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

THURSDAY, 2 OCTOBER 2003

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SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Thursday, 2 October 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, Conroy, Coonan, Denman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Hutchins, Knowles, Lees, Lightfoot, Mackay, Mason, McGauran, Murphy, Nettle, Payne, Santoro, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Cook and Marshall

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:
2. the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation
3. Australia's goals and strategy for the negotiations, including the formulation of and response to requests, the transparency of the process and government accountability
4. The GATS negotiations in the context of the 'development' objectives of the Doha Round
5. The impact of the GATS on the provision of, and access to, public services provided by government, such as health, education and water
6. The impact of the GATS on the ability of all levels of government to regulate services and own public assets
7. The issues for Australia in the negotiation of a Free Trade Agreement with the United States of America including but not limited to:

a) the economic, regional, social, cultural, environmental and policy impact of such an agreement

b) Australia's goals and strategy for negotiations including the formulation of our mandate, the transparency of the process and government accountability

c) The impact on the Doha Development Round

WITNESSES

Subcommittee met at 9.05 a.m.

FILIPETTO, Ms Lisa, Assistant Secretary, Services and Intellectual Property Branch, Office of Trade Negotiations, Department of Foreign Affairs and Trade

GOSPER, Mr Bruce, First Assistant Secretary, Office of Trade Negotiations, Department of Foreign Affairs and Trade

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. Today's hearing is open to the public. This could change if the committee decides to take any evidence in private. We will begin by addressing matters related to GATS and move to free trade issues. 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. I welcome the witnesses. I now invite you to make a brief opening statement before the committee embarks on its questions.

Mr Gosper—Thank you very much. I will summarise some of our key perspectives on the GATS negotiations, update the committee on more recent developments and deal with some of the issues that we note have come up in your various hearings, including in state capitals. First of all, I would like to reiterate that we are engaged in the GATS negotiations because of the predicted benefits for our services sector and because these negotiations are part of the Doha Round, which offers widespread benefits to the Australian economy and the global community.

Australia is very well placed to participate in these negotiations, given its open and competitive services regime, which is the result of several decades of reform of the regulatory environment and, indeed, the increased openness of world trade in services. I think it is very true to say that autonomous trade liberalisation and market reform in Australia have outpaced, by a considerable degree, the liberalisation that has taken place in the WTO in this sector. This is particularly relevant given that the GATS serves primarily to enhance trade through the greater transparency, certainty and predictability that it provides—through removing much of the policy space which is not relevant to current regulatory settings.

Our services sector is obviously much more liberal than is reflected in our current GATS schedule, which was developed in the mid-1990s. That in turn gives us considerable negotiating flexibility. We do of course have very substantial interests in the services sector. It will be no surprise to this committee that the services sector, in common with those in most developed countries, accounts for two-thirds of our output and employs four out of every five workers. Importantly, it also now accounts for some 20 per cent of our exports and is, by our reckoning, the fastest growing export sector.

Tourism remains a particularly important export sector, and other important export sectors include education, business services and financial services. Some of these sectors have been growing very strongly over recent years. Half of our exports go to Asia, while the EU, the USA and New Zealand are other major markets. Modelling work that has been undertaken, including

by the Productivity Commission, estimates that there are some substantial gains for Australia from global services trade liberalism, including prospective gains of up to $US2 billion a year. I am sure the committee understands that the level of competition that can be promoted by trade and the services sector involves new technologies, improved management and a better and more cost-effective service to customers.

Our negotiating position remains very much one of trying to gain new commitments in markets and sectors where there are existing and potential significant export interests. That said, determining our negotiating position obviously involves balancing our interests, both offensive and defensive. Our offensive interests include getting a better deal for our exporters; our defensive interests obviously include preserving the right to regulate as well as to fund our public services in particular. We also recognise the special interests of certain services sectors. In referring to this balance of interests, I do not want to imply that these rights are under any serious threat, but it is obviously a factor that is certainly relevant to public interest in these negotiations.

Let me comment briefly on the consultation process, which has been a subject of some comment from the community at your hearings. First of all, I would reiterate that DFAT takes its responsibilities in relation to transparency and accountability very seriously. We welcome the level of public interest as an input to developing our negotiating position or to advising the government on its negotiating position and ensuring that our negotiating position remains firmly grounded in our national interest.

We have held consultations with a variety of stakeholders. We are in regular contact and consultation with 14 Commonwealth departments and agencies. We have met with state and territory governments, including representatives of 25 state departments. We have met a number of times with the Local Government Association and we respond regularly to queries from local governments. We have met with 164 industry associations and businesses. We have met with 80 nongovernment organisations. We have accepted 73 submissions from civil society on the negotiations on the GATS and a further 23 in the lead-up to the Cancun ministerial. We have updated our web site 10 times since July 2002 to reflect ongoing negotiations, with substantive detail on progress in those negotiations. We have 269 subscribers to our services negotiation email service, which is available to anyone who so desires.

DFAT consults these groups at different times, according to the negotiating cycle and what is required at the time. Obviously we consult when we require input on a particular negotiating issue, when we need comment and views on a negotiating position or, more broadly, when we wish to keep stakeholders informed of developments. So our consultations are a mix of formal and informal processes and direct and indirect contact. Our web site is a major point of contact with the public and is updated whenever anything significant happens. We schedule consultation rounds according to the negotiating cycle and what is required at a particular point. For instance, over the last two months we have been consulting industry in order to further prioritise the requests that we will need to make of others. In the lead-up to the submission of our offer in late March, our focus was on consultation with state governments, NGOs and other Commonwealth departments.

It is not possible to agree to every request to meet outside of Canberra, if such a request does not coincide with other business or other planned visits; however, we are always prepared to

meet in Canberra and to provide further information by email or teleconference. I have here a list of consultations that we have undertaken over the recent period that I would be happy to table for the benefit of the committee.

CHAIR—Thank you very much.

Mr Gosper—Let me now turn to some issues of public interest that were raised in the consultations. Firstly, I will address public services; this goes to the question of article 1.3. The scope of the GATS does not extend to services supplied in the exercise of governmental authority. This has been addressed in our submission in some detail. The GATS framework is based therefore on the right of governments to provide, fund and regulate public services. It was not the intention of negotiating parties to infringe on this right. Indeed, since the agreement was adopted in 1994—and I would remind the committee that we now have some nine years of experience of operation of this agreement—no member has chosen to contend these matters in dispute settlement or, to my knowledge, in any other WTO process.

We believe that the GATS provides adequately for the co-existence of publicly and privately provided services even in the same sector. We do not believe that article 1.3(c) derogates from this. Public services are generally provided to pursue social policies. Purposes of provision of public and private services are different, even if they exist side by side. It is also true that there is no prevention of the subcontracting out by local government of services to private suppliers, given that government procurement does not apply to the MFN, national treatment and market access provisions. The GATS does not set standards for public service; that is up to individual governments. There have been no disciplines elaborated on subsidies, and discussions on this are proceeding very slowly. The Australian government has made it very clear that, in looking at any possible disciplines on subsidies, it will have regard to the need to ensure that it can provide subsidies to services provided in the exercise of governmental authority.

With regard to domestic regulation, the GATS does not prevent governments from regulating to achieve social, environmental and other objectives. The general exceptions clause specifically reinforces the government's rights to adopt or enforce measures to protect human, animal and plant life and health; public morals and order; and privacy—and its rights to adopt or enforce measures against fraud and deception. We frame our GATS commitments in accordance with our regulatory environment and not the other way around. This is a very important point I would like to make to the committee: the GATS is not an instrument for deregulation or privatisation. It addresses the terms of trade in services; it does not drive our regulatory agenda. That is a matter of national sovereignty and it is a matter for the individual government to decide.

Currently members are looking at developing disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade. This has to be set against the general exceptions clause, of course, and the government's right to enforce such measures. In elaborating disciplines on domestic regulation, Australia's own regulatory environment is already ahead—by some considerable degree—of what the GATS is trying to achieve. This is therefore an area in which we can make a positive contribution. I note that the necessity test, which was the subject of some comment, would apply not to the necessity of objectives but to the means chosen to meet those objectives. The objectives are a matter for the national government to decide.

Australia's exporters have a strong interest in there being more transparency and predictability in the regulatory environment they face in overseas markets. For this reason, Australia supports rules that add to certainty of process in relation to qualification requirements and procedures, technical standards and licensing requirements. This does not undermine the ability of members to set standards or criteria.

Let me turn to the current state of negotiations. Since DFAT made its submission, the services negotiations have made some modest progress, particularly in the area of market access. Of course, we have to acknowledge that recent events in Cancun will have some impact on the services negotiations. That having been said, service negotiators are meeting in Geneva this week. There are now 38 offers on the table, covering 52 members out of a total membership of 148. We believe that the members that have made offers are responsible for over 70 per cent of the word's trade in services.

We held further negotiating sessions in May and July, and there is, as I have said, one under way now. These sessions consist of two parts: firstly, advancing market access through bilateral and plurilateral meetings, and, secondly, negotiating on the GATS framework, particularly in relation to domestic regulation and rules. Australia has held 22 separate bilateral meetings and will hold a further 12 this current session. Since making our submission, we have also received requests from two more countries—Thailand and Trinidad and Tobago. My understanding is that they largely cover existing areas of request.

The bilateral sessions have focused on clarifying the detail of offers made by others, explaining our own offer and continuing to reinforce the requests Australia has made. In participating in these bilateral negotiating sessions, Australia has not made any commitment to offer more than in its initial offer. That being said, our negotiating partners have pressed us on a range of issues. Our offer has generally been well received, although some negotiating partners have been critical that our offer does not necessarily reflect fully the current openness of our regime. Of course, as part of the negotiating process, we will need to keep under review the extent of our negotiating flexibility.

Let me also add that a number of developing countries—which I also note were a subject of some comment in your hearings—are particularly active in the services negotiation, and it would be a mistake to characterise developing countries as passive observers with the inability to make their voice heard. Of the 38 offers submitted, 22 have been from developing countries. Developing countries' interests tend to focus on the temporary entry of services suppliers and rules issues such as emergency safeguard measures and the subsidy issue. We have held bilateral sessions with a number of countries and they have pursued their interests actively with us. That being said, ensuring greater participation of developing and least developed countries is a priority. A number of countries have raised their need for capacity building, and this is being addressed in various ways by the broader membership and by Australia. In recognition of the special circumstances of four LDCs, the services group agreed in late August on special negotiating modalities for them.

In summary, Australia's involvement in GATS is characterised by extensive consultation domestically; active engagement in each negotiating session, including representation from other departments and agencies; a focus on the core issues of market access; efforts to engage developing countries more extensively; and the primacy of Australia's national interests,

including an appropriate balancing of our external export interests and our defensive interests in respect of our ability to maintain public services and the right to regulate.

CHAIR—Does Ms Filipetto have anything to say, or is that statement made on her behalf also?

Ms Filipetto—That is our statement.

CHAIR—The department has given us a good and comprehensive submission, and I thank it for that. I also thank you for your additional remarks this morning. They have added to the evidence before this committee and rounded it out I think quite well. However, there are some questions and, if I may, I will go to some of those. Firstly, this inquiry has been confronted most of all with the fact that there remains a persistent public anxiety about the GATS negotiations. You have put down a comprehensive statement this morning which, in particular—and this is also true of your submission—goes to the detail of where that anxiety is articulated about particular concerns in GATS. Does the department have a view about whether more can be done or whether there is an adequate opportunity for people in civil society to voice their concerns about GATS? We at the parliamentary level are met with this continuing anxiety, articulated strongly and passionately in some cases, and it remains one of those big issues in public debate that confront trade negotiation. This is a very broad question. Mr Gosper, since we have to contend with that, I thought I might ask you what the department's reflections on this particular issue are.

Mr Gosper—It is very clear that there is a degree of anxiety about the GATS in the public and, more particularly, in non-government organisations and many community groups. I think much of that could be said to reflect broader concerns about the impact of globalisation and the broader set of trade negotiations that are under way now in the WTO—not just in services but in other areas, including free trade agreements. Many of those concerns, including the concerns that have been raised with the committee, are not exclusively focused on the GATS regime itself but nevertheless find some expression in relation to the GATS and even in specific provisions of the GATS, including issues such as the capacity of governments to continue to regulate, to set environmental standards and to set standards for work force education and so forth. These are broader issues than simply GATS.

I think the government has been very conscious of that, and that is why over the last couple of years we have set in place a number of enhanced consultative mechanisms, including establishing a WTO advisory group including the series of consultations, part of which I have outlined here today, undertaking a range of outreach activities including, of course, the publication of material that deals with the general issues of globalisation as they relate to trade and, specifically, the GATS. Partly as a result of this concern we have also taken the unprecedented step of publicising many details of the requests that have been made of Australia and the initial offer that we made. I believe it is also why the government has, again in an unprecedented way, decided to make a clear affirmation that it will as part of these negotiations—not as part of the initial offer but as part of these negotiations—not be making offers in the areas of public health, public education or the ownership of water, precisely because those have been areas of particular public concern in this.

We have done much over the last period to enhance our consultative processes. It is possible that we could enhance them further. We are always looking for new and innovative ways to do that. There are of course natural limits on our ability to do that. After all, we are consulting on a specific task that we are undertaking, and we must ensure we have the time and ability to undertake that task. But we are always looking to enhance our consultation, to understand better the range of concerns that have been expressed and to see whether we can more effectively address them.

Senator MARSHALL—Is that an admission that your consultation process has not been successful?

Mr Gosper—No, it is not. It is an admission that the environment in which these negotiations take place is one that is always evolving, because we have a negotiating process that moves forward. We have an evolving regulatory, economic, national and global framework in which these negotiations take place. The character of public services and regulation in Australia evolves over time, as it does in most developed countries. Nothing is static; everything is dynamic.

Senator MARSHALL—How do you rate the success of the consultation process?

Mr Gosper—I think we have had a fair degree of success in identifying the need for greater consultation and addressing many of the concerns that have been put forward. I think a key part of that has been the government's openness in respect of the requests, in respect of its initial offer and in respect of making clear what it is not prepared to do in these negotiations. I think that has been well received by many—but certainly not all—of the groups that we deal with. I would not for a moment deny that there is still much public anxiety about and interest in these negotiations or that we do not have to continue, and if possible improve and extend, our consultative processes, but I think we have had a degree of impact thus far in the process that we have built over the last couple of years.

Senator MARSHALL—Article 1.3 is a good example. You are very clear in your view of what it means. You have told us about the historical use of that clause and you have demonstrated that. Yet still there is significant concern about what that article means, what it may mean in the future and how it may be interpreted. I think the words of article 1.3 are the cause of that. Why have you not been able to put to bed those concerns if, as you say, there is enough evidence to back your position?

Mr Gosper—The first comment I would make is that, as I said originally, we have now got nine years of experience of this agreement. We know what was intended when it was negotiated and we know how WTO members view the agreement. That is well demonstrated by the fact that it has not been raised as an issue or tackled in any meaningful way—certainly not through dispute settlement or otherwise. The critics of this provision—those who are most concerned about it—do not refer to anything that has actually happened or is happening but to the potential for some implication to arise from this clause. I will not deny that there is ambiguity that can be read into this clause. That is not least because, to be very frank, the character of public services in most modern developed economies—in fact, I would say all—involves both public and privately delivered services. Most of these things exist side by side to some extent now in all

economies—certainly in all developed economies and certainly in our own. So that raises a complexity to it.

The question you have to ask, if there is ambiguity—if you accept that there is some potential to interpret those words differently—is: firstly, is that a real problem at the moment? In other words—and this is only something that can be taken forward between a WTO member government and another WTO member government—is there a real problem that needs to be dealt with? That is the first thing, and all our experience over the last nine years suggests that there is not. Secondly, you would ask: if you were to seek to address this ambiguity, could you easily fix it? It is not at all clear to us that you could easily fix it. You might end up with a perpetuation of an ambiguity or even a worsening of the situation.

Senator MARSHALL—I was going to ask about that. My understanding is that this is not just a concern raised in Australia; this is a concern raised in many other developed countries in particular. I would have thought that there was something driving a requirement to clarify and remove any ambiguity. You are going to explain why it might become more ambiguous, but I would have thought—given what you have told us about the history of its interpretation—that it would have been quite easy to redefine this so that there was no ambiguity, and it meant precisely what you wanted and could only be applied in accordance with the way you say it has been applied until now.

Mr Gosper—The people who are concerned will have to talk about the reasons they are concerned themselves, but I have talked to quite a few of the people who have these concerns and I have looked at the literature. I think that in large part many of those people draw their concerns from broader concerns about the impact of globalisation—and the impact of corporate influence on global rules and trade agreements in particular. Often their experience is related to the multilateral agreement on investment and the sort of context and concerns that that created. They often draw from this broader framework, come back to the GATS, see some issues that are in some way related and worry about the potential for this agreement to become something that opens up a number of areas of the economy in ways that they would not like to see happen. So they are broader concerns; they are not based on anything that has actually happened in the GATS context—in the agreement that was negotiated in the mid-nineties or the way it has been interpreted, applied or implemented in the eight years that it has been in existence.

Senator MARSHALL—Has it been tested?

Mr Gosper—No, it has not been tested. It would only really be tested through a dispute settlement process. There has only been one dispute with respect to the services regime since the GATS came into place. That involves an issue between the US and Mexico on its telecoms regulatory regime, which is still unresolved, as far as I am aware, at this point.

Senator MARSHALL—So, while there is an acceptance that there is some ambiguity there, we really will not know what it means, regardless of how it has been applied up until now, until it has been tested.

Mr Gosper—We know what it means. We are a member government of the WTO, and our view on what it means seems to be shared by other WTO member governments.

Ms Filipetto—Mr Gosper's point about member governments not having this concern is very apt. When this issue was discussed in Geneva, it was really about how we raise the comfort level of our civil societies on this issue rather than about how the membership resolve the issue amongst themselves. So there has not been any suggestion amongst the membership that this is an area where we do not feel absolutely certain about what was the intent and the scope of this agreement but rather it is about how we raise the comfort level of the civil society and people who are concerned about it. There has not been any move to take forward clarification by any member.

Senator MARSHALL—That is why we are now having this discussion about 1.3. It came as a result of the transparency and consultation argument. We introduced it. It comes back to why so many people are still unsatisfied with the ambiguity of this clause, given what you have said. What more can be done? One of my first questions was: has the consultation failed—we have not convinced people that this is not a problem—or has it been partially successful? Can you give me a view on that? If what you say can pass the test of scrutiny, I would have thought it would have alleviated the concerns that have been raised. It has been a common theme through many of the submissions, as you know.

Mr Gosper—Yes, I understand that. We would be very pleased if we could have consultations and everyone agreed with the view that we have been putting forward. I think obviously some have not, and they continue to have these concerns; some have. Some of the groups, including the groups that you have talked with in your hearings have obviously reflected on the explanations we have given and seem willing to accept them.

Senator MARSHALL—AFTINET, for instance, are a broad coalition representing churches, unions and welfare groups. They have certainly expressed in their submission some concerns about the level of consultation. In your verbal submission today, you talked about consulting groups, particularly industry groups, as required. Can you just explain to me the level of consultation that has occurred with public advocacy groups and groups representing civil society around these issues? Again, I should say that AFTINET indicated they were not satisfied. Without putting words in their mouth, the message I took away from them was that they were not satisfied with the level of consultation.

Mr Gosper—I gave some figures about the consultations we have had with NGOs—some 80 NGOs have been consulted—and certainly AFTINET is an important part of those. We have made some additional efforts to involve them in all sorts of processes, in all sorts of ways. For instance, when we hosted the mini ministerial meeting in Sydney last year, we involved a number of NGO representatives in addressing ministers that were attending from overseas. I will ask Ms Filipetto to talk about some of the details of how we engage with AFTINET, but they are clearly one of the major groups with which we engage—including with Miss Ranald—as part of that process. I agree that there is much on which we advise this group that they do not agree with. Clearly they do not accept many of the views and perspectives that we put forward, and we have got an ongoing dialogue with them on those issues.

Senator MARSHALL—But there is a difference between arguing philosophically about trade—whether it is free, fair or whatever word you put on it—and consulting about the facts and what article 1.3 actually means. I understand through consultation you will not agree about

the philosophical aspects of it, but why can there not be agreement about the regulation of government services and about article 1.3 and what it means?

Mr Gosper—On these sorts of issues we clearly have different interpretations. We explain the basis for our interpretation; they do not accept that. But we are reflecting the view of the government, which is a member of the WTO, and it is a view that is common amongst other WTO members about how these things should be interpreted. After all, it is governments that take on the obligations and implement them. We can continue to talk to them about our differing interpretations, and we are quite happy to continue to do that, but the reality is that we have obviously not been successful in explaining, at least to AFTINET's satisfaction, how these matters should be interpreted.

I would add an important point in respect of 1.3. I noticed during your hearings that on a number of occasions some references were quoted from a WTO secretariat statement or document of some sort—I have not seen the document myself. It referred to article 1.3 and the coexistence of public and private sectors. I point out that the documents that have been produced by, for instance, the WTO secretariat or the OECD are relevant, but it is the members who actually decide on the nature of the obligation they have taken up and how it should be implemented. Indeed, both the WTO and OECD have made public documents which I think make it very clear that our interpretation of 1.3 is quite a sustainable one. But the quote that has been referred to in some of your hearings refers at the end to scheduled sectors.

This is one point I do want to emphasise: the GATS has great flexibility in how it is applied. When it comes to government services, this flexibility is very relevant. We acknowledge concerns about ambiguity. This is one reason why we have made it very clear in respect of public education, public health and ownership of water that we will not be making any commitments. Of course, we have also made it clear that where we have made commitments in respect of the private provision of services—for instance, in the area of education—we have not bound any commitments in respect of mode 3, commercial presence for national treatment. This is precisely so that we can ensure there is no question about our ability to maintain the appropriate level of subsidies to public providers of particular services. It is also true when we refer to subsidies—and subsidies are at the bottom of differences in 1.3—that the definition of 'subsidies' is something that is not yet clarified as they apply to our services. That is part of the ongoing negotiating process. As I said in my opening statement, it is proceeding at an extremely slow pace.

CHAIR—I will continue with some points in relation to the discussion you have been having with Senator Marshall. I do so by firstly reflecting on or considering what the role of this inquiry has been. When the Senate conferred the terms of reference on this committee to inquire into these issues, it asked us to inquire into something that effectively has not yet taken place—that is, what the GATS agreement or the Australia-US free trade agreement will be. As a consequence, we have invited and received a lot of public submissions, where stakeholders—using that term in the broadest sense—have put forward their concerns or their wish lists of objectives. In a way, this part of our inquiry has been a parliamentary consultation with the community about the issues of these negotiations—though I do not think it has been as comprehensive as the one the department has done, because we have not received as many submissions as you did.

I think there has been a great deal of appreciation expressed to the Senate about the creation of a forum in which those views could be publicly aired, and there is considerable value in, if nothing else, having those views publicly aired so that there is an articulation of precisely what the anxieties and concerns are. That creates the basis for a sensible public debate about the issues. If they remained amorphous, we would not be able to have a more focused debate, and that has been a useful process. In taking evidence from you today and noting your submission, we are, if you like, hearing the government reply to these concerns in that public debate and, by proxy, per medium of this committee, the reply to some of the anxieties that have been raised. I will come back in a minute to all those questions you raised under 1.3(c) about disciplines on subsidies and all those other issues—the necessity test and so forth.

In a way, I think you can fairly say that to this point the inquiry has been a useful medium by which public and departmental views can be put on the record so that there is a forum for this debate. But the thought occurs to me: why is it necessary for the Senate to do that? Do you think there is or there would be some justification—and, if you are not in a position to answer this question, is it something you might want to give consideration to and come back and provide an answer to—for the department, leading into negotiations such as this, to hold public forums in which those interest groups can come forward and do what they have done for us directly for you and receive answers directly from you as a basis for shaping the debate?

Mr Gosper—We have done that on a number of occasions. We have travelled to state capitals. We have invited community groups, NGOs, state governments and industry groups to participate in public hearings. We certainly did that prior to and after Doha in quite a few state capitals. Many of those meetings were quite feisty affairs and not necessarily focused simply on the GATS or the technical issues. But we have on occasions done precisely that, and we are open to doing it if there is a specific demand and if we can manage it within all the other work.

CHAIR—I am pleased to hear that you have done it, but it has not come under public notice, at least as far as I can see. I can understand why they would be feisty affairs, because in a way they are an invitation for people to come forward and say whatever they think about globalisation. Trade seems to be the pointy end of that debate, so you would attract that type of criticism or commentary, which is fair enough in its own way, but it is not the purpose of those consultations.

You have also emphasised this morning that there is a lot of anxiety about what might happen. The committee is also in this position with the Australia-US free trade agreement: what is the potential outcome? People are trying to second guess conclusions and put on the record their anxieties and what their concerns would be if it were to go in a particular way. That is all understandable, but we do not have any conclusion at this point, so we cannot answer those concerns by resorting directly to the conclusion and how one should interpret that. However, I think that has raised in the committee's mind the issue of what the process here is and what parliamentary accountability is.

Since you are familiar with the proceedings of this inquiry and in any case have heard me at some length in estimates processes over the last several years, you know that this is an issue that we are turning our minds to. You will be mindful of the fact that in the Senate in the last fortnight's sitting there were three notices of motion which proposed calling on the Senate to decide that the proceedings or the outcome of the Australia-US free trade agreement, of GATS

and of other issues go to a Senate vote—that is, calling on the government to report to the Senate and have the Senate vote yes or no on whether it accepts those outcomes. You would be mindful of the fact that we, speaking on behalf of the opposition, voted those propositions down—not because we were not interested in the propositions that were being advanced but because we have not formed a final view as to whether that step should be taken. We think it is a fair question to raise, but we do not think it is appropriate for the Senate to be rushed into making a decision. We think this committee should look at that matter and give some consideration to it. I do not propose to ask you about it, although if you do want to make some comments on it please do so. The reason I am not going to ask you directly is that I think it is a matter of government policy and probably something that you are not in a position to answer. Am I reading this right, or is there some commentary you could make on this?

