LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: General Agreement on Trade in Services (GATS) with special reference to the ACT)

Members:

MR B SMYTH (The Chair)
MS K MacDONALD
MS K TUCKER

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY 12 NOVEMBER 2003

Secretary to the committee:
Ms S Mikac (Ph: 6205 0136)

By authority of the Legislative Assembly for the Australian Capital Territory)

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.33 pm

GRAHAM RODDA and

JANE MULLIGAN

were called.

THE CHAIR: I call the Public Accounts Committee to order. You should understand that these hearings are legal proceedings of the Legislative Assembly protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

It is with great pleasure that the committee invites the CPSU to give us a few comments on their submission. Would you like to make an opening statement before we discuss the submission?

Mr Rodda: Yes, we would, Chair. I'm Graham Rodda representing the Community and Public Sector Union. With me is Jane Mulligan. Before I begin, we have a small correction to make to recommendation 4 on pages 2 and 11 of our submission, which is to delete the words "with any replacement of GATS". I will give you some general background about the Community and Public Sector Union. The CPSU is a federal union with regions and sections in each state and territory. Our coverage includes the ACT, Northern Territory and Commonwealth public sectors. In addition, the SBSF group of the union covers the state public sectors. Our members include people doing work in the areas of administration, sales, engineering, communications, information technology, legal, technical, scientific research, broadcasting and many others. We cover a very broad range of classifications.

In making our submission and giving evidence today, we do refer to earlier submissions made by the CPSU to the Senate inquiry into GATS and the US free trade agreement, and we also support ACTU submissions on these matters.

Because of the importance and far-reaching consequences of GATS, the CPSU congratulates the Standing Committee on Public Accounts for holding this inquiry into the implications for the ACT government of the General Agreement on Trade in Services, known as GATS. The area is highly complex and the CPSU has been grappling with the implications for the future of public service provision in Australia arising out of these negotiations.

While there may be a number of positive outcomes for Australia and the ACT from the trade agreements currently being negotiated, in terms of increased export of services, the CPSU has identified a number of in-principle areas of concern, including the high level of uncertainty about what constitutes a public service; the lack of protection for these services; the use of the GATS negotiation process to pressure countries to privatise public services but, once the service is opened up to competition, GATS will operate as

a ratchet to ensure services cannot be returned to state control, even for the strongest of public policy reasons such as in cases of market failure; the imposition through a GATS treaty of constraints on the capacity to administer public policy in the national or territory interest as defined from time to time; and the importance of all countries adopting and honouring the fundamental ILO conventions as a key element of any trade agreement.

The CPSU believe that one of the main issues for the ACT government is that GATS will be negotiated and decided between nation states. This means any agreement that the federal government signs up to will be binding on all levels of government in Australia, including that of the ACT. Because of this, we reiterate the first recommendation in our submission—that this committee in its report identify the areas of concern to it and relay these concerns to the federal government and the Minister for Trade in particular.

We also draw the committee's attention to the World Trade Organisation dispute resolution processes which do not permit actions to be brought by parties other than national governments. This means that the ACT government would be unable to challenge any adverse impacts on ACT government services arising out of any World Trade Organisation trade agreement unless it had the co-operation of the federal government.

Because of these factors, in making its report this committee should urge the federal government to adopt a conservative and open approach to what is included within GATS. In respect of public services in particular, although the federal government has stressed the importance of the right of World Trade Organisation members to regulate or introduce new regulations on the supply of services in order to meet legitimate national policy objectives, some concerns remain.

A market access commitment made by any member country in respect of the service sector will result in a restriction on the ability of governments to regulate under the market access provisions of GATS. While it is open to governments to qualify a market access commitment by outlining the regulatory measures that they wish to retain, this step will only have a standstill effect. Once a market access commitment is made, many future regulatory changes or new regulations cannot be made if their impact is more trade restrictive than the measure in the country's schedule of GATS commitments. If it is more trade restrictive, a country could be liable for compensation to any country adversely affected. Similarly, the current round of offers and negotiations between countries will not be the end of GATS processes, because under article XI of the GATS agreement governments commit to increase over time the range of services included in the agreement.

In summary, the CPSU believes that there are a number of areas that require further clarification, particularly with regard to public services, and I hope that this inquiry will help identify some of those for the ACT.

THE CHAIR: Thank you. In terms of the submission, the nine recommendations are quite clear. The opening paragraph at the bottom of your title page, which you also quoted in your speech, you refer to as being on page 11. I can't find it on page 11 of my copy of the document. It is an interesting point.

Ms Mulligan: I am Jane Mulligan from the CPSU. I can't see it either and I am sure it was there, so that might be an editing error as well.

