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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Reference: Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006

THURSDAY, 27 APRIL 2006

SYDNEY

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SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

Thursday, 27 April 2006

Members: Senator Payne *(Chair)*, Senator Crossin *(Deputy Chair)*, Senators Bartlett, Kirk, Mason and Scullion

Substitute members: Senator Stott Despoja for Senator Bartlett

Participating members: Senators Abetz, Allison, Barnett, Bartlett, Mark Bishop, Brandis, Bob Brown, George Campbell, Carr, Chapman, Colbeck, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fierravanti-Wells, Heffernan, Hogg, Humphries, Hurley, Johnston, Joyce, Lightfoot, Ludwig, Lundy, Ian Macdonald, McGauran, McLucas, Milne, Murray, Nettle, Parry, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Trood and Watson

Senators in attendance: Senators Kirk, Ludwig, Mason and Payne

Terms of reference for the inquiry:

Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006

WITNESSES

Committee met at 9.30 am

ACTING CHAIR (Senator Mason)—This is the hearing for the Senate Legal and Constitutional Legislation Committee's inquiry into the provisions of the Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006. The inquiry was referred to the committee by the Senate on 30 March 2006 for report by 2 May 2006. The bill proposes a number of amendments to the Customs Act 1901 to, amongst other things, allow a Customs officer to restrict access by holders of a security identification card to section 234AA places, ships, aircraft and wharves; make technical corrections to provisions implementing the Australia-United States Free Trade Agreement; implement an accredited client program to enable importers meeting accreditation requirements to utilise streamlined procedures for importing goods; and confer protection from criminal responsibility for Customs officers handling narcotics in the course of duty.

The committee has received four submissions for this inquiry, all of which have been authorised for publication and are available on the committee's website. Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies are available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

[9.31 am]

FRASER Mr Robert Lawrence, Past Chairman, Customs Brokers and Forwarders Council of Australia

SHARP, Mr Darryl Broderick, Vice Chairman, Customs Brokers and Forwarders Council of Australia

ACTING CHAIR—Welcome. The Customs Brokers and Forwarders Council of Australia has lodged submission No. 1 with the committee. Do you wish to make any amendments or alterations to that submission?

Mr Sharp—No, we do not.

ACTING CHAIR—In that case, I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr Fraser—The CBFCA has always been interested in the idea of an accredited client program and beyond that an accredited service provider program. We have been involved in discussions going back to the introduction of the trade modernisation legislation and since then on these issues. As you can see from the submission that has been made, there is a degree of disappointment that the legislation has been published without any real degree of consultation on its content, at least with our organisation. Apart from that, we are happy to proceed to questions.

Senator LUDWIG—It is not quite right to say that there was not consultation in respect of the trade modernisation legislation dealing with an accredited client program. There was, as I understand it, when it first was mooted. Do you recall when that was?

Mr Fraser—The initial legislation probably went back before 2000. It would be a guess on my part.

Senator LUDWIG—Were you consulted then about the accredited client program?

Mr Fraser—There were discussions as I recall.

Mr Sharp—The written submission that was prepared on 10 April provides the detail to those questions. In the early days with the cargo management strategy right through to approximately 18 months ago, we were heavily consulted on these issues. Both Mr Fraser and I attended meetings where Customs officers sought our ideas as to what would be an effective program. It is only in recent times that that has not taken place.

Senator LUDWIG—At that time, 18 months ago, what was your understanding of what the program would entail and when it would be implemented?

Mr Sharp—The last meeting of significance that I can recall was held at the Qantas Club in Sydney Airport and chaired by Tania Barrow from the Australian Customs Service. My recollection was that two things needed to be addressed. One was that the final rollout of CMR was maybe going to have an impact, but the overriding issue was that duty deferral was going to—

ACTING CHAIR—What is CMR?

Mr Sharp—Cargo management re-engineering.

Senator LUDWIG—We all use terrible acronyms in this place.

Mr Sharp—Duty deferral was the key issue that she was going to go back to Canberra and follow up on with her colleagues in the Treasury and the like. That is the last meeting of any significance that I attended.

Senator LUDWIG—Can you explain what you mean by duty deferral?

Mr Sharp—The original program, as it was pieced together, and as Mr Fraser said, is something that the CBFCA has always wanted to pursue, but in the business rules it was considered appropriate that high-level compliant importers be given some incentives. The cornerstone, as far as incentives go, at that time was put forward to be duty deferral. The ultimate duty deferral mechanism would have been one that saw many importers having their duty liability deferred all the way through to their business activity statement. It reconciled at the same time as they reconciled their other liabilities to the government, which was in line with the one window to government approach and similar things that were being suggested at the time.

Senator LUDWIG—You might need to explain that a little further. How would that benefit a member of your organisation?

Mr Sharp—A member of the Customs Brokers and Forwarders Council of Australia works very closely with importers. There is a cash flow benefit in the sense that a significant cost to business is a cost of the cash, and the current protocols require that customs duty is paid before the goods are released. If regular importers of note had gone through the audit process and complied with all the other business rules as put forward by Customs, they would be given the financial incentive to have their duty liability deferred. If we were working hand in hand with an importer that had invested time and money into the Accredited Client Program, either us, our business or the importer's business would not have to physically fund the hard dollars involved.

Senator LUDWIG—So the benefit of accessing the Accredited Client Program would be a deferral of costs. How long would that be for?

Mr Sharp—There was never an agreed time frame. There was significant debate, and I will call on Mr Fraser because I believe he attended some of those meetings or at least was privy to the outcomes.

Mr Fraser—A working group was appointed by Senator Ellison, the Minister for Justice and Customs, I believe in 2001, which did report back to the minister with an industry view on what an appropriate reporting period should be for duty deferral. The consensus of that group was that deferred duty should be reported and paid within five to 10 days—I think that was the outcome—of the end of each calendar month. That would cover the period of the previous calendar month, but the reporting for that particular month would be done within five to 10 days at the end of the month and the duty that was deferred would be paid in that time as well.

Senator LUDWIG—What has happened since then? Have you subsequently heard back from Customs as to what their view about duty deferral was?

Mr Fraser—From my perspective, it came as a surprise that duty deferral was off the table. We first found that out about 18 months ago. As Mr Sharp said earlier, one of the cornerstones, if you like, of the Accredited Client Program as it was first envisaged was that duty deferral would be one of the benefits and one of the better incentives to encourage people to come into the proposed scheme.

Senator LUDWIG—Does the scheme that is proposed in this legislation include duty deferral?

Mr Fraser—Some may call it duty deferral. I would not call it duty deferral.

Senator LUDWIG—What would you call it?

Mr Fraser—It is a bit each way. It is prepayment in a sense.

Senator LUDWIG—That cannot be a duty deferral, if it is a prepayment.

Mr Fraser—No, exactly.

Senator LUDWIG—So it is not the scheme that you envisaged 18 months ago?

Mr Fraser—Certainly not. As I read it, and if my understanding is correct, the proposal is that the duty would be paid on the 15th day of the month to cover all potential duty liabilities for the whole of that particular month. So, in a sense, it is deferral for the first 15 days and then prepayment for next 15 days.

Senator LUDWIG—You have had no explanation from or negotiation or consultation with Customs about this proposal?

Mr Fraser—Not with the CBFCA, no.

Senator LUDWIG—To come back to the start, the accredited client program has not been operating since the original legislation—that is, the trade modernisation legislation.

Mr Fraser—That is correct.

Senator LUDWIG—And it is not due to start until this legislation with the scheme passes or is put to parliament?

Mr Fraser—That is my understanding, yes.

Senator LUDWIG—What benefits, on your reading of what it looks like now, do you see from the program if you have not been consulted about it? I assume that there is going to be—perhaps I will not assume anything—I will just come back to the original question. What benefits do you see coming out of this program that is being offered in this legislation?

Mr Fraser—I can only speak from a personal perspective in terms of the clients for whom we report to Customs. I would say there would be very few, if any, of our clients who would get any benefit out of the scheme as proposed.

Senator LUDWIG—What about the incentive of then becoming an accredited client? Is there any reason that you would then seek to adopt the program on the bill that is currently before you?

Mr Fraser—In fact, I do not think there was much benefit in the scheme as it was originally proposed at least for the majority of importers. What is proposed in this legislation provides even less benefit as far as I can see.

Senator LUDWIG—Is there a percentage of brokers that you would say you represent or, in terms of industry, an amount of cargo that is moved? If that is your view, I assume it is the view of the CBFC or perhaps you can clarify that if it is not.

Mr Sharp—The CBFCA has a membership of the majority of the customs brokers that operate in Australia. We are not just restricted to small or medium sized businesses. Most of the very large integrators are also members of the Customs Brokers and Forwarders Council.

ACTING CHAIR—What sort of percentage of imports would your organisation cover?

Mr Sharp—When you ask about percentages of imports it is a difficult question because things have taken place recently that change historical figures. The change in the threshold that enables self-assessed clearances has resulted in many of the integrators using that methodology to acquit the goods that they import. So when you are talking about import declarations, again the accredited client program would move importers from creating an import declaration to a simplified request for cargo release followed up by a reconciliation at the end of the period. I would suggest to you that the CBFCA would account for something in the vicinity of 70 or 80 per cent of the import declarations that are processed in Australia.

ACTING CHAIR—Thank you.

Senator LUDWIG—Have you turned your mind as to whether this accredited client program meets the World Customs Organisation standards requirements for an AEO—that is an authorised economic operator?

Mr Sharp—We have seen a submission by another party to this committee. It is the CBFCA's position that they do not meet the requirements sufficiently as outlined in the framework by the WCO.

Senator LUDWIG—Did you want to expand on that at all? Perhaps provide a bit more in depth information or are we going to leave that for another submitter?

Mr Sharp—I think one of the key issues is that the framework talks about providing certain benefits to authorised traders and the like whereas the accredited client program seems to be directly levelled at the importer and it does not take into consideration the other parties to secure an efficient process.

Senator KIRK—Thank you for your submission, gentlemen. Could you outline for us in general terms your preferred approach to this area and how it would operate in practice? I know that it is a broad question.

Mr Sharp—The thought that came into my head was that the preferred approach would be to bring together the relevant people involved in the process and to start a genuine consultation process. There have been a number of changes in the industry as a result of the introduction of a new computer system by the Australian Customs Service and a lot of the historical data has changed. There is no simple answer to the question. The answer I would suggest is that you bring together high-level representation to work out a model that would

work. At the moment, I do not know what that model would be, but the CBFCA is suggesting that, as it is put forward in the legislation, it simply does not go far enough.

Mr Fraser—I think one of the objectives should be to make it more inclusive than it is probably envisaged at the moment. When it was first put up, the program would have effectively benefited—if that is the right word—less than five per cent and probably closer to two per cent of all importers in Australia. The proposal in this legislation is probably effective for even fewer than that. So, when I say 'more inclusive', I am suggesting that it should cover more of the field than what this is likely to do.

Senator KIRK—So, in a sense, are you suggesting that we need to go back to square one, to start again and consult all relevant stakeholders?

Mr Sharp—That would be my suggestion. Mr Fraser commented on a program that is of benefit to a larger number of importers. We both deal with a lot of importers of note. They may not be the biggest or the second biggest importers in Australia but they are high-volume importers, and I believe that they should be considered in a legitimate program.

Senator KIRK—I believe that draft business rules have been circulated. Have you had a chance to look at them? What are your comments in relation to them?

Mr Fraser—If you are talking about draft business rules in relation to this legislation, I would have to say no. I have seen previous draft business rules under the original proposals. It goes back to my comment about being more inclusive. I believe the rules were somewhat draconian in terms of the preadmission requirements. I am not saying that there should not be preadmission requirements but, if you are going to be more inclusive, they need to be a little less stringent than was first suggested.

CHAIR (Senator Payne)—I have one question flowing from Senator Kirk's questions. I apologise: the score is Sydney traffic 1; Senator Payne 0.

Mr Fraser—We play that game every morning!

CHAIR—Senator Kirk referred to consultation—and I know your submission refers to the consultation process. How do you think that fell down? Where did the gap arise? Is it something that you have raised with Customs as a peak body?

Mr Sharp—I have been involved with the CBFCA for at least the last six years and, as I see it, as we headed towards key elements of the trade modernisation legislation—the CMR, the cargo management re-engineering—there was a need for the CBFCA to address a whole raft of issues, and the accredited client program was simply not on the agenda. Other, more pressing, issues took precedent, and we have been working very hard with Customs and government on all of those issues. This pretty much sat on the sideline for a little while.