Mr Gosper—No, I think you are correct. It is a matter on which it would be inappropriate for a public servant to comment. But I can say that we do acknowledge the wide community and parliamentary interest in the GATS issue, and we certainly welcome the inquiry you are undertaking. It is an important part of the overall consultative process and an important part of ensuring that community concerns are given the proper light and consideration. We are confident that those concerns can be properly addressed, including through this sort of process.

CHAIR—Thank you for that. Going to the process argument, you have given us an impressive list of consultations that the department has undertaken. Addressing this question of the so-called anxieties out there, one of the clear anxieties from the evidence is that, while people have a sense of the views they have offered being taken away and synthesised in some form, leading to an approach that will be taken by the Australian government, they are not sure what the feedback to them is about their points of view or how their points of view are being weighed in the mix of other points of view that lead to the formation of government action. It is not so much that they were not asked up front; it is more a question of what happens to their views once offered. Do you have any comment about that?

Mr Gosper—I have heard about that frustration in the past, including from individuals. We do seek to provide feedback, either on the occasion of the consultation or later, on whether points that have been made or issues that have been raised are ones on which we can agree or ones we can respond further to at an appropriate time. We do that wherever possible. We remain open and continue consultation with many groups and individuals. Of course, one of the main areas of feedback, which I would hope many community groups would understand, is what the government actually does. It was as a result of these community concerns that arose in consultations that we decided to publish our initial offer. We are one of only four governments in the world that have done that.

It was as a result of these community consultations that we released the degree of detail that we have to the requests that have been made of us. I know of very few governments that have actually provided anywhere near that level of material to requests made of them. It was as a result of concerns raised in these consultations that the government explicitly referred to its position on public education, public health and the ownership of water. That is all feedback. The fact that we have an ongoing consultation process and the fact that we participate in and welcome inquiries like this is all feedback; it is all recognition that we understand—whatever our agreement on the basis of the concerns that have been raised—that there is genuine anxiety and there are genuine concerns that must be addressed as part of the overall process.

CHAIR—There is another question that has been raised with us and it will be one that you will be familiar with as well. If I can put it in a colloquial form, it comes like this: 'They came along; they asked us for our views. We gave our views. We have read now what has been released so we know where they're going and what the position is. But the $64,000 question relates to what at the end of this process will be agreed and whether we'll have an opportunity to express a view as to whether what is agreed is acceptable or not.' To put it as some of our witnesses as argued it: 'Will we be ambushed with a pre-baked conclusion which we won't be able to do anything about? There will be a semblance of public consultation but'—to mix the metaphor—'the carpet will be ripped from under us and it will be a fait accompli.' Have you any comment about that?

Mr Gosper—Only to say that I think it is the government's intention that the openness of the consultation period will continue through the course of the negotiations—and that includes in relation to further offers that are made, if they are made during the course of the negotiations—and the final agreed positions.

CHAIR—What is the government's intention? When it is satisfied at negotiating level that a deal exists and it wants to close the deal, what is the government's intention? Before it signifies that Australia has agreed but after it thinks it has the deal, what process of consultation will it undertake?

Mr Gosper—I wish we were close enough to say that that was a live issue that we were going to have to address in the next few months. But in reality it might be some time in the future. The position that we take in these negotiations will be one that is incrementally developed—and thus the consultation with interested groups, whether they are state governments or industry associations or other community groups. As I have said, we will continue the same sort of consultation process that we have had to date. But I would be speculating if I talked about the nature of the concluding part of the negotiations and how that would be handled. I would only say in the broad that our intention is to keep the same sort of consultation process going.

CHAIR—I can understand 100 per cent why you make that response. I want to put to you, though, in terms of what has come before us, why that question ought to be considered more deeply by the government. From your perspective, you are working your way through this thing. At this stage it is not clear where the end point may be. Thus you say to us—understandably—that you have not turned your mind yet to a public statement of what the consultations will be when you get to the end point. But the anxiety and concern we have talked about is driven by the potential of what might be involved. A lot of this concern to some extent would be—it will not be completely; it may never be completely—assuaged by knowledge that the government is on the record making a commitment to consultation at the end.

Mr Gosper—We will certainly reflect on that. I have told you what the general intention of the government is with respect to consultation. We also have to acknowledge this is a negotiation and governments that engage with other governments in negotiation like to keep for themselves the requisite flexibility to do deals. It would be disingenuous of me to acknowledge otherwise.

But I think we have gone a long way in the general principles that we have set out for these negotiations, the general principles that will guide the government—that is, the way in which we will treat government services in certain sectors and the way in which we will, wherever

possible, maintain a position that reflects the degree of openness that we have in our current regulatory regime. I am sure you understand that by that I mean the water that is in the tariff—to take an industrials example to services.

CHAIR—You have made this reference in your submission.

Mr Gosper—All governments want, to the maximum degree possible, to constrain themselves to bindings that are fully consistent with current regulatory settings—as we have in our initial offer. All those sorts of principles have been set out and I am sure will continue to guide the government's involvement in these negotiations.

CHAIR—I understand all that, Mr Gosper, but it causes me some anxiety. I am not implying in this question that the government should not have the requisite flexibility; nor am I implying anything either way about what the outcome should ideally consist of and whether I have a view about whether it is a good deal or a bad deal. All I am going to is, to use a phrase that Ms Filipetto used a moment ago, the question of raising the comfort level for NGOs. I think the comfort level would be raised significantly if we had some sort of assurance that people would have a reasonable opportunity to express their views about the final package, whatever it was. That is not to interfere with the flexibility that you need to negotiate. That is not to tell governments with whom you negotiate that you do not have flexibility or that you are limited in any way. It is a commitment to transparency at the most critical point of the negotiations.

I am motivated in raising this by the belief that nowadays governments are to some extent limited in trade negotiations by public suspicion in some sections of the community about their role and purpose and about the impact of what they agree on. While I would differ from that argument to a large extent, I think that one of the reasons why issues that you referred to earlier, such as the multilateral agreement on investment, were regarded with huge public disfavour—and from a professional point of view I would have some differences on the package as well—was that there was a sort of secrecy element. There was a wall between what was going on in those discussions and what the public could learn or know. There are a few people out there—and I do not suggest that there are many; nor do I suggest that it is necessarily anyone who has come before us in these hearings—who are committed to opposing this no matter what. For them, the question of confidentiality or secrecy is a major weapon with which to argue that something bad is happening by stealth, without public accountability. In a democracy, that is a pretty powerful argument. That is why I think that if at the end of this process there is some way in which people can be given a chance to satisfy themselves as to what is in fact the deal and to express a view about that our lives, at least at the legislative end of all this, will be made much more comfortable.

Mr Gosper—I understand, Senator. I would have to take that on notice to a degree. I think it would be the government's intention to maintain as open and inclusive a consultative process throughout the negotiations, including at that important final phase. Again, I make the point that these negotiations will proceed incrementally and we will provide detail all the way through that process. I do not foresee that at the end of the day we will come to some dramatic change in the environment that is unknown to anyone. It is not a walk off a cliff or anything like that. It is a scheduled, planned incremental process that will lead us to a result, and it will be the subject of as much public consultation as we can possibly undertake in the circumstances.

CHAIR—I accept what you say but, just to return to the point, some of our interlocutors would say: 'What Mr Gosper said was that he believes that this will be the case. That is not a guarantee it will be the case, and we would want it to be the case.' That is what they will say to us, and I think that will have some resonance in this committee.

Mr Gosper—Then we will have to think a little bit more about how we give people the assurance that I have given you here today that we are going to maintain this process through all phases.

CHAIR—I understand that you are not in a position to do that today. That is obviously at the end of the decision-making process a decision for the government, not for the department.

Mr Gosper—Indeed.

CHAIR—When you referred in your opening remarks to the government's position on the necessity test I made a note that I would ask you to elaborate on that in a little more detail. Before I do, when you were talking about article 1.3(c) you were very careful in your opening remarks to give us a set of reassurances about a number of specific issues that have been raised in the public hearings that we have had. I take all of them on board. In a way this is a hard question, but I am bound to ask it because there are some members of this committee that are not here and, if they were here, I am sure they would ask it: those assurances that you have given us on each of those issues, particularly the assurances about public sector activity and national sovereignty on environment and health issues—the list of assurances that you gave us at the beginning—are ones we can count on. They have been ticked off by the government. That is the government policy.

Mr Gosper—Perhaps I could refer you to Mr Vaile's statement on 1 April this year, in which he said:

> The Government is committed to upholding the right of WTO members to regulate and to fund public services, and will not support any new rules or make any offers which cast doubt on that outcome.
>
> Australia will not be making any offers in the areas of public health, public education or the ownership of water. The Government will ensure that the outcomes of negotiations will not impair Australia's ability to deliver fundamental policy objectives in relation to social and cultural goals and to allow for screening of foreign investment proposals.
>
> As the negotiations progress, we will continue to consult with stakeholders and to provide all information that we can, consistent with WTO and commercial confidentiality and without undermining the effectiveness of Australia's negotiating effort.

That was in conjunction with the release of our initial offer. Those assurances of the sort that I referred to are very much on the public record on the part of the minister.

Ms Filipetto—The exceptions referred to by Mr Gosper earlier in relation to things like health are embedded in the GATS in article XIV under the general exceptions provisions—in fact they were not all listed; it is a substantial list—and article XIV bis, which refers to the security exceptions. So that is very well grounded in the GATS. Those exceptions have legal force.

CHAIR—I am pursuing this on the basis of some of the members of this committee who are not here and who I am sure are interested in this. What you are saying is that, in the negotiations, with the way the GATS is structured and with the assurances that the minister has given on behalf of the government, we would not expect any outcome that transgresses those principles?

Mr Gosper—We are saying that our understanding and the understanding of other WTO members on these issues, as set out in the GATS agreement, is very clear. But, because we understand that others nevertheless have concerns, we have made explicit statements that confirm not only that we interpret the agreement this way but that this is certainly how we will apply it.

CHAIR—Obviously, therefore, it follows that if something different from that occurred the Senate would be in a position where it would justifiably be capable of taking another view. I am making a general statement.

Mr Gosper—I am not sure what the statement is.

CHAIR—If, for example, the GATS agreement came back requiring legislation before the Senate on public health—which is outside of the assurances that you have given us now—then the Senate would be justified in saying, 'This is not what we were led to believe the purpose of this was, and we will strike that legislation down.'

Mr Gosper—There is a limit to what I can say I about such a scenario. What I have given you is the government's interpretation and undertaking on how it would interpret the agreement and, indeed, how it will act in these negotiations.

CHAIR—I am saying that we therefore accept all of that, and any unfair surprises outside of that—which I do not anticipate—would open up the argument in the Senate as to whether the commitments had not been adhered to.

Mr Gosper—I do not envisage at all that the government would wish to depart in any way from its interpretation of the agreement or the undertakings it has given in relation to the application of the agreement.

CHAIR—Can you give us a more detailed commentary on the necessity test?

Mr Gosper—I will ask Ms Filipetto to talk on that in detail, but I notice that this did come up in the context of comments by Ted Murphy, in particular, from the National Tertiary Education Union. Ted, by the way, has recently been appointed as a member of the minister's WTO Advisory Group, so in that capacity he will be able to provide specific advice to the minister on those sorts of issues. That is another indication of the sorts of consultative mechanisms that this government has put in place.

Senator MARSHALL—Before you go on, can you explain how that group has come about? How did Mr Murphy's appointment come about, and whom does he represent?

Mr Gosper—The WTO Advisory Group was established by the government early last year, as I recall. It exists in addition to the Trade Policy Advisory Council that advises the minister. Its

objective is explicitly to advise on issues relating to the WTO agenda. Participation is at the minister's invitation. It includes a range of industry people, academic people, a representative from the Australian Conservation Foundation and a representative from the union movement—in this case, Ted Murphy. We can provide the membership list to you. There are about a dozen people. The member meets with them several times a year. We provide information to them on the state of play in the negotiations.

Senator MARSHALL—What level of information? Is it all the available information?

Mr Gosper—I will just come back to your question. They are invited to accompany the minister to WTO ministerial meetings. A number of them took the opportunity to travel to Doha and, more recently, to Cancun. I think we had eight and seven members respectively that came to those two meetings. During the course of those negotiating processes, they are closely involved daily, if not hourly, in briefings with the minister and senior officials on what is happening in the negotiating rooms, what Australia's objectives are and how we are pursuing those objectives. They do not get all the information. There is a certain amount of information that either is too detailed or does not need to be presented in full detail for the purposes of the negotiations. But we do keep them advised of the state of play of negotiations and, of course, answer any questions or address any issues that they bring up as part of the negotiating process.

Senator MARSHALL—Have any members of that group indicated that they are dissatisfied with the level of information that they are provided with?

Mr Gosper—Not that I am aware of.

Ms Filipetto—Before responding directly to your question, Chair, I would like to make a few general comments about what we are negotiating in Geneva. They relate to this issue of public concern about whether we sign on to the GATS. We have signed on. The GATS agreement stands as it is. There are very limited areas of the framework of that agreement that are under discussion. As you know, those areas are limited to rules issues—the government procurement subsidies and emergency safeguard measures—and domestic regulation. Those discussions are moving very slowly. There are many differing views and a lack of consensus, so we expect the discussions in those areas to continue to move slowly. But there is certainly no negotiation on the articles for areas such as general exceptions, which we discussed earlier, security exceptions and public services.

As you would probably know from your experience, changing an agreement is a bit like changing the Constitution—it is very difficult, and people do so reluctantly, because of the balance of interests that had to be taken into account when the agreement was originally formulated. So, as Mr Gosper said, we would not expect the walking over the cliff issue of substantive changes in this agreement. I think what is more interesting is the fact that we are negotiating the schedules of commitments, and that is really the market access issue that remains the core of these negotiations for us.

In relation to the necessity test, it is, as Mr Gosper said, not about the primacy of a government to establish its policies but really about the implementation of those policies to ensure that there is more of a predictability and certainty about the process than the outcome. I think that some people are concerned that it presupposes a certain outcome, but it is really more

about how the process is implemented. That is the main feature of the necessity test. As we discussed earlier, there has been no testing of any of the GATS except in relation to certain issues raised in Mexico Telecom's case.

CHAIR—Do I interpret comments in your opening remarks to mean that, irrespective of the fate of the Doha Round, it is possible to see services reaching a conclusion separately?

Mr Gosper—There is certainly a very positive degree of engagement amongst many members on the services sector, and there is a degree of support from industry groups globally in the negotiations. It is certainly the least controversial part of the market access negotiations—and probably one of the least controversial parts of the overall Doha negotiations. That is evidenced by the fact that post Cancun the services group met—they met last week and will meet this week—whereas processes for a number of other negotiating groups have been suspended to allow a broader period of reflection on the way ahead for the negotiations. When we went to Cancun we did not expect any issue to confront us on services. It is simply something that members are dealing with in a way that does not really create any controversy for any particular member at this point in the negotiations. Whether you could translate that into an expectation of an outcome notwithstanding the conclusion of the round—after all, this is part of the single undertaking at this point—is more difficult to say. If the rest of the round were to fall away, my expectation would be that the services negotiating group would continue to meet and continue its work, but it is very hard to see a conclusion of that work absent a conclusion of the broader negotiating effort.

CHAIR—Can you give us an analysis of what happened to the broader round at Cancun and what the outlook is?

Mr Gosper—Yes, I am happy to do that, because it is certainly relevant to some of the broader context of your hearing. I will talk a bit about actual events, before we discuss some of the underlying forces that led to those events. The meeting broke down on the last day, when it became clear that there was no outcome available on the cluster of issues described as the Singapore issues—trade and competition, trade and investment, transparency in government procurement and trade facilitation. This was largely a result of a disagreement between the demanders, and those were principally the EU, Japan and Korea—but we have interests in a number of these issues—and those who were opposed to negotiations under any conditions, and those were principally the African Union and the ACP countries, the least developed countries.

The process that was engaged in in Cancun at that time was one that involved an intensive discussion on the last day. The chair, Dr Derbez of Mexico, made several attempts to bring the key opponents on this issue together—unsuccessfully. So when this intensive consultative process ended with disagreement on the Singapore issues, the chair decided that essentially there was no basis to continue the intensive consultative process on the remaining key issues—namely agriculture and industrial tariffs—because essentially the overall balance of the package had been so diminished that progress on other issues was not possible. In other words, there was an estimation that further flexibility in areas such as agriculture would be very difficult to attain when the EU did not have a good part of its own negotiating agenda available. So he decided to conclude the meeting at that point, prior to getting into the final discussions on agriculture and industrial products. Of course, these final intensive processes were on the basis of a text that he as chair had produced on 13 September. That advanced in a number of important respects the

texts from Geneva that had been presented to ministers. Australia's own view on the text was that it had some serious deficiencies.

CHAIR—This is the chairman's text?

Mr Gosper—Yes, the Derbez text. It had some serious deficiencies, particularly in regard to industry and agriculture, that would need to be the subject of considerable improvement before it was an acceptable text. But we are of the view that, if engagement had been made on those particular issues, there may have been some opportunity to reach some acceptable resolution. In any event, that opportunity was not available because of the way the meeting deadlocked on these Singapore issues and the approach that was taken by the opponents on these particular issues. In concluding the meeting, Derbez asked ministers to agree that we would all capture the work that had thus far been done in the negotiations and that senior officials would meet in Geneva no later than 15 December to continue the work that had been undertaken in the negotiations.

From Australia's vantage point, this is a disappointment because we thought there was some opportunity to produce a satisfactory text that would deliver a range of important outcomes for us. Nevertheless, this is the outcome. Our position at the moment is one that is very much focused on encouraging early re-engagement and restoring momentum. We are focused on doing this by seeking the agreement of all members that the Derbez text, as presented at the Cancun meeting, represents a basis to continue the work of the negotiations. We hope that if other members can agree to this we can use processes over the next few months to advance the notion of a framework that would enable us to move the negotiations ahead on schedule. Whether we will be able to do this or not is very difficult to say.

Certainly our disappointment is shared for varying reasons by many other countries. I think it is fair to say that the EU and the US both feel deeply disappointed and discouraged by the failure at Cancun for various reasons. Many of the African Union and ACP countries seem relieved that they do not have to negotiate on the Singapore issues or seem relieved to be out of a framework in which they would need to consider these issues. Many others are of the view that it would have been very difficult to get an acceptable position on agriculture as part of these negotiations. Perhaps we therefore need to have some more time and energy built into the negotiating process, to deliver those sorts of outcomes.

It will be very difficult for us over the period ahead to quickly restore momentum but we are certainly engaged in that and we are making representations to that effect in many capitals around the globe at the moment, by talking to the major players, talking to key regional players and talking to our Cairns Group colleagues about how we can best move past Cancun and move the round forward.

CHAIR—You have said that the chairman called on the conference to capture what progress had been made—that is, to freeze the outcome at that point so that no other progress is lost. Was that agreed?

Mr Gosper—It was accepted by ministers, but how that is interpreted—whether it is interpreted as meaning that all members accept that the Derbez text is a basis for negotiation or as meaning that members simply agree that all the work that has been put forward either by

negotiating groups or by individual members as contributions to that process is still there and is still relevant to the negotiations—is not clear. Our view is that all the work that has been done thus far by negotiating groups or individual members is a relevant contribution, but the key is to ensure that we have agreement that the Derbez text itself, which represents the contribution of all those other contributions, is a basis for negotiations and something on which members can agree to work to make the necessary improvements.

CHAIR—I want to be careful about this. Is it the Derbez text that you are talking about?

Mr Gosper—Yes, that is right.

CHAIR—What is being suggested is that that text be accepted as the basis for the next tier of negotiations—and the progress made on the basis of that text?

Mr Gosper—We would be saying that the negotiations from here should proceed on the basis of the Derbez text. We are not saying that the text is acceptable. We are making it quite clear that it has some serious deficiencies that need to be addressed. But, after all, if we are to move forward we have to move forward on the basis of some negotiating document—some paper—that brings together in some format the key issues on which you might reasonably expect that consensus could be built. For us and for many members—whether it is all members I am not quite sure—that document is the Derbez text.

CHAIR—Some of the commentary has been that at the eleventh hour the EU made concessions on the Singapore issues that were quite dramatic. That might be press hyperbole, but that was the nature of the commentary. It certainly seemed a big change from the EU's previous position on the Singapore issues. Is that concession by the EU on the Singapore issues captured now?

Mr Gosper—That is very unclear. During the last day of the intensive consultative process—and we are talking about a span of some five hours—Pascal Lamy offered to take two of the Singapore issues off the negotiating table and, indeed, out of the WTO. On that occasion he was not specific about which two issues he was referring to, although most members and most EU commentary since have interpreted that to mean the issues of competition and of investment. Whether that position is still available is unclear to us. Indeed, we are asking the European Commission that question now.

Some public statements that have been made by the European Commission indicate, for instance, that they may wish to take the view that, as they made this offer and it was not accepted, the offer was relevant to the occasion. They also suggest that in any event before the EU would agree to take them off the negotiating table they would need to be satisfied about some alternative process to address these issues. Whether that is through a plurilateral agreement, a Tokyo code type approach to some of these agreements or what is very unclear at this point. So the EU's position is still not clarified and there are other countries, principally Japan and Korea, who are also among the original and most active demanders on these issues, and no doubt they will have particular interests.

So at this point I can only refer to what happened in Cancun. We are seeking clarification from the EU on what its position is at this point. I am not sure that that clarification will emerge easily.

The EU, or at least the commission, and Pascal Lamy have made it clear that they need a period of internal reflection about EU trade policy and immediate objectives over the immediate period ahead. How soon we will get those answers is not yet clear.

CHAIR—So with a nod of the head everyone agreed to capture the outcome, but then no-one is quite sure precisely what that outcome is?

Mr Gosper—With respect to those Singapore issues, yes.

CHAIR—Just with respect to those? We are precise about all the other issues?

Mr Gosper—There was nothing else that was the subject of that sort of agreement to take issues off the table as part of the final conference process.

CHAIR—There has been media commentary about where countries might have gone on agriculture, had progress been possible at Cancun. We are not talking about any change in the formal negotiating position on agriculture. There may have been intimations but nothing is on the table: is that right?

Mr Gosper—We have a text. The Derbez text includes an annex that sets out the detail of how the three pillars of agriculture would be developed as part of the negotiations. Of course there is debate about specific provisions in that text. Some countries, like Australia for instance, wanted a much stronger commitment to an end date for the elimination of export subsidies, or more strengthened provisions in relation to market access for developing countries and so forth. There are all those issues to be addressed as part of the ongoing negotiation. But nothing with respect to the overall Derbez text has been taken off the table, so to speak.

CHAIR—Does the Doha deadline remain as a commitment?

Mr Gosper—It remains as the formal objective of members. To be realistic, we have to acknowledge that, unless we can use the next two or three months to capture the work, including the Derbez text, and agree a framework, it is going to be very difficult to meet that deadline. I cannot but be realistic in this sort of scenario. We want to do our best to see if we can establish an environment in which we can meet that deadline. Whether we will be able to do that is very uncertain. As I have said, we are yet to see a clear signal from the EU or the US about their intentions over the immediate period, and we do not know whether some developing countries, particularly the African Union and the ACP countries, are prepared to come back to the negotiating table either.

CHAIR—So the deadline formally remains, but there is some doubt about it—is that correct?

Mr Gosper—Realistically, I cannot say anything about that.

CHAIR—Given the current developments, when might we know what the new negotiating framework agreed between the parties will be?

Mr Gosper—We should know by mid-December, at this meeting. The senior officials meeting will coincide with the general council meeting of the WTO. I think that will be the final

indication of whether we can, at this point in the negotiations, establish a framework for the negotiations and whether that framework would be based on the Derbez text. So that is the answer to that part of the question. Absent that sort of progress, it is very difficult to answer your question. It will obviously take some time. If we cannot capture the current text or move this process forward over the next few months, it will become more difficult to move it forward because, as you understand, there are various political cycles which always impact on these sorts of negotiations. Many people understand that, of course, the US presidential election will make things very difficult towards the end of next year. There is also a changeover in the commission—Pascal Lamy's term will end and so forth. So there is quite a bit of uncertainty, but the next two or three months will be critical. Certainly, the mid-December meeting will be quite important.

CHAIR—The next critical meeting is the December one, in which, hopefully, if things go well, we will have an idea about what the framework will be to resurrect and save the round from there on?

Mr Gosper—That is the scheduled meeting, but, of course, there will be lots of informal processes—particularly with the committed, energetic parts of the membership such as Australia—in the intervening period, to help to build consensus and momentum towards that mid-December period.

CHAIR—Immediately after the failure at Cancun there was a lot of speculation, as there always is, or finger pointing, as to who was responsible and what was the cause of it all. Most of that was not constructive, but it was understandable, perhaps, given how much effort and will was committed to getting an outcome at Cancun. Now that there is a bit more distance from that conference and there has been a bit more of a chance to take an objective look at it, free of what the argument might have been, is there any sense anywhere that this was an opportunity missed and more could have been done?

Mr Gosper—I certainly do not want to get drawn into the question of casting blame because, as you said, that is very unproductive and it could be destructive in an environment where we are trying to bring people back to the table.

CHAIR—I am not asking you to blame anyone.

Mr Gosper—Thank you. Interestingly, on the part of some members, including those that had a degree of opposition to the Singapore issues, we are picking up some reflection that they nevertheless regret that there was no opportunity to get to the core issue of agriculture, because for many members, as you know, agriculture is very much the core. So, certainly, on the part of some countries that took particular positions on Singapore issues, some reflection is emerging that they have missed an opportunity to deliver what is after all the core developmental part of the round—that is, freeing up world agricultural markets and lowering industrial tariffs for products like textiles and so forth. Those are really reflections, but they do seem to be emerging on the part of a number of countries—not necessarily amongst many members of the ACP group or the African Union at this point but certainly among some other important players in the system. That reflection is increasingly evident.

CHAIR—Some media commentary has been that the developing countries had a golden opportunity there. The modification of the EU's position on the Singapore issues represented significant progress—and this is the media commentary, as I understand it—and by dismissing that and not wanting to, if you like, accept it and build on it, the developing countries blew the opportunity they had to make this a truly developmental round. I am not asking you to comment on the commentary, but I think that is a fair representation of what is being said in the media. Is there a sense in the developing country sector and in this new group, G21, that perhaps this was an opportunity missed and if they could play their cards again they would play them differently?