THE CHAIR: I think that's one of the interesting things that needs to be discussed. For instance, in Victoria, after the outsourcing of public transport, I understand the tramlines have just been handed back to the government. I suspect that under some of the GATS agreements that might not be allowed to occur. So, when there has been market failure, will we end up with a service being denied to the public and, because of WTO guidelines, it cannot be handed back or re-established? Maybe I've just missed it, but I couldn't find it, and it's interesting that you chose to quote it in your opening statement as well; I think it is an important part. Could you perhaps find out whether or not that section is actually—

Ms Mulligan: It is on page 11; it's in a different format just above recommendation 5. The same sort of statement is made there referring to article XI, but it's not identical to that paragraph on the front page.

THE CHAIR: Okay. I wondered whether it should be under that section. How much of a concern is it to you that the WTO agreement would mean that you cannot return things to state control?

Mr Rodda: It's a large concern, particularly because we do have recent examples in the ACT of pharmacy services that were returned to state control; and there are also recent examples of Totalcare. There is the potential for governments, if they provide those services, to face action from other countries—and potentially also to be liable to pay compensation. At the moment we have the debate about the capacity for the ACT government to regulate planning. We know that we already have to deal with the National Capital Authority. Potentially, one of the considerations will be that there will need to be an assessment made against GATS and you'll need to involve the World Trade Organisation in terms of getting advice or opinion about whether or not your decisions are consistent with GATS.

MS TUCKER: Another example is water. The Greens are putting the position that water should be, as a natural monopoly, totally managed by government. It is not likely that we will win that one at the moment, but you never know. That's what's good about democracy, isn't it? You have that capacity to make these decisions in the public interest. Mr Smyth's party or the government could decide to do that, but the potential is that they wouldn't be able to do that. It would be a decision made by the elected people in the interests of the community for good environmental and social reasons.

Ms Mulligan: I think there are a number of concerns around water, especially in developing countries, about those essential services being corporatised. But my understanding is that the federal government has excluded water specifically from the GATS negotiations.

MS TUCKER: But then you go to the question of the exclusions and what that actually means, and the pressures. From memory, that's something that I think your submission talks about. I know that the fair trade network certainly talks about it in detail. You can drive a truck through the exemptions.

Ms Mulligan: That's right. There's a lot of ambiguity and I think that's where a number of the issues of concern remain.

MS TUCKER: The potential for challenge by other members about whether it's a public service or not.

Ms Mulligan: A definition of a public service is "supplied in the exercise of government authority" and that's qualified by the requirement that those services are provided neither on a commercial basis nor in competition with one or more service providers.

MS TUCKER: I wonder whether Actew/AGL is immediately not a public service in that definition.

In your submission at recommendation 8 you say that the ACT government should also seek reassurances from the federal minister that undertakings will not be made in any of the areas that overlap with the ACT government without the opportunity for consultation with the ACT government.

I'm wondering what your view is of the need, considering we've always had minority governments here, to have some kind of consultation with the Assembly as much as with the government. It would be government to government in that the federal minister would make contact with the government of the day, whether a minority or a majority government, but I'm interested to know whether you think the Assembly has a role there as well in terms of being involved in the debate, or if you'd be comfortable with it just staying in the hands of the government of the day?

Mr Rodda: I think that we were thinking that it would be a fairly open process and that it could involve committees such as this if necessary. In terms of the way in which the ACT government would communicate those discussions with the Assembly, we would see that as an open process rather than a closed process and the accountability would be there back to the Assembly certainly for what the government was doing. This is certainly an issue that we have raised with the Senate inquiry—that there needs to be accountability back to parliament at the federal level about the national agreement. But that's not good enough in itself, because there needs to be involvement of the state and territory government bodies as well. The key thing here is that, if we are going to restrict our ability to govern Australia or a territory or a state, we should be doing that in open consultation with the community so that we don't have any surprises.

We can look at what happened to the Canadian government when they tried to ban the chemical MMT. The Canadian people would have been surprised that their government didn't have the ability to ban that particular chemical, and I imagine the Canadian government were surprised as well. It was clear that they couldn't do that. In fact not only could they not do it and they had to reverse their ban; they had to pay $13 million in legal fees and damages to the corporation.

So those issues of trade agreements and how they impact on the government's capacity to govern are linked back to the community and their ability to have some confidence that governments can do what is necessary for their safety or for the safety of the environment. Clearly, that Canadian example is of concern; there are these implications.

THE CHAIR: How close is the GATS agreement to the NAFTA agreement? In your opinion, is it likely that under the GATS that could occur?

Mr Rodda: It potentially could occur. It depends, of course, on what's in the schedules, as I understand it, in terms of those commitments. I think one of the things that we're grappling with is that, because there hasn't been a lot of information put out by the federal government as to the implications, it is difficult to know just exactly how it will work and what are the implications. So I suppose that looking at the US trade agreement is useful in that it is a trade agreement. I know it's not identical, but in terms of some of the problems that have arisen I think it's useful.

MS TUCKER: Well, the Atlantic salmon was under WTO, and it's the same with Tasmania. The turtle and shrimp stuff was also under WTO.

Ms Mulligan: My understanding is that they're all being conducted under WTO principles. I think there have been some issues in the NAFTA agreement that have caused a lot of problems; hopefully, they will learn from those mistakes.