The interesting roll out of CMR—a lot of which we felt could have been avoided—fractured the relationship a little bit between the peak association and the Customs Service. We have immediately taken steps, since the appointment of Mr Carmody, to visit him and have now undertaken a very active consultation process. We look forward to the future. That pretty much outlines what has taken place, and that is why we have got to where we are today.

Senator LUDWIG—I have dug up the Senate Legal and Constitution Legislation Committee report into the original trade modernisation legislation of May 2001.

CHAIR—I am sure it was a very good report.

Senator LUDWIG—It is. At 1.83, under the heading 'Perceived benefits of the ACP,' it states:

Inquiry participants identified several important benefits of the ACP scheme—

and there are five dot points. The first one states:

- the ACP arrangements promise to deliver efficiencies to both the government and traders generally by reducing unnecessary red tape …

Is that met by this amendment or this latest iteration of the ACP, in your view?

Mr Sharp—One of the difficulties in answering that question is that the business rules have not been widely distributed and neither Mr Fraser nor I have had a chance to look at that to answer with absolute certainty. My suggestion would be that it is possibly not met.

Senator LUDWIG—It makes it hard without the red tape to see how much red tape there is.

Senator MASON—You have not seen the business rules?

Mr Sharp—No. The introductory period we have had, even today's meeting, has been extremely short, unfortunately.

Mr Fraser—In terms of efficiencies, one of the purported efficiencies from that original report was that cargo would be released and delivered easier using the accredited client program. Our view has always been that the barrier clearance industry—which includes brokers, forwarders, shipping companies, airlines et cetera—has always been very efficient in ensuring that cargo is released efficiently. So, in terms of potential timing benefits, we did not perceive that the accredited client program was going to offer any distinct advantage over existing arrangements, as far as the logistical issues were concerned.

Mr Sharp—In layman's terms, if something arrives by airfreight today, you have less than 24 hours most of the time to pick it up and deliver it. If something arrives by sea freight, you have approximately 48 hours to have that cargo picked up and delivered. Those benchmarks, save for any major computer malfunction, are achieved almost day in, day out across the whole industry.

Senator MASON—You are painting a very grim picture, gentlemen, of the process. I will move on from the process for a second. Is it your contention that the system is now worse, in the sense that it has actively thrown up obstacles to your enterprise, or is it rather that you are disappointed—that it could have been so much better, if there had been further consultation? Which of those two is it?

Mr Fraser—Are you talking about the accredited client program proposal?

Senator MASON—Principally, yes. The bill generally, but the ACP in particular.

Mr Fraser—From my perspective, the latter of those points that you made would apply: it could be better.

Senator MASON—It has not necessarily thrown up obstacles, it has not made it worse, but it could be a lot better if there had been more consultation?

Mr Fraser—We do not know whether or not it is worse because we still have not seen the business rules.

CHAIR—It is the same old chicken and egg problem.

Senator LUDWIG—What about the next dot point:

- the ACP endeavours to bring Australia in line with overseas practices. It is similar to schemes in other countries and the introduction of the scheme signals Australia's commitment to resource and risk management to other countries …

Bear in mind that there is a program in the US called C-TPAT, which has an ACE periodic monthly statement fact sheet, which does not seem to mirror this program. In fact, it seems to mirror the original one you highlighted, perhaps with an added advantage. It seems to say that the benefits there were:

- The potential to receive more than 45 days interest-free float
- The ability to view statements as they are created
- The ability to select either a national or port statement

Do you have a view about that second dot point that was one of the perceived benefits back then, as to whether it is still relevant today?

Mr Fraser—My recollection is that the initial proposals that were made prior to even the introduction of the trade modernisation legislation were perhaps ahead of the game in terms of the World Customs Organisation and other jurisdictions. To some extent, I think I am right in saying that the World Customs Organisation was influenced by what Australia was trying to do with programs like this. But the game has moved on. We are talking about prior to September 11, when the original proposals were put up. Perhaps now, what Australia is proposing has fallen behind the rest of the world to some extent, at least in terms of this particular proposal.

Senator LUDWIG—The third point is:

- the ACP rationalises Customs' clearance procedures for import/export shipments. One of the principal benefits of the ACP is 'product to market in a less impeded manner along with a closer relationship with government'.

I guess that is a broad statement, but until you see the business rules and some of the other matters you cannot discern from this bill, can you, whether that will in fact be the case?

Mr Sharp—That is correct. There has been a change of landscape. If you go back to when the ACP was originally discussed, we were very much living in a land of facilitation. That has changed and we are now very much in a land of security and compliance. That is why the CBFCA was disappointed that Customs was able to come up with a program and prepare legislation to put forward. I still believe it is appropriate that we get together and look at what will work in the current environment, because it is different to how it was five years ago.

Senator LUDWIG—Is it not that much different that originally it would have been mooted that it was about trade facilitation and accounting procedures? That was the original ACP. Since then the World Customs Organisation standards have highlighted two issues which are different sides of the one coin: supply chain security and trade facilitation. The

ACP, as mooted in this bill, does not seem to address the issue of supply chain security. It only deals with the issue of the accounting procedures necessary to provide a trade facilitation role. Is that how you see it?

Mr Fraser—Yes.

Senator LUDWIG—So it does not seem to have taken into consideration the later developments by the WCO and the standard that is now in place. In fact, it seems to be a development that you reflect upon in a 2001 environment and not where we are now in a 2006 environment. Is that how you understand it?

Mr Sharp—I would agree with that. One of the perceived limitations of the program being put forward at the moment is that the ability of importers to take advantage of it appears to be very minimal. Many of the regular importers are very highly compliant and should be given access to a program as an accredited client or on the back of an accredited service provider. If we were able to do that, it is my belief that the Australian Customs Service and the government would then be better resourced to look at the high-risk security areas and other areas of concern. At the moment, a lot of regular, highly compliant importers and service providers are having to jump through difficult hoops. This program just does not provide the potential incentives because there do not appear to be outcomes.

Senator LUDWIG—Of course, what the World Customs Organisation standards require for an AEO is to have the encouragement and trade facilitation measures built in to encourage you to take an active interest in supply chain security—to secure the supply chain by providing information. In other words, they should provide the incentive to become an authorised economic operator—or, in this instance, an accredited client program—which will then mean there will be some significant benefits, though not iterated in this bill, in terms of less security because you have managed to commit to a significant program. That does not seem to be here in this bill, nor part of the program that is being mooted here.

Mr Fraser—That raises an interesting point in that as an industry we are accepting the task—I will not say we are being forced, because we are quite happy to accept the task—of taking on greater responsibilities in relation to Australian quarantine, for example, in relation to aviation and marine security, in relation to the regulated agents arrangements and in relation to the export of cargo. All of those things relate to security in a sense and we are taking on that responsibility as service providers. The idea of Customs having an accredited service provider program is really just an extension of that same principle and type of responsibility that we are already accepting.

Senator MASON—To keep it simple, you are arguing in a sense not only that the bill does not facilitate trade but that it does very little to facilitate security.

Senator LUDWIG—It does not encourage you to participate in the program so that you then take those necessary steps to implement secure initiatives.

Senator MASON—Is that right?

Mr Sharp—That is correct.

Senator MASON—So in a sense—to use your phrase, Senator Ludwig—both sides of the coin are not being serviced?

Senator LUDWIG—That seems to be what the witnesses are saying.

Senator MASON—Is that right?

Mr Sharp—If I could give you a current example of that: from a service provider's point of view, a customs broker's point of view, we enter into a contractual agreement with the Australian quarantine service, we have access to a lot of information care of the Australian quarantine service and we become their eyes and ears. We play a very active role in ensuring that certain things are not imported into Australia which have a devastating potential, financially and in other ways.

Senator MASON—You play a quasi-regulatory role.

Mr Sharp—We do.

Mr Fraser—It is a coregulation arrangement.

Mr Sharp—The WCO guidelines that Senator Ludwig referred to earlier make reference to the ACP in Australia and also to the Frontline initiative in Australia. The Frontline initiative is squarely focused on the importation of drugs, and the way the Australian Customs Service roll that program out is principally by virtue of visiting customs brokers and freight forwarders and increasing our awareness of what potentially high-risk importations are so that we can alert them. On the drugs side of things, we are working with Customs. On the quarantine issues, we are working with quarantine. On the security issues, the current processes are that we sit here and we are not to ask any questions, and I do not believe that that is in the nation's best interest. I think we could work with them. There could be an element of trust and the government would get better results.

Senator MASON—Again, it is coregulation in effect.

Mr Fraser—Correct, yes.

Senator MASON—In the context of security?

Mr Fraser—That is right, and that notion has been put to Customs over the whole period of the development of cargo management re-engineering and the trade modernisation legislation.

Senator MASON—And their reservations are simply based on the idea that we are not sure who we can trust. Is that right?

Mr Fraser—I think that is a fair summation, yes.

Senator LUDWIG—Are you aware of the Business Partner Group?

Mr Fraser—You mean the companies that are involved in it?

Senator LUDWIG—It seems to go under a banner. They have made a submission to the committee which deals with the Accredited Client Program and they use the banner of Business Partner Group. They say they were: 'formed in 2001 and represent a cross-section of industry that has worked closely with government agencies to realise a workable and practical ACP model. Our members include importers, the parties that ultimately pay all the bills, freight forwarders and customs brokers. As such, the BPG is surely representative of the importing community in this instance.' Their submission then goes on to indicate broadly that

they do not agree with the comments made by the Customs Brokers and Forwarders Council in its submission to the committee. They have indicated that they were involved closely with ministerial roundtable consultations in 2004-05 to deal with the introduction of the ACP, as I understand it.

Mr Sharp—My response to that is that it is interesting that they have made reference to the CBFCA, so obviously they know that we exist. The BPG is not an organisation that I am readily aware of.

Senator LUDWIG—I am curious though: have they kept you informed about their negotiations about the ACP and the issues that surround it?

Mr Sharp—It would be my understanding that they have got the interests of a small number of large importers and they would lobby government directly. As result, they have not kept us informed of anything.

Senator LUDWIG—So they have not kept you informed about the developments of ACP?

Mr Sharp—Not to my knowledge, no.

Senator LUDWIG—Are you part of that business partnership group in a loose or a formal sense?

Mr Sharp—No, not to my knowledge.

Senator LUDWIG—So you were not aware that there were specific discussions that were at a broad based industry meeting dealing with the ACP by the BPG? I might give you the opportunity to read that submission, because it does appear to have come in late. I did want to take the opportunity to ask a couple of questions in respect of it. I am sure the Chair would give you the opportunity to put in a follow-up or a supplementary submission dealing with some of the issues—

CHAIR—Yes.

Senator LUDWIG—given the nature of the claims that have now been made in this latest submission.

CHAIR—All I would say is that, as Senator Mason would have said at the beginning, the tabling date for the inquiry is 2 May, which is Tuesday, so we have a very tight turnaround. Mr Sharp and Mr Fraser, if you would not mind having a look at that submission, Senator Ludwig might just put a couple of questions and if you could follow up with responses for us, we would be grateful.

Mr Sharp—Certainly. Having looked at the paper, I still stand by my earlier comments. I am looking at a paper that does not even have an ABN on the document and I would suggest that it is a self-interested group looking after a couple of companies.

Senator LUDWIG—They say that the current ACP model, including the duty deferral proposal contained in this bill—if that is what we call it—is the outcome of very detailed and protracted consultations dating back to the mid-nineties. Are you aware of that?

Mr Sharp—No, we are not aware. Consultations can be many and varied.

CHAIR—We know that. As there are no further questions, I thank you very much, Mr Sharp and Mr Fraser. I again apologise for my late arrival. I thank you for both your submission and your assistance with questions today. On the particular matter that we have just been discussing, we will come to you with anything specific and we would appreciate your assistance, if that is possible.

Mr Sharp—It was a pleasure.

[10.08 am]

ANGEL, Mr Paul, Director, Australian Federation of International Forwarders Ltd

CHAIR—Welcome. The Australian Federation of International Forwarders has not lodged a submission with the committee. We invite you to now make an opening statement and provide the committee with any information you think appropriate on the bill before us, and we will then go to questions.

Mr Angel—We are supportive of the program. Having listened to the previous comments, the overriding thing is that we would be disappointed in the deferral not coming through, which certainly is the incentive, but I believe that we would be supportive of the program as a whole.

