods, services and/or investment. Both governments support the policy prescriptions of minimal state intervention in the market, strict budgetary controls, including on social spending, and the privatisation and corporatisation to supposedly increase competition and efficiency. Our belief is that any multilateral or bilateral negotiations being undertaken at the moment will reflect those particular policy preferences.

Our belief is that the general feeling behind this particular economic policy is that what is good for business is good for the nation and is therefore good for everyone. However, what we are wanting to do here today is reflect what we believe is a growing community concern over those policies, particularly how they impact on things like funding levels to public services, public control over important social policies, prices to what have been renamed consumers and inequity in the services available to the rich and the poor.

It is our belief, given the current policy preferences of the government and its support for the economic agenda that I have just outlined internationally, that it is quite likely that current negotiations or future negotiations will adversely impact on public services. In our paper, we



have used the example of health care, which has come up quite often in a number of different submissions in relation to the possible future impact of both the free trade agreement on the Pharmaceutical Benefits Scheme and the GATS agreement on public health care.

We also believe that there is widespread community concern over the impact of this economic agenda on the Third World. In terms of our discussion here today, the issues that we want to raise is that it is not clear to us how the GATS agreement actually helps development in the Third World—how that actually brings forward and helps the Third World to develop. Within the GATS negotiations themselves, there have been disagreement over the use of emergency safeguard measures and debates between the developed world, who want to make more use of those or have more provision for those, and the developing world. We also believe that there is a lot of concern over the WTO more generally and its role through agreements which impact on development in the Third World, like trade related intellectual property rights and the impact that has had on treatment access, particularly in the case of HIV. We feel that this latter part is relevant to the discussion here today because we think there is a large part of the community that would include a moral concern for development in the Third World in their idea of national interest and that this needs to be reflected in the negotiations undertaken by the Australian government.

The second area where we wanted to question the idea of national interest is in terms of security. What we believe this means is looking at whether the growing economic and security alliance between Australia and the US is actually a positive thing. The immediate question for us is really around what goals and what values this alliance has actually built. Again, I think there are a lot of community concerns about the economic agenda that is contained within this. Also, on the security agenda, you can note the huge amount of opposition—or at least public debate—that occurred around the war in Iraq recently.

In terms of a security and economic alliance, we also believe that the response in the region is something that needs to be very much taken into account and is unlikely to be positive. In general, we believe that trade and security are two separate areas of public policy that do need to be considered separately and debated and discussed and that there is a large amount of community concern about those issues and those two issues being linked in the way that they currently have been in public statements.

That comes back to questions of democracy and the way that these sorts of things are negotiated and decided and what abilities there are for people to input into that process—but not just to input into it, but to actually have some power in the decisions that are actually made. There are a lot of chances for people to say what they think, but I think there are a lot of groups—perhaps including our own—that still feel that the actions that are taken do not necessarily reflect what we believe are very important community concerns. This occurs at three levels. The previous two speakers have touched on some of these already.

The first is the issue of internal democracy within the World Trade Organisation itself. There are a large number of concerns about that and, again, the document that we have tabled on that has a very interesting critique and suggestions for possible reform in that organisation. The second level is on Australia's negotiating stance itself. We think there should be an expansion of consultations and an expansion of the ability to affect decision making at that level. The third is on the negotiation of the free trade agreement itself.

Just to finish up, we have made a number of recommendations in the written paper. I will give you a chance to read them in the context of our paper, but I will just read through them now. Firstly, we believe that the Australian government should cease negotiations for a free trade agreement. We do not believe that the economic gains will in any way be significant and we do not believe that they are worth the likely trade-off of important public policies.

Secondly, we believe that an independent inquiry should be conducted into the potential outcomes of the proposed FTA which incorporates regional, social, cultural and environmental impacts in assessing Australia's national interest. Thirdly, any multilateral negotiations undertaken by the Australian government should specifically promote a policy of differential treatment in favour of developing countries. That comes back to the point that I made earlier about that being an important community concern. A lot of the current multilateral negotiations are not tipped in that direction and in fact often adversely affect developing countries.

Fourthly, all negotiations on the GATS treaty should cease until full, open and transparent negotiations are conducted and all issues raised within the document that we have tabled—that is, the memorandum on the need to improve internal transparency and participation in the WTO—are satisfactorily attended to. Fifthly, the Australian government should specifically renounce a linkage between trade and security in present and future trade negotiations. Sixthly, the Australian government should specifically exempt all public services from any current and future trade negotiations. Lastly, all negotiations should be open to full community consultation and full parliamentary debate and not be matters only for cabinet.

In response to community lobbying, one example is that the initial GATS offer was made public for the first time in April. Our concerns with that is that that initial offer can be changed at any time over the next 18 months of negotiations and there is no specific guarantee of future public discussions. This remains a matter of great concern to us.

**CHAIR**—I have a couple of questions. This issue of transparency, openness, democracy has come up several times. We have asked the ACTU and the Australian Fair Trade and Investment Network, who both raised the issue, to suggest a procedure that might be adopted that they would be happy with that might be adopted and which would provide the sort of transparency, openness and democracy that they are concerned about. Given the emphasis in your submissions on that issue, we should make the same invitation to you. Could you provide us with what you regard as the model for how a nation with a democracy and a Constitution like Australia's should proceed in obtaining authority to commence establishing a mandate, consulting with stakeholders, providing that transparency in the negotiating model and the outcome and how it is decided and concluded—that sort of thing? Would you be in a position to do that?