MS TUCKER: I'm interested in your comment that there's going to be a pressure to privatise resulting from this. Could you elaborate on that?

THE CHAIR: What page is that?

MS TUCKER: That was what Mr Rodda said.

Mr Rodda: The pressure comes, in a sense, from the commitments the countries make to expand the range of services that the agreement will cover. We are concerned that, when these agreements are negotiated, if Australia wants to gain a particular provision in another country's schedule, there will be pressure put on Australia to privatise. In our view, it is almost an implied part of the process: it is about opening up services, where possible, to private delivery. Also, in terms of negotiations, if compromises are going to be made, we are concerned that pressure will be put on Australia to make commitments around privatising particular public services—the whole gamut of services. You've mentioned water and electricity, and I know that that's been an issue of debate in the territory for some time, but obviously the big two services that will concern the territory will be education and health. We know that there are players—big companies, multinational companies—in the health sector with a lot of clout. If they're keen to see more private hospitals in Australia, they're potentially going to have leverage under that agreement.

This is not to say that these things shouldn't be talked about or that agreements shouldn't be made; the issue is the level of transparency and accountability, the way in which our negotiators conduct the negotiations, the fact that, if we are going to make those agreements, the Australian public has the right to know that these agreements are going to be made before they're made and that we fully think through the implications of the agreements before they're made, because we do believe that there will be pressure. Clearly, in other agreements there have been unforeseen circumstances that have surprised governments. We're not at all convinced that a negotiation process that isn't open is the best way to go. That is a part of our grappling with what are our concerns

with GATS: we don't have the full picture in terms of what's going on and what's happening.

MS TUCKER: And what the requests are from other governments. The government, in its submission, says that you would never say that, because no one else does; so that's not even open for conversation apparently. Is that one of your concerns—that requests from other countries are not a matter for public conversation?

Mr Rodda: Well, our negotiators could turn them down and just say it's ridiculous. I suppose that negotiations may need a level of privacy. But, where it gets to the point that these things are seriously on the table and being considered, I think it's quite appropriate that those things become open knowledge. When the union negotiates certified agreements on behalf of our members, we don't go out and do secret deals; we let our members know what's happening at the bargaining table. I don't see that there's any difference between negotiating a trade agreement and negotiating any form of agreement. If the government is representing the people of Australia, it's important that the people of Australia know, before the agreement is made, just what's in those agreements, understand the implications and can participate in the debate around that.

Fundamentally, that's a principle of democracy and good government. These negotiations can potentially erode if they're done in a secret, behind-closed-door manner, with the final agreement being signed before there has been proper public debate about what's in it. I just don't see how it's going to be a good agreement.

MS TUCKER: I notice you talk about a public interest test. We've got the least trade restrictive test that can be applied at the moment. And you're sort of countering that in a way in your submission, where you have this notion of the public interest test with particular criteria. Is the public interest test a widely promoted notion from you guys, or has that come from somewhere else?

Ms Mulligan: Elements of that come from the ACTU position on privatisation; that's ACTU policy. We think that as a test for any privatisation those criteria are the ones that need to be looked at.

Mr Rodda: In terms of engaging the public in the debate, I think those sorts of tests are really useful because the public understands the notion of public interest. If there are some clear criteria that agreements are going to be assessed against, the public are going to find it easy to understand what are the issues.

MS TUCKER: Well, if you have spelt out what the criteria are to determine that, we'd quite like that for the least trade restrictive test as well. I'm interested in the question of transparency and the capacity of people to understand whatever the rules are for negotiating at an international level, how decisions are made when there are disputes, access to the dispute process and so on. So thanks for your submission; I think you've raised some important points. I don't have any more questions.

THE CHAIR: Just linking, say, recommendation 2 with that recommendation we were just talking about, No 4. You do say on page 5 that the preamble of the agreement contains a right to regulate. You think that the preamble is too weak and subject to erosion of its force?

Mr Rodda: Yes, I think it's a bit misleading because it talks about the right to regulate but then the agreement goes on to qualify that right, saying that it's a right to regulate but only in particular circumstances; so it's certainly not an absolute right to regulate. It's certainly saying that governments will regulate, but it doesn't make it clear that there's really a restricted right to regulate under the agreement and that trade agreements do involve governments in a sense giving away some of their rights to regulate on a number of issues.

THE CHAIR: And then that's affected through recommendation 4 by the lack of definition of what's a public service. So it's just all too vague.

Mr Rodda: Well, our experience from certified agreements indicates that, where you have vagueness in agreements, that's a recipe for dispute. In the words of Commissioner Deegan from the Industrial Relations Commission, you'd certainly want your agreement to be very clear about what is intended. In our experience—and I think also it's the experience from other trade agreements—vague definitions, or definitions in which it is not clear what is intended, will open the door for quite serious disputes and challenges.

THE CHAIR: Okay. The same with recommendation 6 because of the nature of the way article VI is worded; do you think that needs to be strengthened as well and made clearer?