CHAIR—Has the federation been involved in any of the consultation in relation to the bill.

Mr Angel—Not directly. I am involved in the pilot program, and I have been since the early nineties. My company appears as a private one on the business partner group, so I am aware of that. I guess the feedback to the federation has come through that connection.

CHAIR—Would you have expected the federation, as a peak organisation, to have been involved in the consultation?

Mr Angel—We are to the extent that the service providers on that business partner group are members of the federation. But the direction of the Accredited Client Program is to importers. The service providers are there as service providers. So the overriding consultation has been with the importers and with that pilot group, which has been seen to be representative.

CHAIR—You would have heard some of the discussion in relation to the business rules from previous witnesses. Has there been any consultation with either the federation or with you as a member of the committee, I think you said, on that matter?

Mr Angel—The business rules were developed through the consultative process with the pilot partners. There was significant consultation to try to get those into a workable manner to the extent that it started off that any party going on to the Accredited Client Program had to have a full audit done by a certified accountant. That obviously blew the costs of getting onto the program out significantly and really limited who could go on there. Through consultation that was changed to a self-assessed audit. Those types of things have been achieved through that consultation process.

Senator MASON—Who are the pilot partners, Mr Angel?

Mr Angel—I think they appear on the submission. They are Coles Myer, the Colorado Group, DuPont, Ericsson, Kodak, Komatsu, Nortel, Panasonic and Hewlett-Packard and their related service providers.

Senator MASON—Some of those are in the business partner group that we came across before.

Mr Angel—The 'business partner group' is loose terminology for the pilot partners that have been working with Customs.

Senator MASON—Yes, Coles Myer and Colorado. Thank you.

Senator LUDWIG—So your organisation is a member of the business partner group?

Mr Angel—TCF services.

Senator LUDWIG—Have the business rules been developed?

Mr Angel—They have. Correct me if I am wrong, but I believe they are on the Customs website.

Senator LUDWIG—Are you familiar with the business partnership group submission? Were you part of that?

Mr Angel—It came to me late yesterday, so I have had a brief glance over that. But, because I am here representing the federation, I did not take a great deal of notice of it.

Senator LUDWIG—In your two different hats then, does the federation agree with the submission of the business partner group?

Mr Angel—I do not think they touch on the fact that a duty deferral was the preferred option and the incentive. I think that they are driving it from the point that the program has been in development since 1997 and, whilst this is not ideal, it will get the program started and from there it can be developed further. It has been nine to 10 years in the making and it had a number of hurdles along the way. So they want to try and get something in and operative.

Senator LUDWIG—What was the original proposal?

Mr Angel—The original proposal, as I understand it, was that duty was deferred until the periodic declaration was lodged and the duty would be paid at that stage.

Senator LUDWIG—How long would that be for?

Mr Angel—It was originally the first day of the following month, because of requirements for Bureau of Statistics reporting, as I understand it, but that is going to be, I think by regulation, seven days after the end of the month.

Senator LUDWIG—Did your company and your organisation agree with that original proposal being the preferred option?

Mr Angel—Yes.

Senator LUDWIG—What happened to that?

Mr Angel—My understanding, going through the pilot process, was that Customs were of the opinion that deferral would be approved and there was no parliamentary approval required for that. I think they found out late in the event that that was not the case and the government chose not to take up the financial cost of deferring the duty.

Senator LUDWIG—Did you understand that the government objected on the basis that they did not want to assume any financial cost?

Mr Angel—That is correct.

Senator LUDWIG—Do you know what that financial cost was, or would have been? Were any figures mooted at the time?

Mr Angel—We did some numbers, which I believe Customs agreed with, but I don't know those off the top of my head. I would have to provide those to you.

Senator LUDWIG—It would be helpful if you could provide those to the committee. Do you know why it was not accepted by government? I don't recall it coming before the parliament.

Mr Angel—I believe that, again, it was the fiscal cost of doing it.

Senator LUDWIG—Customs did not accept the fiscal cost?

Mr Angel—No, I believe Customs realised that this was an incentive to get people on there. Submissions were made to Senator Ellison.

Senator LUDWIG—So Customs thought it was a good idea, as far as you are aware, and they were pushing for it?

Mr Angel—They were seeking approval for deferral.

Senator LUDWIG—And Minister Ellison knocked it back?

Mr Angel—I don't know whether it was the minister or whether it was—

Senator LUDWIG—As far as you are aware?

Mr Angel—Yes.

CHAIR—I am not sure that Mr Angel is in a position to—

Mr Angel—Sorry, I can't answer that.

Senator LUDWIG—No, I meant to qualify that in terms of what his knowledge was at the time. Has your organisation been trialling the ACP?

Mr Angel—My company represented the Colorado Group, who were the importer. They had gone through the audit process to be accredited, but because of the change to the new IC system, there were no IT systems built to be able to trial and test the program. So they are at the stage of being accredited, but without being able to trial the process.

Senator LUDWIG—When is that likely to be undertaken—any trialling?

Mr Angel—I believe the functionality is still not in the ICS. It is not slated until after the middle of this year. As with anything to do with the ICS, that is difficult to judge.

Senator LUDWIG—What functionality is still missing, in order to be able to trial it?

Mr Angel—I believe it is the request for cargo release and the periodic declaration.

Senator LUDWIG—Have you been informed when that is likely to be available?

Mr Angel—My recollection is that it was later this year but I am not sure whether we have anything specific in writing.

Senator LUDWIG—Perhaps you could check to see whether there is any specific information that you can provide to the committee on that issue. Is it correct to say that the ACP, the Accredited Client Program, cannot get off the ground until those two issues are dealt with?

Mr Angel—That is correct. If you have not got an IC system to do the requests for cargo releases and the periodic declarations, the program cannot run.

Senator LUDWIG—So we are waiting for that, even before we can trial the ACP? We don't have an effective trial of the ACP undertaken at this point?

Mr Angel—No, not in a transactional sense.

Senator LUDWIG—You cannot say whether or not there is an improvement or a perceived benefit, even for the group that you represent?

Mr Angel—I think there is a perceived benefit that it will cut down the transactions, but there is no empirical evidence that that would be the case. It is unquantified.

Senator LUDWIG—So there is a paper trial going on, is there? When you say there is a trial, if you cannot actually—

Mr Angel—It is not so much a trial; it is a pilot of getting the framework for the program together, the business rules that surround that and the mechanisms that will allow that to work. I have no doubt that there will be teething problems in any IT system that is put in place to get that working efficiently.

Senator LUDWIG—And you do not have an end date for when the functionalities are likely to be up and running and available for the trial?

Mr Angel—No. I will take that on notice and see if I can find out whether we have had anything specific.

Senator LUDWIG—What benefit might it give in the way the duty is to be paid under the new system?

Mr Angel—I understand that the reason it was to be paid on the 15th with an estimate payment up front was to make it revenue neutral. In essence, you are paying two weeks in advance and two weeks in arrears. That was the only way that we could get a single payment. Without a single payment, you cannot do a periodic declaration because payment would need to be made on a transactional basis. It was a compromise to get the program moving forward.

Senator LUDWIG—Is there a financial benefit to the organisations that you represent?

Mr Angel—Not in the single duty payment in terms of direct deferral cash flow costs.

Senator LUDWIG—So there is an indirect cash flow benefit?

Mr Angel—Depending on how people have their internal systems organised, there is an indirect benefit of not having to reconcile every single duty payment. You have one single duty payment at the end of the month, so there is a transactional processing cost benefit—which is what the importers perceive.

Senator LUDWIG—How significant is that?

Mr Angel—It depends on how much you put on a transactional cost. Some of these companies are doing 2,500 to 3,000 transactions a month. If you put the figure at $5 or $10 per transaction, they would see that as significant when they are running on the margin.

Senator LUDWIG—In providing supply chain security, what initiatives have you been requested to pilot or undertake to meet the WCO standards?

Mr Angel—My recollection is that the security side of things has been left out of the Accredited Client Program because Customs wanted to proceed with a broader based security program, in that supply chain security needs to apply to everybody who is importing, not just those who choose to use the Accredited Client Program because it has some benefits to them operationally. My understanding is that they have chosen to do that so that it would apply to all importers.

Senator LUDWIG—My poor understanding is that you would gain some benefit. You would be put at the front of the queue for ease of getting through Customs; you would be facilitated once you went through security initiatives. So none of the pilot programs that Customs have asked you to do includes due diligence on your employees or checks on your security or checks on the way you handle the security issues internally. Is that right?

Mr Angel—I will have to take that on notice. Towards the end there was some talk of rolling security in there, but I am not entirely sure of whether that found its way into the program. Certainly the idea of the audit was to ensure that there was proper corporate governance—and corporate governance would obviously include those types of internal IT and staff issues.

Senator LUDWIG—You are familiar with C-TPAT, I take it.

Mr Angel—As a general program.

Senator LUDWIG—It provides two parts for meeting the WCO standards: you get an incentive to commit to the scheme and, as a consequence of being in the scheme, you have to undertake certain requirements that are security related to ensure that there is supply chain security. As a consequence of becoming accredited in C-TPAT, which is the US system, you get facilitated through Customs—you get front-of-the-queue types of benefits. Have you been piloting that?

Mr Angel—It is from a compliance point of a view, but not from a security point of view.

Senator LUDWIG—So it is only half the scheme?

Mr Angel—Yes. It falls back to a lot of the coregulation comments before. There was never an idea that one size fits all, that you could negotiate particular issues with Customs. It may be, with nickel cadmium in ceramic goods coming in, that you would undertake to customers that you would only let them through if you had the certificates that say that they met the requirements, and that would be negotiated into your agreement. That is where the service providers that are doing the transactions on behalf of the importers would be approved also to ensure that they knew what their requirements under that information contract for that particular client would be.

Senator MASON—I have a quick question, but none too difficult I suspect. In the last full paragraph on page 1 of the letter accompanying CBFCA's submission it says:

From the CBFCA's perspective consultation on key issues of the Bill with CBFCA has been non existent ...

That may be the case, but were you putting to Senator Ludwig that you believe there has been sufficient industry consultation?

Mr Angel—I believe that the pilot has been there, that members of the business partner group have been involved in this for nearly 10 years, and I believe the information on what has been achieved there has been distributed although not directly to the CBFCA or AFIF. Some of the difficulty has been that it has been over such a lengthy period of time. It started and it stalled for various reasons, duty deferral being the most significant of those. So it raised its head, made some progress and then slowed down and went off the radar for significant points of time, and then there would be some more consultation in the business partner group or the pilot partners. It would have been very hard for anybody outside of that to follow it in great detail over that 10 years.

Senator MASON—But you would say that among the pilot partners there was ample opportunity for consultation?

Mr Angel—Yes.

Senator MASON—What interests the committee is why the CBFCA—and we have heard evidence from them—cover industry groups that import about 70 per cent of the imports into this country. We have consulted them and I suppose we will ask Customs about that. That is obviously not a question for you, but that is the sort of elephant-in-the-room question.

Mr Angel—We have overlapping membership, and I believe a number of those people, the service providers in the business partner group, are members of both CBFCA and AFIF.

Senator MASON—It just seems unusual. I do not really expect you to answer that.

Mr Angel—My only comment on that is that there were specific consultations in the period that CBFCA has mentioned between CBFCA and AFIF on the broker accreditation side of things as the next step from the accredited importers being to try and accredit service providers as well.

Senator MASON—The second part of the last sentence in the bottom paragraph of the first page of the letter with the CBFCA submission reads:

> ... the CBFCA queries the rationale of a program which gives little, if any, benefit to the majority of importers and little cognizance of benefits to service providers.

So you dispute that as well? You say that the pilot program has shown that there are significant benefits to the majority of importers and service providers?

Mr Angel—The importers on that program say that there are benefits.

Senator MASON—There are some disappointments as well. I understand that.

Mr Angel—Yes, the duty deferral. In cost recovery, there is now a charge for a request for a cargo release and there will be a flat charge for a periodic declaration. Once you get into large transactions, there are some cost savings on those cost recovery charges that, because of the larger importers doing multiple transactions and repetitive transactions, they rationalise: why do they need to pay cost recovery if they can do it in a more efficient way for both themselves and Customs?

Senator MASON—That is an improvement.