**Mr Dubrow**—Now?

**CHAIR**—I am not suggesting you should be put on the spot to articulate it immediately. Maybe you could take it as a question on notice and send us a document that sets that out. I would be interested to see what proposal you have, but I am not suggesting that you do not speak to it now, if you want to.

**Mr Dubrow**—I would be interested in getting something like that under way. My idea would be to knock the heads together a bit. I think it would be really positive if the government got

together with industry and/or the civil society groups, community groups, unions and everyone in the one place. I think everyone could learn off each other. It seems to be that certain sectors get access to the government through DFAT, and others just get excluded in the run-around. We heard Patricia Ranald sort of begging for access to DFAT and seeking requests and stuff. It should be open to everybody. I think everybody would learn off each other if the debates very early on came together across the board.

**Senator HOGG**—Have you sought access to DFAT on this?

**Mr Dubrow**—No, not specifically on this; we have just been—

**Senator HOGG**—What about AID/WATCH?

**Mr O'Connor**—No. We are also a member of AFTINET, who have sought access.

**Senator HOGG**—But you have not done it independently?

**Mr O'Connor**—That is correct.

**CHAIR**—Anyway, we are looking at what you would propose for our democracy and our structure. What in your view would be an appropriate model? If you could take that on notice and provide us with a suggestion, we would be interested to see it. That invitation is open to both of you.

**Mr O'Connor**—Certainly.

**CHAIR**—The other question is a bit more on the elevated philosophical plane and is on this issue of consultation and authority for a government to proceed and the question of NGOs and their role in society and the role of an elected parliament and its representatives. I think you, Ms Carman, made the point in your presentation to us about how important it is—I think this was your submission—that civil society have a say over final arrangements or conclusions. How do you balance that argument against the right of an elected parliament to have a final say?

**Ms Carman**—I guess we could have a very long, philosophical discussion about representative democracy and participatory democracy, but it is not particularly what I wanted to go to.

**CHAIR**—We can, but I am just asking you for your view on this subject.

**Ms Carman**—Specifically in terms of this—and this comes back to your initial question about consultation and what that perhaps should look like—given that we actually have a problem with the content of a number of negotiations that are going on at the moment, I do not particularly want to put a blueprint for consultations on the table because, for instance with the FTA, we do not actually want the thing to be negotiated. That is one issue for us.

**CHAIR**—I understand you saying to us that you think this ought not proceed. I presume in addressing a model, there is some sort of commencement question that arises about how an authority is to proceed and what the democratic process is in that. Conceivably, it could be that

the question is posed, 'Let's do X,' but when you seek the authority you find there is a lack of authority and then you do not do X. Therefore, if there were a number of other organisations that felt that way—we just heard from the AMWU, which is another one that does not believe that the US-Australia FTA should proceed—it may be that there would be no authority to proceed at the beginning.

**Ms Carman**—Sure.

**CHAIR**—I am not asking you to relate it to the specific issues under inquiry, because there still remains the larger question that on occasions there will be, I presume, a view that it ought to proceed and that we ought to be in trade negotiations, and then all the other questions follow as to how you then conduct them and what the process should be. I am not wanting to compromise your basic position of opposition—I understand that—but I would be interested to see if, without compromising your position, you had a view about what the proper process might be.

**Ms Carman**—My particular view is that, in general, with those consultations, one aspect that is missed out is community education about what the issues are and open community discussion around that. I think that, by the time people really became aware that this free trade agreement was even on the table or perhaps what social policies were possibly going to be included in that, it had already begun and there had already perhaps been a discussion between George Bush and John Howard about it being concluded by the end of the year. Before any of these negotiations are embarked upon, there is a need for much wider publicity about what the issues are and the potential trade-offs some people might want to make and other people might not want to make and there is a need to have consultations and meetings—to have those sorts of structures in place—so that the community is aware of what is being discussed. Then you need to look at the way these sorts of consultations occurred and look at drawing in much broader community representation. I think that is something that definitely should be looked at.

**CHAIR**—Anyway, I stopped you before you went on to your second point.

**Ms Carman**—That was my second point.

**Mr Dubrow**—I would like to make a comment on that very briefly. I think a really interesting question is the issue of authority and an elected government vis-a-vis a civil society, for example. It is interesting how at the United Nations level they are bringing far more consultation to the civil society level and looking at the elected governments as the main area of authority. But there are also things outside that realm of national governance, especially at the WTO level, that need to be taken into consideration. These goes to labour rights, environmental standards and things like that.

**CHAIR**—But the WTO, when assembled, is the ambassadorial representation of various governments. There are some 160 members of the WTO. Some of those are democracies and some of them are not. Some of them are kingdoms and some of them are dictatorships and they all arrive at their mandates to instruct their ambassadors by a different process. Even among those that are democracies, the quality of the democracy or the form of the democracy may vary or take a different shape. As I think Ms Carman said, you can get into a very deep philosophical debate about where mandates and things like that arise. That is why I concentrated on saying:

given our constitutional structure and the nature of the Australian democracy, what might you think could be the model?

**Mr Dubrow**—You have the one level where you have Prime Minister Howard talks of his mandate for certain things just based on a single election, but the broader concept of democracy—that is, fairness and inclusiveness—would include getting broader public opinion involved with decisions, especially when they go to the core of the cultural, political and economic fabric, as these agreements do.

**Senator MARSHALL**—I do not actually have a question, because I think you made all your points very well. After a couple of days of considering what is in Australia's best interest, I want to thank you for reminding me, in particular, that there is also an obligation for us to consider what is in the best interests of humanity as well with regard to these issues. I thank you for that.

**CHAIR**—As there are no further questions, I thank you for appearing before us today.

**Committee adjourned at 4.23 p.m.**