Mr Rodda: I think we were wanting, in a sense, replacement of that test, in that article VI has the test on domestic regulation.

THE CHAIR: So altered? You say "altered" in your recommendation. Do you think it should be replaced?

Mr Rodda: Yes. We're certainly wanting the public interest test to have prominence. Do you want to comment, Jane?

Ms Mulligan: I think that what we're suggesting there is that the public interest test is the appropriate test.

THE CHAIR: Okay. If we move on to, say, recommendation 8 and the environmental services, why would you include just environmental services? Why not include public services? If you're going to make a specific recommendation that environmental services be excluded, given your recommendations 2 and 4 where you advise that environmental services be excluded, wouldn't it be advisable to add them as well?

Ms Mulligan: That recommendation wasn't meant to the exclusion of the other recommendations. It was mainly addressing the terms of reference there on sustainability specifically.

MS TUCKER: Because you've got public services in 5.

Ms Mulligan: Yes.

THE CHAIR: There being no more questions, is there anything finally you'd like to tell the committee?

Mr Rodda: No—just thanks to the committee for the opportunity to appear before you and participate in this debate.

THE CHAIR: Thanks very much for your submission and for appearing today.

MICHAEL WHITE was called.

THE CHAIR: Michael, you should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections, but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation for what you say at this public hearing. It also means that you have the responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter.

Please identify yourself by giving your full name and the capacity in which you appear. Do you wish to make an opening statement?

Mr White: Thank you very much. My name is Michael White. I am ACT branch secretary of the Media, Entertainment and Arts Alliance. I need to say right up front that I'm not an expert on this and I haven't been involved in the writing of the detailed submissions that I sent to you. When I heard about the committee, I started to put my mind to how the GATS stuff could affect particularly arts and culture, because that's been our focus in Canberra. I did as much thinking as I could.

One of the things I want to say as an opening statement is that it is very clear to the alliance from our submissions—the alliance is not alone; the Australia Council, the Australian Film Commission and a lot of the other arts statutory bodies and community bodies have been extremely concerned—that in relation to trade agreements generally and the current agreement with the United States we really need to protect our culture as much as possible. With the trade agreements that are possible in the future, we run the danger, particularly in relation to America, of being totally swamped by American culture, not that we aren't at the moment.

One of our submissions mentions that already something like 70 per cent of the programming that comes into Australia is American, but the critical thing to realise in relation to that is that content regulations are currently there to protect our culture. If those issues were taken away, it would be much easier for program makers in Australia to say, "Why bother spending $300,000 an hour on producing *Blue Heelers* or something like that when we can buy product in America much cheaper?" It's absolutely critical, we believe, to maintain those regulatory things that we've got at the moment.

It would appear that the position that the Americans are taking at the moment is one of being prepared to adopt the notion of having what's called a standstill agreement. They are saying, "Any agreements or regulatory situations that you've got in place at the moment are okay, but we want access in the future to any things in the future." We believe that that would have been like saying in 1950 when we had radio but not television, "Okay, you can have standstill provisions on Australian content on radio, but you can't have any content provisions in future." Five years later, television is introduced—blah de blah. Who knows how culture is going to be delivered in the future. We know it's going to come through the internet, telephones and whole range of things. Our major thrust is that those standstill provisions are not good enough and we're arguing that very strongly to the federal government, along with these other bodies.

I have put my mind to how this is going to affect us here in Canberra in relation to culture and the arts. Most of our arts organisations are heavily subsidised by government and we probably wouldn't have an arts industry in town if there weren't the sorts of arts grants that go to youth theatre, the Street Theatre and the Canberra Theatre Centre. If we had a free trade agreement, someone somewhere else could say, "If you're subsiding culture to this amount in this town and we want to bring some culture here, then we believe that you are unfairly doing that and we can bring penalties against you."

That's my understanding of how the free trade agreements work. We have concerns about that, particularly as we're looking at the moment at, hopefully, growing the local film industry. There has been a small film industry around here, but there has been a convergence of sorts and there's a bit of a network of film makers getting together. Canberra's a great place to have a film industry. I can see that in the future, if we had a free trade agreement with America, we wouldn't have a film industry at all.

I guess that's my opening statement. I'll, hopefully, answer any questions. I brought you some gifts as well, which won't register in *Hansard*. But that's a brief summary of the program that we've been running.

THE CHAIR: Michael, thank you for that. Referring to the submissions you have provided, I notice in the February 2003 submission you mention on the bottom of the first page the Singapore Australia Free Trade Agreement and how they've been able to put into that agreement something that, I guess from my reading here, you think is suitable to protect culture in Australia. Indeed, on the fifth page of the March 2003 submission you acknowledge that, importantly, the SAFTA contains no standstill provisions, is technology neutral, and embraces all technologies and delivery platforms now known and those that may be developed in the future. Is that the sort of caveat you'd almost like to see put on a free trade agreement to ensure that, no matter what happens in the future, a free trade agreement with America won't affect our cultural activities?