Mr Angel—The big guys who have good corporate governance and have good IT systems can report a lot of this information out of their own IT systems. They do not need an

intermediary service provider to create that information. What they do need—and I think you will find that the service providers that are on the business partner group see that—is to change the way that they are dealing with the major importers in becoming more information focused than transaction focused. They would provide them with the information on tariff classifications, restrictions and all of that stuff that customs brokers do, but they would be providing that as an advisory role for them to take on board into their IT systems. They would manage it on a transactional basis but would not actually be creating transactions. That is where the cost of the perceived red tape is.

Senator MASON—I understand. Thank you.

Senator LUDWIG—Has your organisation done a cost-benefit analysis of the program that you have undertaken to discover whether or not there is a demonstrable benefit to your business?

Mr Angel—Yes. We did some time ago, which did some modelling on an importer's total duty and the total number of transactions and we plugged some numbers into that. I can provide that model. It includes the benefits of duty deferral but it also includes the other benefits we perceived from the program in trying to quantify the savings from that.

Senator LUDWIG—So you only did it on the basis of a duty deferral model. Have you done it on the basis of the current model?

Mr Angel—No. It is the same benefits without the duty deferral benefit in there, so we could certainly provide the transactional quantified cost.

Senator LUDWIG—So you can provide what the difference effectively is—in other words, the quantifiable cost that you will then unplug?

Mr Angel—Yes, certainly. We can provide it before and after the costing as we saw the modelling.

Senator LUDWIG—That would be helpful.

CHAIR—Thank you, Mr Angel, that would great. As I said to confused witnesses, we are horribly constrained by the time frame given to us by the Senate. Our reporting date is 2 May, next Tuesday. So to have that as soon as possible would be very helpful.

Mr Angel—I will try to get that to you tomorrow.

CHAIR—Fantastic. Thank you very much. As there are no further questions, Mr Angel, thank you very much for appearing and for your verbal submissions today on behalf of the Australian Federation of International Forwarders. The committee is very grateful for your assistance.

Mr Angel—Thank you.

[10.33 am]

HUDSON, Mr Andrew Thomas, Member and Former Chair, Customs and International Transactions Committee, Law Council of Australia

CHAIR—The Law Council of Australia, on behalf of the Customs and International Transactions Committee, has lodged a submission with the Legal and Constitutional Legislation Committee, which we have numbered 4. Do you need to make any amendments or alternations to that submission?

Mr Hudson—No, the submission stands as it is.

CHAIR—I ask you to make an opening statement, after which we will go to questions from members of the committee.

Mr Hudson—I would like to keep my comments fairly brief. First of all, the Customs and International Transactions Committee of the Law Council welcomes the opportunity to appear before the committee. It has been appearing before this committee for a number of years in relation to this legislation, so it is ground we have gone over before and we welcome the opportunity to come back to reinvestigate that ground.

Our submission is as comprehensive as we could make it in 24 hours in terms of our views in respect of the bill. The only other issue I would like to raise in respect of it is—and if I could come back to the issue of the WCO framework of standards, which I had the benefit of rereading coming up from Melbourne this morning—one under the WCO framework that talks about advanced reporting of cargo. That addresses the issue of reporting 24 hours for sea cargo before it leaves the point of departure. I think that might be a worthwhile model to look at in terms of the Australian legislation. We do not quite have that at the moment. That may address some of the advance reporting issues. Other than that, we merely stand with our written submission.

CHAIR—Thanks very much, Mr Hudson. I know you note in your submission the committee's concern about the short time frame in which these matters are dealt with. Certainly, the Law Council was approached at the same time as all other witnesses and the committee simply deals with the time frame given to it by the Senate, which on this occasion was happily supplemented by both Easter and Anzac Day.

Mr Hudson—Indeed, it was a busy time. The submission reflects the views of the constituency of the committee, if you will.

CHAIR—I understand that. We, in fact, are very grateful for the submission because it brings up some important areas of concern to the committee. Let me start with one—not one we have really explored with the other witnesses in terms of the prescribed places access issue which you raise. I think it is an important point that you raise about the presence of individuals who might be required to be in prescribed places to assist or support people who are the subject of Customs inquiries. I think your submission lists lawyers, union delegates, doctors and perhaps even interpreters.

Mr Hudson—Translators and interpreters.

CHAIR—For the committee's benefit, could you take us through the amendments that you are suggesting to deal with that particular issue?

Mr Hudson—By all means. The Law Council's committee appreciates the concerns the amendments are trying to deal with. There are people who have what are generally known as security identification cards who have access to these types of areas. Obviously, Customs are concerned to limit that access. There are extremely legitimate reasons for this.

We are just concerned whether that has been fully thought through in terms of people who may actually need access but who find themselves precluded, notwithstanding a security identification card, by virtue of a written direction from the CEO of Customs, which appears to be generally unfettered. The amendments we propose are in respect of people who might otherwise have security identification cards and/or a legitimate expectation of being able to access these areas. These are areas, I understand, where questioning takes place, bags are searched and so forth.

A party who is going to be excluded should, perhaps, receive advance notice from the CEO of Customs of the intention to exclude them. It may impact on their work, for example; it may impact on their abilities to carry out their professional roles. The CEO should be obliged to notify a party and, having notified them, give them an opportunity to be heard on the issue or perhaps respond to it. There should, perhaps, be a category of people whose access should not be limited in this way. I talk of lawyers, for example, because that is what we are, but also medical practitioners. I can think of translators or union delegates for employees who may be in these areas where they are told, 'You shouldn't be there, and here's a written direction saying you should not be there.' They might be entitled to representation. If people, who are adversely affected by a written direction and told, 'You can't go into these prescribed areas,' and are unhappy with that exclusion, perhaps there should be grounds on which they could seek a review of that exclusion, whether internally within Customs or externally. I think we understand the principle behind it, and it is a very sound principle. We are just concerned about the downstream consequences of it. I guess we are not entirely sure of all the circumstances in which the CEO may issue written directions.

CHAIR—I think it is a legitimate point that the committee raises.

Senator LUDWIG—With respect to that matter, there is also now a police command centre at airports and the like for controlling these areas. They might in fact override and deny someone access to an area as well?

Mr Hudson—They may well act on advice. I presume the CEO may act on advice from the police command centre. Coregulation was described before. DOTARS have regulation over the airports under aviation transport security. We also now have Customs and also the police presence there. There may be situations in which the CEO may be asked to issue a written direction to somebody who, for example, is otherwise authorised under the aviation transport security regulations to say, 'Could you please issue a letter excluding this person from access.' So there may well be interaction of the type you have referred to.

Senator LUDWIG—Isn't one of the difficulties that we do not know whether they—that is, Customs and DOTARS—have conferred about this bill. You are not aware of any conferring?

Mr Hudson—I am unaware of that, but I am unlikely to be aware of it.

Senator LUDWIG—Probably me, too.

CHAIR—We can ask them.

Senator LUDWIG—It means that you now have another piece of legislation essentially dealing with the same issue, and we are unsure as to how it will operate in practice. You might have different reasons to exclude or not exclude one person, as the case may be. There may be a facility under the DOTARS legislation to appeal that and not under the Customs legislation. So, if you cannot exclude them under DOTARS, you then ask Customs to exclude them.

Mr Hudson—I am sure that would not happen.

Senator LUDWIG—I am positive it would be considered, though.

Mr Hudson—You are correct: there is a variety of layers of regulation over airports and indeed ports. From our perspective, there is a concern that there is this overlay and an overlapping and not necessarily consistent regulation and just seeing how it operates. For example, I think Customs officers have a particular law enforcement officer—I stand to be corrected on that—under the aviation and maritime transport security legislation. They have a suite of powers under that legislation which may be different to the powers they have under the Customs legislation.

Senator LUDWIG—Do you know whether it is subject to the ADJR?

Mr Hudson—A written decision?

Senator LUDWIG—Yes.

Mr Hudson—Whether it comes under the heading of a decision of an administrative character, which would be subject to review—

Senator LUDWIG—There are two parts. There is an AAT review if it is an administrative decision.

Mr Hudson—Correct. Then there is the decision under an enactment. It may well fall under it, but it may well be excluded. There may be an amendment. Indeed, I am not sure whether this would be a decision which would be subject to exclusion from the operation of the ADJR or the AAT legislation. There may well be an option under the prerogative writs but, again, we have not driven down into that detail yet.

Senator LUDWIG—I will follow up with Customs on that.

Mr Hudson—It is certainly an issue we would certainly like raised because there may be people who may consider themselves having legitimate access who are excluded for reasons which they are unaware of.

Senator LUDWIG—There are two distinct issues: one might be a merits matter and one might be at law.

Mr Hudson—Correct.

Senator LUDWIG—I will ask Customs on that basis. Perhaps you can elaborate further on the free trade agreement. You say that the changes do not go far enough.

Mr Hudson—It has been the position of the Law Council's Customs Committee for some time now and individually I have had this position on my own behalf and on behalf of clients and of associations. In fact, I made this comment to some Customs people a couple of weeks ago. Perhaps there is potentially some tension between the voluntary disclosure regime under the US-Australia free trade agreement and the provisions of the Customs Act. They largely fall around what constitutes 'voluntary'. The US-Australia FTA has a provision that states, 'If you voluntarily disclose an error, make reimbursement of any underpayment, you should not get any penalties.' Under the Australian legislation, voluntary disclosure is not quite that simple. There are limited circumstances in which voluntary disclosure is allowed to be made. For example, under the Australian legislation once you receive a notice of Customs' intention to exercise monitoring powers—otherwise, audit powers—it is too late to voluntarily disclose.

My concern is that if you receive a notice and you say, 'Customs are coming in, we should really be doing a prudential audit to try to work out how we are going in terms of compliance,' if you do discover a problem of claiming preference under the free trade agreement, you are too late under the Australian legislation to voluntarily disclose that error to avoid liability. Whereas, under the free trade agreement, my view is that you should be able to voluntarily disclose the error and avoid liability. It is an issue that has been raised in a number of forums on a number of occasions. My understanding is that Customs are talking to the trade branch—presumably to DFAT—about the tension.

There have been some proposed changes to the guidelines dealing with the Infringement Notice Scheme, because you can get an infringement notice for a claim of preference. But that deals only with infringement notices; it does not necessarily deal with other potentially remedial actions such as prosecution. It is an issue that has been around for a while. We were just hoping that perhaps it would have been an appropriate opportunity to address that. We obviously have a few free trade agreements in place now. We have a variety of others that we are seeking to negotiate. One of the issues we are finding under the Thai free trade agreement is people providing certificates of origin which appear to be legitimate but which are not in fact legitimate. Another issue is the ability of people to avoid penalty action or infringement notice action if they provide a certificate which appears to be in order but for some reason it is not. The difficulty is that there are authorities in Thailand who are issuing certificates of origin who are not authorised to do that. You might have a Thai exporter who goes along and says, 'This is from the Thai government.' It has the Thai crest on the top and it is stamped 'compliant' and, not unrealistically, they expect that that is compliant, and it may not be. That creates a number of difficulties for importers if they use one of those to claim preference. They find out it is incorrect, they have to pay back the duty, they have to voluntarily disclose the error, then they have to get a correct certificate and apply for a refund. There are some difficulties with that.

CHAIR—Sure.

Mr Hudson—The Thai free trade agreement might have warranted some changes to accommodate those sorts of issues, which I have raised with Austrade and DFAT on a number of different occasions before now.

CHAIR—Mr Hudson, you make the point in the introduction of your submission that, effectively, this is a sixth set of amendments to the trade modernisation legislation. I think it is

a point that this committee has made before, and it is an approach that Customs, in particular, seems to take, which is to throw a few bits into a piece of legislation. It is not in fact a criticism, but it is an observation that it is a difficult way to do business in terms of comprehensive and clear legislation.

Mr Hudson—Especially when ignorance of law is no excuse. Customs do work hard, and I would endorse their views about issuing a lot of manuals and explanatory material. But often that is after the event. It is a question of how much is disseminated and has come through. Trade modernisation legislation has had a difficult life, I guess associated with the whole CMR process. There have been a number of changes as we have gone through, as there have been a lot of changes to the Customs Act over the course.

CHAIR—Indeed, but you expect to see certain things come forward in what is often described as omnibus legislation. For some reason X and Y are there but Z is not, and Z turns up two lots later. It is a matter the committee has commented on.

Mr Hudson—From that perspective, some advance warning about what is being proposed to be amended may be of assistance to industry. That is without wishing to draw any adverse implications.