Mr Gosper—It is probably a little bit too early to say, although I have already referred to some emerging reflections that include parts of the G21 group. The strong ideological position, which Derbez referred to in his closing statement, was taken more by the ACP and the African Union group than by the G21, although obviously a number of countries, such as South Africa, are members of the G21. The G21 after all is focused on agriculture; that is the purpose of the group. So it was looking for a strong outcome on the agriculture text. I am sure that, whatever its views on whether a satisfactory outcome could have been produced on the basis of the Derbez text, it would have liked the opportunity to do that. I think that is consistent with public comments that have been made in many of the capitals of those countries.

CHAIR—I understand that about 40 per cent of world agricultural trade is, to use the jargon, 'south-south trade'—that is, trade between developing countries. In that context, for example, opening up the Indian market for developing countries would probably be one of the better steps that the WTO could take in order to help developing countries build their economies by playing to their comparative advantages. This may not be a question that you can answer, but the G21 group, as I understand it, is led by India and Brazil. Does India have any proposals to open its economy to agriculture so that other developing countries can take advantage of it to grow their economies?

Mr Gosper—I think, to make the obvious point, the key distinction between the Cairns Group and the G21—and, after all, 12 of the 17 Cairns Group members are also members of the G21—is that the G21 seeks minimal or no commitment on behalf of developing countries in the area of market access. In other words, the G21 has simply taken up the Cairns Group positions on 2½ of the three pillars. It has taken up Cairns Group positions on domestic support and export subsidies, but when it comes to market access, although it agrees with the Cairns Group on developed country commitments, it seeks no or minimal commitments on behalf of developing countries for market access.

That is obviously not a position that all members of the Cairns Group agree with, because we have an established position—an established position, of course, that has been negotiated with and accepted by all the members of the Cairns Group, including Brazil. Nevertheless, the G21 thinks that, notwithstanding the sorts of flexibility and special and differential treatment provisions that the Cairns Group has embedded in its proposal for developing country market access, it should not make commitments in this area until such time as developed countries have made further commitments across all areas of the agriculture negotiations.

As to whether they would subsequently be willing to provide some additional market access, I can only say that in various discussions that we have had with members of the G21, they have made it quite clear that they are willing to do their part at the right point on these sorts of issues.

We would assume, of course, that many members of the G21—including those big developing country agricultural exporters like Brazil and Argentina—have an interest in the terms of their access to other developing country markets and they would see those interests being fulfilled at some point. But exactly when and how is not entirely clear to me.

CHAIR—Since Cancun there have been intimations again in the media that the WTO now, given its size in terms of the number of countries that are in it and the snail's pace—that is the media commentary—at which it proceeds in these negotiations, the WTO as an institution needs reform. Has anyone suggested what the direction of that 'reform' might be?

Mr Gosper—Not explicitly, although there have been some references in recent days by Commissioners Lamy and Fischler to the need to reform decision-making processes in the WTO and to look at the role of the director-general and so forth. We would oppose that at this point. We do not deny that there may be issues to address in the organisation when it comes to these sorts of processes in the future and that they are deserving of some attention, but it would be a mighty distraction at this point in the negotiations to begin to look at decision-making processes in the WTO. For one point, of course, you are asking that a decision-making process on which there is not—

CHAIR—Sorry, I was just distracted in order to be reminded that 20 minutes ago we should have stopped for morning tea.

Mr Gosper—Maybe I should finish. Decision-making processes are the subject of some controversy or difficulty within the WTO, but you are asking such a process to make decisions on decision-making. In other words, once you throw this into the mix, you can be sure that members will be preoccupied and distracted by it for an extended period. When we are trying to in fact put the round back together, put it back on the table and move it forward over the next few months, we do not need that sort of distraction. It is something that could be addressed—and perhaps should be addressed—in its own time and in a way which does not distract us from the core business of the negotiations.

I should also say, of course, that I do not agree that process was the problem in Cancun. The process, which has been changed quite markedly since Seattle and even since Doha, was not the problem. It was not a problem of nontransparency, noninclusiveness or anything like that. The problem was that some members took positions which did not reflect a full consideration of their overall interests in the negotiations.

CHAIR—If it is all the same with you, Mr Gosper, I would like to go through until 11 o'clock before we take morning tea. That will enable me to complete this general set of questions on the round and anticipation of how that might affect the outcome of the GATS. On the discussion about reform of the WTO, you are saying very strongly, from what I have just heard, that we are not in favour of being distracted by that discussion now; the priority for us is to put the round back on and get that moving. Does that mean that we do not have a view about reform at all or that, if we do have one, it is that it is not appropriate in terms of timing?

Mr Gosper—We do not have a well developed view on the necessary reform. We are quite happy to look at proposals for reform of the organisation at some point, but that would be reform that would be consistent with the character of the organisation as we see it, which is one that is

very much focused on trade and technical issues and one that does not simply allow the organisation to wander off into political and ideological position-taking of the sort that we see in some other major international organisations. That is an important perspective we have on this process. There have been proposals that have been made at various times in the past for some sort of enhancement of processes that might, for instance, involve some sort of management committee that would involve various members, perhaps on a rotating basis to some degree, that would help with overall management of the work agenda of the organisation or advice to the overall membership. There have been proposals to in some way enhance or clarify the role of the director-general as part of these negotiations. We are happy enough to talk about all of these things and look at them, but at the right time. Certainly, we have got no certainty on our own part that change is necessary. We have a willingness to look at it and we certainly have no prescription about change or what a changed environment might be.

CHAIR—Just before Cancun I had some informal talks with members of some European governments. Therefore, I cannot say that what I am about to outline is necessarily the view of those governments or, if it was the view of those governments, that it would be the view of the EU. But I raise this question because it has been raised in debate by the Europeans. They were effectively arguing that the WTO is dysfunctional and that there now is, heaven help us, a need to establish within the UN a council to the level of the Security Council to deal with economic and development issues and take control of this whole field. You may not want to comment on that, but do you have any comment on it?

Mr Gosper—Certainly, it is a much more complex environment now. As you know, we started the Uruguay Round with some 80 to 90 members and now we have got 148, with the two that joined at Cancun. So it is a very different environment and, of course, they are all developing countries or least-developed countries in some context, which makes for a much more difficult environment to manage. But the reality is that this is a fairly significant undertaking, in that over some 18 months we have been able to go fairly close to a text that would, with some necessary improvements, go a long way to delivering the Doha mandate, which was a very good mandate.

I think we have to be very careful to understand what went wrong at Cancun. As I have said before, it was not the process. Obviously we need to do much more as individual members and as an organisation, an institution, to deal with some of the concerns and perspectives that parts of the African continent, and ACP countries in particular, deal with, but I am sure they are manageable. I guess this is a very much a personal view, but I shudder at the thought of UN-style processes becoming institutionalised in the WTO. I think you would find that many members would be encouraged then to think that there was even more constraint on the way that the organisation can move forward in areas that are genuinely in the interests of the global economy.

CHAIR—I think the other point is that, at Bretton Woods, when the debate was going on to form the GATT, which led to the WTO, the countries represented in that debate were then the global imperial powers, and none of the developing countries were effectively there. They were spoken for by their imperial leaders. Now what has happened is that, with national liberation movements around the world since the end of the Second World War, there are a lot of other countries that are newly independent and seeking a voice on these issues for themselves. Any process that cut them out of that would deny the basic rationale of Bretton Woods. One of the other views that has come forward since Cancun's collapse is that, in a way—and I am making

an interpretation, so my interpretation is obviously subjective—the tone of it is: 'We always said that the WTO wasn't going to work, and now we can fall back and promote bilateral trade negotiation. Away we go in this new theatre of bilateral trade negotiation.' Is that the government's view?

Mr Gosper—I have not heard anyone say, 'We always said the WTO wasn't going to work, and so now instead we will move back to FTAs.' I have heard some say: 'The WTO is important. We will move it ahead but, in any event, we have a number of other processes engaged and we will move them ahead.' I do not think it is a question of either/or; I think it is a reflection of the fact that a number of governments—and I am referring to many, such as the US and in fact a whole number of governments—are engaged not just in the WTO round but also in FTA negotiations of one sort or another. The US, for instance, is negotiating with its FTAA partners—with the Central American economies—with Australia and probably with others as well. I think the Australian government has been very clear that it sees the multilateral system as the bedrock of its global trade interests. It is still very much the key of our global trade policy interests to support the WTO and to move the Doha Round forward, but we also have other opportunities which we believe complement our interest in the multilateral trade system and in the Doha Round and we will move them forward as well.

CHAIR—In a way, isn't it the case that, because Cancun was not able to proceed, countries that had already laid off their bets with bilateral negotiations feel that that was a sound investment by them and they are now able to bring forward their bilateral negotiations?

Mr Gosper—I think governments who invest in bilateral as well as multilateral agreements make what they can of each of them. From our perspective, the fact that we have an important negotiating agenda with a major trading partner like the US is certainly important to the government; but we do not see how the value of that is affected in any way by the breakdown in Cancun. The government still see the multilateral trade system, as I have said, as the bedrock of their global trading interests. They are very disappointed about, and regretful of, that breakdown and have made very clear they are committed to doing all that they can to move the round forward.

CHAIR—The government have also said that one of the advantages—I think the word 'advantage' was what they used—of bilateral negotiations is that you are able to use them to energise the round and to lever bilateral solutions to thorny or difficult WTO problems into the round, to get conclusion. Is there anywhere you can point to, Mr Gosper, where bilateral negotiations have performed that role in stimulating the round?

Mr Gosper—There is an example from the Uruguay Round where much of the architecture on services was developed in the context of the NAFTA agreement between the US and Canada. That is clearly one example. In most of these RTAs and FTAs, there are many areas in which participants look to go beyond what is possible in the multilateral system—for instance, services and the Singapore issues: trade facilitation, transparency in government, procurement, competition, investment and so forth. There are plenty of examples of the way in which RTAs have been able to deliver best practice—or even testbeds for provisions that have become of broader importance, applicability or demonstration for the multilateral system. I am sure there are plenty of examples too of RTAs that have not done that, but they are not RTAs that meet the standards that Australia has committed itself to.

CHAIR—And FTAs? You have moved the conversation from FTAs to RTAs.

Mr Gosper—I did not mean to confuse the terminology.

CHAIR—You mean both.

Mr Gosper—Yes.

CHAIR—Are there any examples of FTAs or RTAs doing it as far as this round is concerned?

Mr Gosper—We were not particularly pleased with the agreement that Japan and Singapore negotiated which involved liberalisation of just seven per cent of Japan's tariff lines. We did not think that met an appropriate standard.

CHAIR—We will adjourn for morning tea.

Proceedings suspended from 11.03 a.m. to 11.22 a.m.

Senator MARSHALL—I want to confirm that we have in fact made offers in relation to private education.

Mr Gosper—That is right; some private education services were part of the original offers that were made in 1995 as part of the GATS.

Senator MARSHALL—I want to take you through some of the concerns that have been raised with us and get your response on those. The government currently provides subsidies to domestic private education suppliers; we do that through private schools and Bond University, for example. If the private education sector were opened under GATS, would the government be obliged to provide foreign private service suppliers with the same level of subsidy as it currently provides to domestic private service suppliers?

Mr Gosper—No, it would not. That is not required under the GATS agreement as we, and many other members, interpret it. But we have made no limitations in respect of mode 3, which relates to commercial presence, on national treatment. This is precisely to ensure that we address any uncertainties that some people might see in that regard.

Ms Filipetto—That is why we have scheduled it as unbound. Unbound means that there is not a commitment on that mode, and that leaves us 100 per cent flexible to do what we want in relation to the national treatment column, mode 3.

Senator MARSHALL—So whether or not to provide subsidies to any new foreign educational institutions would purely and absolutely be a government policy decision?

Mr Gosper—There is no requirement under the GATS agreement as it exists or certainly under our schedule of commitments that would allow that.

Senator MARSHALL—Does the same apply to private health services?

Mr Gosper—We have made no commitments in respect of private health services other than chiropody and podiatry—

Ms Filipetto—And dental services.

Mr Gosper—Yes. There are no existing commitments.

Senator MARSHALL—I thought there was an issue arising out of dental services, but I cannot recall what it was right now.

Mr Gosper—I can recall someone raising it at some point too, and I cannot recall how we dealt with it. Maybe Ms Filipetto does.

Ms Filipetto—Our understanding is that dental services constitute a relatively open market, and the commitments which we made in 1994 reflect that. I think the question was raised in relation to whether Medicare was to cover dental services. So it was a health insurance issue. Our view is that Medicare is not captured by the GATS.

I would also clarify that our existing commitments on education and private education were also related to a limited part of the private sector market—that being secondary education, higher education and other education—which is actually language training. In the case of both secondary education and higher education, as we said earlier, on national treatment we are unbound and so we have absolute flexibility in relation to the issue of government support.

CHAIR—I have a number of questions which have been submitted to us and, because not all members of the committee can be present, I will quickly go through them. Some of them have been answered in the earlier discussion and so I will not cover those, but there will be a bit of overlap. Firstly, your submission emphasises that there is no requirement for reciprocity in GATS negotiations such that a country needs to make commitments in sectors where it seeks commitments from others. Nevertheless, the submission also states that where a country has strong defensive interests—that is, against liberalisation—it may choose not to make any or to make only limited commitments, whereas when a country has active offensive interests—that is, export or systemic—it may make commitments in order to raise the level of liberalising ambition. The question is: would it then be correct to say that, although there is no requirement for reciprocity in requests and offers, there are nevertheless strategic imperatives driving countries towards reciprocity?

Mr Gosper—It is perfectly true that there is no requirement for reciprocity, nor is there expectation for reciprocity within this sector. I was just looking there for a reference to statements by Pascal Lamy for the EU where he affirmed that there is no strict reciprocity requirement as part of these negotiations. One of the reasons for this is that, where we are dealing with services trade liberalisation, there is the question of the openness of particular regimes as well as the question of the specific commitments that are made through scheduled commitments as part of GATS. I think most members understand that the Australian regime is very open already by international standards—if not as represented in our scheduled commitments then certainly as it is applied across most sectors of the economy. So that is also relevant to the question of reciprocity. So however one is looking at these negotiations there is

no requirement for reciprocity. We do not have to make equivalent concessions in our own market by any degree simply to produce some results in some other market.

CHAIR—In relation to GATS and the Doha development agenda, your submission states:

> ... service negotiators agreed ... to modalities for autonomous liberalisation. This enables WTO members, particularly developing countries, to claim negotiating credit for any reform (autonomous liberalisation) which countries have undertaken. Such credit would be claimed on a bilateral basis.

Could you elaborate on this issue? In particular, what does 'modalities for autonomous liberalisation' mean? In what sense is this agreement positive for developing countries?

Mr Gosper—I will ask Ms Filipetto to deal with this, but we have recently agreed these modalities for autonomous liberalisation, which recognise that countries have made movement over a period of time in liberalising their services regime.

CHAIR—Perhaps you can start, Ms Filipetto, by telling us what the phrase 'modalities for autonomous liberalisation' means in lay talk.

Ms Filipetto—I suppose 'modalities' is a term used quite often in the WTO. It is something like a framework or 'best endeavours' approach to an issue. So, as Mr Gosper said earlier, we have also got modalities for LDCs. We have two sets of modalities now in the services negotiations.

CHAIR—LDCs being 'least developed countries'?

Ms Filipetto—Yes, least developed countries; I apologise. So the phrase 'modalities for autonomous liberalisation' really set out the fact that a number of countries have undertaken autonomous liberalisation and, where they have—and it is not specially for developing countries; it is for all countries—there is not a formal mechanism for cross-checking that modality with the commitments you make. So the modality is not prescriptive; rather, it is indicative of the fact that, in the event that countries have undertaken autonomous liberalisation already, they should not be pressured to undertake even more liberalisation as part of this round, or those requests to undertake more liberalisation should be measured against the fact that they have already undertaken autonomous liberalisation. So in fact those modalities also benefit Australia because they indicate that, where countries such as Australia have already reformed their services sector, they should not necessarily be expected to keep reforming ad infinitum. In respect of developing countries, it is a bit of a reward for those who have unilaterally decided to reform their services sector.

So really the aim of the modalities is to recognise where countries have made that sort of unilateral decision that the pressure they are under may be lessened in the bilateral negotiating process. But it is a best endeavours thing rather than a direct link with the schedules that are provided by members ultimately. Similarly, the modalities for least developed countries are a best endeavours effort to get all members to recognise the special circumstances of least developed countries and what they may or may not be able to offer in this round of negotiations and also a sort of exhortation for other countries to be in a position to offer things of interest to least developed countries.

CHAIR—Some trade theorists argue that free trade is of economic benefit only once national industries or sectors have developed sufficiently strongly that they are able to withstand international competition. They point to the historical relationship between successful industrialisation and protectionism in the US, the UK, France and Japan and so on and suggest that premature liberalisation will leave developing countries permanently disadvantaged in international trade terms. The question is: do you agree with this analysis and if you do not, why don't you?

Mr Gosper—I am not sure that I would agree. For instance, Britain's industrialisation occurred in a world market that was much more open than the one we have now. In any event, obviously many developing countries see that their prospects for economic advancement are constrained by their limited access to world markets, particularly in areas in which they have a comparative advantage. I think they also understand increasingly that in many areas—and services is very pertinent to this, of course—the services regime that they have is very relevant to the competitiveness of their overall economy and the way in which they can engage economic development and export growth. So, just as a general comment, I am not sure that I would agree with the quote that you have given.

CHAIR—For the sake of completeness I will ask all the questions that flow from this. In your view what, if any, are the risks to developing countries of opening different sectors to international competition prematurely?

Mr Gosper—I am not sure that there are any risks of premature opening of sectors, because the GATS gives great flexibility for countries to decide what access they are prepared to offer in particular sectors—an additional flexibility of course for least developed and developing economies in what obligations they take on. But clearly—and this sort of bears in mind the figures I have referred to about developing country participation in these negotiations—developing economies increasingly see benefits themselves from participation in the negotiations.

CHAIR—What technical assistance, if any, does Australia provide to particular developing countries to analyse the likely consequences for them of trade liberalisation in different sectors?

Mr Gosper—We provide very extensive assistance to developing countries, including through the WTO. For instance, we have made successive contributions of $500,000, I recall, to the WTO's global trust fund, which is specifically for the purposes of trade related technical assistance, including of course helping developing countries understand their specific negotiating interests. We have provided half a million dollars to enable a centre to be established in Geneva to assist developing countries who are not otherwise resident in Geneva to better be able to follow events in Geneva and participate in them. We have a $3.4 million WTO related technical assistance program in the Asia-Pacific region. We have a $3 million sanitary and phytosanitary capacity building program.

We have undertaken over the most recent period a number of trade policy outreach initiatives in the region. For instance, we sent a team of trade negotiators to Africa and undertook a week-long intensive course for some 40 trade negotiators from around a dozen African countries, specifically on the range of interests that they have in the WTO negotiations, including areas such as services and intellectual property. We have also had a number of seminars regionally to

discuss particular parts of the WTO negotiating agenda. Those are simply part of the overall framework of the $28 million worth of trade related technical assistance and capacity building activities that we undertook in 2003.

CHAIR—That is money that Australia has spent in capacity building in other countries?

Mr Gosper—That is right. That is part of our aid development program.

Senator MARSHALL—What sorts of tests are applied to determine what category a country falls into? I understand that Singapore is described as a developing country, but I would have thought that is a bit of a—

Mr Gosper—Generally we would not target a country like Singapore, of course. We are interested in the developing countries which obviously have constraints. So within the region we focus on economies like some of the Pacific island countries; some of our South-East Asian neighbours such as Cambodia, Vietnam, Indonesia and so forth; some of the countries in the subcontinent; and in Africa a group of countries from east, south and occasionally west Africa as well. These are economies that are developing economies. They are not economies like Korea or Singapore, which are essentially in a different category and have their own expertise and so forth.

Senator MARSHALL—Are there tests applied for that description, or can you self-label?

Mr Gosper—I would have to get advice from the aid people, but when it comes to the programs that we recommend or that we deliver with the support of AusAID, we clearly are looking at those countries which have very little technical expertise themselves. They are the sorts of countries that I have described—and they are the sorts of countries that we have actually done work with.

Senator MARSHALL—It is relevant to a degree, because during the negotiations on the investor state provisions in the free trade agreement with Singapore it was argued that it was okay to have those provisions because Singapore was a developing country. We had not entered into those sorts of provisions with developed countries before but we had with developing countries, so the label was important in that respect. I am interested to know how that is determined.

Mr Gosper—Official lists of what constitutes a developing economy are developed in the relevant multilateral fora. But I think the relevant point, from the view of the technical assistance that we support or deliver, is that it is those developing countries where there are genuinely issues of technical capacity to participate in the trade agenda. That is not a country like Singapore or Korea; it is the sorts of countries that I have talked about.

Senator MARSHALL—Thank you.

CHAIR—DFAT's submission discusses concerns raised about the definition of government public services and their exclusion from the scope of GATS, especially in areas where there is a mix of public and private sector provision of those services—for example, in education and health. You say on page 30 of your submission that the provision of public services is 'for a

broad set of public policy reasons', that it is not in direct competition with private services in the same sector and:

... no WTO member has argued that public services should be seen to be in direct competition with private services in sectors where they may be a public/private mix.

There are four questions that flow from this. Firstly, what is the body that would resolve a dispute, should it arise in this area?

Mr Gosper—If a dispute were to arise that related to this issue, it would be considered by a panel that would be constructed in accordance with the rules of the dispute settlement understanding and, subject to the decision of that panel, it would be viewed by the WTO appellate body.

CHAIR—Is that body obliged to take into account the current views of WTO members or may it develop its own jurisprudence, based on the text of the agreement?

Mr Gosper—From a legal perspective, the intent of the negotiators, the preambular language and the way an agreement has been interpreted customarily would always be taken into account in that context.

CHAIR—Given the concerns raised about the possible implications of the wording of the text at this point, is there an argument for clarifying the text? For example, does there need to be a clearer definition of public service which explicitly refers to public policy purposes? If not, why would that not be the case?

Mr Gosper—I think I dealt with that earlier—

CHAIR—I think you did too.

Mr Gosper—by saying that whatever views on ambiguity there might be, firstly, one has to ask whether there is a real problem—in other words, a contrary interpretation that is the subject of disagreement amongst members and specifically the subject of a possible dispute—and, secondly, whether in fact a clarifying process would easily remove such ambiguity.

Senator MARSHALL—That comes back to the previous question: does the body that determines that necessarily have to take into account the views of the governments in making that decision or is it entitled to develop its own jurisprudence based on the text of the agreement? Those two questions that have just been asked really have to be taken and answered together.

Mr Gosper—I should clarify that, with respect to a panel—an appellate body—my understanding, and I am not a lawyer, of course, is that the two processes will take that range of considerations into account. That does not discount the possibility that an appellate body might extend or clarify the interpretation of an existing agreement. That is often what is referred to as a jurisprudential role. My experience, however, has been—and I have seen this in a number of cases—that the appellate body is very reluctant to do that. They are very reluctant to unnecessarily address areas of ambiguity that exist in agreements that are not pertinent to the intent of the agreements.

Ms Filipetto—I might add that, as part of the dispute process, the parties to that dispute put in a submission. That submission details their view of why the measure they have taken is consistent with the agreement. The panel considers the submissions before it as well as the legal text of the agreement itself.

Senator MARSHALL—Of course, if both parties agree on the interpretation of the clause, it is not going to go to a dispute process in the first place. It is only where one party does disagree.

Mr Gosper—No, I think Ms Filipetto was just saying that it is not a case of a group of people sitting in a closed room and deciding things themselves; it is in fact a case of meeting with the parties and considering submissions and oral testimony that works through these issues. I think that is the key.

Senator MARSHALL—That has also been one of the criticisms levelled—that this body is purely made of experts in trade and that that is all they are willing to consider in their deliberations on these matters.

Mr Gosper—It is a trade agreement, of course, but in looking, for instance, at the expertise that is used for particular panels you will see that they are composed of people who are not simply trade experts or lawyers. Depending on the nature of the case, they will often include people with specific expertise that is relevant to the issue at hand.

Senator MARSHALL—How is the panel convened?

Mr Gosper—The panel is a subject of discussion between the two parties. We are actually going through a process now where we are looking to establish panels for a couple of other disputes that Australia is involved in. The two parties put forward a series of names. Often after discussion and after looking at the qualifications and expertise of these people, parties will reach agreement on who would be appropriate for the panel. Where agreement cannot be reached after a period of time it is put in the hands of the director-general, who brings forward a list of three names that he believes would be appropriate for the panel. That has regard, of course, to the nature of the dispute, the views that have been expressed by the two participants in the dispute and those sorts of things. The appellate body is a standing body.

CHAIR—What is your response to the argument that in fact there would be very few public services which are not provided at least partially in competition with the private sector and that this provision is likely to be interpreted very narrowly by the WTO?

Mr Gosper—My reaction is that I do not agree with the second part of it. I have already said, I think, that it is a common feature of public services in many developed economies that there is some private delivery of those services, and that is certainly true in Australia. That does not mean, of course, that that private delivery is in competition with the public delivery. The decision to have public delivery of the service is often taken for a broader set of public policy reasons. That is the reason that governments choose to maintain those public services, whether or not there is in addition some private delivery of service.

CHAIR—The committee notes that concerns about globalised free trade are raised at two levels. One, opposition is raised by groups such as unions, and environment and human rights

groups and other NGOs. That opposition relates to the negative impact of free trade on certain domestic sectors, developing countries, the environment and so on. Two, there is disagreement at the level of academic trade theory about whether free trade is empirically equated to economic growth, development, increasing equality and so on. See, for example, papers from the Conference on Globalization and the Myths of Free Trade, New School University, New York, 18 April 2003. The committee notes that your submission largely refutes the arguments raised at the first level. To what extent has the department analysed the arguments which are occurring within economics and trade theory?

Mr Gosper—I am not sure if I can answer in detail, other than to say that there is extensive evidence that has been produced by a very wide range of international authorities of a strongly positive correlation between the openness of economies and economic growth. That is seen very widely, particularly amongst developing countries. I do not foresee that that is substantially in dispute. That is not, of course, to say that openness of an economy or participation in the global market automatically relates to economic development or, more broadly, living standards. Most of the economic literature understands that there are many other factors that relate to economic success, but it is clearly—and, I would submit, incontrovertibly—a fact that those economies which have prospered most over the last few decades have been those that have made significant moves to open their economies.