Mr White: Yes. I think a free trade agreement with any country would need to have that protection. I also understand that smaller countries—France, the UK, Italy and places like that—are forming a cultural kind of grouping to argue through the United Nations that, because the US culture is so dominant and so overpowering, the smaller countries need to band together. I think there was some hope that they would join together and have some public statement coming out this year, but I think that they've been rolled over, there's been a push from America, and that's not going to happen. I'm not sure if that gets mentioned.

MS TUCKER: That's the International Network for Cultural Diversity?

Mr White: Yes.

MS TUCKER: It has representatives from 55 countries. Has it been rolled over?

Mr White: It hasn't been rolled. I think they were hoping to get together and have some sort of strong statement coming out, but that has now been delayed until some time next year.

MS TUCKER: One of the things that you mention here is that there are definitional issues about culture, which is also related to procurement policy because it is never black and white. Obviously, a procurement policy can have an impact on the potential for culture to survive. In this submission you are calling for the federal government to do certain things. Has the federal government responded? Has this submission been tabled and responded to?

Mr White: The Prime Minister indicated in a statement that he made recently that there was quite a lot of pressure coming from the Motion Picture Association of America that they want the standstill provisions. Our understanding was that early on the government was saying that it was not on the table and it was not willing to discuss it. There have been no direct comments coming out, but the last statement that the PM made indicated that they might be prepared to adopt this standstill provision.

MS TUCKER: That is interesting, too, but I'm particularly interested in the definitional issues. You mightn't be able to answer questions on those.

Mr White: What section is that, Kerrie? Which paper?

MS TUCKER: There is no number on the page, but it's the submission to the Office of Trade Negotiations, not to the Senate inquiry. In the second paragraph on the third page you talk about the International Network for Cultural Diversity. I know I read about definitional issues and I thought it was there. I know they were mentioned somewhere in your submission.

Mr White: I probably don't have the detailed knowledge to respond to something like that.

MS TUCKER: It's okay. We can ask the federal government how they've responded to this submission, anyway, because their representatives will be coming along this afternoon.

MS MacDONALD: We can always seek clarification later, can't we?

MS TUCKER: From whomever wrote the submission?

MS MacDONALD: Yes.

Mr White: I did hope that someone from our federal office would be able to come down.

MS MacDONALD: We could always seek clarification from your federal office through you.

THE CHAIR: Does GATS overturn, for instance, local screening requirements in that regard?

Mr White: In terms of?

THE CHAIR: The content requirements that you must run so much Australian product on TV.

Mr White: They could. Isn't it the whole danger that a free trade agreement could say, "You've got regulations saying you need to have so many hours of television per week that have Australian content. That's an unfair advantage. Either we want some sort of compensation for doing that or we want you to get rid of that." Our argument in relation to America is that, even though currently 69 per cent of the content on Australian television is coming from America, it's in a regulated market, so there are swings and balances and stuff like that.

THE CHAIR: The regulation comes out of growing up as a kid in the 1960s and the 1970s when all you could watch was American. There was a reaction from the community and the community, in fact, forced the government to regulate that. Is it necessary to put it in these agreements? I'm of the opinion that the Australian community resisted the Americanisation of culture in the late 1960s and early 1970s simply because that was not what they wanted to see and wanted to hear, or is that being naive?

Mr White: The pressure then gets put on the producers. If the local producers don't have to supply the content, the pressure on them will be to say, "Why will I spend $300,000 an hour on making local content when I can buy it from overseas?" I think what will happen is that it will slowly chip away and we will run the danger of no longer having any local stories on television.

I was reading a thing this morning on George Miller, who said that when he first went to America in the 1970s the few Australian films that were being shown over there were dubbed because no-one could understand how we talked. I think there's also some confusion with our big stars who are now playing on the international scene. That's fantastic and it's great that we've got performers that are actually doing that, but they are still appearing in American product; it is not our product. I imagine that hardly any Australian movies are going back the other way into the American market. We have more success with our local television and our soapies and stuff like that that are being sold around Australia, but locally shown Australian movies—

THE CHAIR: We've exported our actors and actresses rather than our product.

MS MacDONALD: Our actors and actresses have exploited the American market and managed to market themselves well, but they've also adapted as well.

Mr White: And they're good.

MS MacDONALD: Yes, they're good, but they've adapted as well. Americans still can't understand Australian accents, so they speak with an American accent.

Mr White: No doubt, there has been a huge growth in the Australian film industry of American product coming offshore. One of the things that depress me is that all Australian actors have to learn how to speak American if they want to be in the shows that are being shot around the place. We've had quite a difficult year with local films that have been produced. A whole range of things haven't done all that well at the box office. So it's a fairly critical stage that we're at.

MS MacDONALD: Do you think there's a possibility that it could end up going the other way to an extent if something like this were introduced and it ended up backfiring on the United States or even New Zealand, for example, if we ended up pushing all of our stuff onto their markets? Possibly, that already happens in New Zealand; I don't know.