Senator LUDWIG—Perhaps some consultation.

Mr Hudson—Customs have a really hard job.

CHAIR—We appreciate that. It is a very broad set of responsibilities.

Mr Hudson—It is a difficult area.

CHAIR—Sorry I interrupted, Senator Ludwig.

Senator LUDWIG—It was on that point. This omnibus bill deals with not three related areas but three disparate areas which have been drawn together. Business or industry is expected to follow the legislation and understand that there are three disparate areas being drawn together in what is described as an omnibus bill—but it is not; it is three bills in one.

Mr Hudson—In many respects. We did have advance notice that there were three bills cleared for introduction. This was one of those bills. But all we had was the title. You would not take from the title of the bill the areas that it addresses.

CHAIR—Really? 'Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006' you do not find highly informative, Mr Hudson? I am amazed!

Mr Hudson—It is informative, but some of the detail may have assisted.

CHAIR—Yes, perhaps!

Senator LUDWIG—Turning back to the free trade agreement section, are there amendments that you say should be there? What do you say they should be?

Mr Hudson—My view has been on the record for some time.

Senator LUDWIG—Is that your personal view?

Mr Hudson—Me as Andrew Hudson and also through the committee. Perhaps there should be a voluntary disclosure, or perhaps the liability provisions which might be attracted by an incorrect claim of preference under the free trade agreement should be amended so that

the voluntary disclosure is brought into line with what is in the free trade agreement. In other words, we could exclude from the limited voluntary disclosure regime in Australian legislation voluntary disclosures of errors in claims of preference under the US free trade agreement—we could have that as an exception. We could have two more provisions which say that those limits in respect of voluntary disclosure do not apply in respect of voluntary disclosure of errors in claims of preference. That would be a parliamentary drafting error. But it could be done. I guess it depends on the view of government as to the degree of tension between the two and the significance of the concern.

Senator LUDWIG—What is the import if it is not done? How does it affect business if it is not done?

Mr Hudson—The difficulty it leaves is that the intention of the Australian legislation is that it should reflect what is in the free trade agreement. If it does not reflect it, that is a small concern. But the importer who has made what turns out to be an incorrect claim of preference might turn around and say, 'Okay, I'm making what I believe is a voluntary disclosure which fits within the terms of the free trade agreement.' Customs may—and it might be different Customs people years from now—say: 'It doesn't fit within our legislation. Therefore it is not voluntary. Therefore we reserve the right to penalise you.' There is a potential financial disadvantage in terms of penalty or infringement notice.

Senator LUDWIG—And that could be years later.

Mr Hudson—It may well be. Indeed, the people administering the legislation now may no longer be there. I might no longer be around. We may be in a different environment altogether—assuming we still have the free trade agreement and we do not turn that back and get rid of it.

Senator LUDWIG—I turn to the next area within the omnibus bill, the ACP. In your comments you seem to also recollect that there was a proposal for a duty deferral aspect of the ACP. Was your organisation or your committee part of those original discussions or were you aware of that as part of your dealings in Customs?

Mr Hudson—This is in effect of the original proposal?

Senator LUDWIG—Yes.

Mr Hudson—There was consultation between Customs and segments of industry—Customs will probably correct me—going back as far as 1997 and even earlier than that in respect of trade modernisation, cargo management reengineering and the accredited client program. The Law Council was not directly involved in that. When the accredited client program came out, the first we saw of it was in the legislation. We made submissions to the review back in 2001. The Law Council is a member of the Customs National Consultative Committee, which is a peak industry body, for want of a better term. From time to time there has been discussion about what is happening with the program in a very general sense—but certainly Law Council representatives have not been directly involved in any subsequent discussions about the accredited client program and its content.

Senator LUDWIG—Do you recall when the last discussions with the committee were in respect of the accredited client program?

Mr Hudson—Unfortunately the representation by the Law Council is through a chairperson, which is rotated. I really could not give you an assurance or an accurate date of the last time—

Senator LUDWIG—I will rephrase the question: how long have you been chair?

Mr Hudson—No, I was the chair from 2001. That was the last time I was the chair. I have not been the chair since late 2002.

CHAIR—Mr Hudson is representing the committee today as a former chair.

Senator LUDWIG—When were you last consulted?

Mr Hudson—The Law Council?

Senator LUDWIG—Yes.

Mr Hudson—In respect of the—

Senator LUDWIG—In respect of the latest iteration of the accredited client program.

Mr Hudson—As found in this bill, for example?

Senator LUDWIG—Yes. Even limited to this bill.

Mr Hudson—I am not aware of any negotiation or consultation with the Law Council in respect of this bill—but then we are merely humble lawyers and not directly involved in the border clearance industry. We merely try to help where we can.

CHAIR—Indeed.

Senator MASON—You are there to serve, Mr Hudson?

Mr Hudson—Yes, indeed. I am a modest servant of the industry. The Law Council has not been involved in direct discussions. Recently there have been two reviews conducted in respect of the CMR process. The Law Council has been given an opportunity to have discussions in respect of both of the reviews by the Australian National Audit Office and Booz Allen Hamilton. In part, that touched very briefly on the accredited client program, but that to my knowledge is probably the last. I can certainly ask both subsequent chairs to determine whether there was any individual consultation.

Senator LUDWIG—If it does not put you to too much inconvenience, it would be helpful. You make some comments about the framework of standards to secure and facilitate global trade—that is, the WCO framework. You say:

> Notwithstanding views by some parties that the ACP is entirely consistent to the Framework, the Committee believes that the ACP does not reflect all intended aspects of the Framework.

I was wondering if you could expand on that by as much as you are able to say about where it does meet, where you think it does not meet or where you think it omits to meet the framework.

Mr Hudson—I think the comment made earlier today was that the accredited client program was first mooted as a program in 2000 or 2001, which pre-dates September 11 and predates the WCO framework. I think our submission reflects that there are probably three main areas in the WCO framework, one of which is that the authorised economic operator is a concept that applies not just to importers but also to a variety of people within the supply

chain, which includes brokers, forwarders, transport companies, operators of warehouses and depots, and so forth. The current accredited client program predominantly—and almost overwhelmingly—provides benefits to importers alone. This concept has not been extended to apply to other people in the supply chain.

There is the issue of the security aspect, and I think that has been dealt with by previous submissions. The accredited client program does not have a security aspect to it. But then, of course, there is a significant degree of security overlay for parties within industry. It may well be a simple expedient of amending the accredited client model to include a security aspect. A lot of people in industry—forwarders, for example—may be regulated air cargo agents. They comply with the security regime. Or they might be people operating at or around ports and airports and who might have to have aviation or maritime transport security plans. They are concepts that others are aware of, and that could be worked into it. Perhaps the focus has been on getting through the compliance part of the duty issue.

The third issue I was going to mention was that the framework does talk about less intervention in the supply chain, for example. It talks about less examination of cargo. Customs do examine cargo here. There is nothing in the accredited client program which suggests that a member of the accredited client program would have less examination of their cargo. I am anticipating the position of government would be, 'We reserve our rights to look at any cargo whatsoever.' One way that could be addressed, for example, is to tell members of the accredited client program, if they are a large enough importer, that perhaps their goods will not be sent through the container examination facility, which is one way in which cargo is examined. Perhaps that aspect does not meet our border security regime, for want of a better term.

Senator MASON—On page 2 of your submission, down the bottom, you have 'participation on access'. Do you mean restriction on access?

Mr Hudson—That is right. That is the issue we addressed, about people receiving written notification saying, 'You can't go into these proscribed places.'

Senator MASON—You mean restriction on access.

Mr Hudson—That is right.

Senator MASON—How would that work? I have the bill in front of me. It says:

A Collector may, at any time, by written notice given to a person who is the holder of a security identification card … direct the person not to enter into, or be in or on—

certain places. I cannot see what is wrong with that. I am assuming, in the context of the real world, someone would be excluded because of some potential security risk. I am assuming that is right.

Mr Hudson—I think that is referred to in the explanatory memorandum. If that is the reason for it, perhaps that might be referred to in the bill. I can give you an example. I act for clients in and around Melbourne airport. When I turn up for meetings at Melbourne airport, I get a visitor identification card. If I were to receive a call to say, 'We've got a client who's currently in one of these proscribed places'—which are fairly limited—'and they are being questioned, or they're having their baggage examined, and they'd like their lawyer there,' and

I were to try and go into that place and say, 'I have an identification card which allows me in here,' if, in advance of that, a letter had been issued saying, 'No, you can't go in there,' the person inside there who has asked for the assistance could be precluded from getting that assistance because I have been told I cannot go in there for whatever reason. I do not think I represent a security threat, but that may well be a matter of debate.

CHAIR—The committee has discussed security-cleared lawyers at great length, Mr Hudson.

Mr Hudson—I have not been security cleared, but the security identification card covers people who have to work there as well as people who get visitor cards. If it was purely to do with security concerns—

Senator MASON—You can envisage that, can't you, Mr Hudson? You can envisage there could be circumstances where they simply do not want anyone coming in.

Mr Hudson—I appreciate that if it is driven purely by security.

Senator MASON—I am assuming that is right.

Mr Hudson—I am assuming that is right as well. That is referred to in the explanatory memorandum. It does refer to people who they might be concerned about and feel that it is inappropriate for them to be there, and they have given some examples. But the legislation is quite broad. It does give the CEO the capacity to issue a written direction precluding access to people who would otherwise be entitled to access. It does not actually go into any detail as to the grounds for that and on which it can be invoked.

Senator MASON—If that is right, and we are talking about a situation at an airport—Senator Ludwig mentioned a review under AAT or ADJR, and I think you mentioned prerogative writs. I would have thought that would all be a little bit after the event. Really, we are talking about an issue in an airport.

Mr Hudson—Indeed, that is the problem, which is why the amendments we suggest, or at least have opened for consideration, include that there be a process in which a person who is to be told that they are going to be excluded gets advance notice of it before that notice takes operation.

Senator MASON—Would that be practical?

Mr Hudson—It depends upon the reasons for it. If they suddenly discover that this person poses a particular security threat then perhaps that notice may not be practical. But, presumably, that notice could be abridged in circumstances of particular urgency. I would draw the analogy with a landlord being able to enter premises with no notice in the case of emergency—if the place is falling apart or whatever. Presumably, the legislation could reflect that. You could have a scheme in which people who are going to be excluded by way of written direction might be given notice of it, except in the circumstances of national security issues or some other reason. I understand the review might not be practical. And we do not know what the notice would preclude—whether it would apply from then forever, from then for one day or from then for 12 hours.

Senator MASON—Or just for that meeting or whatever.

Mr Hudson—Yes. That is the difficulty with it. We are not entirely sure of how it would operate in practice.

CHAIR—I think the issue is about the provision being so completely open and having absolutely no parameters that I can identify around the why and the wherefore of the process. Whether all of the Law Council's recommendations are necessary and/or appropriate is one question; whether having some parameters around the powers is appropriate is another. It is completely open ended at the moment.

Senator MASON—So someone might be excluded for any particular reason for 12 months.

Senator LUDWIG—Such as colour of hair—or lack of it!

Mr Hudson—Obviously, it will potentially be a limited concern because these are very limited areas. They are not used that much and they were introduced under some legislation a few years ago as being areas you cannot do certain things in. I understand that in practice this might have a limited application. The concern, which senators have picked up, is that we are not entirely sure of how it is going to operate or the circumstances under which it may be invoked. Some more clarity might be of benefit.

The explanatory memorandum does refer to some situations. It talks about diplomatic personnel who they do not want wandering around the tarmac. I can understand that. There are people, perhaps baggage handlers, who have a security identification card who they do not want there anyway. Rather than revoking their security identification card, it might be easier to send them a written notice saying they cannot go in there. That would be a legitimate reason, for example.

Senator MASON—So you can see the necessity for the power but it is just the breadth of its expression.

Mr Hudson—Yes, it is the whole boring lawyer procedure stuff that we do.

CHAIR—There are no further questions. Thank you, Mr Hudson, for appearing, for your submission and for the information you have given to the committee. We will pursue these matters with interest.

Mr Hudson—Thank you very much.

[11.11 am]

BUCKPITT, Mr Jeff, National Manager, Compliance Branch, Australian Customs Service

NYAKUENGAMA, Ms Sharon, Director, Compliance and Enforcement , Legal Policy Compliance Branch, Australian Customs Service

WHOWELL, Mr Peter, Manager, Legislation Program, Australian Federal Police

CHAIR—Welcome. The Australian Customs Service has lodged a submission with the committee which we have numbered 3. Do you need to make any amendments or alterations to that submission?