CHAIR—The other part of it is that there is no one single thing here; it requires countries to have a domestic economic setting which is oriented to growth and oriented to a level of taxation to provide public services in welfare and social security.

Mr Gosper—And private property rights and appropriate regulatory regimes—all those sorts of things, of course, are essential. Trade is no panacea, but the reality is still—and I believe that this is extremely well documented—that those economies that have done the most to open their economies over the last four years have been those that have prospered most.

CHAIR—I think that the World Bank has done a number of studies on that subject.

Mr Gosper—Amongst others; yes.

Senator MARSHALL—One of the other general criticisms we get is that, once agreement has been reached in these forums, there is no turning back the clock. If in the future the public interest changes—governments change; policy may change—is there a mechanism for changing our mind or seeking alterations to commitments that have been made?

Mr Gosper—There are four broad ways in which a scheduled commitment can be reviewed: a provision for a waiver, for instance, under a particular circumstance; where there are balance of payments problems; and there are, of course, the general exception provisions that relate to human health, safety, security and so forth. There are also the usual provisions that exist for goods, which allow a member to renegotiate a binding that has been put in place. It is that that is most relevant, in the broad, to a circumstance that we would envisage. In respect of the removal of a binding, a member may be required to provide some level of compensation for removal of that binding, and that could take place in any area—in other words, it may not be strictly related to that service sector or even to services, but to some other area of trade.

Senator MARSHALL—Do you mean a trade-off rather than compensation?

Mr Gosper—It is compensation for the fact that you are removing a benefit that has been provided to a trading partner as part of a negotiated outcome. If we were to change some binding in a way that foreclosed the participation of some other economy in a part of our services sector, that economy might require that we provide some compensation by way of increased access in some other sector that is relevant to trade between the two countries. It is not a requirement that that will be provided but it may be provided. That would be the subject of a consultation process. That circumstance has not arisen, certainly for us, and I am not aware of it arising for any other member in the past.

In general, I should make the comment too, of course, that most governments—and I think this would be very true for this government and the previous government—do not usually bind themselves completely to the level of flexibility or openness that is already provided in an economy. In other words, in most areas some of the water is removed but not all, because all governments traditionally like to provide themselves with a little flexibility at the margin. So you will often find, for instance, that where we do make commitments they are substantially in excess, or somewhat in excess, of current applied policy. The real advantage of this comes from the fact that it removes an amount of the uncertainty and unpredictability in the regime that a foreign supplier faces in the Australian marketplace. So, to answer your question in brief, there is a range of provisions in which a concession might be withdrawn and there is a process that relates to that. In reality, it does not seem to arise. It has not arisen for us as far as I am aware, unless Ms Filipetto is going to contradict me.

Ms Filipetto—No.

Mr Gosper—In any event, in most areas it is very true that governments traditionally keep some level of flexibility for themselves and do not fully bind the application of policy.

Senator MARSHALL—There are examples of countries that have in fact opened their markets considerably and they could not be described as economic success stories—the obvious example is Argentina. Does the department look at the reasons that that happens and take those issues into consideration?

Mr Gosper—Not specifically with regard to these GATS negotiations.

Senator MARSHALL—You said earlier that countries that have done well economically are the ones that have opened their markets, but one may also argue that some countries that have not done well are the ones that have opened their markets.

Mr Gosper—Yes, but I do not know if Argentina's difficulties relate to merely the opening of markets. It has a long tradition of not opening markets and of other distortions in its economy.

Senator MARSHALL—And some may also argue that the success economically of some countries is as a result of not opening markets.

Mr Gosper—Some may argue that as well but, as I have said previously, I think most of the evidence is quite clear. I do not know of any economy which has reformed its regulatory

structure because of commitments that it makes internationally in the area of GATS. GATS is about market access it is not about deregulation or privatisation. Those are two quite different things. GATS is not an instrument to reform economies; it is an instrument to improve market access as it relates to the services sector. It is not of itself something that promotes or enforces in any way privatisation and deregulation.

Senator MARSHALL—Thank you.

CHAIR—Thank you very much, Mr Gosper and Ms Filipetto, for appearing today.

Mr Gosper—Thank you very much, Senator.

[12.01 p.m.]

DEADY, Mr Stephen, Special Negotiator, Office of Trade Negotiations, Department of Foreign Affairs and Trade

SPARKES, Mr Phillip John, Deputy Lead Negotiator, AUSFTA, Office of Trade Negotiations, Department of Foreign Affairs and Trade

CHAIR—Welcome. Thank you for your submission, which we have in front of us. Mr Deady, we invite you to make a few opening remarks.

Mr Deady—I would like to give the committee an update, explaining where we have reached in the negotiations and what lies ahead, and giving a sense, hopefully, of the range of issues that are on the table before us in these negotiations and some of the processes that we have been involved with in terms of consultations and other activities leading us to this point. The negotiations began last November with the announcement when Bob Zoellick was in Canberra of the intention of the United States to enter into negotiations with Australia. That really started the negotiating process proper.

There was a 90-day period required under the US Trade Promotion Authority whereby consultations with the Congress were required before formal negotiations could commence. The first negotiating round was held here in Canberra, back in March of this year. We have now had three full negotiating rounds—the one in March in Canberra and then two subsequent rounds in May and in July in Hawaii. We are now in the process of preparing for the fourth round of talks, which will be back here in Canberra running through the week beginning 27 October. At this stage we have also planned a further full negotiating round for the first week in December, in Washington.

The main focus of the negotiations in the first three rounds has been on developing the broad framework, the legal text that would cover the agreement, and agreeing on the chapters that would be covered by a comprehensive agreement between Australia and the United States. It was only in the third round that we were able to sit down with the United States and begin negotiations on the specific market access aspects of the negotiations. These market access commitments are really the core of free trade agreements. Again, a requirement of US law was that the United States was not able to commence formal negotiations on market access until the International Trade Commission in the United States had completed an economic assessment of the impact of the Australia-US free trade agreement on US industry.

That is the broad process. We have commenced these negotiations. The Minister for Trade, Mr Mark Vaile, outlined the broad objectives for Australia in these negotiations prior to the launch of the first round in March. We are seeking a truly comprehensive and liberalising free trade agreement that is fully consistent with the rules of the WTO, both the rules of the GATT which deal with free trade agreements and the rules under the GATS which talk about the economic integration of economies.

We are looking at a very big agreement. The agreement itself will run to probably 23 or 24 different chapters, covering the full range of economic activity. There will be chapters on the traditional areas of goods. There will be a chapter on agriculture, industrial goods, rules of origin, technical barriers to trade and standards, and customs cooperation. There will be a chapter on trade remedies, which are the various trade rules that apply in both countries.

There will be chapters that deal with the issues of trade in services, telecommunications, financial services and the movement of business people. There will also be a chapter on investment, and there will be chapters on newer issues like competition and intellectual property—there is a range of issues there. There are also likely to be a few chapters on trade and labour, and trade and environment. These are areas that have been put on the table by the United States, again reflecting some of the requirements of the trade promotion authority and the requirement that the negotiations that the US enters into contain chapters on those two issues.

There is also the broad architecture set of chapters, which deal with the dispute settlement mechanism. A dispute settlement mechanism will be part of this agreement. There will be broad chapters on general provisions, transparency and those general architecture aspects of the negotiations. We have made good progress in the three negotiation sessions to date on establishing the broad structure of the agreement. There is text in most of those chapters, if not all of them. A lot of it is very much square bracketed, in the sense that it is not agreed between the two parties. There are still gaps in those chapters where both countries are looking at the particular issues and articles that they want to include in those chapters, but there is also a large amount of agreement between the two countries in the broad structure of those agreements.

I mentioned that it was in the Hawaii round that we exchanged market access offers. Australia exchanged a comprehensive offer with the United States covering trade in all goods. All these offers are initial and conditional, but in services and investment we also put forward an initial offer to the United States.

CHAIR—Conditional in the sense that the offer is on the table as long as there is an agreement overall?

Mr Deady—Yes. The initial offer is conditional on the overall package being negotiated between the two countries, so we very clearly reserve the right to revisit that offer, to either enhance it if the deal becomes sufficiently good or obviously to adjust it in other ways, depending on the overall size of the package. Those are the conditions on which both countries put forward those offers.

We received a comprehensive offer, also from the United States, covering all goods trade without exceptions and also offers on services and investment. The initial offer is there also. So they were exchanged in Hawaii. That round concluded at the end of July. We have been reviewing that offer from the United States. We are continuing our consultations with industry and other stakeholders as we prepare for the next phase of the negotiations—and that essentially is to respond to that offer and to put a formal request to the United States in response to what they have put on the table. The United States has clearly been doing the same thing for us.

We have had some further discussions on those requests, so we have put back to the United States a full request on agriculture. We are continuing to talk to Australian industry and other

stakeholders as we prepare our requests for the broader non-agricultural goods part of the negotiations, and also the services and investment part of the process.

From November, we have asked and called for public submissions. There has been a very high level of interest in these negotiations and we have conducted, I believe, a very detailed series of consultations with Australian industry and other stakeholders right through the process. It has been a very fast moving process that has required, I believe, even more consultations and negotiations than perhaps would be the norm. We have attempted to complement those consultations with the publication of a regular newsletter. We have put out three of those, reporting on the outcome of the three rounds that we have conducted.

We have also tried to maintain the web site to provide the community with a sense of the issues in the negotiations on the table, to respond to many of the so-called frequently asked questions that we are aware are out there in the community about the free trade negotiations. We see that as very much an ongoing process and we recognise the need to continue to intensify those consultations as we now prepare for what is the final phase of the process.

When the Prime Minister and President Bush met in Crawford, Texas, in May, they identified the end of this year as a target date for concluding the negotiations. Both governments are committed very much to achieving that deadline. We are working very hard to achieve that and, as I said, good progress certainly has been made with that objective in mind. The Prime Minister, in responding to President Bush at that time, committed Australia to those intensive negotiations, recognising that there were a range of sensitive issues on both sides that would need to be dealt with, and restating that Australia was looking for a very substantial, comprehensive outcome to the negotiations and that the key for Australia remains to achieve just that: a big deal, a comprehensive outcome. That is the driver and that is the process which we are taking forward in the negotiations.

As I mentioned, the United States team is coming here for the week of 27 October. A series of other events will be taking place in the next month which will be very important in determining how well placed we are to achieve the target date set for the end of the year. The APEC ministerial and leaders' meetings are happening in Thailand midway through October; they will provide another opportunity for Mr Vaile to have further discussions with Ambassador Zoellick. Mr Vaile has had a number of discussions throughout this process with the USTR, and this will be an opportunity for a further stocktake. There is also the announcement that President Bush will be visiting Australia after the APEC meeting and before 27 October. That is another opportunity where, no doubt, the FTA will be discussed.

That is a broad outline of where we are. That is as much as I would like to say to begin with. As part of this process there is an ongoing range of contacts with the United States. I should mention to the committee that just this week our lead negotiator on the services and investment side is in Washington holding intersessional discussions with his US counterparts. The leader of our team on intellectual property also left last weekend for a week's discussions on the FTA with the United States. So that work is going on. There is a range of other contacts. There have been a number of video conferences and other contacts with the United States since the conclusion of the third round in July.

CHAIR—Given the program you have outlined, where the substantive negotiations, as I understood it, are ahead of us—due in October and then in December—is it fair to say that it is too soon to call whether or not an agreement is likely?

Mr Deady—We are very much in the heat of the negotiations. We have had three very useful rounds to date. We have made a substantial amount of progress in putting together the structure of the agreement. As I mentioned, July was the first time we had the opportunity to talk on specific market access commitments—the heart of these negotiations. There is a great deal of detail in these FTAs. They really are comprehensive agreements, and I think that that is indicated by the scope of the coverage of the various chapters alone. We are talking about treaty-level commitments, which need to be worked through very carefully in terms of legal language and agreeing to the various agreements and obligations that both sides are prepared to enter into.

At the same time, I think that both sides are committed to doing just that. There has been good progress. We are in a position now where I believe that this month—the run-up to the October round and the October round itself—will be crucial in allowing us to make those assessments of how we are placed in order to reach that target date. We certainly need to make further progress across a range of issues. In relation to the initial offer the United States put forward in July, Mr Vaile made it clear that, in agriculture in particular, we were looking for significant improvements from the United States. That is something we are pressing very hard on. Certainly, that was the nature of the comprehensive request we put back to the United States. We are waiting to hear from them. Those things will be discussed in October, and also other aspects of the negotiations. It is not just in agriculture that we have offensive interests in these discussions. It is very clear that the United States will also be putting a raft of requests to Australia as part of that process. So there is a great deal still to be done, but I think that we are well placed to meet that target date, provided that that commitment remains there to get on and do this exercise.

CHAIR—I have noticed that both the Deputy Prime Minister and the Prime Minister have said words to the effect that this is not a done deal and that things need to improve. I do not want to talk this up or down; I just want to nail it for what it is. Essentially that commentary, I assume—and I am seeking your view about this—is on the basis that the initial presentation of offers is on the table and all the work is really ahead of us; it is the quality of that outcome which will decide the issue and, until that work is done, no-one can say. Is that a fair presentation?

Mr Deady—I think that is a fair presentation. What we are about is working very hard to negotiate a very large package. And it is a package: nothing is agreed until everything is agreed, as is always the case in these negotiations. We do have a great deal of work ahead of us. I suppose the balance of that, as I have said, is that we have made very strong progress. I think that reflects the fact that in these negotiations Australia and the United States did, to a very large extent, step off from the same starting point. We are both committed to a comprehensive agreement, and that is very clear from the initial offers that were made. Obviously improvements are needed; there are issues about transition periods and how long some of these commitments might take to come into force. That is something that the United States have included in agreements they have done previously. So there is a large body of work to be done, but again we are well placed, I believe, to take that forward.

The critical thing, as you have reflected—the Prime Minister, Mr Vaile and other ministers have made this clear—is that it is a big deal. A substantial outcome is needed for Australia, and

there are some very sensitive issues on both sides that need to be resolved in order to bring about that outcome. But certainly I see our job, the job of the negotiators, as being to work very hard to build that package, to press these negotiations forward and to identify outcomes that are satisfactory to both sides as we go forward.

CHAIR—When you say that you are looking for a comprehensive agreement, the word 'comprehensive' has real meaning in the sense that it would be an agreement in conformity with our WTO obligations on a bilateral trade agreement.

Mr Deady—That is correct. Australia has always interpreted article 24 of the GATT, which allows for regional and bilateral free trade agreements, to mean that they need to cover, in legal language, substantially all trade in the elimination of customs, duties and other barriers. Australia has always interpreted that very fully as being a high hurdle to overcome for these bilateral negotiations. 'Substantially all trade', in our view, means comprehensive coverage without exclusions: all goods to be covered and all goods to move to the elimination of tariffs. That is the approach we have taken, and I think it is important to note also that that is the view of the United States and it reflects the offer they put to us. Their offer is truly comprehensive. They are not looking to exclude sectors or products from the coverage of the negotiations.

CHAIR—So is it fair to say that if it does not meet that test of comprehensiveness, as you have outlined it, there is no deal?

Mr Deady—As reflected in the offers on the table, that is very much where both sides are coming from and so I do not think that is a debate between us. It has to be comprehensive. It has to lead to the elimination of all tariffs. As I have mentioned, certainly one issue is that the path to that liberalisation is still subject to the negotiations. But I believe we need a comprehensive means of having just that: a big deal without exceptions.

CHAIR—The words 'ambitious timetable' get used in this debate. I might say 'ambitious' in that context is a bit like the Sir Humphrey Appleby comment about politicians being courageous—that is, it is a nice thing to do, but be warned that it will be tough to do it. Is it possible for you to reflect on the level of ambition here in timetabling terms? Is it feasible to have an ambitious timetable that requires us to complete this by March?

Mr Deady—I certainly think it is feasible. Yes, it is ambitious. Looking at the history of free trade negotiations going right back to the original agreement between the United States and Canada, the actual negotiations there took between 18 months and two years, and then there was quite a period before it was finally resolved. NAFTA was similar; the actual negotiating time took about two years. We had two-year negotiations with Singapore. Similarly, the United States agreement with Singapore took about two years. Those are indicators of the complexity of the issues before us in these negotiations. I will say though, as I have said before, that one of the strong pluses we have—and it is why I believe this very tight time line is feasible for Australia and the United States—is that we have a very common approach to the nature of these negotiations. There were issues of a structure or framework nature which took us 12 or 18 months to resolve in our negotiations with Singapore but which were resolved immediately in our negotiations with the United States. Perhaps the best and clearest example is the negative list approach to services out—the structure of the agreement, the structure of the services and investment chapters.

CHAIR—This is the negative list?

Mr Deady—This is a negative list—that we would pursue the negotiations on services and investment through a negative-list approach. We were 12 months into negotiations with Singapore before that was finally agreed between the two countries; it was a significant negotiating issue. As I say, in our negotiations with the United States, that was done from day one.

A critical thing is the question of ambition, and I think it does reflect what has been said by the Prime Minister. There are very sensitive issues on both sides. Very clearly, from the US point of view, agriculture is front and centre in terms of the sensitivities they face; there is no doubt that very strong resistance exists amongst sectors of the agricultural community in the United States to an agreement with an efficient and competitive agricultural producer like Australia. That is well understood and well known. Also reflected in the statement of objectives set out by Ambassador Zoellick are issues with the United States, and that statement raises a number of questions about policies and programs in this country. There are sensitive and complex issues on both sides, many of which though—again it is quite feasible, in my view—can be worked through in the time line we have in front of us, provided that the commitment and the will are there to take those decisions and force those negotiations through that process.

CHAIR—It has been described as an 'ambitious' agenda and you have given us a comforting view about how feasible it is to meet that deadline, subject to the will on both sides—and there is always the prospect that maybe that deadline is too tough—but are we prepared to blow the deadline if we do not get the deal we want?

Mr Deady—Again I will not speculate too much on whether or not we can make the deadline. The government's messages have made it very clear that the key driver for Australia is a big deal, a good outcome from the negotiations. The timing of that is secondary. Mr Chairman, you yourself have stated that the Prime Minister, the Deputy Prime Minister and Mr Vaile have said the same thing—that we need a big satisfactory outcome for Australia from these negotiations. We are working very hard and, as I have said, I think the time line we have in front of us is feasible. But at the end of the day the critical driver here is not the time line but the outcome. There is a target date that we are working very hard towards, but it is just that—a target. The quality and nature of the outcome are what is significant. That is the view also of the United States—of Ralph Ives certainly and I think of Bob Zoellick and others as well. Certainly I have heard Ralph say, both publicly and privately, that that is the driver from the United States side. The commitment is there from the negotiators to get on and do this as quickly as we can.

CHAIR—You refer to the negative list, and I will talk to you about that after lunch and not before. You tell us that this will have 23 to 24 chapters. Will it also have a couple of annexes?

Mr Deady—It will certainly have annexes. On the goods side, both the agricultural and the non-agricultural goods side, there will be attached a schedule of tariff commitments. Again, on the basis of the likelihood that there could be some phasing of those, there will be tariff schedules that will reflect those commitments. Again, just thinking off the top of my head, certainly the ones you mentioned—the negative lists—are annexes attached to the services and investment chapters, which reflect the reservations we take against the commitments embodied in the chapter. In government procurement, again there will be a series of annexes attached to

that chapter—if there is a chapter on government procurement—which will, for both countries, include the agencies covered by the commitments in that chapter. That is really an opt in type of chapter, in the sense that both countries have federal systems, so state and territory governments, from Australia's perspective—and state governments from the United States' perspective—would be included in a list to have coverage of that kind. So there is a whole range of chapters that do have annexes of that nature.

CHAIR—Is there likely to be an annex of reserved items: that is, items that are not concluded but are reserved for further negotiation during the life of the agreement?

Mr Deady—I would not describe it as that. Depending on the nature of the final outcome, there could well be commitments that are certainly, as I said, on the goods side even, phased in over time. I can certainly envisage parts of the agreement—and we actually did this with Singapore—that would have language saying that one year after entry into force certain things would take place—or five years after entry into force certain things would take place. So, to that extent, there may be some transitional periods—even beyond the goods side. But the commitment is a single undertaking taken at the time that the negotiations are concluded. With the dynamics of the negotiations, part of the outcome could well be that ongoing processes emerge—if that is the point of your question—for example, in the standards and technical barriers to trade area, where we are perhaps looking for some further improvements over time in terms of mutual recognition, the equivalence of our approaches to testing and other arrangements in relation to standards and various things like that. That could be a part of a built-in agenda, but again the commitments are the commitments that are taken at the time the negotiations conclude.

CHAIR—I am getting this impression: we will have 20 to 23 chapters which will deal comprehensively with a whole range of subjects—and you have mentioned a host of them here today. Some of those may have annexes—one of them will be about explaining or going into the details of the negative list approach on services.

Mr Deady—Yes.

CHAIR—And there may be ongoing processes. Would that be an annex for the whole of the agreement or would it be related to that particular chapter?

Mr Deady—It could be either, but I believe that several of them would be related to the particular chapter—they would be annexes or the establishment of processes. There will be an overall review mechanism established covering the whole of the agreement, which will be at ministerial level. Several of the chapters will have their own consultative mechanisms. There is an example perhaps in the quarantine chapter. It is very likely that we are talking about formalising under the framework of the FTA the consultative mechanism that already exists between ourselves and the United States to look at various quarantine issues. It is that sort of context, I think, or that sort of process that could emerge under particular chapters.

CHAIR—So the chapters basically contain the issue and what the commitments are, and the annexes may contain reference to phase in times and things of that nature—implementational or transitional?

Mr Deady—That is right. I think it is very similar to the scheduling in the WTO. The chapters will contain the legal binding commitments, and then the annexes will describe the coverage—or noncoverage in the case of a negative list—of those specific commitments. That is the nature of the overall agreement.

CHAIR—But it is not likely—and correct this impression if it is wrong—that you will have a list of issues for further or ongoing negotiation that are matters of substance? An example that has been put to me is pharmaceuticals.

Mr Deady—Okay.

CHAIR—The government has put on the record its attitude to the PBS and pharmaceutical negotiations. Are you saying to us that there will not be a provision that enables parties to come back after the agreement is implemented and take on the issue of, for example, pharmaceutical negotiations?

Mr Deady—No, there will be no ongoing negotiations as such as a result of these negotiations. Once the agreement is reached, negotiations are concluded and that is what you get. There will be implementation periods and transition periods, as we have said, and there will be ongoing reviews under various chapters, but the negotiation is to a single undertaking and that will conclude the negotiation. Something as substantial as the PBS may or may not be treated as part of the negotiations, but that concludes when the negotiations conclude.

CHAIR—Are the reviews that you are talking about the ritual ministerial meetings, to put it in my words, which will look at how processes are working out under the agreement?

Mr Deady—Yes, that is right—they will look at the implementation of the agreement. I do not want to mislead anyone on this in any way—we also have some ambition in this review process that there will be a dynamic to the negotiations and over time, just as in Geneva and the rounds that we have been talking about this morning, there may well be an opportunity to revisit the agreement and press for further liberalisation in certain areas. For example, it is not impossible—and it is reflected in our Singapore negotiations—that, because both governments decide they want to look at those reservations lists to see if they can be updated, further advances in liberalisation may occur over time. That is not ruled out as part of the dynamic of a trade agreement. But, as I said, once the negotiations conclude, they conclude on the basis that that is the agreement. Then, clearly, the two governments can take that forward at some time in the future. It does not rule that out, but it is not part of the package that we would end up with.

CHAIR—The reviews you mention are basically, as I understand it, ministerial reviews?

Mr Deady—Yes.

CHAIR—Are they confined to the contents of the agreement? They are not occasions to introduce new substantive matters or matters that were not agreed in the initial talks?

Mr Deady—They would certainly deal with issues arising from the agreement, if there are any. It is similar to what happened with something like CER. Perhaps that is a better example. The 20-year history of the CER does indicate that governments have come back from time to

time to look at the agreement again to see if it can be taken forward in various ways. So it does not rule that out, but there will not be anything written into the agreement as such that leads to any automaticity in that. That is part of the dynamic of the relationship between the two governments—as the economic and investment relationship continues to develop, you would certainly think there would be a capacity to reflect that in the agreement. But, as I said, at the moment it is about negotiating the package to be taken as part of the overall undertaking at the end of the process.

CHAIR—If I am hearing this correctly, the review will be related to progress under the agreement—basically, referring to the terms of the agreement—but the review process does not exclude, if a minister chooses to raise it with his or her counterpart at the ministerial level, the prospect of looking at a further deepening or widening of the agreement?

Mr Deady—Certainly there is nothing in the language that we have there to date which would rule that out. I think that would be part of the dynamic of the agreement.

CHAIR—But it is subject, then, to both parties agreeing?

Mr Deady—Yes, that is right.

CHAIR—Will there be a life to this agreement—will it extend for a certain number of years, after which it will come back for renegotiation?

Mr Deady—No. The final provisions will include the usual treaty language about both countries having the right to withdraw, I suppose, from the agreement, but there is nothing specific there to do with a time line or a specific life for the agreement.

CHAIR—Regarding the concept of a withdrawal clause—and you did not indicate that such a clause had been agreed—if there were such a clause involved would it be to the effect that each party gives the other a certain period of notice?

Mr Deady—I expect so. We have not got to that phase yet. As with the normal treaty provisions, there would be something like that.

CHAIR—And they may give it for the whole treaty or for part of the treaty.

Mr Deady—Again, I cannot speculate.

CHAIR—Okay. You have maintained an open dialogue with the stakeholders and you have kept the stakeholders briefed, as I understand it, about issues of interest to them that have been thus far dealt with. Is that the case?

Mr Deady—Yes, we have worked hard to be open and to consult as widely as we can.

CHAIR—Has Mr Vaile's trade negotiating committee—or whatever it is properly called—been briefed in full as to what the progress is?

Mr Deady—Mr Gosper mentioned the WTO Advisory Group, which, as the name suggests, is primarily there to advise on issues in relation to the WTO. In some of those meetings we have provided the group with an update on progress with the US FTA. There are a number of other consultative groups that the minister is involved with. The Trade Policy Advisory Committee is another one. I have provided briefings to that group. There are also the National Trade Consultations, which are the state and territory ministerial and official level consultations. The US FTA has been on the agenda at several of those meetings.