Mr White: I don't know. No matter how good our products are, America is mono-viewing in terms of their culture and stuff like that. Hardly any international product actually gets into the place.

MS TUCKER: If you watch the news in America, you don't see any other country mentioned, unless it is a country that America is bombing at the time or something like that.

Mr White: France has taken a really strong position on the protection of its culture for a long time and I think that gets up the nose of the Americans a lot, but they are very strong on it and probably far more regulatory than we are and their culture has survived and goes on.

MS MacDONALD: I heard Tom Schaeffer giving a speech the other day in which he was putting the standstill argument forward, which astounded me. Apparently he has made that speech a few times before, but it seemed astounding to me that the ambassador of a foreign country should be trying to dictate to the government of this country on exactly where they should be going in terms of the media. There was also stuff to do with farming.

Mr White: Canada adopted standstill provisions with their agreement and they've got virtually no film industry.

THE CHAIR: In the February 2003 submission on what I'm going to call page 7 there are two paragraphs that talk about America and it is said that the United States is aware that its programming becomes less attractive the more robust the indigenous program producing industry becomes. The quotas on air time for indigenous product are absolutely essential, therefore, to protect the industry as a whole, otherwise it just becomes so unviable that you do get what I think is called swamping by the Americans.

Mr White: Yes. I'm just trying to find a quote. The Motion Picture Association are also doing something at the moment. As well as arguing extremely strongly, they're wanting to introduce their own sanctions to stop product coming into the United States, at the same time as these negotiations are happening. I thought I'd brought that stuff with me, but I haven't.

THE CHAIR: Just above "Governmental services" on the seventh page of writing the February 2003 submission goes on to say that Australia is not alone and that the United States is currently arguing that levies imposed on French films, the proposed levy on Mexican films and the quota that exists in Korea in respect of feature films are all barriers to trade. I was just wondering what the levy on the French films was.

Mr White: I'm not sure. Which page are you on?

THE CHAIR: It's above "Governmental services". There are three paragraphs there that are really quite interesting. I'm not aware of what the French do. You say earlier that the Mexicans are talking about charging 1 peso per visit to the theatre to help subsidise the Mexican film industry in response to NAFTA and the Yanks are objecting to that. Maybe it's in the other one. Where would we find out about the French?

Mr White: I could follow that up. I could find out about that stuff.

THE CHAIR: That would be kind.

Mr White: I am sorry I don't know more in depth about that.

MS TUCKER: The submissions are good, though; there's a lot of detail in them.

Mr White: Lynn Gailey, who has done all this, would be able to quote it off the top of her head. She has done all the arguing.

MS TUCKER: There's a lot of information in it.

MS MacDONALD: I was considering asking this question of the previous witnesses, but decided not to do so. Do you think that there are benefits in terms of providing services which do not currently exist by entering into the agreement? Is that question a bit vague or is it too difficult to answer?

Mr White: It's probably a bit of both.

MS TUCKER: Do you mean that there could be benefits because we would have open markets for the cultural industries here and overseas?

MS MacDONALD: Not so much that. I was thinking previously about services which we do not currently have and which, by opening the markets, may be able to be provided for by bringing in a foreign player.

Mr White: As an Australian citizen, I am greatly concerned with some of these free trade agreements in things like the provision of services in the community sector. I noticed recently whilst listening to someone on the radio that for the first time a big American company which is providing the sorts of services in the unemployment area that the Catholic Church and the Salvation Army do has come on shore. It is a huge American company that does that and it has lobbed in Australia and is tendering out for the provision of community services. While that's all driven by profit, I have a great worry about it.

MS MacDONALD: Every country does things differently. Whilst overseas last year I had an experience with the postal service in Ireland. I went into a post office to get a package box to send some stuff back to Australia and I was told that they do not sell them and I would have to go to a stationer two kilometres down the road. Australia Post does it. Why couldn't the Irish service do it?

MS TUCKER: In your submission you say that the United States wants to see the repealing of the regulations covering Australian content on television. We know that

there is an agenda there. They're quite outspoken about what they want. Basically, they want full market access to everything and they want to get rid of local content. That's a stated objective and aim. The previous witness was talking about section 11, which deals with progressing. What are the underlying principles or objectives of the trade agreement as it now stands? You know what is the agenda and you know what the market philosophy requires, which is open access to everything. It's really more a question for the next witnesses, I suppose, but I'm interested in ascertaining your understanding, as a representative of the cultural and arts group, of the current rules in terms of national interest?

Mr White: I think that if we didn't have the regulatory provisions that we have now for local content we probably would not have any local content on television, if we hadn't had that battle back in the 1970s and that sort of stuff. The Americans recoup their money on film and television at the local market. All external sales are pure profit. That's why the motion picture producers are so keen on getting this; they make all their extra money purely on those overseas sales.

MS TUCKER: Why is that?