Mr Buckpitt—No.

CHAIR—The AFP has not lodged a submission but we thank the AFP very much for appearing today. Before we commence, I remind senators that under the Senate's procedures for the protection of witnesses, department and agency representatives should not be asked for opinions on matters of policy and, if necessary, they must be given the opportunity to refer those matters to the appropriate minister.

I ask both agencies, if appropriate, to make opening statements and then we will go to questions. I do not mind who starts.

Mr Buckpitt—I would like to thank the committee for the invitation to appear today. I would like to start by drawing your attention to our submission. It was provided to assist the committee in its deliberations, particularly with regard to determining if the bill is compliant with the WCO's framework of standards to secure and facilitate global trade. I would like to emphasis a few points from our submission.

First and foremost, we are of the view that the accredited client program is entirely consistent with the WCO framework of standards. The evidence for this is seen in reading the framework document. I am not sure whether the committee has a copy of the framework of standards document; if it would be helpful I can provide the relevant extract.

CHAIR—I do not have it with me right now.

Mr Buckpitt—I can provide you with copies.

CHAIR—Thank you.

Mr Buckpitt—The relevant part of the WCO framework is described as the customs to business pillar or, more simply, pillar 2 of the framework. In the relevant extract, which I have tabled, the first paragraph reads as follows:

Each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain. The main focus of this pillar is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain. These business partners should receive tangible benefits in such partnerships in the form of expedited processing ...

I would like to draw your attention to the final paragraph on the second page of the extract that I have provided:

Drawing from the vast number of innovative programs, Customs administrations and international trade businesses joining the WCO Framework will standardize Pillar 2.

The relevance of that particular paragraph is in the footnote. In footnote No. 3 you will see that a number of programs are listed from different parts of the world, and Australia's two programs, Frontline and the Accredited Client Program, are both mentioned. So we say that the Accredited Client Program is referenced as an example of an innovative program that is consistent with where the framework of standards wishes to see customs to business security partnership programs go. We believe that the program will assist in strengthening supply chain security.

As indicated in our submission, the Accredited Client Program includes a number of business rules that will in due course be tabled in parliament. One of the draft business rules is Accreditation Standard No. 6. I would like to table copies of that document, which is currently a draft. I should emphasise that this is a document that has been the subject of consultation with industry. It will undergo further change. The document that is about to be put before you is one that is probably two years old, and in the context of the WCO framework of security standards, which was only finalised last year, it will need to be brought up to date in the sense that the WCO framework of standards was itself very much a draft when this document was being produced.

CHAIR—Just to clarify, this is a draft set of business rules?

Mr Buckpitt—This is an extract from the Accredited Client Program business rules. If you read this document you will see that it is clearly about supply chain security. So it is that aspect of the Accredited Client Program that goes to security initiatives.

CHAIR—Sorry to interrupt; thank you very much.

Mr Buckpitt—The next point I would like to make in opening is to simply emphasise that the WCO framework of standards is in any event only a set of standards and guiding principles. It is not the subject of any international law, nor is it covered by any conventions or treaties. The framework has been developed to assist members of the WCO to improve their countries' customs procedures to secure the movement of international cargo. Application of the framework of standards is voluntary, although all members are clearly being urged to implement the framework. In this regard, the Chief Executive Officer of Customs provided formal advice to the WCO Secretary-General in June 2005 of our intention to implement the framework. We consider the Accredited Client Program to be just one aspect of our response to the WCO framework. It is not the totality of our response by any means.

Finally, I would like to provide to you a third document, which is a one-page fact sheet about the Accredited Client Program. Included in this fact sheet is information about eligibility and benefits of the program, areas that have been raised in some of the submissions by other parties addressing the committee. In closing, my colleague Sharon Nyakuengama and I would be happy to clarify any aspects of our written submission or the comments I have made today or to address any of the other points that have been raised by the parties addressing the committee.

CHAIR—Thank you very much, Mr Buckpitt. Ms Nyakuengama, do you wish to add anything now?

Ms Nyakuengama—No, not at the moment.

CHAIR—Mr Whowell?

Mr Whowell—No, thank you.

CHAIR—Mr Whowell, if you are in a position to point to the key aspects of the bill as far as the AFP are concerned, we can at least confine questions to you to that.

Mr Whowell—I was asked to come here by the secretariat to assist the committee. There were no real issues in the bill for the AFP. There is a defence in there to do with the possession of drugs for Customs officers, so that was what I suspected you may have questions for the AFP about.

CHAIR—That is fine. We will come to that in due course. Mr Buckpitt, it is fair to say that the committee has had before it today probably some of the 'key players' in terms of peak organisations and people who are involved in policy development in this area, as well as business, obviously, in this area. We have had what I would describe as a patchy at best report on consultation, how the bills come together, what is in a bill, what is a special surprise for people when they see something hit the deck—that sort of thing. They are issues that we have spoken about with Customs in the past—not necessarily with you, but certainly with other officers—in relation to other legislation. We had a period a couple of years ago when the churn rate for customs legislation through this committee was quite phenomenal, so it is an area with which most of us are familiar. Could you comment on the aspects of consultation, or lack thereof, which have been raised with us today by groups like the Customs Brokers and Forwarders Council, the relevant committee of the Law Council and, in a different direction, the Australian Federation of International Forwarders?

Mr Buckpitt—I think your question can probably be answered from two perspectives. One is in relation specifically to the Accredited Client Program and the other is in relation to the bill more generally. I will respond in regard to the Accredited Client Program and my colleague will respond in regard to the bill more generally.

The Accredited Client Program, as you have heard from other people, has had a very long history. Part of the difficulty we now face is that there has been a turnover of people, memories fade and there is some doubt as to what has or has not been the subject of consultation in the past. The Accredited Client Program goes back to 1997. I think it was in 2000 or 2001—and it might even have been prior to that—that the Business Partner Group started, so it has been operating for a period of at least five or six years. Firstly, that group is well known to all the organisations that are represented before the committee. There have been regular updates to representatives of organisations appearing before you in the context of the Customs National Consultative Committee—all the bodies represented on that—so the existence of the Business Partner Group is well known to them. Secondly, the Business Partner Group was a group that was formed by industry as their preferred means of engaging with Customs about the program. It was an initiative from industry rather than Customs making a decision that we would invite these dozen organisations and exclude others. It did not quite form in the way that these consultative groups might normally form.

On the issue of involvement, it is probably true to say that the development of the program has gone into a hiatus of sorts over the last two years because of the difficulties pertaining to

the issue around duty deferral as to whether the government was or was not comfortable with the concept. Nevertheless, there have been meetings with industry and there have been meetings with the CBFCA in particular. In the case of the CBFCA, the chairman participated in meetings with the minister through ministerial roundtable discussions concerning a range of issues pertaining to CMR, including the Accredited Client Program, on 28 January 2004, 1 June 2004 and 1 February 2005. In each case, the Accredited Client Program was on the agenda and there were discussions about issues such as benefits and where Customs was up to in regard to the program. So there have been discussions with industry, including the CBFCA, on the Accredited Client Program. They have not been meetings that have been called solely for the purpose of consulting with industry around the accredited client program, but they have nevertheless been significant discussions.

Generally, the consultation has been through the business partnership group and I think their submission indicates that they have been closely informed over a period of several years as to the progress of the program. We have had the expectation that there would be a process in the finalisation of things such as the business rules whereby there would be further opportunity for consultation with the Business Partnership Group and the wider industry, so organisations such as AFIF and CBFCA would have an opportunity to see draft business rules once they were approaching the point at which we were going to table them. I will ask Ms Nyakuengama to comment on consultation on the bill more generally.

CHAIR—Before we go on to the bill generally, on the ACP issue, are the meeting notes you just referred to something the committee is able to obtain?

Mr Buckpitt—I would need to take that question on notice.

CHAIR—One other question: the Business Partner Group have sent us a document yesterday. Obviously, therefore, we are not in a position to arrange for them to appear before the committee today. It actually does not even have an individual's name on it. It does not provide the secretariat with an individual's contact details. It has a secretariat address, an email address which may or may not pertain to someone who works for the Business Partner Group—I have no idea—and it lists four corporate names at the bottom of the third page as pilot partners and service providers, and they have been discussed today. You may be relying on consultations with the Business Partner Group, but to say the committee is somewhat in the dark as to the identity, background and involvement of the Business Partner Group would be an understatement. To say that, as a matter of experience, we deal regularly with the CBFCA, the AFIF and other customs organisations is in fact the case. Thank you for passing on that information about the BPG but, until this morning, I would have told you that the BPG was probably some subsidiary of British Petroleum, for all I knew.

Mr Buckpitt—If I can just add a comment, I suspect that the last page of the submission is not here—

CHAIR—That may be the case.

Mr Buckpitt—because I would have expected that the listing of the Business Partner Group would show a dozen names, not four, and that might have a signature and details as to how to contact them.

CHAIR—It may; unfortunately, this is all that has been provided through the fax to us, as far as I know. We will follow up with this organisation.

Mr Buckpitt—I can provide the secretariat with details as to who would be behind the production of that document.

CHAIR—We would be interested in your input on that. Obviously I mean no criticism of the organisation itself and simply that, having received this last night, the committee is in absolutely no position to have dealt with it adequately for today.

Ms Nyakuengama—On the bill more generally, all the measures in the bill, other than the duty payment arrangements for accredited clients, really are highly technical measures that relate to specific operational issues that have arisen in difficulties. They have probably arisen over the past two to three years and, being such small measures, have been waiting for a legislative vehicle to be put through. As you are aware, more generally, the government has had quite a large legislative reform agenda in other policy areas lately, and small issues like these ones that we have wanted to process for administrative or operational convenience simply have not made the priority listing to get drafting resources allocated or through. I guess we would rather see a wholesale, more comprehensive review of lots of pieces of legislation as well but, when it comes to drawing a line at what is in a bill, I am afraid that is something we do in consultation with the Office of Parliamentary Counsel with measures that are completed and have policy approval on a particular day. Some of these measures have been sitting on our wish list, for want of a better word, for up to 2½ years.

They are measures that are very small. When they are subject to the bill and the drafting stage, they are probably regarded as cabinet in confidence. Also, all of these measures have been passed through the Office of Regulation Review and it has been indicated that they are not of significant policy concern to require a regulation impact statement and the consultation process that goes with that.

We have other measures that we are looking at at the moment in relation to our duty recovery provisions and payment under protest provisions. We specifically wrote to the Law Council of Australia towards the end of February inviting them to lodge a submission with us on that. More generally, we are looking across all our offences in the Customs Act in response to the Australian Law Reform Commission's review into civil and administrative penalties, which, once again, is quite dated now—but it is getting the overall attention on such a big project.

The trade modernisation legislation in 2001 has to have been one of the biggest changes to Customs legislation in the 15 years that I have been working with it. I think it is quite understandable that it has taken five years to bed that down and that the amendments that have come through in that period since its passage have primarily related to bedding that down and fixing things up in line with the phased implementation of the ICS, the integrated cargo system. Other high-priority amendments have related to border security in response to terrorism threats. So administrative reform has taken a back seat.

CHAIR—So you say there is more coming. Even better. I will leave it there for the moment and go to Senator Ludwig.

Senator LUDWIG—Just going back a bit, submitters have referred to a duty deferral process from when the ACP program was first mooted. Can you explain what that originally was, if that was in fact one of the issues that was first considered?

Mr Buckpitt—The program as originally proposed included duty deferral for a full month. The concept was that all the duty payable for transactions in one month would in fact not have to be paid until a certain day in the second month. Initially I think it was indicated by the representative for AFIF that that was to occur on the first day of the month, but after some further consultation it was decided that the proposition to be put to government was that it would be payable on the seventh day of the month. So, in effect, an accredited client would receive a benefit of duty deferral of anything from one to five weeks. That was the original proposal.

Senator LUDWIG—Was that costed?

Mr Buckpitt—Yes.

Senator LUDWIG—How much was that going to cost?

Mr Buckpitt—Treasury costed that as potentially being $89 million over a four-year period, based on upon certain assumptions about the size of the program.

Senator LUDWIG—How did Treasury get involved in the costing of that?