CHAIR—To what degree of specificity have you gone in those consultations? Are you able to tell the advisory bodies and consultative groups at the peak level—I am not talking about the particular industry sector groups—the whole story in black letter detail or do you give them a general sense of what the negotiations involve?

Mr Deady—Overall, we give them a general sense of the negotiations: the broad coverage issues, the process issues and some of the key matters that might be emerging under some of those chapters. I think that is the best way to describe how we have informed those broad groups. In our discussions with state and territory governments we have given a much more detailed explanation of the overall agreement—not to the extent of providing them with a copy of the draft text at any point, but we have gone into more detail with that group than with some of the broader stakeholder groups.

CHAIR—This is a fair call. In order to keep the confidentiality of the negotiations and, as negotiators, to keep the negotiating flexibility that you require, essentially it is only your team and the minister that effectively know the inner details and the black letter of those details. All the other consultative groups and stakeholders have been briefed on a general basis, according to their requirements—with the states and territories having a better, higher quality brief than that, but not on the actual text. Is that it?

Mr Deady—I believe that is correct. I would just say that it is very much a whole of government team. The whole of government and Minister Vaile are involved in the negotiations.

CHAIR—So it is not just Mr Vaile?

Mr Deady—No.

CHAIR—It is other interested ministers?

Mr Deady—Absolutely, yes.

CHAIR—Is there a cabinet subcommittee looking at this?

Mr Deady—This issue has been discussed several times by the cabinet.

CHAIR—By the cabinet itself?

Mr Deady—Yes.

CHAIR—I think the correct name of Mr Oxley's group is AUSTA.

Mr Deady—Yes.

CHAIR—Has that group been briefed to the level of specificity that you have referred to?

Mr Deady—We have had several discussions on a general level with the AUSTA group about where the process has got to. There is a whole raft of negotiating industry groups, as you mentioned. The NFF has set up a specific group to focus on the US FTA. We have a standing group on the services and investment cluster where we consult with a wide range of stakeholders, not just industry but NGOs, local governments and others. We have a broad goods group, which is the non-agricultural sector. I have also talked to groups like the BCA and the trade unions. I really believe that we have given them a very similar outline of the process, the coverage of the issues and some of the key issues that have emerged in those negotiations. As you correctly pointed out, some of those discussions get into more detail—for example, with the agriculture groups—on where we have got to with US offers and our requests. But that is the approach we have attempted to take right across the range—not just with industry but with other stakeholders as well. We have worked very hard to be as open as we can be, given the natural constraints on negotiations between two governments.

CHAIR—Does AUSTA have a briefing to the level of specificity that the peak consultative groups have?

Mr Deady—Overall, I would say yes. We have not consciously done more or less for that group. That is very much the approach. To begin with you mentioned groups which the minister is involved in, and the minister has given briefings to those groups. He has gone into detail on some of the discussions he has had with Bob Zoellick and others, whereas my discussions are much more about the process of the negotiations—where we are getting to and that sort of detail. They are the sorts of issues that have been taken up with AUSFTA, the NFF and others.

CHAIR—We are on the public record and therefore it is not appropriate for me to ask you to give us a brief to that level, but if we were in camera would you be in a position to give this committee a brief to that level of specificity?

Mr Deady—I do not think that is a question I can answer. The broad outlines that I have provided this morning are very much the sorts of outlines that we have given to these groups. Because of the nature of the negotiations and the process that we are engaged in, it is not really for me to answer that. I think it would have to be taken up with the minister.

CHAIR—Okay. I want to go to the issue of when such an agreement, should we conclude it, would come into force. Am I right in believing that whatever the government signs off on in terms of this agreement it does not come into force until such time as the parliament passes the implementing legislation?

Mr Deady—That is correct, yes. There would be a clause that would say that for both governments the necessary legislative procedures have to take place. Then a date of entry into force would be set, agreed by both parties, once those procedures had concluded.

CHAIR—Does that require the parliament to pass all of the implementing legislation, not just some of it?

Mr Deady—That is my understanding, yes.

CHAIR—If some of it is passed, not all of it, does that mean that the whole agreement will be null and void?

Mr Deady—Until it is all passed, we would not be able to go to the United States and say, 'We have fulfilled the obligations under article X, Y or Z and we are now in a position to have the agreement enter into force on such and such a date.' I do not know whether I can answer any differently from that. These are the commitments we have entered into with the United States and these are the legislative requirements necessary to bring those commitments into effect, so unless that happens we cannot identify the date to allow the agreement to come into effect.

CHAIR—Am I right in believing that, when the agreement is negotiated to the satisfaction of both governments and the decision is made to pursue the agreement to ratification and implementation, the process on the American side is that its text lie on the table of the US Congress for 90 days so that Congress can become familiar with its terms and hold inquiries, if it wishes, into its content to satisfy itself about those terms?

Mr Deady—Yes.

CHAIR—Is that the procedure on the American side?

Mr Deady—That is my understanding. Under the trade promotion authority, there is an initial 90-day period after the negotiations are concluded and prior to the signature of the agreement; then it is sent to Congress.

CHAIR—Then, following the expiration of that 90-day period, is there a further 60 days in which both houses of the US Congress have to vote yes or no on whether they accept that agreement?

Mr Deady—That is correct, yes.

CHAIR—If they wanted to, could they vote in the 90-day period?

Mr Deady—Again, every time I read the TPA I see something different. I believe they could overlap, but I suppose the expectation is that the 90 days occurs. As I understand it, in that 90 days they can certainly begin the mark-up processes. So, as I understand it, the 60 could be shortened and they could actually begin the mark-ups and the committee work. A lot of the committee and legal drafting could be done in that 90 days; they would not have to wait for that to conclude before they could start that process. That is my understanding.

CHAIR—That is an interesting point. Are the mark-up processes, as you have referred to them, for the purposes of conversion of the agreement from what trade negotiators have concluded into the legally binding text that lawyers would tick off on?

Mr Deady—No. The text is the text, and that is what is agreed between the two governments.

CHAIR—Has it already been washed through the lawyers?

Mr Deady—That is right. There will be legal scrubbing, as we call it, before the thing goes to Congress. The mark-ups would be the drafting of the changes to US legislation to give effect to—

CHAIR—To identify what bills would be changed?

Mr Deady—Yes. Of course, in the case of the US, one piece of legislation covers the various changes necessary.

CHAIR—Does the Australian government intend to have any similar or like processes to those followed by the US government?

Mr Deady—The processes that the Australian government would follow, I believe, would be the usual treaty processes. They would include the release of the agreement to the public in the JSCOT and then, as you have said, any legislative changes required would go through the normal legislative processes. That is the process that we envisage once the negotiations are concluded.

CHAIR—The JSCOT process is the giving of an advisory opinion to the government by that committee and, following that, legislation comes forward. Then, before this treaty—if we get to the point of having one—can come into force, it is for the parliament to carry that legislation. Is that it?

Mr Deady—Yes.

Proceedings suspended from 12.48 p.m. to 1.59 p.m.

Senator MARSHALL—Can I ask you a very direct question? It is a question that has been put to the committee as something that ought to be able to be answered in the context of these discussions. Will Australia's manufacturing industry—and the living standards and job security of manufacturing workers—improve or deteriorate as a result of a trade agreement with the United States?

Mr Deady—We are negotiating, as I mentioned this morning, a comprehensive agreement that will provide preferential access for Australian industry to the world's biggest economy. We are already basically talking about two fundamentally open economies. Tariffs are not high in either Australia or the United States in an overall context but there are certainly pockets of protection that impact negatively on Australia's exports into the United States—very clearly in agriculture, which is well documented, but also more widely across a range of tariff items, such as horticultural products, metals and minerals.

There are a number of issues that have been brought to our attention. There is the infamous 25 per cent tariff that the United States imposes on imports of light commercial vehicles into the United States in the auto industry. So there is a substantial prize still to be won from gaining that access into the United States. It would give preference to Australia in some instances. It would also, equally importantly, level the playing field for Australian manufacturers exporting to the United States, given that the US already has FTAs with Canada, Mexico and Singapore and that it is negotiating with other countries also.

There is certainly a substantial prize to be gained in the area of government procurements/ that is another area where there are potentially significant gains for Australian manufacturers exporting to the United States. We are not a member of the government procurement agreement associated with the WTO. That means that Australia is not a designated supplier to the US government, and there are certainly prohibitions on Australia being able to sell directly to the US federal government and also to state and county governments in the United States, so there are certainly potential gains there. From our perspective—

Senator MARSHALL—I take it from what you are saying that those issues are in fact in the negotiations and being actively—

Mr Deady—We are certainly pressing very hard for a chapter on government procurement. There are offensive and defensive interests, and across the tariff concessions we are looking very hard for the United States to eliminate its tariffs on all products as quickly as possible to provide that access. Chemicals is one area. There is a whole raft of areas where we are still facing tariffs in the United States that have an impact on Australia's ability to sell in those markets and on opportunities for Australian exporters.

We are also as part of this package looking at making concessions to the United States, including on manufacturing tariffs. Most of those in Australia now, as I said, are very low. The two areas where there are still any significant levels of tariff protection left are the textile, clothing and footwear area and the automotive sector. We are in close consultation with all Australian industry, including those two sectors, as part of these negotiations. But we are an efficient, competitive producer, our exports of manufactured goods to the United States have been growing very strongly over recent years, and overall the expectation is that improving access to that market would lead to a significant improvement in our export performance in those areas.

The other area I should mention is aluminium fast ferries. There is an embargo on imports into the United States of foreign built ships. We have a very competitive industry that sells right around the world, but it is prohibited from selling to the United States. That is a very sensitive issue in the United States—the Jones act—but nonetheless it is one we are pursuing, to enhance access for that industry into the US market.

Senator MARSHALL—What about our own automotive industry?

Mr Deady—We are in close consultations with the automotive industry. Broadly, there is support for the FTA negotiations within the automotive industry. It is certainly fair to say that among the four major car producers there are different views. But nonetheless we are continuing to talk to them and looking to see what sort of final package might emerge from the negotiations.

Senator MARSHALL—It just occurs to me that our national interests may not necessarily be served by the views of major vehicle manufacturers. I suspect that three of the four manufacturers in Australia have substantial manufacturing plants in the United States as well, and the decisions at that level on whether to remain open or not in this country are not necessarily based on what is in our country's interest. A change to the trading relationship between Australia and the US might in fact result—or potentially could result—in some of our car plants closing.

Mr Deady—I am not sure there is really a question there. As I say, we are in discussion with the—

Senator MARSHALL—Do we know that that will not happen? What sort of modelling has been done to predict potential scenarios arising from the potential Australian-US free trade agreement, in terms of the reduction of tariffs in the automotive industry? Have we had a look at what the potential outcomes might be?

Mr Deady—Almost two years ago now, I suppose, the department commissioned modelling work from the Centre for International Economics, which looked at the overall impacts of a free trade agreement between Australia and the United States. It looked at what the impact of full liberalisation as an outcome of those negotiations would be. That modelling work demonstrated that by 2010 across the board as a result of free trade agreement negotiations GDP in Australia would be $US2 billion higher than it would otherwise have been.

Senator MARSHALL—Where did the $4 billion come from? That was thrown around initially.

Mr Deady—The $4 billion is an Australian dollar number. At the time that study was released, that was the result of the exchange rate that applied. If you converted $US2 billion with approximately 50 per cent, as it was running at the time, that was where the $4 billion came from.

Senator MARSHALL—So we know about one study saying there would be a $2 billion benefit.

Mr Deady—The CIE study was done on behalf of DFAT; DFAT commissioned that study. The modelling work that was done produced that outcome as a result of, as I say, a comprehensive and full free trade. They did some simulations that looked at a 50 per cent liberalisation and came up with benefits of roughly half. So it was consistent in that regard.

Senator MARSHALL—That was a big package. Where did the vehicle industry fit in?

Mr Deady—That study did have some sectoral breakdowns. It contained some indicators of the effects on individual industry sectors. It was a disaggregated model that was used. I have not got that study with me today. There were some numbers certainly on the automotive industry. As I say, I have not got it in front of me, but there were, I believe, increases projected in both imports and exports of automotive parts from Australia to the United States and from the US into Australia as a result of the negotiations. That was one of the findings of the modelling.

But the US is a substantial market already, for Australian parts in particular. There is a strong two-way trade in automotive vehicles and parts—particularly in parts, but Mitsubishi certainly sells built-up vehicles to the United States. So there is an existing trade, and this was what the modelling showed would happen if there was the removal of all tariffs. There are a couple of things there, without getting into too much detail. The average tariff in the United States on automobiles and parts is quite low—2½ per cent is the tariff primarily across the board. The one exception is this 25 per cent tariff on light commercial trucks, which does impact directly on

Holden utes. They would fall under that tariff item. That is the tariff that impacts on exports of Holden utes or utes out of Australia.

Senator MARSHALL—The economies of two states in particular rely heavily on the automotive industry. Those states are Victoria and South Australia. As a Victorian, I have a special concern in this area. The vehicle industry is crucially important. Not only does it provide jobs directly in that industry but also it provides a skills base which feeds a lot of the manufacturing industry per se. If the vehicle industry was removed, that skill base would not be trained and would not be available. As a consequence there would be enormous flow-on effects, not just for suppliers to the vehicle industry but also for industry in general. Again, Victoria, being one of the engine rooms of manufacturing in the country, would be very severely affected.

I do want to push you, and I think the government recognise the importance of this too. Every time there is a strike in the industry and one of the plants is potentially going to close down, the government say it will damage our national economy and they seek to end the strike. I guess we can conclude that it is of crucial importance. I do want to push you again to come back to the question: will this industry be safe and secure as a result of a free trade agreement between Australia and the US?

Mr Deady—The government just this year announced the tariff arrangements for post 2005. There will be a further tariff reduction, as you know, on 1 January 2005 and then a further reduction in 2010, to five per cent. As you well know, that industry has gone through a large amount of adjustment in the last number of years. There is also an industry program in place for the automotive and parts industry. That is a critical part of the arrangements that apply to that industry in Australia. What we would be looking for—if we were looking—as part of an outcome from the US FTA would be the removal of the tariffs on autos and parts for all products coming from the United States. As I say, we have not reached the end of the negotiations.

This question of precisely what the time line for that would be is something that is subject still to the negotiations, but I think you have to look at all of those factors and the fact that the industry is a very strong one now—very strongly export oriented and highly competitive—and I do not believe that the reductions in tariffs on imports from the United States would have that sort of dramatic negative impact on the Australian car industry. Certainly in all of our discussions with the car makers themselves—and not just the big four manufacturers but also the parts producers; we have certainly included those in our consultations—across the board there is support for the FTA negotiations.

We are talking to them about the issues of rules of origin—how they would work, what would be the transition periods, if any, that might apply. All of these are parts of a package that I think has to be looked at. I think it is very significant that the ACIS program is not something that is being negotiated and talked about in the negotiations with the United States. The existing arrangements would remain in place. It is the tariffs that we are talking about in relation potentially to the United States. With all those factors together, I think it really is an exaggerated concern to look at the FTA somehow impacting in a dramatically negative way on the auto industry.

Senator MARSHALL—I dearly hope that it is, but these concerns have been raised. Apart from your personal belief and what might be my personal belief, I am trying to find out whether

we can actually point to any evidence, any studies, because, when some different organisations—the NFF and others—made submissions about the agricultural side, they were able to say nearly exactly what the impact would be if we reduced tariffs in that area: how long it would take us to grow our markets, how long it would take us to increase our capacity to fill some of the opportunities, what it would mean in dollar terms, what it would mean in jobs, what it would mean in processing plants. A lot of work had been done. If we accept the evidence that has been put before us, we can clearly say, 'If this happens, these are the flow-on effects,' and that can be argued and backed up. Clearly, to Victoria and South Australia the automotive industries are as important as, if not more important than, agriculture. I am at a bit of a loss to understand why we are not seeing the same sort of study and work done to tell us what will be the result in this crucial industry if certain things happen in a free trade agreement.

Mr Deady—We have had extensive discussions with the car companies and with the parts manufacturers. They have a good understanding of the sorts of issues involved in the process we are engaged in here.

Senator MARSHALL—But does Ford, for instance, really care whether they have a manufacturing base in Australia? Things happen on a global scale and they have manufacturing plants all over the world. I have seen this happen many times, although not necessarily in this industry. A global decision is made, based on global events, simply to shut down a factory, not because it is necessarily inefficient or cannot compete but because things have changed and as a result the global policy changes. I am interested in the actual economic impact and the direct impact on the jobs and families of Australian citizens, rather than the impact upon a multinational company.

Mr Deady—That is clearly very much the concern of the government also in these negotiations: looking to improve the opportunities for Australian export industries in the US. But, as I said before, if you look at the significant tariff reform that has gone on in the car industry for a number of years, the investment that has occurred in recent years has been very strong, supported in part by the arrangements that have been in place now for a number of years. All of the car companies have gone through adjustments but in recent times they have increased their investment in this country. There are very substantial investments in this country—very successfully operating car producers. All four of the car producers are operating very efficiently and competitively now.

Senator MARSHALL—Yet we did have Toyota say that they would consider simply leaving the country if we went ahead with the free trade agreement.

Mr Deady—I do not think that is quite what they said. There were certainly some reports of some comments made in Japan pointing to the fact that they do produce Camrys in the United States and that this was a factor, among many others, that would influence them. You mentioned yourself that the car industry is a global industry now and these decisions are taken by headquarters. That fact of the production that happens in the United States was noted. But equally Toyota Australia made it very clear that their commitment to operations here in Australia was not something that was in question. We have certainly talked to Toyota directly about the free trade agreement.

Senator MARSHALL—The Australian management took a much more pro-Australian line than the line coming out of Japan, and you would expect that.

Mr Deady—But again I have not seen anything from Japan other than the one comment made by an individual there. Anyway, we are operating on the basis of the conversations we are having. As I said, there are some differences of view among the four producers in Australia. It is fair to say that there is stronger support for the FTA among some than others. But they are working with us. They are identifying the concerns they have and we are continuing to talk and the government is continuing to take into account all of those views as we go forward in the process.

It comes back to looking at the overall context in which the industry is operating in Australia. The MFN tariffs that apply, the ACIS scheme that operates, the amount of investment that has already taken place in this country, the fact that we now have a very successful export industry in both our built-up vehicles and parts, the global nature of the car industry—all of those are factors that impact on investment decisions and production decisions over time. The FTA with the United States would be one factor in that—but just one factor.

Senator MARSHALL—Canada's experience in relation to their free trade agreement with the United States certainly points to the risk of large-scale job losses, particularly in the manufacturing sector. My understanding is that between 1989 and 1997 it is estimated that Canada lost 276,000 jobs, as there were 870,700 export jobs created but that was not enough to match the 1,147,000 jobs destroyed by imports. Have we looked at that experience and tried to translate that into a potential outcome in Australia in our manufacturing sector? I would have thought Canada and Australia in many respects would be comparable.

Mr Deady—As part of our preparations for the negotiations and in the ongoing process, we have looked at the NAFTA agreements and at the preceding Canada-US trade agreements. I am not particularly aware of the numbers you cite but I certainly have seen numerous figures produced by the government of Canada that refer to the economic impact of the NAFTA agreements, and all of those point very strongly to the benefits that have flowed to the Canadian economy from the NAFTA in increased employment, increased exports and increased investment. Certainly the government of Canada—and I have heard this on a number of occasions in various presentations that have been done around this country—points to the very substantial gains that Canada believes have accrued as a result of the free trade agreement with its NAFTA partners.

Looking beyond the Canadian experience, if you look at the experience of our negotiations in the free trade agreement with New Zealand—yes, there are adjustments that happen. Some industries benefit more than others in the adjustment processes they go through but the overall benefits have been overwhelmingly positive as a result of that closer economic relationship. That is certainly the view of the government of Canada and the government of Mexico as a result of NAFTA.

Senator MARSHALL—I accept that through these agreements there will be adjustments, but it is about understanding what those adjustments need to be. We ought to know in advance what they need to be so we can make some rational decisions about whether they are in our interest or not.

Let me just change the subject. According to your submission, one of the Australian objectives of the free trade agreement is to seek to eliminate or reduce United States agricultural subsidies that affect Australian exports to the United States or to third party country markets, and there was also an agreement that the United States should not subsidise exports of agricultural products to Australia. A number of weeks ago I was able to ask the US Ambassador to Australia what ability, given the setback in Cancun, there would be to pursue the elimination or reduction of agricultural subsidies in the US. His response was that that is not something that would be done or could be done in a free trade agreement. I am wondering how we are going with that aim and whether under the free trade agreement negotiations we are in fact negotiating the reduction or elimination of agricultural subsidies in the US.

Mr Deady—The primary focus of these bilateral free trade agreements is on the market access side of trade, as you correctly point out. The way we look at agricultural support and protection multilaterally is via the so-called three pillars with which we are trying to achieve liberalisation and reform. Those pillars are: market access, domestic support—domestic subsidies like the Farm Bill in the United States—and export subsidies. In the multilateral process Australia is working very hard, despite the setback in Cancun, to achieve fundamental reform of world agricultural trade, addressing those three issues.

The focus of FTAs, I have to say, is very much on one of those legs: the market access side. It is improving access for Australian agricultural exports into the US market. As part of the agriculture negotiations with the United States though, we are looking for some commitments from the United States in relation to subsidies. I have to say that on the domestic support side we are not seeking reductions in the Farm Bill as part of the FTA negotiations. We have some language for the bill that we suggested to the Americans—about continuing to work towards reductions and the elimination of domestic support as part of our ongoing efforts multilaterally. That is something we are continuing to talk to the United States about.

On the export subsidy side, again there are real limitations on the capacity to deal with those issues bilaterally in an FTA. That is very much the reason, as I said, that this is only part of the government's trade policy strategy in the multilateral processes. The Doha Round moving ahead on agriculture reform internationally is critical. With regard to export subsidies though, we again have some ambition for discussions as part of the FTA. We are certainly pushing them in areas like agreeing not to subsidise exports into this country. We are also looking beyond that to see if we can seek some disciplines on US export subsidy practices in third country markets of importance to Australia for particular products.

So we certainly do have some ambitions there, but like all aspects of the negotiations on agriculture it is tough. It is not easy, but nonetheless that is the approach that we are taking. I certainly am very prepared to indicate today that the negotiations with the United States as part of the FTA are not about seeking reductions in Farm Bill domestic subsidies. That is beyond the scope of the negotiations.

Senator MARSHALL—Did we actually start with that objective?

Mr Deady—The wording does reflect the objective that we took into the negotiations, and I do believe—looking at the language now—it is still broadly consistent with what we are trying to do. There are clearly some ambitions on export subsidies but not on overall reductions or the

elimination of export subsidies as part of the FTA. Again, that is a bridge too far. That is for the multilateral processes.

With regard to domestic support, it is not about reductions in the Farm Bill but rather some sort of process potentially emerging from the negotiations that would better position Australia, perhaps through consultations or other mechanisms, to deal with the worst effects of those domestic support arrangements on Australia's exports to the United States and hence to third markets. So to that extent I believe that that is still a genuine objective of ours as part of the negotiations, but this is an area where the limitations of FTAs are well understood, and we clearly state those. A big part of the process—the big part of the negotiations on agriculture—is market access. These other elements are important, but there is a limit to what we can do bilaterally.

Senator MARSHALL—Given that trade distortion will remain, the NFF in their submission very strongly said that they would only accept a free trade agreement on the basis that it gave them complete, total, unlimited access immediately to all markets in agriculture. Is that our bottom line position?

Mr Deady—I am not going to speculate on bottom line positions. You have articulated the position of the NFF. I think the government's position on the market access package in relation to agriculture and the United States has, again in very broad terms, been very clearly stated. We need a substantial market access outcome in negotiations with the United States. We need a significant, immediate improvement in access into that market and we need to be looking at the elimination of all border protections, tariffs and quotas on Australian exports of agricultural exports into the United States.

We accept though that this is a package that we are talking about, and we are negotiating with the Americans on that package. That package, as I mentioned, has to include those elements: significant and immediate improvements in the transparent process leading to the full elimination of tariffs and other quotas on agricultural products into the US market.

Senator MARSHALL—I just want to link into the WTO negotiations. Mr Bob Stallman from the American Farm Bureau Federation told the *Australian* some time prior to 16 September this year that 'the prospects of an FTA would be damaged by failure in Cancun.' The *Australian* reported:

'If we can get an ambitious market access result out of here it would make it easier for some of our groups to accept the pain from an individual free trade agreement,' Mr Stallman said before the talks collapsed.

'The reverse is that if we don't get significantly more market access then it will make it more difficult for us (to accept a deal with Australia).'

What is your view on that?

Mr Deady—I do not see a lot that is new in that sort of comment from the leader of the US farm bureau. I think it is very clear that farm groups in the United States, as reluctant as they may have been to accept the beginning of negotiations with Australia for a free trade agreement, have been saying that they have made the link to also saying that, if they are prepared to do

anything for Australia, it should be in line with the multilateral outcomes. That is the view of US agriculture. That is not surprising. It is certainly not news that US agriculture is reluctant to pursue these negotiations with Australia—to welcome these negotiations. The sensitivities over agriculture are very well known. There is no doubt that the agriculture groups in the United States will be continuing to pressure the administration and the Congress to minimise the outcome.

The sensitivities over agriculture were well known before we began the negotiations. They are still very clear. But that is why a big deal on agriculture has to be such a part of the overall outcome. We need a big deal on agriculture to have a successful conclusion to the negotiations. The negotiations were commenced with that well recognised by the United States.

Senator MARSHALL—I have another question before Senator Cook gets a go. In March 2001, Robert Zoellick is quoted as saying:

... I want to make sure it's—

meaning a free trade agreement—

done in a fashion that has bipartisan support in Australia.

Are you negotiating this agreement with bipartisan support?

Mr Deady—I am not sure how to answer that one. I am negotiating this FTA. The government of the United States announced in November of last year that we would commence negotiations aimed at a free trade agreement between our two countries. I have had a series of objectives that Australia has for those negotiations set out for me. They are stated as clearly as possible. They include very much our offensive interests and those areas which we would be continuing to protect as part of the negotiations. That is the process I am engaged in. They are the negotiations that I am undertaking with the United States. I do not think it is for me to comment beyond that in relation to the negotiations. The government has taken the decision to negotiate with the United States, and I am carrying out those negotiations.