Mr White: Because they cover their costs on the local market.

MS TUCKER: They cover their costs in the internal market, so they're not looking for profit internally.

Mr White: It's great if they can, but they do not need to because they can recoup the costs of their programming there. So everything they export in relation to culture is pure profit. There is 69 per cent of profit out of Australia from all the programming and they wouldn't mind 100 per cent. Coming back to Canberra, I'm not quite sure, other than that link to the local film industry.

MS TUCKER: It's advertising and everything else that they want here.

Mr White: Yes. Generally, the less our own stories and our own faces on film and television are out there, the weaker our own culture becomes.

THE CHAIR: There being no further questions, thank you.

LISA KIM FILIPETTO was called.

THE CHAIR: You should understand that these hearings are legal proceedings of the Legislative Assembly and are protected by parliamentary privilege. That gives you not only certain protections but also certain responsibilities. It means that you not only are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing but also have the responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Would you like to make an opening statement on behalf of the department and the Australian government?

Ms Filipetto: I am the Assistant Secretary for Services and Intellectual Property in the Office of Trade Negotiations in the Department of Foreign Affairs and Trade. I will make some short opening remarks, which I think add to the information we have already provided to this inquiry through the submission made by DFAT, and also bring you up to date on some recent developments. The key issue is: why are we engaged in these GATS negotiations? We believe that there are predicted benefits for our services sector and also that the GATS negotiations are part of the Doha round which offers benefits to Australia's economy overall.

MS MacDONALD: What is Doha?

Ms Filipetto: The World Trade Organisation has rounds of trade negotiations. Generally these rounds are given the name of wherever the negotiations are launched. So the Doha round was launched in Doha in December 2001.

MS TUCKER: And now it is a declaration. Do we have a copy of the Doha declaration?

THE CHAIR: Section 4, page 25.

MS TUCKER: It is in your submissions. So we can see that detail.

THE CHAIR: It talks about Doha.

Ms Filipetto: The ministerial declaration sets out the mandate of these negotiations and includes reference to services. We think we are very well placed to participate in these negotiations because we have a very competitive services sector, resulting from decades of regulatory reform and increased openness to all trade. In fact, our own reform—what we call autonomous liberalisation—has outpaced trade liberalisation in other WTO member countries.

Our services sector is more liberal than the commitments that we have already made, which gives us some negotiating flexibility, and contributes around two-thirds of Australia's output and employs four out of five workers. Services industries make up 69 per cent of total industry value added in 2000-01 and paid 83 per cent of all wages and salaries. The contribution of services to Australia's exports have increased over time, rising to almost 20 per cent—that is, $A31 billion in 2001-02. Modelling work suggests that services liberalisation would provide significant gains. The Productivity Commission estimated in 2000 that, for Australia, global services trade liberalisation

would increase economic welfare by $US2 billion per year. That is by way of background.

What is our negotiating position? Our central objective remains to gain new commitments in markets and sectors where Australian exporters have potential and interest. But, that said, determining our negotiating position is really a balance of our offensive—that is our exports—and our defensive—that is our domestic interests. Our offensive interests include getting a better deal for our exporters, and our defensive interests include preserving the right to regulate as well as the right to fund our public services. We also recognise that certain service sectors have special interests.

Getting the balance right is really what we try to achieve through our consultation process. We also try to get a good understanding of our existing regulatory regime and, through that, the scope for our negotiating flexibility. As I said, we do use the consultation process to help us frame our position and determine where the balance of the interest lies. We take our responsibility on transparency and accountability very seriously. We are very happy to see a strong level of public interest, as this is an important input to developing our position and it does help to ensure that what we do is grounded in pursuing our national interests.

We have had consultations with lots of stakeholders. We have met with all state and territory governments, with 164 industry associations and companies and with 80 NGOs and have accepted 73 submissions from civil societies specifically on the GATS and 23 in the lead-up to Cancun. We do not consult all these people at the same time; we frame our consultations according to a negotiating cycle and what is required at the time. At certain times we need industry input and at certain times we need broader community input—that is how we structure our consultation. We are very keen to maximise the opportunities for ACT service providers and welcome the chance to have a close dialogue with the ACT government on market access barriers and discriminatory practices that prevent ACT services exporters from securing a bigger share of world services trade.

We have had quite a number of debriefs of state and territory governments on the GATS negotiations and separate meetings in February and mid-April this year with senior ACT government officials, including with Business ACT. At this point, we would just like to reiterate the message that we convey to all state and territory governments: we are very happy to discuss GATS negotiations. If people wish to do so, they are welcome to come in and see us.

I would like to make a few comments on issues that are obviously of public interest, as reflected in the communications we receive from the community at large. The first relates to public services. We are firmly of the view that the scope of the GATS does not extend to public services supplied in the exercise of governmental authority. The GATS framework is based on the right of governments to provide, fund and regulate public services. It was not of the intention of the negotiating parties to infringe on this right. Since the agreement was adopted in 1994, no member has chosen to contend these matters in dispute settlement.