Mr Buckpitt—Because the program would impact on government revenues, for any such proposal to go forward for government consideration such a costing would have to be agreed to by Treasury.

Senator LUDWIG—Was that sent to Treasury for their agreement?

Mr Buckpitt—No, that was the Treasury costing.

Senator LUDWIG—You might have to step me through the process. Do Customs then tick that off and implement it?

Mr Buckpitt—No.

Senator LUDWIG—How does it work from there?

Mr Buckpitt—Essentially, all that is required is that Treasury agree to the costing. Whether Customs does or does not agree with the figuring is of no consequence to the process.

Senator LUDWIG—Did Treasury agree with the costing?

Mr Buckpitt—That was the Treasury costing.

Senator LUDWIG—Did they give an opportunity to say whether that was acceptable?

Mr Buckpitt—It was their costing.

Senator LUDWIG—Were they part of the decision-making process as to whether Customs went ahead with the program?

Mr Buckpitt—They provided advice to government in the context of the budgetary process, and it was in the context of the 2004 budget process that the government took a

decision that it had a concern about the financial impact of the program on the budget bottom line.

Senator LUDWIG—Is that Treasury?

Mr Buckpitt—That was a government decision based upon advice from a number of sources, including Customs and Treasury.

Senator LUDWIG—What was Customs's view? Did they have a view in respect of it?

Mr Buckpitt—Customs supported the concept of duty deferral.

Senator LUDWIG—You will have to step me through it again. Is it government as a nebulous entity that says that it did not support it, or is it the Treasury or a specific minister? How does the process work?

Mr Buckpitt—It was a decision taken in the context of the budget process, so it was a cabinet decision.

Senator LUDWIG—And that was that it would not be supported.

Mr Buckpitt—That is correct.

Senator LUDWIG—When was Customs advised of that?

Mr Buckpitt—I do not know the specific date. However, I think it became public information in the context of the 2004 budget.

Senator LUDWIG—And from there a new scheme was proposed or developed?

Mr Buckpitt—Essentially, the decision was that the government had concerns about the financial impact of the accredited client program, and the minister was tasked with consulting industry further to develop a proposal which would be acceptable to government and industry—that is, one that did not have the same financial implications for the budget.

Senator LUDWIG—Was the original duty deferral process after the Treasury costing and prior to the decision in the budgetary process of 2004? Was that a matter that was part of the scheme that was mooted to industry as part of the trade modernisation legislation—in other words, was it an integral part of it?

Mr Buckpitt—It was part of the accredited client program as discussed with industry through the late 1990s and early 2000.

Senator LUDWIG—So industry expected to see that duty deferral?

Mr Buckpitt—Yes.

Senator LUDWIG—Then, post 2004, you broke the news to industry through another consultative program round that that was not going to be the case.

Mr Buckpitt—That is correct.

Senator LUDWIG—Would that be considered a broken promise? Did you promise industry that that would be part of the ACP?

Mr Buckpitt—I do not think so, because the discussions with industry were always predicated on the government needing to finally approve the program. It was always understood that there was to be a final sign-off to the details. Even now I think there is still an

expectation that there is a sign-off of legislation that you have before you and the business rules have to be tabled in parliament, so I think industry understood that the process had a number of checks, balances and hurdles that it had yet to go through.

Senator LUDWIG—When you say industry understood, what part of industry? It seems to be we are having a bit of a problem with the submitters as to determining who you consulted with.

Mr Buckpitt—We primarily consult with the Business Partner Group when it comes to this sort of detail about the program.

Senator LUDWIG—Who is on the Business Partner Group?

Mr Buckpitt—Unfortunately, you do not have page 4 of their submission.

CHAIR—While we are back on that subject, may I say, Mr Buckpitt, that you were correct, that the submission did have a final page and that was not passed on to the committee by the secretariat in the transfer from Canberra to Sydney. I apologise unreservedly for indicating that there was not a fourth page. There is in fact a fourth page. It lists other corporate members of the Business Partner Group and has the name of a representative at the bottom of it. It does not actually greatly further enlighten the committee as to the nature of the group, but we do have that information. I will give that to Senator Ludwig and I do place on record my apologies. It was an administrative error on the committee's side of things, not on anyone else's.

Mr Buckpitt—It is also relevant to note that the composition of this particular group is contained in the legislation itself. Section 71DD(3) has a listing of the Business Partner Group. I think there are some 15 of them listed there.

Senator LUDWIG—That is the total sum of the Business Partner Group that you are aware of?

Ms Nyakuengama—They are the parties that are involved in it which would be actual importers. The current legislative framework for the accredited client program that was included in the 2001 trade modernisation legislation confers benefits on importers. So the big importers that are listed there were the primary participants as importers that have the obligation to lodge customs entries. My understanding is they brought along their service providers, the freight forwarders and their brokerages, as their representatives in that forum.

Senator LUDWIG—Could you clarify one matter with me. Had you seen the BPG submission prior to the committee getting a copy of it?

Mr Buckpitt—No. We saw it this morning for the first time.

Senator LUDWIG—Had you had discussions with the group prior to today's hearings about today's hearings?

Mr Buckpitt—I had a telephone call from the individual who I suspect wrote the submission.

Senator LUDWIG—Margaret Milne.

Mr Buckpitt—Yes, Margaret Milne, on Monday. But that was a very short conversation. Basically she was asking me whether it was too late to make submissions. I referred her to the secretariat.

Senator LUDWIG—Just back to the duty of deferral, the new one being developed is now out. How was it developed?

Mr Buckpitt—Customs proceeded to meet with the Business Partner Group. There were two or three meetings in the space of seven or eight months. We produced some options for the group. As a consequence of discussions, we settled on the model essentially contained in the bill before you now.

Senator LUDWIG—When you say you settled on it, do you mean with the group?

Mr Buckpitt—Yes.

Senator LUDWIG—So were all group members aware of the model?

Mr Buckpitt—Yes, I believe they were.

Senator LUDWIG—Have you done any costing of that model?

Mr Buckpitt—No.

Senator LUDWIG—I am curious: why wouldn't you have done costing? You did it for the last one.

Mr Buckpitt—The previous arrangement was the subject of a costing, that is true. The short answer is that there are still benefits in the program for industry, but they are not as significant as they once were. Given that there had been such an investment of effort for both Customs and industry in developing the program to the point that it had, Customs considered that it should in all good faith continue to finalise and make the program available to industry.

Senator LUDWIG—Is this why there is no costing in respect of this proposal? Is it revenue neutral or expected to be revenue neutral?

Mr Buckpitt—With respect to recovery of revenues, it is revenue neutral, because effectively you have got up to two weeks worth of duty that could be paid early and up to two weeks of duty that could be paid late because of the mid-month payment. It is revenue neutral in that sense.

Senator LUDWIG—Is that why no costings were done—because you did not expect there to be significant costs to Customs to implement the program with this element?

Mr Buckpitt—That is correct. The costs for Customs to implement the program are relatively minor from here. To correct one point previously made, the integrated cargo system has been built with the functionality required for the Accredited Client Program. It was our view that to make the further changes required for this payment model, if I can call it the current payment model, the costs would be relatively minor.

Senator LUDWIG—Has this been referred to Treasury for their view?

Mr Buckpitt—No, and it would not normally be referred to Treasury other than in the context of the government taking a decision about the approach to revenue collection. Treasury has been involved in that aspect.

Senator LUDWIG—Has Treasury provided a view about this model?

Mr Buckpitt—Treasury provided the government with a view about this model in the context of the normal budgetary process for the 2005 budget. The outcome of that was the government's announcement that it would proceed with the program along the lines of this new arrangement.

Senator LUDWIG—Did you take it from that that Treasury was happy with the new model?

Mr Buckpitt—We took it that Treasury was no longer objecting to the proposed arrangements.

Senator LUDWIG—Has the program been piloted or trialled? Some submitters indicated that.

Mr Buckpitt—The language is a bit confusing.

Senator LUDWIG—Yes.

Mr Buckpitt—There has not been a trial in the sense of declarations being provided to Customs on a monthly basis. Where there has been a pilot or a trial has been in determining whether or not companies would meet the eligibility requirements. Perhaps one of the most significant of the eligibility requirements is that companies have a 98 per cent accuracy rate. That is a very high level of accuracy. Most of these companies had to have audits undertaken as to whether or not they could in fact meet that standard. There were preparations and work on their part to get up to the level of accuracy. So the pilot has in effect been work on their part to get across the hurdle to be eligible for the program. That explains why the companies have been listed in the legislation in that way—to recognise that they have already established their bona fides and are eligible for participation in the program.

Senator LUDWIG—When is it likely to be functional to trial it with the ICS or the CMR?

Mr Buckpitt—Currently the ICS IT people are specifying the detail of the changes that they need to make. We have been told that that task will be completed by the end of July and that they expect that the final, relatively minor in the scheme of things, changes that need to be made will be completed by the end of the year. Our expectation is that, assuming that the legislation is enacted and that the IT system changes—relatively modest as they are—are completed this year, we would be in a position to commence the program in earnest at the beginning of 2007. In the lead-up to that, we would see testing taking place with particular companies that wish to go live. We would have what I would describe as a test environment available for them to send us test messages that would ensure that when they do go live there are no surprises for them or us in the processing of their declarations.

Senator LUDWIG—In terms of the ICS or IT part of it, are the changes that are needed parts of the program and have a consequence in the new processing system or are there other reasons that they cannot be piloted now?

Mr Buckpitt—The changes that need to be made relate to the change in timing. The functionality relating to periodic declarations and requests for cargo release were built on the original concept of duty being payable on the seventh day of the following month. However, we now have an arrangement whereby an estimate is payable in the middle of one month with

the reconciliation and the estimate for the following month being required in month two. So it is a slightly different arrangement for the timing of payment. The actual periodic declaration, the RCR is essentially unchanged. We are talking about a relatively minor amendment.

Senator LUDWIG—But it will take six months or more to get it?

Mr Buckpitt—I do not know that it will take that long. What I can say is that we have been promised that by the end of July they will have a more definitive timetable, but we have been given to understand that it will be available by the end of the year. So, until they have done the detailed analysis, they cannot be any more precise. Part of the problem is that there are lots of other changes in the queue.

Senator LUDWIG—So I understand. What will be the benefits of entering the accredited client program? There is not a revenue benefit in the duty deferral. That is now gone.

Mr Buckpitt—That is true.

Senator LUDWIG—So what are the benefits to encourage—

Mr Buckpitt—There are a couple of benefits that have financial implications and they are addressed in the fact sheet that I tabled. You will notice that there is a specific heading, 'What are the benefits?' The first benefit shown is that monthly declaration reporting replaces the need to provide an entry declaration for each and every consignment. In the case of a very large corporation—for example, Coles Myer—at the moment they might be lodging 4,000 to 10,000 entries every month. With each of those entries there is a detailed data set, a payment involved and a lot of other transactions that go on within their organisation to make all that possible.

The concept with the accredited client program is that they can obtain the release of the cargo with a very much abbreviated report and then, at the end of the month, they can provide us with a more detailed report that has all the financials and other information that enables the duty to be calculated. They can provide that in a consolidated format, if they like, which provides very significant savings in terms of administrative effort to bring all that information together and then enter it into IT systems. So companies such as Coles Myer are supportive of this because they see administrative efficiencies for them in reducing from 4,000 to 10,000 entries per month down to effectively one periodic declaration.

The other aspect of this relates to cost recovery charges. There is an expected benefit for larger companies in relation to the charging regime. As you know, Customs cost-recovers in relation to import declarations. The participants within the accredited client program would be subject to a different charging regime. I do not have the precise figure but it works out as being of the order of 40 entries per month. If a company has about 40 entries or more per month, they are financially better off under the accredited client program than they would be under the current system of cost-recovery charges, so that would be another benefit. There are other benefits associated with the program which are not so easily priced. We have said to the Business Partner Group that we would have account managers dealing with their companies. That would facilitate the movement of cargo in that they would have, I suppose, a more immediate point of client contact with someone who would deal with all of their issues. That is referred to in the listing of benefits.

As for the concept of self-assessment and policing rather than having Customs verification, our view is that with these very highly compliant companies, ones who have got to the point that they are 98 per cent accurate as to their level of data, we can provide less attention to these sorts of companies in terms of the audits and inspections that we do. Finally, the benefit for us, from Customs' point of view, is that we have an incentive, something to offer to companies that do really make a big effort to achieve a very high level of compliance. So the effect is that we will have an increasing proportion of large companies which are highly compliant and will therefore require less of our audit attention.