Senator MARSHALL—Do you brief the opposition?

Mr Deady—We have briefed opposition spokespersons on trade, through the ongoing estimates hearings and this process, I must say. Those are the processes of government we have been involved in.

Senator MARSHALL—Have their views been taken into consideration in the negotiations?

Mr Deady—The discussions—at least in my mind—have not led to that end point. As I say, we are negotiating on behalf of the Australian government; it is conducting these negotiations. I am the official leading the Australian team in those negotiations. We are negotiating on the basis of the objectives set for us by the government—the mandate we have been given by cabinet.

Senator MARSHALL—I want to take you back to the conversation you had with Senator Cook prior to lunch. If you came to an agreement with the Americans, they would then have

their processes, but our process is that it goes through the treaties committee for a recommendation—but that is not binding. The legislation that is required to be changed needs to go through our normal legislative processes. Without bipartisan support that may not be achievable. In that case, the agreement may never be implemented—in which case, isn't everybody wasting their time?

Mr Deady—I apologise, but I cannot answer that. That is a hypothetical question. I am negotiating. We are a month out, as I said, from the fourth round of negotiations. We are negotiating on the basis of a mandate given to us as officials by cabinet, by the government, and that is the process we are taking forward, with a view to negotiating a package that is consistent with that mandate we have been given. That is then brought back to the government for its consideration and then, if the negotiations have concluded successfully, those treaty-making processes we spoke about before lunch take effect.

Senator MARSHALL—Have any of the US negotiators asked whether you are negotiating with bipartisan support?

Mr Deady—Not in the negotiating process that we have been engaged in, no. That is not something that Ralph Ives and I have talked about.

Senator MARSHALL—Given Robert Zoellick's public statements in that respect, do you think the US negotiators have an expectation that you are negotiating with bipartisan support?

Mr Deady—Again, I can only say that they understand the Australian system of government. That is certainly not a secret to them. We are negotiating on the basis of the objectives which Mr Vaile outlined publicly. They saw those. We have been engaged in the process now for a little over six months and have been building this package. As negotiators that is what we are getting on with. They have their negotiating instructions from the administration. They continue to talk to US industry and to the administration and to refine that negotiating mandate, I am sure, just as we do. But that is the process we are engaged in and I cannot say more than that.

CHAIR—In your opening remarks you said that the negotiations began in November last year and were preceded by a press conference with the Prime Minister and the US Trade Representative, Robert Zoellick, in Canberra, and the timetable has developed from there.

Mr Deady—That is correct.

CHAIR—Was it then that the department was charged with the job of negotiating the agreement? Was that the kick-off point as far as your involvement was concerned?

Mr Deady—That was the announcement that negotiations were to proceed between Australia and the United States. That triggered a process in the United States, as I am sure you know, about requirements of legislation and the Trade Promotion Authority. Bob Zoellick was required immediately to write to the Congress saying, 'Yes, the administration intends to commence negotiations with Australia and these are the objectives,' and they are set out in that letter. There was, as you know, in the lead-up to that November meeting a series of preparatory discussions. If you go right back to 10 September—before September 11—the Prime Minister was in Washington at the time and the FTA was talked about there. There was an exploratory,

preparatory process established at that time and that continued essentially through to November. I cannot remember the exact date that the Trade Promotion Authority passed but it was not long prior to the announcement last year in November. So to that extent there was a process, but we were not engaged in negotiations, for very clear reasons.

CHAIR—As I recall, there was a relatively long period of discussion between the two countries as to whether or not we would embark on the course of a free trade negotiation.

Mr Deady—That is correct. Again I would have to check the record for the precise dates, but the approach was made about the prospect of a free trade agreement between our two countries. It was certainly taken up by the Prime Minister at that time in September, and then this more formal preparatory, or exploratory—perhaps that is the right word—process was begun in earnest at that time. I think I have mentioned to you in estimates before that at that time I had just taken over as our lead negotiator on the Singapore negotiations. Ralph Ives, coincidentally, was the lead negotiator between the US and Singapore, so that did give us an opportunity to exchange a few notes on those negotiations and also to do some of the work that we were charged to do as officials to explore the prospects of a free trade agreement between our two countries.

CHAIR—What caused this process to start? Can you recall that for the committee? Did DFAT suggest to the government that it should proceed to try and obtain US agreement to a free trade negotiation, or was that something the government asked DFAT to pursue?

Mr Deady—I would have to re-examine the record there. I have to say that I was actually not in the Office of Trade Negotiations in that early part of 2001. I would have to check the precise dates on these things, but it was certainly following the Seattle WTO ministerial that the government announced that it was intending to explore the prospect of bilateral free trade agreements where these would deliver benefits to Australian exporters in a deeper way and in a quicker fashion than perhaps may have been possible through the multilateral negotiations. That was an announcement of government trade policy. But in regard to the precise dates and the process that led to the initial approaches in relation to the US FTA, I was not involved—

CHAIR—I know you are a busy man, Mr Deady, so I do not want to burden you with unnecessary work. Let me say this: my recollection is that prior to the US presidential election at the end of 1999—

Mr Deady—After Seattle.

CHAIR—the government indicated publicly that it was interested in a US free trade agreement. With the election of the Bush administration, the government responded more actively in pursuit of that goal, leading later to the Prime Minister and the President, while not officially committing to it, saying very favourable things about the possibility of it. That led to exploratory discussions. The proper process—the formal agreement to proceed—did not occur until 10 November. That is my understanding.

Mr Deady—That is absolutely my understanding.

CHAIR—So if there is anything wrong with that understanding—

Mr Deady—I do not think there is. I think that was the process.

CHAIR—Given that that was the process, it would seem to me that the economic studies as to the benefits of a free trade agreement followed, but did not precede, the government commitment to pursue a free trade agreement. Is that right?

Mr Deady—Again, I would have to check the record on precisely when those studies were commissioned, but I believe they were released midway through 2000. I would have to check that.

CHAIR—It was some time like that.

Mr Deady—I think that is right. Yes, there was a study done by the CIE, which I mentioned—the modelling work—and there was also work done, as I know you know, by the APEC Study Centre. Also, there was a conference or a seminar held sometime in that period when at least one, or perhaps both, of those studies was released. As I said, I would have to check the historical record for the precise timings.

CHAIR—That is my broad recollection too. While having precise dates is comforting, I go to the sequence of events. The point I am making is that it is my recollection and understanding that the government had announced that it wished to pursue this course prior to undertaking those studies. If that is wrong, would you please let me know?

Mr Deady—Okay.

CHAIR—Working on that, are you aware of any studies that the government may have undertaken as to why it would choose the United States or what consideration it may have made of alternatives prior to making the decision to seek an Australia-US free trade agreement?

Mr Deady—I think, as I mentioned, the government did set out in broad terms its objectives in relation to seeking FTA partners, and this certainly reflected the significance of the trading partner and the contribution an FTA could make to Australian industry and Australian exports. It certainly looked at the prospects of those negotiations—the likelihood of success, obviously, but also the scope for a deeper and quicker outcome than that possible through the negotiations in Geneva. They were the broad criteria, as I understand it.

CHAIR—My question is, and if you need to take it on notice please do: was there any process which DFAT was involved in of advising the government to seek a free trade agreement with the United States back in 1999 or earlier?

Mr Deady—As I say, I was not directly involved in the processes at that time. I would have to take that on notice to get a full explanation or description of the process that happened at that time. Certainly DFAT would have been involved in policy development processes within government leading to the commencement of an approach to the United States about an FTA, but I cannot answer any more fully than that today.

CHAIR—We have been through a lot of this in estimates, and I do not want to take up your time or mine and go back over that unnecessarily, but you would have heard me say that I

believe the signature time in which the government went public on seeking an FTA with the United States was in the context of the anniversary of the ANZUS treaty and that the government was looking for a way of 'deepening and broadening the relationship' beyond the security and defence issues of ANZUS into a wider and more embracing relationship on economic issues with the United States. I am not aware of any input into that decision by DFAT. I think it was a political decision. If there is some light you can shine on that, I would appreciate it.

Mr Deady—I will take that on notice and see what we can do.

CHAIR—After announcing that, the government proceeded to lobby to persuade the United States to agree that we should have a free trade agreement. There was an extended period of discussion and debate, as I recall, with the United States not dismissing the idea but not directly accepting it either. As the argument settled down—and after their own program in regard to free trade with the Americas and other bilateral agreements they had were established—the question of whether they would do a deal with Australia became a more realistic issue for the administration and finally they accepted the proposition from Australia.

Mr Deady—I think that is broadly correct. The only other element in that mix—you spoke about the development of US trade policy under the Bush administration, and I think that is absolutely the case—the missing ingredient, was trade promotion authority. Until that was delivered to the administration, these things were if not academic then certainly in a different context compared to once the administration had the authority to engage in negotiations. That was the one thing right throughout that part of last year—until trade promotion authority came through there was a limit to what they could to in regard to launching specific negotiations.

CHAIR—That is quite right—and I think we were all quite pleased when the Bush administration obtained trade promotion authority from the congress. I would like to turn now to the Centre for International Economics' study. This study is often cited, in a shorthand way, as evidence that a free trade agreement with the United States would be of economic benefit to Australia. The evidence that is cited is that such an agreement would be worth—and I think the words are always carefully phrased—'up to $10 billion'. Are you familiar with that? It appears in ministerial speeches and press releases.

Mr Deady—Yes. The output of the study with this modelling exercise produces a run of the increase in GDP that would occur over a number of years as the result of the entry into force of a free trade agreement between our two countries. As you know, there are several numbers that have been used: one was a snapshot number that in 2010 GDP would be $US2 billion higher than would otherwise be the case. If you take a run of the benefits—a flow effect of the higher level of GDP over five or 10 years—it is roughly $10 billion. It is more scientific than that in the modelling. That must be a US number again, because they talked about something higher in Aussie dollars. That is the flow of GDP that would occur over a number of years from the outcome of the FTA.

CHAIR—But it is my understanding that the study actually says what the percentage of welfare gain will be to GDP, without giving an actual money amount.

Mr Deady—That $US2 billion figure is in the study. It is expressed in terms of percentage of GDP—0.9 per cent, I think it is—but it also says what that means in dollar terms. It certainly says that.

CHAIR—In Australian dollar terms?

Mr Deady—No, the $US2 billion is the number that appears in the study.

CHAIR—So, what are we talking about? I do not have it in front of me, unfortunately, but I will go to some of the other information in a minute. As I recall the actual phrasing of this—you may have it in front of you, Mr Deady—

Mr Deady—I am afraid I do not have the study, no.

CHAIR—the qualifications upon which that sum is arrived are that, if both markets open completely—

Mr Deady—That is right.

CHAIR—I had it down as $10 billion; you are saying $2 billion.

Mr Deady—I will certainly answer this question as clearly as I can. The study does a number of things: it produces a run of what GDP would be over the course of the next 20 years with an FTA between Australia and the United States with full liberalisation. So it makes GDP projections for 20 years. It produces a run on what GDP would be without an FTA. There are several things it does but, of the numbers that have been quoted, the purpose of one was to say: 'Let's take a snapshot. In 2010, 10 years after it came into effect, GDP in Australia would be $US2 billion higher than it would otherwise be.' So, in that year, GDP is higher by that amount. The higher number you talk about is the flow of benefits, so GDP over five or 10 years would $10 billion—

CHAIR—It would build up to $10 billion?

Mr Deady—It would build up or, rather, accumulate to $10 billion—$2 billion in 2010, $2.1 billion in 2011 and so on. That is where you get the $10 billion from.

CHAIR—After 10 years?

Mr Deady—Again, it is difficult without the numbers in front of me, but that is the figure that is talked about in terms of the flow effect on GDP—the overall accumulated increase over a number of years.

CHAIR—We have had this discussion before, so I do not intend to go back over it in any detail but, again, we can work on the basis that this is my understanding, and if I am wrong would you please correct it. My understanding is that the $10 billion is after 10 years and it is based on the assumption that an agreement would mean that all barriers on both sides were removed and that the $10 billion is a cumulative figure. The primary calculations in the study go

to what the percentage increase would be to GDP, and therefore the $10 billion is an amount extrapolated from the GDP percentage increase.

Mr Deady—I would reserve my comments on the $10 billion, because I am not sure of that number, but I think that is correct. It is my recollection that that $10 billion is not something that was estimated by the department as a result of looking at the percentage increase. That projection of the actual dollar amount of GDP gains—

CHAIR—is in the study.

Mr Deady—Yes. That is a modelling result. It is not something that we have extrapolated. The only other thing is, yes, the modelling is driven by the removal of all barriers to trade—tariffs, quantitative restrictions—at the border, but there are a number of additional barriers, restrictions, that the modelling work cannot measure. To that extent it is an underestimate, if you like, of the gains. For example, we have had this debate with the modellers just in the last couple of weeks: it does not take into account the restrictions on Australia selling to the government procurement market in the United States. It looks at the tariffs, non-tariff barriers, quantitative restrictions but not at some of those other instruments of policy in the United States which clearly impact on Australian exports. To that extent, it would underestimate the gains. In services and investment, again it is argued that it would underestimate. The modellers tell us that is a very hard thing to model. To that extent, the dynamic gains that might emerge from the investment services aspects of the agreement again are not fully reflected. With that caveat on your description, as a modelling exercise it models the things it can measure—removal of all those barriers, elimination of all the quantitative restrictions, all the tariffs on goods—and those things are fully reflected.

CHAIR—My other point is that it is cumulative. It builds up to that figure. It is not the result 10 years down the track of $10 billion extra that year; it is an addition of all the gains leading up to 10 years from now.

Mr Deady—I apologise that I have not got the study in front of me but, yes, the $2 billion number is the increase in a particular year. The $10 billion would be an accumulation of the gains over a flow of years.

CHAIR—You have just referred to government procurement and other things like that. In the notes attached to the calculations there is a long discussion about each of these inputs into the model. There is a discussion in those notes about how they are modelling the government procurement elements. That is quite a considered and long discussion, as each of these input discussions are. Are you putting to me now that they have not assessed what the likely benefit might be should we break through on government procurement?

Mr Deady—Yes, that is right. The study identified a number of additional barriers that Australia faces in the US market. It also talked about some of the barriers in Australia. It talked about the procurement barriers in relation to the United States—the Buy America Act and the fact that we were not a member of the GPA of the WTO. It talked about some of the difficulties in modelling things like procurement, but it did not actually model those restrictions on Australia's exports into the United States or the removal of those restrictions in relation to procurement.

CHAIR—It is some time since I read the actual study. It is my recollection that they did not model government procurement but that they did argue, in the note to government procurement, that it is very unlikely that the Buy America Act would be removed by a bilateral trade agreement and, as a consequence—among other reasons; that was not the only reason—there was no point in assigning a figure for the purpose of the econometric study. Are you putting to me that you think there is a possibility that the Buy America Act will be modified as a consequence of this agreement?

Mr Deady—We are certainly negotiating very hard in the government procurement chapter to allow for access for Australian business to sell to the US government. Where those restrictions apply, such as in the Buy America Act, yes, we are pressing for access for Australian industry into the government procurement market of the United States. We are negotiating on various things, including which agencies would be covered—you mentioned various annexes right at the start—and the thresholds above which procurement might apply. All of those things are still subject to the negotiations but, yes, we are looking to ensure Australian industry can sell to the United States government—something that we cannot do now—and that would mean adjustments to the exclusions that we face under the Buy America Act.

CHAIR—So you are saying that there is a possibility that the Centre for International Economics' study underestimates what the welfare gain might be, and an example of that is that we may make more progress in the government procurement area than the study assumed we would?

Mr Deady—Yes.

CHAIR—Has DFAT said where else it thinks the study is underestimating the return?

Mr Deady—No, we have not sought to analyse the study in that way. What we have tried to do is, where these things are raised, clarify with the modellers as to what in fact it did and did not do. I say that because the model is an important piece of work and an indicator of the sorts of gains that could accrue from an FTA. But at the same time, it is just that: a model. It is driven by the assumptions. It is a model that is based on full employment; it is a model that is based on all of these various assumptions about elasticities of demand and supply and this gets back to trade diversion and trade creation.

It is an input into the process but it is not the driver of our approach to the negotiations. It does not impact at all on our processes in terms of developing our mandates or developing our negotiating strategies for dealing with the United States. But it is a useful indicator in very broad terms of what would be—and this was its intention at the time—the broad GDP gains from the opening up of the US market for agriculture and for industrial products based on the tariffs.

It certainly made some assumptions about certain services and investment but, again, in fairness—and it is not for me to comment, really, on the model, because it is far beyond my competence—there is a recognition that this area of econometric modelling is in early its stages. None of it purports to pick up all of the dynamic benefits that may or may not accrue from liberalisation of services and investment, for example.

CHAIR—I am not going to criticise the modelling, because I have a high regard for Andy Stoeckel, who was the head of that institute. But what is often said about this modelling is 'rubbish in, rubbish out'. I am not suggesting that is true of this model, but a model is as good as the assumptions it is based on. What we are talking about now are the assumptions. What you are saying is that in the case of procurement the model may have underestimated the possible gain but that the department has not done an analysis of the model to see where else it may have underestimated the gain, in which case I assume it has not done an analysis of the model as to where it may have overestimated the gain.

But, nonetheless, the minister, the Prime Minister and now the media trumpet this 'up to $10 billion' as the possible value. You are working at a different level to me: you are working at face-to-face negotiation; I am working at the level of community understanding of what this is all about. Therefore, we are talking past each other a little; we are talking about two different things. But going back to that $10 billion, that was true, if you accept the model, given the exchange rate at the time between the Australian dollar and the US dollar, wasn't it?

Mr Deady—The $4 billion that was talked about, which was the number based on the snapshot of GDP in 2010, was based on the exchange rate at the time. The model produced a number of US$2 billion, and the number that was used at the time was this value of $A4 billion. The $10 billion to me sounds like the US dollar number, so the Aussie number is probably $18 billion or $20 billion.

CHAIR—A figure of $10 billion is what I keep seeing in print—'up to $10 billion'.

Mr Deady—Yes.

CHAIR—The exchange rate at the time—and it is a matter of record what that was—was around 50c to 51c.

Mr Deady—That is right.

CHAIR—The exchange at the moment is around 65c. So the number of $10 billion would not be true in today's currency values, given the change in the exchange rate, would it?

Mr Deady—All I can say there is that if you ran the model now on the same assumptions—the elimination of all tariffs—it would pick up the changes that have occurred in both countries since that time. So it would be for 2003 that we are running the model. I do not believe—it would be for the modellers and for Andy to answer the question—the numbers produced would be very different from the numbers that were produced in 2000. That is where I say the model is an indicator. I would say that the order of magnitude—the 0.09 per cent of GDP—is probably still pretty well right. If you ran the model now, that is the sort of outcome I think you would get. But the fact is that we have adjusted some of our tariffs since then. I think Andy has told me, for example, the effective rate of protection on sugar in the United States has probably gone up since they ran the model back then. So, again, if you build that in, then there would be bigger gains because of the subsidisation of sugar.

CHAIR—Certainly.

Mr Deady—It depends, obviously, on the assumptions; it depends on the time that these things are done. That is why I think the modelling is very useful. We have certainly used it. The government has used it. I think it is a good indicator of the broad order of magnitude of the benefits, but that is all it is.

CHAIR—Yes. But I am confronted in public discussion about this when people 'bland' the words. Again, I make the point that we are talking at two different levels. I am talking about public understanding of this. Government spokespeople use this phrase 'up to $10 billion'. Sometimes they qualify it with 'after 10 years' and 'if the entire market opens on both sides'; sometimes they do not. My point is that, at the end of the day, that is an exchange rate driven figure; the exchange rate has changed, ergo that figure has changed.

Mr Deady—All I can say there is that I apologise that I have not got study in front of me and so I cannot talk about the $10 billion. I can talk about the $4 billion, because I know that is exactly what was used. If that number is the Australian dollar number based on the flow of benefits, then, yes, it depended on the exchange rate at the time.

CHAIR—Even if it were the American dollar number, in terms of value to Australia it would have changed as well.

Mr Deady—Yes, that is right. But, as I say, if you ran the model again now, it would be based on today's exchange rates, so the outcome would be different. The adjustment in the exchange rate would be reflected in the output at the time. The US-Australia exchange rate at the time was a factor in the model. It would be a different exchange rate now, and so the US dollar number would be different. As I say, that is based on the assumptions at the time, and many factors have changed since that modelling.

CHAIR—Sure. The other qualification is that it assumes the market opens completely on both sides. I think from the body language and the level of expectation coming out of the talks it is a fair comment to say that, no matter how good an agreement you are able to negotiate, Mr Deady—and I have high regard for your ability to do that—you are not likely to succeed at opening the market completely on the US side.

Mr Deady—All I can say there is that we are looking for a very big package right across the board. We talked this morning about both Australia and the United States having the same view in relation to what article 24 means. If we are talking about time, the implementation period is something we are prepared to negotiate on with the United States; but, at the end of the day, when it comes to what the tariff will be, what the boarder protection will be, we are at one that that will be zero between the two countries.

CHAIR—That is what the objective is, but we are not there yet.

Mr Deady—We are not there yet, no.

CHAIR—The APEC Centre study is the other study that the department relies on.

Mr Deady—Yes.

CHAIR—The APEC Centre is headed by Mr Alan Oxley and is attached to the Monash University.

Mr Deady—That is right.

CHAIR—Is that report an econometric study?

Mr Deady—No, it is not a modelling exercise. It is more a qualitative assessment of some of the existing barriers to trade between the two countries and an analysis of the trading relationship.

CHAIR—Obviously you are also aware of the ACIL study that was commissioned by the government.

Mr Deady—I am aware of that study.

CHAIR—It was a very long time before that report was made public, as I recall. That study does not find there is a big gain to be made, and you address that in your submission at some length. But, for the purposes of this inquiry and at this stage, it does not suggest at all that there is any big gain to be made; in fact, it says that any gains may be negative. I should modify that statement. Looking at the ACIL Consulting study, the second paragraph of the executive summary states:

Our assessment is that the economic benefits of the FTA to Australia as a whole are, at best, very finely balanced. The impact on Australian farmers is likely to be negative, especially if domestic political considerations in the US prevent genuinely free trade in the most sensitive industries—sugar, dairy and meat. Given this, the case for the FTA must rest on broader strategic arguments, the articulation of which has not been clear to date.

And it goes on. The next heading in the executive summary is 'Modelling results'. It states:

Modelling commissioned as part of ACIL's research indicates there is room for doubt that a free trade agreement with the US (even one covering all protection and all products) would be of benefit to Australia.

It goes on to say that the reasons are complex and then starts to talk about those. Then a further paragraph states:

ACIL's modelling has projected that a bilateral deal with the US involving a phase-in of complete free trade—

and 'complete free trade' is in bold print—

over 5 years from 2005 would be slightly detrimental to the Australian economy.

And so they continue. We are both familiar with this.

Mr Deady—Yes.

CHAIR—You have set out a range of reasons why you regard this as flawed. In fact, the first point of the list of reasons in your submission is that this study is flawed.

Mr Deady—Yes.

CHAIR—Why is it flawed?

Mr Deady—I think that those modelling results are flawed. That is not just my view; it is the view of a number of modellers who have looked at that work subsequently, including Andy Stoeckel. But I find that result, as I said in some of our initial discussions, a very strange one. I find this a most flawed result: liberalisation of the US market for beef, dairy and sugar that removes the quantitative restrictions on Australia's exports to that market will somehow produce a negative result for Australian agriculture. Looking at the overall modelling, you can see that the model they ran found that, if Australia unilaterally liberalised—that is, reduced—all its tariffs, it would have a negative impact on the Australian economy. That flies in the face of all the economic modelling and analysis that has been done in recent years. I find that a very flawed result.

It then builds on this and says that, if we did not do unilateral liberalisation but did a partial FTA with the United States—'partial' in the context of less than a full multilateral negotiation—there would still be a loss to the Australian economy but the loss would be less than if we unilaterally liberalised. I find that a very strange and peculiar set of results. I do not disagree with the first quote you gave—that there would be no benefit to Australian agriculture if there were no benefit from the FTA—but I do not think that statement says very much. 'If we do not get an outcome on agriculture, then there will not be a benefit to Australia from an FTA with the United States on agriculture'—I cannot argue with that, but I do not think it is terribly informative.

CHAIR—Let us get this discussion into some framework. Firstly, you are not saying that the ACIL Consulting group are not a respected economic agency able and competent to comment on these things, are you? You are not attacking their credentials, are you?

Mr Deady—No. ACIL are a well respected group and they have done this work. I should say just for the record that this study was not commissioned by the Department of Foreign Affairs and Trade; it was done by the Rural Industries Research and Development Corporation, and RIRDC themselves I think had some serious problems with the quality of that report—it has not been released as a publicly endorsed RIRDC report although it has been made public. Honestly, it is not just the modelling work. I had serious problems with a number of the assertions and claims made in that study when I was a referee on the study going right back through the process. I really tried to explain to the author why I thought what I did about some of those claims about what happened in the Uruguay Round and subsequently in trade policy in the United States and in this country. But, anyway, that is their report. They have put their name to it and they stand by it. I have no problem with that. But, as we have said, we believe that the report is flawed, and I certainly stand by that.

CHAIR—Put yourself in the position of the ordinary Joe Blow in the street. The government commissions a study by a respected economic agency, the International Centre for Economics, an econometric study, and it produces these figures—you beaut. The government, through one of

its agencies, commissions another study from the ACIL Consulting group and that produces a different result. You say that the one that produces the result you do not like is wrong and the one that produces the result you like is right. Why should we not say that the reverse is true?

Mr Deady—I think that should be judged by the peers of the people who look at this modelling work. They can make their own comments on the quality or otherwise of the two pieces of research. We asked CIE to do a piece of research for us, which they did. We took that on board as one of the pieces of information that feeds into this process. We have made that publicly available. We stand by the work that they did. I cannot comment on ACIL's modelling. As I say, at the time I first saw it, its results seemed very strange to me. I have looked at it several times since and they do not become any clearer to me. I think the quality of the CIE study is far superior to the quality of the ACIL study. But, as I say, these are indicators, in any event, based on the assumptions that go into the modelling. They are useful tools, but that is all they are—just part of the input into this debate.

CHAIR—But you see how it looks, and this is what I am concerned about: the government makes a decision to do this deal. A study comes up which says that this is a good decision because there is a net economic benefit to Australia; another government study comes up which says that this is not a good deal and there is marginal if not a negative benefit to Australia. The government says, 'Well, the first study is right and the second study is wrong.' The first study gives you the result you want; the second study does not. You said earlier that the first study is also wrong in the sense that it underestimates the gains in some particular areas but this study, the second one, which finds against you, has bizarre reasoning.

Mr Deady—I think the first study, from the CIE, does underestimate some of the gains, but that is because of the inherent limitations of modelling not because of any fault of the modellers, and I think you have acknowledged the quality of Dr Stoeckel's work yourself, Senator. Yes, the other study comes up with this result, but I think it is the nature of the result that makes me question the validity of the study. There really is no debate, I believe, amongst economists—there is certainly a debate in the wider community—that unilateral liberalisation is to the benefit of the country that carries out that unilateral liberalisation and, in fact, that the biggest bang would be further unilateral liberalisation. That is certainly the view of—

CHAIR—That proposition is right, obviously. Economists do make that assertion across the board. But that assertion, 'across the board'—and that is the sentence that opens your entire submission to this inquiry about the benefits of open trade or free trade—is a different proposition to talking about the benefits of a bilateral trade agreement—

Mr Deady—Yes.

CHAIR—which economists would describe as a preferential trade agreement or a discriminatory trade agreement, whichever way you want to look at that proposition.

Mr Deady—Yes.

CHAIR—There would be a healthy debate between economists as to whether that was, in the perfect sense, free trade or whether it was not. All the description 'free trade' gives in this case is that there is free trade between two countries, not free trade per se.

Mr Deady—That is true, yes. They are preferential agreements, discriminatory agreements. They are a breach of the MFN principle.

CHAIR—Yes. Let me make your task a little harder, if I may. You are aware of all of these things too, but I am bound to put them to you. Are you aware of the Productivity Commission's staff working paper 'The Trade and Investment Effects of Preferential Trading Arrangements—Old and New Evidence' published in May this year?

Mr Deady—Yes. I must admit that I have not read all of that one. I have read all of the paper by ACIL, believe me.

CHAIR—I have not read all of it either; I have to confess that too. But I have read some of it, the key parts of it. The other thing I have read is what the *Financial Review* said on 27 May, after this report came out, in their editorial about the findings of this report and what—and I mean this sincerely—the distinguished economics editor of the *Australian*, Alan Wood said in an article that appeared in that newspaper on 27 May. Because these are notorious pieces of media, I am sure you are familiar with them too, Mr Deady.

Mr Deady—Yes.

CHAIR—You can see me coming, can't you? They do not give you a good review, do they?

Mr Deady—They did not review the US-Australia FTA.

CHAIR—No, they did not, but they reviewed the principle that you are negotiating.

Mr Deady—They looked at a number of—

CHAIR—Preferential trading agreements.

Mr Deady—regional preferential arrangements, yes.

CHAIR—They come to the conclusion that, effectively, the economic gains from this sort of deal are questionable. That is fair to them, isn't it?

Mr Deady—That is a very thorough study by the Productivity Commission. It is a staff paper—I think that is how they describe it. Again, you are right about all the modelling work, the analysis of free trade agreements, preferential arrangements, and the nature of those being done. One of the key elements going right back through the whole academic discussion of this for years has been this debate about trade creation and trade diversion, and they are the sorts of things that that study is again trying to estimate. If trade creation exceeds trade diversion as a result of these free trade agreements, the net global wealth there can certainly be increased as a result of these free trade negotiations. These studies, on balance, on the agreements they have looked at have come to the conclusion that diversion was perhaps greater than creation and, therefore, there were these negative impacts. I am not going to comment on that analysis. Again, I believe that it did not address, because it could not—unless it did get into the modelling work—the impact of the US-Australia free trade agreement. It does look at a number of trade agreements—and you might say, 'Well, what else would Mr Deady say in this regard'—such as

the Australia-Papua New Guinea agreement, which is not a bilateral preferential trade agreement; it has unilateral concessions from Australia.

CHAIR—But it looks at NAFTA and all those agreements.

Mr Deady—It looks at NAFTA, it looks at CER and, again, bizarrely comes up with the conclusion that that is somehow a loss—that there has been a negative impact as a result of CER. I personally feel that is a strange result, but, as I say, I have not looked in detail at that study. I think it is a piece of work which looks at an issue that is certainly, as you say, an issue of academic and public debate. It is a contribution to that, but I do not—

CHAIR—Let us borrow an image or concept from justice. You would know the statue of the Greek woman, blindfolded, with a sword in one hand and a set of scales in the other. Let us just take the scales for the moment. In one side of the scales we put the Centre for International Economics and the APEC study. In the other side of the scales we put the ACIL study and the comments made by the Productivity Commission. They are both heading in different directions, yet you choose the first lot over the second lot.

Mr Deady—The government has taken the decision to negotiate a free trade agreement with the United States.

CHAIR—That is the point of it: the government has made the decision.

Mr Deady—It has made the decision. What we are looking at are the barriers that Australian exports face in the United States market. Some of those barriers are particularly significant, coincidentally, in areas where we are perhaps the world's most efficient producer—or, if we are not the most efficient, we are in the top two—namely, the areas of sugar, dairy and beef. Any access that Australia gains to the United States market in those commodities is, in my view, unequivocally trade creating. There is no diversion of product. This is again without getting into the debate about the ACIL study. We are not displacing a third country which is an inefficient producer in the US market; we are replacing inefficient US production. So, very clearly, there are welfare gains to Australian exporters of those products as a result of this. There is a whole raft of other products that we have gone through where we are looking to make access gains.

On the other side of this debate—and I know that I am labouring the point, but this is one thing that I do want to say—all of this discussion of trade creation and trade diversion has to take into account the level of the external tariff. If you looked at these studies 10 or 15 years ago, the external tariffs were significantly higher and so the threat of trade diversion was potentially again significantly much higher. The fact is that the average Australian tariff is now very low and a very large percentage of imports into this country are duty-free, so there is no negative impact whatsoever from preferential arrangements within the United States where existing multilateral tariffs are zero. I think all of those factors have to be taken into account as you go forward in this process. But, from the bottom line, we are negotiating a deal or an outcome from an FTA with the United States which is looking to advance the interests of Australian exporters in that market. As I said, we are perhaps the world's most efficient producer of those products, so there are welfare gains as a result of that, not just for Australia but globally, I would argue. That is the hard nature of the negotiations and the outcomes. We are limited in our access in that market—

378,000 tonnes of beef and 87,000 tonnes of sugar are the quantitative limits we face in those markets and we are trying to do something about them.

CHAIR—I want to throw into the scale on the Productivity Commission and ACIL side yet another counterweight. Professor Garnaut came and gave evidence to this inquiry. You would agree, I am sure, that he is a distinguished economist in Australia.

Mr Deady—Yes, there is no question about that.

CHAIR—If you would not mind, I would just like to read for you the major points he has given us. His evidence was in the form of a series of articles that he had published—and I am sure that you are familiar with those—and some oral commentary, but he reduced it to a series of five quite simple points. He starts in this way:

I have provided two papers to the committee: 'Australian Security and Free Trade with America', 'Requiem for Uldorama: A Plain but Useful Life'.

They are the two papers. He goes on:

I also draw the Committee's attention to an earlier paper, published in the *Australian Journal of International Affairs*, and a more recent piece with Professor Jagdish Bhagwati, published in *The Australian* on July 11.

I interpose here to say that Jagdish Bhagwati is an international commentator on trade who is well known to us all. I think he is at either the University of California or Columbia—I am not sure which university it is. It is unexceptional between us, I think, Mr Deady, that he is recognised as one of the leading commentators on trade. If anything, he is someone who is attacked strongly by the antiglobalisation movement for his opinions. Let me pick up what Ross Garnaut has then said:

These various papers make a case that a "Free Trade Agreement" with the United States of the kind currently under negotiation is likely to damage Australian economic interests, and possibly damage Australian security interests through the tensions that it may introduce into relations with United States.

Here is the point:

The economic case has the following elements:

(i) The negotiation of such an agreement at this time would accelerate the weakening of the multilateral system that is currently in process, by adding to momentum for development of discriminatory free trade areas, and by diverting focus from multilateral trade negotiations.

I will give you the rest of the five points and then ask you to comment:

(ii) The negotiation of such an agreement would weaken the Australian trading performance in its most important export region, East Asia, including by encouraging the emergence of free trade areas in East Asia that discriminate against Australia. This would be of great importance in agriculture, but also in other sectors.

(iii) The rules of origin associated with this and other "free trade agreements" would raise transactions costs in international trade and increase business costs, and in the process lower productivity.

(iv) The acceptance that agricultural subsidies would be outside a bilateral free trade agreement, as is likely, would be a "WTO-Minus" development that would corrode the position of free-trade agricultural exporters in the international system, and could negate any benefits from increased market access to the United States.

(v) The process of policy-making so far, relying on commissioning consulting reports with limiting terms of reference, damages established Australian trade policy-making processes. It is important that this be remedied by an independent, transparent Productivity Commission Report before any agreement is considered.

That is, in absolute summary, what Professor Garnaut put to us and has put in many public fora both here and overseas. I note in your submission that you have taken some time to deal with what you see the arguments are in the ACIL report. Would you care to address those objections by Professor Garnaut for us?

Mr Deady—We have some fundamental disagreements with virtually all of what you have outlined there in terms of what the FTA means for the multilateral system and what it means for our relations or our trading performance in East Asia. I do have some particular comments on the rules of origin, because again I think it is an exaggerated claim by Professor Garnaut and Professor Bhagwati in this area. On the question of agriculture, again I do not see that an FTA with the United States that led to a significant market access improvement for a very competitive agricultural producer such as Australia would send a negative signal to the WTO at all. On the third issue, of consultancy reports, I think that the ongoing broad policy debate about approaches to an FTA reflects the actual reality of the debate on these issues at the moment, including this inquiry.

Starting from the top, on the weakening of the multilateral system, if these FTAs are done comprehensively, they in fact can, I believe, complement the multilateral trading system. In this case we are talking about Australia and the United States, but previously there have been a number of examples. Mr Gosper mentioned the NAFTA agreements and what they did in relation to the establishment of the WTO and the GATS agreement. I think the experience is that these modern-day FTAs, providing they do meet the high tests set by the rules of the WTO, can complement the trading system. I think what we are doing—and what we did in our own agreement in Singapore—on the services and investment side is an indicator of how these things can strengthen the level of commitments that countries are prepared to enter into that can in time contribute to the multilateral processes.

I believe that we negotiated commitments on services with Singapore that would not be possible to negotiate as part of the GATS negotiations in any sort of current time frame. Singapore has been going down a path of liberalisation and deregulation. What we were able to negotiate as part of the FTA with Singapore was a binding of the deregulation that has occurred in that country. I think that does contribute and now puts Singapore in a stronger position in negotiations multilaterally. I do not think there is any evidence that a bilateral agreement, such as the one that Australia is heading into with the United States, leads to a weakening of the multilateral system.

I make the same point about our trade relationship with Asia. There is no evidence that countries in East Asia are discriminating against Australia. There certainly is evidence of an interest in pursuing regional trade agreements, but many of the countries in the Asian region are also interested in negotiations with the United States. We have concluded our negotiations with Singapore and we are well advanced in negotiations with Thailand. I do not believe that the facts of what we are doing in trade policy at the moment support the view that somehow this will lead to outcomes that will discriminate against Australia.

I will also mention that the Prime Minister was in China a few weeks back, and there have been discussions there on the trade and investment framework agreement and whether that could be advanced and could in time move to a full-blown free trade agreement. I think that reflects the facts of what is going on. I do not believe that our negotiations with the United States are the driver of either the problems that emerged in the WTO in Cancun or the movement to regional trade agreements within the region.

I think there is an exaggerated concern about the rules of origin. I think it is based on an assumption from an earlier period when the external tariffs were very high and perhaps this was the result. But a very large proportion of our two-way trade with the United States is already duty-free, so the rules of origin do not affect that trade at all. Very clearly, only the preferential trade is impacted by the rules of origin. In a very large proportion of that trade the rules of origin are largely irrelevant, because clearly the product is from Australia or from the United States. There are no transaction costs in establishing that, particularly if you use the model that the United States pursues in these matters, which is that it is purely a change of tariff classification.

If you import an engine and you export that engine in a motor vehicle, there is no bookwork required, and that qualifies as the rules of origin. There is no significant transaction cost at all in that sort of processes. So I really believe that that concern is exaggerated. Rules of origin are crucial. It is important that we get them right. They are very important, as I have said, in relation to textiles in this country. The approach of the United States certainly gives the Australian textile industry cause for concern. But I do not think that the claim that somehow it will lead to a significant rise in transaction costs is supported by the facts. That has certainly not been the reaction that we have had from Australian industry when we have explained the US approach to the rules of origin.

CHAIR—Professor Garnaut, says at the bottom of page 3 of his attachment paper, entitled 'Wrong way: go back':

> The rules of origin in the North America Free Trade Agreement run to hundreds of pages, creating a bureaucrat's delight, a lobbyist's heaven and a good businessman's nightmare.

What is being proposed on the American side is to change the way in which we assess rules of origin. As I understand it, the proposal that the Americans are putting to us is to adopt their system, not the system we employ.

Mr Deady—That is correct.

CHAIR—Their system is one in which there are reams of paper with each item set out, whereas our system is a formula system. Given what you have just said, maybe you can tell us

where we are up to in those negotiations. Are we going to embrace the American system or not, or is the matter not yet resolved?

Mr Deady—It is a matter not yet resolved. We are still talking to the Americans. More importantly, we are still talking to Australian industry and explaining the US approach—whether it would be appropriate for Australia in the context of the FTA with the United States.

CHAIR—Conceptually though, the point that Garnaut is making is that if we were to change—to embrace something like the American proposition—then Australian business that exports to the world has a different set of rules of origin regulations for the US market than it has for its other destination for its exports and it has to be able to make informed decisions about whether it conforms to a minimum of two different sets of rules of origin. So there is an added cost, isn't there, in working out the transactional difficulties?

Mr Deady—Again, that is what is claimed but I do not believe those are the facts of the matter. We do have a system of rules of origin in relation to Singapore and in relation to New Zealand, which is a value added concept to an exporter who wants to qualify for the preferential access into those markets. In Singapore it is academic because Singapore is zero. That is what I mean. The rules of origin are exaggerated. For our export interests in Singapore, the rules of origin are irrelevant because their tariffs are zero.

For an Australian exporter producing an automobile, if he wants to sell that automobile to New Zealand under preference then the calculation has to be done to demonstrate that there is more than 50 per cent value added in that automobile going to New Zealand. If that producer wants to sell to the United States he has to do no calculations. All he has to demonstrate is what the imported components are—for example, he imported the engines, he imported the gearbox and he imported the rear-vision mirrors. All those things came in under one tariff line. He exports a motor vehicle, which is exported under another tariff line. He has no calculations to make. He meets the rules of origin so he does not have to go through the exercise the he has to go through with New Zealand. It is just wrong to claim that the US approach in and of itself is more transaction costly than our existing approach.

You are right: it is 1,000 pages. But every Australian exporter does not have to look at those 1,000 pages. He or she can say, 'I import this tariff item on this page and I export this tariff item on that page. It is done. I have qualified for the rules of origin in relation to exports to the United States.' The complication with the US is that unfortunately a part of their ruse that is that they introduce a value added type concept—so they bring that into the process as well. It gets even more complicated in textiles. I am not saying it is simple or easy; it is important that we get it right. But it is certainly wrong to say that the US approach in and of itself is costly and the transaction costs are huge.

As I say, for that individual producer, those are the decisions. If he is exporting to those two markets, then, yes, he has to look at it and make sure he can meet the rules of origin in both. For example, if the tariff on a product in New Zealand was only five per cent and it costs him 10 per cent to calculate the rules of origin, he will pay the five per cent. But it is still a business decision for him to make. If the transaction cost is less than the tariff that he is paying then he will go through the process of the transaction costs. As the tariffs generally come down, the rules of

origin become less important. In selling multilaterally—selling on an MFN basis—the rules of origin do not determine the customs used. He has no decision to make.

CHAIR—I am sorry I interrupted you but I thought that since you were talking about rules of origin I would ask you to comment on the comments made to us.

Mr Deady—For Australia and the United States to negotiate a big deal on agriculture is a big ask. It is a very difficult negotiation ahead of us. But, if the outcome is that we are negotiating a market access package with the United States on agriculture so soon after the Cancun meetings, I do not believe that is a negative signal on agriculture multilaterally. I think it is potentially a very positive one. Yes, subsidies are outside, but again I do not understand an argument that an FTA somehow undermines the case for Australia continuing to pursue the full liberalisation of agriculture. I do not think there are facts to support that approach.

CHAIR—I think the concept here is essentially that, if we close a deal that does not include subsidies, we have flagged to the multilateral round that that deal without subsidies is an acceptable agricultural outcome for Australia, thereby weakening—I think this is the concept—our negotiating position in the multilateral round to remove those subsidies.

Mr Deady—That may be the argument that Professor Garnaut is making. Again, I just do not believe it is supported by any of the facts. We are very clear and continue to make clear, as we did in response to the senator's questions earlier, that unfortunately FTAs allow us to get at only one of these three pillars on agriculture. I think the fact that we are successful in negotiating improved market access for Australian exports into the US market is a plus. It will in no way diminish our efforts to continue to seek the reform of the Farm Bill, the reform of domestic support and the elimination of export subsidy multilaterally. The government has made it very clear that is still where the biggest bang is.

Getting back to the studies, I must say that the one thing they all show is the biggest bang comes from that multilateral negotiation. So there is no argument about that. To that extent it is false to set these things up, one against the other. We believe that this can contribute to Australian exports, to Australian industry. To the extent it can also assist in our multilateral processes, that is good. It certainly does not diminish or detract from them in any way.

CHAIR—While we are still on agriculture, now is an appropriate time to ask you a question that I would have asked you later. Given the failure at Cancun, there is a strong argument being put that, because we are now—one assumes—not looking at a WTO outcome on agriculture any time soon, that weakens quite decisively our bargaining position in a bilateral trade agreement with the United States, on the basis that the United States know that they do not have to offer up anything at the multilateral level and therefore can play hard ball at bilateral level.

Mr Deady—Again, I just do not believe that is the result of the outcome of the Cancun meeting. I do not think there has been any doubt from day one in these negotiations how hard it was going to be to negotiate an agriculture package as part of the FTA with the United States. I think it remains a huge challenge for us. It is recognised how sensitive that sector is. It is recognised in the quotes given before by Senator Marshall of Stallman's comments after or in the middle of the process in Cancun. There is no doubt that negotiating the big deal that we need on agriculture with the United States will be difficult.

But we launched the negotiations with the US; the US administration knew what we were looking for as a big deal; and they knew that agriculture had to be a big part of that. That is the process we are going through. Whether we can get there is the challenge ahead of us. I do not believe that fundamentally it changes the decision that has to be taken by the US administration and that has to pass through the Congress. All the sensitivities and all the lobbying efforts will no doubt continue to be voiced by the US industries in opposition to that. In my view, it has not fundamentally changed as a result of Cancun.

CHAIR—I am sorry that I have interrupted you a couple of times. You were responding to the arguments put to us by Professor Garnaut. Have you completed that response?

Mr Deady—I probably have. The last point is a very broad point about policy making on the basis of consultants' reports. That is how I wrote it down; it is not exactly as Professor Garnaut framed it. It needs some sort of independent policy or PC report. As I have said, these consultants' reports are one input in a policy development process. They are one part of an indicator of what the gains may be from these negotiations. But, at the end of the day, it is the government that determines to pursue these negotiations, to press for the biggest outcome possible on the basis of the objectives set out and then to take a decision on the outcome, the package, that we can negotiate with the United States and on what that delivers to Australian interests. I cannot say more than that.

CHAIR—I appreciate that. Thank you for your response. Just going, though, to the last sentence in what Garnaut has put to us about the Productivity Commission, as you say it is for the government to decide to pursue this or not; it is for the government to decide if the outcome is satisfactory and to therefore announce its acceptance of the deal. But it is for the parliament to decide whether it carries any consequential legislation arising from it.

I am not sure how you are fixed to answer this question but let me ask it of you and I am sure you will tell me. What would be the response if this committee recommended as part of the 'transparency approach'—the openness approach—that, once a deal had been agreed at government level and the government had announced its satisfaction with it, it be referred off to the Productivity Commission for the Productivity Commission to report to the government, the parliament and the community on how it assessed the outcome in economic terms prior to voting on any legislation?

Mr Deady—I cannot answer that question on behalf of the government. There are, as part of the JSCOT processes, requirements on the government following the conclusion of negotiations. We certainly will be producing a regulatory impact statement or assessment that will be tabled with the treaty. We are very mindful, certainly, of the JSCOT processes and of the level of interest in the FTA with the United States. I suppose the limit of my answer can only be that we are conscious of that.

We very deliberately tried to be as open and transparent as possible in this process in terms of the consultations we have done. The department, once the negotiations were concluded, will be doing all we can to be as transparent as we can in those JSCOT processes in terms of identifying the outcomes. Clearly the legal text is there but then we would analyse that to the maximum extent we could. But I cannot give an answer as to whether the government would agree to ask the Productivity Commission for a particular report. I cannot give that.

CHAIR—I understand that. That is why I introduced my question in the way I did. The regulatory impact statement that you would put down when the text is tabled: what will that be about?

Mr Deady—We did one of those with Singapore. I know it basically describes the outcomes in more general terms and looks at the impacts on the economy and small business. I would have to again look at precisely what we did with Singapore. But there is a requirement for us to produce this regional impact assessment or statement—I am not sure what the precise title is. But it looks at what the implications are and it complements the material that we put forward to the JSCOT. So we will certainly be doing that and looking to do that as fully and completely as we can.

CHAIR—That concludes at least this set of questions from me. I want to move on to a couple of other issues. Then I want to indicate that we have depleted numbers here and that other questions have been submitted to us and that I might, as I did with Mr Gosper, go through those and get your responses to them so we will have been comprehensive and we will not need to call you back or anything like that.

First of all, one of the issues that there is a great deal of interest in as far as the submissions we have received are concerned—and this issue has resonated with the committee—is the investor state clause. A lot of the argument about the investor state clause is related to what the history of that clause has been in NAFTA and how it has impacted on the partners to that agreement and the publicity that has emanated from that.

I understand—and please correct this perception if it is wrong—that the department's view is that, since NAFTA, attitudes to how investor state provisions operate have been refined, and what you are talking about is not a simple rerun of a NAFTA type clause but a more refined provision. I know that you are in negotiation so there are limits on what you can say, and that applies to all of the issues that we have talked about. But this area has been particularly singled out in submissions to us. What can you say to us that might deal with the anxieties that have been presented about how an investor state provision would, as I think most arguments have said, encroach on sovereignty rights and issues of that nature?

Mr Deady—I agree with you that there have been adjustments to the investor state dispute settlement mechanisms since NAFTA. There has been some refinement, certainly, in the US approach to these. As I understand it, the NAFTA partners themselves have clarified some of the articles that have some commentary and contention surrounding them. Those clarifications or interpretations of the NAFTA articles, in terms of direct or indirect expropriation that it talks about, have themselves been reflected in trade promotion authority. They are also reflected in the US-Singapore and US-Chile agreements. So I think the first thing is that there is a recognition of that.

One of the other substantial criticisms of the original NAFTA arrangement and the panels was again this lack of transparency in the panel processes. Certainly, now the US, in their approach to these dispute settlement mechanisms, have a very much more transparent approach to the panel process that goes on—there is a public release of submissions and an acceptance of amicus curiae briefs as part of these panel processes. I think that has been looked at to try and address some of those problems. The third comment I would make—

CHAIR—I think this whole argument about amicus curiae briefs is a fraught area. Some of the people who argue for amicus curiae briefs are not necessarily, in fact, arguing to be friends of the court, which is what such a brief suggests. They are arguing that they can assist the deliberations of the court by explaining in more detail a particular issue, like the environment. So I just want to say that, to me at least, the argument of amicus curiae is an area that needs some careful definitional consideration before you embrace it. Having said that, please proceed.

Mr Deady—That is a good point. I should say that I am just describing these things in broad terms. Whether these matters are to be part of our agreement with the United States is still an issue that is very much up for discussion. At this point in time, no proposal has been put, either by us or by the United States, for such provisions. We have certainly talked about it as one area, but it is a genuine issue for internal consideration which is going on on both sides. If we were to go down that route, I think the Americans would put forward something that looked very like their Singapore and Chile arrangements and we would certainly look in detail at those aspects of it—the openness, the transparency, how a panel would treat these amicus briefs and various things like that. I think they are good points that we would need to reflect on as part of the process.

The other thing I would say about the NAFTA experience—and there have been a number of cases in NAFTA; our people have looked at a number of those now—is that the sense we have from it is that the actual panel outcomes of those deliberations have been very sensible and quite moderate. Certainly, some of the claims put forward by the claimants in the process and the interpretations of the articles that are in the NAFTA agreements have been very extreme. But the panels, in fact, have actually discounted those claims. As I understand it, most of the outcomes have really been reasonable. I think some of the concerns are probably a bit exaggerated and driven more by the claims of some of the lawyers who have been involved in the processes.

So there are all those factors that do go to this. What we certainly have done, and what we did with our Singapore agreement—and we do have an investor state mechanism in Singapore, as you know—is that we make it even clearer in the text that it does apply solely to the commitments contained in that investment chapter. An investor could not take the government of Australia or the government of Singapore under dispute because of a breach of some other commitment or obligation under the agreement. It is limited solely to the investment chapter. Again that comes back to what I think is a very fundamental point: what are the specific commitments that you have entered into in that investment chapter? Therefore, in entering into those commitments, I think we have to be very mindful of the possibility of an investor state dispute and therefore craft these things as a whole. That is very much in our minds as we go forward in, initially, our deliberation on this. If we reach the point where we are both prepared to look at such an article, then that does, I think, have implications for the sorts of obligations and commitments you would enter into as part of that chapter, and the way they would be expressed. All of those things to an extent are lessons learnt from a number of years now with the NAFTA experiences.