Senator LUDWIG—Has any cost-benefit analysis been done by you in respect of that?

Mr Buckpitt—No, and I think it would be a very difficult exercise to attempt.

Senator LUDWIG—Have any of the ACP members done any cost-benefit analysis and been able to provide those figures to you?

Mr Buckpitt—There was a cost-benefit analysis undertaken in relation to the former model that we talked about earlier. I think that was undertaken by Customs in 2003 but I am not sure how relevant that would be given that the duty deferral model has since changed.

Senator LUDWIG—Is that available in any event?

Mr Buckpitt—I will have to take that question on notice.

Senator LUDWIG—Did BPG do a cost-benefit analysis?

Mr Buckpitt—Not that I am aware of.

CHAIR—Their submission does not mention one.

Mr Buckpitt—I think it is highly unlikely.

CHAIR—Highly unlikely?

Mr Buckpitt—Yes, it is highly unlikely that they would have done one. What is more likely is that individual companies would have done some degree of assessment as to the cost. The only way for us to find out that information would be to ask each of them individually.

Senator LUDWIG—How many accredited compliant program members do you envisage?

Mr Buckpitt—From recollection, the program costing that was undertaken by Treasury was based on up to 200 companies over a four-year period.

Senator LUDWIG—Has that been revised given that the incentive is no longer there?

Mr Buckpitt—No, because the costing was all around duty deferral. The new model makes its budget neutral, so whether it was 200 or 20 it would still be budget neutral.

Senator LUDWIG—Yes, but how many do you think will join up?

Mr Buckpitt—It is speculation.

Senator LUDWIG—I am asking you to speculate then.

Mr Buckpitt—I would speculate that over a four-year period 50 to 100 would, but we are talking about very big companies.

Senator LUDWIG—Out of how many? The difficulty is that the program is designed to encourage people to do supply chain security, to undertake certain requirements and then to have an incentive or benefit as a consequence, although the benefit or incentive is now, as you have indicated, reduced to transactional costs and the like. Do you expect it to have a significant uptake by industry?

Mr Buckpitt—The original program was always anticipated as only appealing to large companies. Take the sort of analysis that I referred to when I indicated that a company would need to have 40 entries or more per month in order to derive a financial benefit. If you look at it purely in terms of those sorts of numerics, there is probably only a couple of hundred companies that have that sort of volume of imports. There are though other benefits I have referred to, which are nonfinancial. So we are talking about hundreds rather than thousands of companies that might come under this scheme, which explains why the accredited client program is only one aspect of Customs' response to the WCO framework of standards. We are in fact consulting with industry on other proposals which relate to the framework of standards as well.

Senator LUDWIG—How many have now signed up to the ACP?

Mr Buckpitt—No-one has signed up, in the sense that to be signed up there has to be a formal contract.

CHAIR—But people are completing those expressions of interest that you refer to in the notes that you gave us.

Senator MASON—Is there enthusiasm, Mr Buckpitt?

Mr Buckpitt—I think it is fair to say that there is a lot of wariness, given the history of this program.

Senator LUDWIG—How many people have expressed tentative interest?

CHAIR—Tentative but wary interest.

Senator MASON—Even though enthusiastic.

Mr Buckpitt—We have not advertised the program to industry for quite some years. Occasionally we do get contact from companies saying: 'We have heard about this program. Can we lodge an expression of interest?

Senator LUDWIG—How many have done that?

Mr Buckpitt—It would be a handful.

Senator LUDWIG—How many are in the BPG?

Mr Buckpitt—About 15.

Senator LUDWIG—Are they all keen or are they also wary?

Mr Buckpitt—They range from very keen to very wary.

CHAIR—According to the submission they are jumping-off-their-seats keen. Possibly enthusiastic, Senator Mason.

Mr Buckpitt—They were all very keen up until the duty deferral proposal was changed.

CHAIR—I'll bet.

Mr Buckpitt—Since then, the level of support has been such that some of them are sitting on the sidelines to see what comes of this.

CHAIR—That had crossed the committee's mind.

Mr Buckpitt—We have had enough expression of interest from them, though, that we are satisfied that we will have participants in the program. Whether it is half or all of them I do not know.

Senator LUDWIG—Or none of them.

Mr Buckpitt—I think that is unlikely. I do not think they would continue to write submissions if they did not want to pursue it.

Senator LUDWIG—Maybe they are still hanging out for the duty deferral system. So, in other words, that was the significant or key point that would have encouraged participants to join the ACP; now that has gone you have to encourage people to join without an incentive—is that a fair statement?

Mr Buckpitt—No, I do not think it is a fair statement. It was perhaps one of the most significant attractions to the program but it was not the only attraction.

Senator LUDWIG—Do you reject the lack of consultation indicated by other submitters? It seems that the CBFCA have indicated that they do not recall any direct consultation in relation to the ACP.

Mr Buckpitt—I have indicated that there were three meetings in 2004-05 that they attended. Prior to that, the CBFCA was engaged in discussions with Customs on the concept of an accredited service provider model, and that is a concept which they have included in their submission to you. They wrote to Customs and they engaged Customs on various proposals around all of that. There were meetings in 2003 with Customs and CBFCA.

Senator MASON—We need copies of that correspondence from CBFCA, Mr Buckpitt.

Mr Buckpitt—I do not have it here at the moment.

Senator MASON—That is okay. But you do have it?

Mr Buckpitt—Yes.

Senator MASON—We might want to see that.

CHAIR—Indeed. I think we have already indicated that.

Senator LUDWIG—But not only that, the Law Council also indicated that they were not aware of it. Would they normally form part of the consultative group? Specifically, in respect of the part of this bill dealing with the ACP, which is a significant amendment to the program, who did you consult with?

Mr Buckpitt—The Business Partner Group.

Senator LUDWIG—Anyone else?

Mr Buckpitt—No.

Senator LUDWIG—Who in the Business Partner Group did you consult with?

Mr Buckpitt—The organisations shown on the third and fourth page.

Senator LUDWIG—I am trying to ascertain whether you consulted with the person who signed on behalf of the Business Partner Group, Ms Milne, or with all the individual Business Partner Group members.

Mr Buckpitt—We consulted with all the Business Partner Group members and we had face-to-face meetings with two-thirds or three-quarters of the members who were available on the day the meetings occurred.

Senator LUDWIG—What were the meeting dates? Was there a general meeting?

Mr Buckpitt—You are testing my memory.

Senator LUDWIG—I am happy for you to take that on notice and provide it to the committee.

Mr Buckpitt—There were face-to-face meetings in January 2005 and I think there might have been another one prior to that. I will take that on notice. There were face-to-face meetings, though.

Senator LUDWIG—On the written correspondence, was feedback provided to Customs? If so, what form did it take and is it available to the committee? What did they say about it?

Mr Buckpitt—My recollection is that the feedback was essentially at the meetings. For example, at the January 2005 meeting there was caucusing of industry representatives to discuss their positions, and the minutes of the meetings would show what the industry reaction was. They were the agreed minutes of the meetings, not just Customs minutes.

Senator LUDWIG—Are those agreed minutes available?

Mr Buckpitt—I do not see a problem with making those available.

Senator LUDWIG—That would be helpful. Broadly, you referred to the issue of the duty recovery—the new charges imposed. Where is that at? There have been some changes to that system.

Ms Nyakuengama—Are you talking about the cost recovery charges?

Senator LUDWIG—Yes.

Ms Nyakuengama—My understanding is that the same charges on the same transactions are in place as was passed with the trade modernisation legislation in 2001.

Senator LUDWIG—So that has not changed?

Ms Nyakuengama—No, that has not changed as a result of this.

Senator LUDWIG—How has that been going? Has it been tracking up or tracking down in amounts? Do have the latest figures on that?

Mr Buckpitt—Which figures are you talking about?

Senator LUDWIG—The cost recovery figures.

Ms Nyakuengama—Generally, or for this scheme?

Senator LUDWIG—Generally.

Mr Buckpitt—I would not know the answer to that question.

Senator LUDWIG—Why would you not know the answer? Is it available?

Mr Buckpitt—I would have to talk to our CFO. As I understand it, your question is about Customs cost recovery charges generally, and my area of knowledge pertains to the Accredited Client Program, which at this point has not been implemented.

Senator LUDWIG—So you cannot help me with some of other matters more generally.

CHAIR—Senator Ludwig, we cannot have a wide-ranging customs administration discussion, but estimates are just around the corner.

Senator MASON—Mr Buckpitt, I salute you on your measured evidence. Do you consult with the CBFCA on industry matters generally?

Mr Buckpitt—Yes, we do.

Senator MASON—I am wondering why they are very straightforward in their submission. They say:

From the CBFCA's perspective, consultation on key issues of the bill with the CBFCA has been non-existent …

There is not much room for manoeuvre on that even for you, Mr Buckpitt, is there?

Mr Buckpitt—Once I provide you with the minutes of the meetings that I have referred to in 2004-05, you might think otherwise. Putting it bluntly, I think the CBFCA was particularly disappointed when Customs did not agree to their accredited service provider model in 2003 and have not been particularly interested in the issue since.

Senator MASON—Taking their bat and ball and going home—is that the problem?

Mr Buckpitt—Yes.

Senator MASON—That is all I need to ask.

CHAIR—I think we are going to be ranging far and wide on adverse comment responses from a mere Customs hearing, which is just unprecedented. Mind you, the last time we offered somebody the opportunity for adverse comment response they did not come back to us, so there you are. I wanted to touch base with Mr Whowell in relation to schedule 6 on the narcotic protection from criminal responsibility issues. Was the AFP consulted in the development of schedule 6 to your knowledge?

Mr Whowell—No, we were not.

CHAIR—Would you expect to be?

Mr Whowell—Not really, in the sense that, after we were approached to either put in a submission or appear today, we spoke to both Customs and the department about it. This was an issue that, from my understanding, falls out of some of the changes that came through last year for transportation of the serious drug offences into the Criminal Code.

CHAIR—Yes, we did that as well.

Mr Whowell—I am aware. This was something which, from the experience of having worked with that legislation, Customs felt that their people were not covered by. The

protection, rather than the defence as it is described in the schedule, relates specifically to a Customs officer and anybody who assists a Customs officer. My understanding from my preparation was that that was because they felt there was a problem with the way that change from last year had occurred and affected Customs. From our look at it, it did not affect the AFP.

CHAIR—So no operational impact from your perspective?

Mr Whowell—Not that we can see at this stage, but this is something that we keep under review on that basis. In terms of consultation, where we were not consulted directly I believe our interests were dealt with by the department when there was a normal scrutiny process in the development of the bill. That is my understanding of the process.

CHAIR—Can you tell the committee whether the protections that are conferred by schedule 6 on Customs officers are similar to protections provided to AFP officers?

Mr Whowell—My understanding is that, in these sorts of circumstances, the AFP has a different role in the first instance, and the protections that are provided within the Criminal Code offences seem to be ones that suit the AFP role.

CHAIR—I see. I suspect, having told us what you have about the process, that it is not a question you can answer but let me just ask: in terms of a joint AFP-Customs operation that may involve the handling of serious narcotics and the sorts of things that are envisaged to be dealt with under schedule 6, does the AFP have a view as to whether these protections are necessary to facilitate a joint operation of that nature?

Mr Whowell—My understanding is that this amendment was really, as was pointed out in the explanatory memorandum, to do with drug detection dogs. I am not sure if my colleagues from Customs can clarify that any further—

CHAIR—That is fine. I have read that.

Mr Whowell—In terms of joint operations, I am happy to take it on notice to give you a bit more of a definitive answer, but our joint operations with the Customs organisation is governed by a memorandum of understanding. From my limited understanding, that would really fall within the area of control operations, and the AFP would be operating under a controlled operations certificate.

CHAIR—I do not think there are any further questions. I want to thank you for answering questions over an extended period. There may be some issues as we come to the drafting of the report, as I indicated earlier, in a posthaste process that we need to follow up with Customs particularly. The report is due to be tabled on Tuesday, so we will have to turn it around fairly quickly. I notice that the approval process for answers to questions sometimes means that the process gets dragged out, but we will all just have to do our best. I thank all of the witnesses who have given evidence to this committee today, and I declare this meeting of the Legal and Constitutional Legislation Committee closed.

Committee adjourned at 12.14 pm