CHAIR—We introduced into the negotiation with Singapore the investor state clause. That is now part of the agreement. In another briefing I have had, in another committee, it was confirmed that we introduced into the Australia-Thailand free trade talks an investor state provision. While those talks have not concluded, my understanding of the briefing was that it is

likely that such a clause will be included. Did we introduce the investor state clause as such into the negotiations with the US?

Mr Deady—No, not as yet. Neither side has yet introduced language on an investor state clause into the chapter on investment. At this point in time a proposal has been put neither by ourselves nor the United States. The way we have approached the investment chapter part of the negotiations is that there is a large chunk of that chapter where—again getting back to the very beginning—we really have a very common view on a national treatment clause. We are talking about an MFN clause in this sort of chapter. But they are not there. They are important. They are not without some controversy or some issues but nonetheless, there is a broad category there where we are pretty much agreed: yes, these will be part of it; let's ensure we get their language right.

There is a second category where our views are: yes, on balance we think these things should be part of an investment chapter between us, but we actually do have fairly different views on what they might look like. There is a raft of issues there. With respect to the third category—and I would say at the moment that this is where this investor state dispute settlement is—we have talked about it, we have explained our approach in Singapore, we have asked questions of the Americans and their experience with NAFTA, what they did with Singapore and what they have done with Chile. We have asked the question: with two developed countries, these are some of the issues this throws up; do we really need this sort of article? Both countries have reflected on that and gone back and had internal discussions, and they are still going on. It is certainly very much a possibility as part of the agreement, but neither country as yet has come forward and specifically put down language saying, 'Yes, we want one and this is what we think it should look like.'

CHAIR—So at this stage it is not necessarily a given that there will be an investor state clause in the agreement.

Mr Deady—No, at this point in time it is not a given.

CHAIR—I think we have had this discussion about investor state clauses at estimates and I do not want to regurgitate the whole thing, but essentially Australia has a number of investor state clauses with a range—I think 22—of countries, all of which are developing countries. It does so, understandably, because of the need to protect investment from expropriation in countries, or where there is a weak rule of law that might undermine the investment. That is not true of the United States. We do not regard it as a developing country, obviously, and we do not regard it as having a weak rule of law either, do we?

Mr Deady—No.

CHAIR—So it is in a separate category from those 22.

Mr Deady—That is right, and that is recognised by the United States of us, so that is why this discussion is going on.

CHAIR—They do not regard us as a developing country—

Mr Deady—No.

CHAIR—or a country in which there is a weak rule of law.

Mr Deady—No.

CHAIR—On both sides of this discussion we are satisfied that we are developed, that we have sophisticated mechanisms, the rule of law and processes of legal dispute settlement to the highest level. We are both satisfied about those principles.

Mr Deady—That is right, yes. We are, and I do not step back from that, but we are also talking to Australian industry to seek their views on whether they believe there would be some benefits in having an alternative to the domestic processes of the United States. That is the question that we are asking of them and seeking a reaction on. There is also the broader question, which is: would it in any way diminish the attractiveness of Australia as a source for investment if we did not have such a clause in the United States agreement? Questions are rightly being asked and assessments are being made on the pros and cons as part of that process.

CHAIR—In the bilateral relationship, the investment flow is predominantly from the US to Australia, although the US is the biggest destination for foreign directed investment from Australia—that is, outward investment.

Mr Deady—I think that is right. The two-way investment flows with them are significantly—

CHAIR—They are predominantly from the US to us.

Mr Deady—Yes, but my understanding, from the last time I looked at the numbers, is that it is the biggest destination for our investment overseas.

CHAIR—That is the US. I think that is right.

Mr Deady—Yes. It is a big relationship for investment, so, again, that is why this is so important. We need it, and these are the questions to be asked. Many of the developing countries you spoke about are prepared to accept these investor state disputes because they enhance their attractiveness as an investment destination. Equally, they have very limited investments in this country, so it is very much a one-way commitment or one-way obligation.

CHAIR—Looking at those investment flows now, given the volume of US investment in Australia and the outward flow of Australian investment to the US, it is fair to say that there is a degree of confidence on both sides of this relationship that domestic law is satisfactory in both countries in terms of protecting investor rights.

Mr Deady—I believe that is right, yes.

CHAIR—That is right empirically. Otherwise, there would not be such a big flow; people would be deterred.

Mr Deady—That is right.

CHAIR—That does weaken the case to some extent to go to an investor state provision, doesn't it?

Mr Deady—It is certainly a factor that we are reflecting on. As I said, given the fact that there are very clear legal processes in both countries and that the rule of law applies, we are asking industry whether we need it. That is the very question. The other side of the question is whether, notwithstanding that, there would be value in the prospect of independent international arbitration. Is it a valuable addition or alternative to rely on US courts and vice versa? They are the questions being asked.

CHAIR—I think this is true in the case of the Australia-Singapore Free Trade Agreement, so I will ask you again: while the department—and I do not question the degree of thoroughness—briefed the states on the implications of the investor state provision in that agreement, it did not formally seek the approval of the states to include such a clause. Is that right?

Mr Deady—To my recollection, that is right. The federal government were negotiating with Singapore to take on the commitment. The commitment is taken on as it would be if there were such a clause in the United States. The obligation applies to the federal government under these treaty matters. Yes, it has implications for state measures and state programs, and during the Singapore process we certainly explained that in as much detail as we could to the state governments. I think that helped very much. They have a much clearer understanding now, as we go through the negotiations with the US, of the negative list. It is the same sort of approach, and the same sorts of issues will come up in services in this area if we go down this path.

CHAIR—We have received a lot of criticism also about what the potential outcome might be in the area of the adoption of a negative list process basically for services trade, but in your opening remarks I think you drew attention to the negative list as being a positive development. What is the department's current view on negative listing for an FTA such as this? Since I am sure that you are familiar with some of the criticisms of it, please pick up some of those on the way through.

Mr Deady—Yes, I will try. Certainly in relation to the negotiations with Singapore—there we were looking for a very big deal on services and investment; that really was the side of the deal that was relevant to us—we were very strong advocates of a negative list approach. We saw the inherent greater liberalising thrust of that approach and the transparency that comes with a negative listing as being pluses for our objectives to be best met in negotiations with Singapore.

With the United States, a very similar approach occurs. They adopt a negative list approach in their NAFTA agreements. That is the approach we both stepped off from. We believe that approach certainly is appropriate to achieving very much a GATS-plus outcome on services as part of these negotiations. It is more transparent, it is inherently more liberalising but at the same time—in getting to some of the comments and criticisms perhaps of the negative list approach—it still provides government with the flexibility to take reservations to ensure that, where it has measures in place not in conformance with the obligations taken in terms of national treatment or market access, we can fully reserve those and commit to a standstill provision, and that is annex 1.

Essentially annex 1 is a standstill where we have a measure that is inconsistent with the obligations but where effectively we agree to be bound. In Singapore—and we would do the same in the United States—we agree not to make that measure any more inconsistent and have it become any more trade restrictive than at the date of entry into force of the negotiations. That is the value of a binding. As I have said, the GATS-plus element is reflected very much in the liberalisation that has happened in Singapore over recent years. That standstill commitment from Singapore was locked in and was a key part of the outcome. That is very much one of the pluses we see in these processes.

Annex 2, the second annex to this negative list, allows us to carve out whole sectors from the obligations in those two chapters of services and investment. That means the government maintains full flexibility to introduce new and more restrictive measures in relation to those sectors. The negative list approach—even though to my mind it is inherently more liberalising—has the capacity still to maintain flexibility, where necessary, and for the government to take whatever reservations it considers necessary in order to ensure there is that flexibility in the future. That is how we have approached it.

Our Singapore agreement has another element; just to confuse things, we have a third annex where we got some additional specific commitments out of Singapore. Having taken reservations in annex 1 or 2, we were still able to extract some concessions from Singapore. That is a little more like the GATS approach, I suppose, in that we were able to lock in again some specific commitments. While they maintain broad flexibility in a particular sector, they nonetheless make some commitments in some areas. The beauty of the approach is that we can craft the reservations to suit ourselves and take them where we need them but at the same time we can reflect that we are an open market for services and investment and, where appropriate, we are prepared to bind that openness as part of these negotiations.

CHAIR—I am mindful of the time. It is now quarter past four and we are due to conclude in half an hour. There is a whole series of questions that have been submitted to us that I have not got to yet. I do not want to unsatisfactorily complete them and I think there is no flexibility, given aircraft scheduling, to get out of here after quarter past. So we are going to have to stop at quarter past. In trying to meet the needs of this inquiry in asking the series of questions, I might come to a point where I will have to ask you if you would take some questions on notice if we provide them to you. Would that be okay?

Mr Deady—Yes. That is fine.

CHAIR—I want to run through a series of quick questions shortly, and I am sure Senator Marshall has further questions because he has more than enough yellow stickers in his copy of the submissions that he is yet to get to. But just coming back to this negative list issue, this has been a major issue in the submissions before us. You say, rightly, that the negative list approach is inherently more liberalising but I think that is the complaint: the negative list approach is liberalising without consent or without knowledge of which areas may be liberalised—areas we have not thought of or are yet to develop. We are committed to those irrespectively but if the question of transparency and accountability arises, the question is: why didn't we know and how can we forecast? The argument goes ahead that some things may not even be thought of yet as particular services, particularly IT services. They will be in the future and they are automatically caught. While it is true that it is inherently liberalising—and that is the nub of the accountability

argument—nonetheless the parliament should know what it is doing. How do you answer that argument?

Mr Deady—I think it does have to be looked at in the overall structure of this negative list. Certainly there are the annex 2 reservations, which are industry-wide reservations, so that certainly does leave considerable flexibility in areas of new services that might be introduced in that broad sector—whether, for example, that is communications on the Singapore agreement, where we took out an annex 2 reservation on broadcasting and so-called cultural industries. I know from the JSCOT commentary that the industry was very pleased with that reservation—that it does maintain flexibility for governments in the future. Also, we have to look at the fact that, as Mr Gosper went through this morning, the same sort of exclusions from the services chapters and the investment chapters—that is, services providing governmental authority—are carved out from the negotiations.

CHAIR—Can I just stop you there, Mr Deady, because this is quite an important point. I want to concentrate on it for a minute, irrespective of the clock. This morning Mr Gosper went through—he was at pains to take us through—a quite detailed set of commitments by the government on public sector services and competition, whether or not in competition with private sector services, and gave us assurance about what the government's approach was on those matters. Are you saying to us now that all of those conditions that Mr Gosper has referred to for the GATS inquiry are equally true of the Australia-US free trade agreement?

Mr Deady—Yes. We are looking to bring down into the FTA negotiations text and legal commitments that precise GATS language—into the bilateral agreement. So that would be the interpretation that we take into Geneva and that is the interpretation that would be reflected in the commitment in the FTA with the United States.

CHAIR—If I had more time I would take you through each of those points—on education, health, water supply and so forth—and get you to sign off on each one of them. But, as I understand it, you are telling me that exactly what Mr Gosper told us this morning about GATS is true of this agreement, and the negotiating position of the Australian government is to provide those protections in the context of this agreement equally as they are seeking to do in the WTO.

Mr Deady—Yes. Our interpretation of that language is that it is the same language and we would not be reinterpreting it or implying any sort of questioning of that language in the FTA negotiations. That would be the position of the United States. This is a bilateral agreement, obviously, but that is the interpretation, as Mr Gosper was saying, of the WTO members in relation to that language. In this case there are only the two of us who have to have that interpretation, and we do.

Senator MARSHALL—But due to the investor state provision in NAFTA there is litigation between United Parcel Service Inc. and Canada Post over what we would consider to be a public service as defined in the way you have just indicated.

Mr Deady—I am aware of that NAFTA dispute but not of the precise details of it. In the FTA negotiations with the United States we would ensure that the language addressed services providing the exercise of governmental authority. We would also have the added ability, where we thought there was any question about that obligation, to include language in the reservations

to reinforce our interpretation in relation to postal services, health services or education. What Mr Gosper said this morning is the approach that we take in these negotiations also.

Senator MARSHALL—One of the significant concerns that has been raised is that, while there may be the best intentions and it is not the intention to undermine or give up any of those provisions, the fact is that the agreements themselves will deliver a mechanism for those things to be undermined. That is where we are looking for real certainty. It probably has to be addressed in both of those provisions, in the dispute procedures.

Mr Deady—I will put aside the investor state provision for one second, because, as we were saying before, that applies only to the investment chapter and the commitments and obligations under that chapter. The negative list is obviously different from what is in the GATS. But the language that we bring down in terms of governmental authority is the same and has the same interpretation in Geneva. From what Mr Gosper was saying, the combination of that language and the commitments that Australia has made in the GATS give the certainty that we obtain in the delivery of governmental services.

Senator MARSHALL—But Mr Gosper did concede that that language was ambiguous. So why do we not clarify it in this agreement and not bring down the same words?

Mr Deady—I have not spoken to Bruce about this. Bruce said that the reading of the language is ambiguous, but it is not ambiguous to the members of the WTO. They are reading it the way we read it. In the FTA we are not going to suggest that there is anything wrong with that language. This is how the United States and Australia interpret it and this is how we are going to bring it forward and put it into our bilateral agreement. That is our interpretation. That is the way that both governments interpret that commitment and that is what we are going to bring forward.

I was trying to say that the whole chapter has to be read in the context of a negative list. If there is a requirement for us in some aspect of the delivery of services to take out a reservation to reinforce the exception for governmental authority then we will take that reservation out in the negative list. It is that combination of our commitments, as reflected in the language of the text and the reservations that we have carved out, that is the obligation that we take forward. I am not in a position to comment on the precise nature of the reservation that Canada took in its negative list in relation to postal services or what has led to the dispute between UPS and Canada Post.

Senator MARSHALL—I will ask you a similar question to one that I asked Mr Gosper. Given that we do not know what the final agreement is going to look like and what may or may not be in the lists of reservations, and given that policy and public interest may change, is there a mechanism for either the US or Australia to say, 'We've had a change of mind. We now want to put this in the reservation list or take it out altogether'? Is there a mechanism for that, and what will it cost? Will the cost be prohibitive?

Mr Deady—The answer is not dissimilar to what Mr Gosper said this morning: we are taking binding commitments in the negotiations. The negative list, in that sense, is clearly different in the amount of transparency and the amount of work we put into ensuring that we are identifying those reservations correctly and getting that language right. We do maintain within the two annexes the capacity to introduce new measures—more restrictive measures if it is an annex to carve out. We are still in the negotiations on this so I probably should not say any more.

If you look at our agreement with Singapore, you will see that we actually have a mechanism whereby the governments could look at adjustments to the reservations that they have taken with a view to a rebalancing. If there was a desire to introduce a new measure to make it more restrictive, there is a capacity to do that provided the overall balance of the agreement is maintained. That is a specific article in the agreement with Singapore. All I can say is that the United States do not normally have that as an article in their own FTAs but, as Mr Gosper has said, there still remains a very broad capacity—subject to the final outcomes—as part of the consultations that we talked about this morning, the ministerial reviews and other things, to look at all elements of the agreement. So that is not precluded from either party. That is still subject to the negotiations and where we finally come out on that broad question or the mechanism of how it can be done.

Senator MARSHALL—There are a number of legal cases happening in the US as a result of NAFTA. While you said you were not aware of the detail, many of the submissions have actually mentioned those elements and I am just wondering to what extent you have investigated the consequences of litigation and the causes for it. Does that raise a general concern or a specific concern with us which we are considering within the negotiations?

Mr Deady—Yes, I did say that we have looked at—certainly the services and investment team have—a number of those NAFTA disputes, worked through them and analysed them. As I said to Senator Cook, one of the conclusions we have drawn from that analysis is that, whilst there have been a number of innovative interpretations of the language put forward by various positions in those disputes, the actual panel outcomes have been—on the basis of what I have been told and the analysis we have done—reasonable. Where the three NAFTA parties have agreed that the articles in fact needed some clarification or interpretation, that has been done since NAFTA entered into force. So there is greater certainty, I think, and greater clarity about precisely what these articles mean. There have been changes made to the chapter 11 type procedures and language in the subsequent US agreements, reflecting some of these interpretations. That is now the basis on which this discussion will take place between ourselves and the United States—if, in fact, we do get to discuss an investor state dispute process.

CHAIR—In view of the hour, Mr Deady, I just want to run through some of the other matters—unfortunately I will not be able to go into the detail that we have on the investor state provision and the negative list approach. Firstly, are you in a position to tell us whether or not there is any proposal to modify the procedures of the Foreign Investment Review Board?

Mr Deady—There is no proposal to modify the FIRB at this point.

CHAIR—But the substantive discussions are in October. Is it possible that this may emerge there, do you know?

Mr Deady—Again, I would refer to Bob Zoellick's letter about US objectives, which does raise the question of certainty for US investors. It may well be that the US does come forward with some proposals in relation to the reservation on the FIRB that we have taken out.

CHAIR—The television and film people have appeared before us. I might say I was rather tempted to extend that part of the hearing, because we got to meet the casts of a number of

leading Australian TV shows and also film actors. What exactly is the Australian government's position in these talks on providing a cultural exception?

Mr Deady—We will not be providing a cultural exception as part of the agreement in that there will be no legal language that provides a cultural exception. We do not have that in our Singapore agreement and it is not something that the government believes should be part of these FTAs. The way this is handled in the negotiations is through the reservations. Whatever obligations are finally agreed in the services and investment chapter, we would then reserve against those if the government believed it needed the flexibility to continue to meet the objective that is clearly stated, which is to ensure that the government can achieve its social and cultural objectives. That is where we are at with the negotiations and that is the approach that will be taken. It would be through the negative list that the government will ensure that those cultural objectives can continue to be met.

CHAIR—Through the negative list?

Mr Deady—Yes.

CHAIR—I will not be able to explore these issues in any detail, but does that extend to provisions regulating e-commerce?

Mr Deady—There is a separate chapter on e-commerce—we are talking about a separate chapter on it. That is an ongoing discussion. I think perhaps this is one example of where we have different views and interpretations of what a chapter might look like. The one critical thing that I can say about this—and we have certainly said this to the industry—is that, whatever commitments are finally entered into in the e-commerce chapter of the agreement, they will in no way override or be a back door to circumvent the reservations that the government takes on the audiovisual or cultural parts of the agreement through the negative list. That is the position of the United States also. This is not about using one chapter to override or be a back door to circumvent reservations that are taken in another chapter.

CHAIR—What can you tell us about the position on the Pharmaceutical Benefits Scheme?

Mr Deady—We had a very long discussion with the United States when they were here in March. There was a question and answer information exchange on the Pharmaceutical Benefits Scheme. They asked a number of questions about the operation of that scheme based on information that the USTR and the commerce department had themselves put together, which was very clearly on the basis of advice they had received from the pharmaceutical industry in the United States. The health department led those discussions and I think they did a very good job of explaining the operation and precise nature of the PBS and dispelling some of the myths about it.

I think it is very clear—and Ralph Ives has said this and senior US officials have also made it clear—that they are not seeking the dismantling of the PBS. The industry itself has said that in the United States. At this point, no specific proposal has been put to us by the United States on the PBS. We are open to continuing to explain the operation of the scheme to them, very much on the basis—and this is a very clearly stated objective of the government in this area—that we are not in any way negotiating in the FTA an outcome that would limit the ability of the

government to provide a sustainable PBS and affordable medicines. That is very much the vision that has been articulated and that we have put very clearly to the United States.

CHAIR—So, from those answers, can I make this assumption: as far as the FIRB is concerned, while the matter has not been taken up in the negotiations and there is still scope to do so, the government's position is not to fiddle with the FIRB?

Mr Deady—I do not want to speculate on that sort of detail. I just want to make sure that I was clear. Look at what Bob Zoellick has said about the investment screening arrangements in Australia we have put forward as part of this comprehensive offer that I mentioned on services and investments. It certainly includes reservations in relation to the operations of the Foreign Investment Review Board. They were tabled in July in Hawaii and the United States asked us some questions about the reservations, but at this point in time we have not received a specific request from the United States in relation to the FIRB.

CHAIR—In terms of television, film and audio, are you saying that the issues that the cultural industries have raised with us are protected in these negotiations as far as you are concerned?

Mr Deady—The government has been very clear regarding the ability to ensure that Australia's cultural objectives can continue to be met. There was a very clear statement from the government that, in these negotiations, we will not be doing anything that will limit the capacity for the Australian government to meet those cultural objectives.

CHAIR—Is that to the level that the industry is seeking?

Mr Deady—Part of the industry would call for a cultural carve-out, as I am sure you have heard. They called for that with Singapore. The way we did it with Singapore—and the way we would do it with the United States—was through the negative list approach. As I say, we are talking to industry about this, but the government's commitment in terms of its objectives here is very clear, and that is that we will be ensuring that our cultural objectives can continue to be met. Ralph Ives has said publicly that the US are comfortable with the current arrangements—the local content requirements on broadcast television and the other aspects of the existing arrangements. He went further in fact and said that the subsidies that are provided for those cultural activities in Australia are also not a concern to the United States. Those are significant statements. We are continuing to talk to the industry about precisely what that means and what the reservation, if any, would look like in relation to that sector.

CHAIR—On the PBS, we are not likely to see anything in the final text to deal with pharmaceuticals?

Mr Deady—Again, we are still in negotiations with the United States. There is really nothing more to say. What I have explained to you in terms of how these things have been handled to date in the negotiations is exactly where we have got to. As you say, we are meeting again in October. No doubt the US are continuing to talk to their own industry about this. They will have reported back, I am sure, on the explanations and information we provided on the scheme. They may well come back with further questions, or want to talk about other aspects of it, but I can just repeat a very clear statement of our objectives in this area, and that is the absolute

commitment from the government that nothing in the negotiations will limit the capacity to provide affordable medicines to Australia, and a sustainable PBS.

CHAIR—On quarantine, we are not going to make any concessions that water down our quarantine conditions?

Mr Deady—We are not. We are not talking about quarantine standards. The science based nature of quarantine import risk assessments will be reinforced, I believe, by the commitments of both countries in the legal texts. I mentioned this morning that we have a consultative process that we established midway through last year to deal with market access issues in relation to quarantine, which we both have. There is just as long a list of our requests of the United States as there is of theirs of us. That mechanism is not about the science or the quarantine standards but about process, timeliness, transparency and ensuring the lines of communication are kept open and flowing.

CHAIR—Have we agreed that in this agreement there will be a provision dealing with labour standards and another provision dealing with the environment?

Mr Deady—We are talking to the Americans about separate chapters dealing with labour and the environment, but these chapters are not about standards of labour or the environment as such; they are about the enforcement of our existing laws on labour and the environment. We are having ongoing discussions with the United States on those two chapters but at this time, as I say, just like everything else in the negotiations, it is a process that is continuing.

CHAIR—Given that answer, is it a process that means that, if there is to be a chapter on it, we are committing to including in the agreement some provisions associated with labour standards and some provisions associated with the environment?

Mr Deady—As part of the trade promotion authority and the administration gaining the authority to negotiate these free trade agreements entered into by the United States, the trade promotion authority sets out some requirements in relation to the inclusion of labour and the environment in such agreements. We understand that and are talking to the Americans in that context. But again that it is not about labour standards as such; it is about the question of commitments to enforce labour and environment laws in this country and in the United States.

CHAIR—Has any thought been given to a provision or an understanding on the setting out of dispute settlement provisions related to greater transparency over dispute issues?

Mr Deady—There will be a dispute settlement chapter under the agreement, or perhaps it might come under the general administrative chapter. As distinct from our 'investor state' that we were discussing before, that dispute settlement mechanism is a government to government process. It is very similar in structure to the WTO dispute settlement understanding. Certainly, in that there are only two of us involved, there are some necessary adjustments to that. Those discussions are going on, but again I do not think there is great contention between us there. I think it is a sensible approach—a panel process, with the establishment of the panels and the time lines et cetera that go through that.

CHAIR—Isn't it the case that with audiovisual the commitment is to standstill provisions—that is, local content quotas stay as they are now so that the government cannot increase them in the future?

Mr Deady—We are still very much in negotiation with the United States. As I have mentioned, in July we put forward an offer covering audiovisual. I cannot go into the details of that offer, but just for the record I can say that it certainly is wrong to say that our offer is a standstill offer, because it is not. Certainly what Ralph Ives has talked about in public can be represented in shorthand as a standstill, and that is the effect of comments Ralph has made about US objectives in this area. But to this point in time that has not been put as a formal request to Australia. Certainly, as I have said, we are looking at a reservation that at the end of the day ensures our ability to deliver these cultural objectives. So as yet there is no commitment at all to—

CHAIR—Both the United States and Australia, as members of APEC, are committed to free trade within the APEC region by 2010. Has there been any discussion about turning any prospective Australia-US free trade agreement into an MFN deal by 2010?

Mr Deady—No. At this point we are negotiating a bilateral free trade agreement between ourselves and the United States, and that is the business which we are involved in in these negotiations.

Senator MARSHALL—Coming back to labour and environmental standards, would it be fair to say that the US negotiators will insist on some words in respect of both of those provisions because the US Congress will insist upon words to that effect in an agreement?

Mr Deady—Under the terms of the trade promotion authority, the US will be looking for, as part of the FTA, chapters on labour and environment. That is the position they put to us in the negotiations. They are very clearly the demanders in this area. It is not something we would have included in the negotiations. We are looking at, and talking to the Americans about, the language that they have put forward in these chapters. The negotiations are ongoing in regard to both those chapters.

Senator MARSHALL—Let us turn that round. If the Australian Senate, for instance, were to insist upon or not insist upon something being in the agreement prior to your finalising negotiations, as a negotiator would you take that on board and negotiate to conclusion?

Mr Deady—My instructions and the mandate for the negotiations are given to me by the government, and that is the basis on which I carry on the negotiations.

CHAIR—I think we are all done here. We could keep going, of course, but even the best parties have to conclude some time. Thank you very much, and thank you Mr Sparkes. That concludes our hearing for today.

Subcommittee adjourned at 4.47 p.m.