The issue is, I suppose, that the nature of public services has changed over time, especially since 1994, but the GATS provides very adequately for the coexistence of

publicly and privately provided services even in the same sector. The purpose of the public service is different from the private service in most cases; otherwise the public service probably would not still be in existence. We do not believe that the GATS derogates from the right to have this coexistence of publicly and privately provided services in the same sector. As you will be aware, in most cases the government already separates out public and private aspects of any service provider to ensure that taxpayer funding is not misused.

Secondly, the GATS does not prevent local or state governments subcontracting out their services. They are still free to subcontract out their services to private suppliers because government procurement, which is really that subcontracting process, disciplines on MFN—most favoured nation—national treatment and market access do not apply to government procurement. We feel that subcontracting is very firmly quarantined.

Another issue is that the GATS does not set standards for public service—that is up to individual governments—and there have been no disciplines elaborated on subsidies. In fact, there has been no definition of subsidies yet and discussions on this are proceeding very slowly.

Separate, but related to this issue, is domestic regulation. The GATS does not prevent governments regulating to achieve social, environmental and other objectives. This is because there is a general exceptions clause that specifically reinforces the government's right to adopt or enforce measures to protect human, animal and plant life—health, public morals and order, privacy and security—and to protect against fraud and deception.

Given the GATS framework, we put our GATS commitments in accordance with the Australian regulatory environment, not the other way around. On the other side of the coin, we believe that our exporters have a strong interest in more transparency and predictability in the regulatory environment they face overseas. We support rules that add to certainty of process not certainty of outcome. Given that Australia has undertaken a lot of regulatory reform, it can make a positive contribution to the transparency and certainty of process issues that we are interested in supporting for our exporters abroad.

Where does that leave us with these negotiations? Progress has been good but fairly modest, particularly on market access. We have to acknowledge that the recent events in Cancun—the ministerial meeting in Mexico that broke down on the last day—will have some impact on services negotiations which, as we said earlier, are part of the Doha round. The Doha round is a single undertaking. It has various elements to it but proceeds as a single undertaking.

We had good news today that we have one more offer on the table. We now have 39 services offers, which cover 53 members out of a total membership of 148. The WTO members who have put in their offers represent about 70 per cent of world trade and services, so obviously we would like to have more offers and we will be working towards that, but there is already a lot to engage upon.

We have had further negotiating sessions since we put in our submission in October. When we go to Geneva we split into two parts: one part is about talking bilaterally to other countries about how we get more market access; the other part is looking at the

GATS framework and whether there are certain mandated discussions that have to happen under the framework. In participating in these bilateral negotiations since our offer was made in March, we have made no commitment to offer more than what is in our initial offer. I just want you to know that people are concerned about what is happening behind closed doors. Our initial offer made on 31 March represents our position and we have not made any undertakings to anybody to go beyond that.

Another issue that often comes up is: what does the GATS mean for developing countries? We think these countries are quite active in the services negotiation. Of the 39 offers that have been submitted, 22 have been from developing countries which make up a large part of the WTO membership and make their views very strongly and forcefully known. We are often asked to have bilaterals with developing countries. They initiate those sessions, so they obviously see some value for their export industry in trying to get market access into Australia, in the same way as our services exporters want to get access to their markets. Developing countries tend to be particularly interested in not only the temporary entry of their services suppliers—getting their people into other countries—but also recognition of their special circumstances. Back in August we agreed on special negotiating modalities—the way of doing things—for least developed countries.

How would we characterise our GATS participation? We undertake extensive domestic consultation, are actively involved in each of the negotiating sessions and include representation from other departments and agencies—so, depending on the issue, we have other agencies with us; the focus is on the issue of market access for our exporters—and are trying to engage developing countries more in doing outreach with them. But, above and beyond all that, our main focus is the primacy of Australia's national interests and supporting that through these negotiations.

THE CHAIR: The committee has had a number of submissions, one of which was from the CPSU. Their opening statement today included the line:

> Once a service is opened up to competition, the existing terms of GATS operate as a ratchet ensuring that services cannot be returned to state control even for the strongest of public policy reasons, such as in the case of market failure.

Is that true?

Ms Filipetto: That would depend on whether or not countries have made commitments in that sector. It is the right of every country to choose whether or not they are going to open the sector. It is a sovereign decision as to whether you deregulate or privatise. The GATS does not drive that. We just use what the sovereign government has already done and then make a decision on whether we bind that through the GATS.

Where there are issues—where there is a risk or where we understand there might be problems in the future—we are quite careful about what we commit to. We have made commitments in sectors where there is already liberalisation and deregulation. We are also able to list limitations in our schedule. Where a state has a separate view or separate measures are in place, we can have that as an extra limitation on our offer. The GATS has a lot of flexibility: you choose the sector, whether you open up all the different ways

of supplying that service, and then, over and above that, whether you add a restriction or a limitation on the degree of openness.

THE CHAIR: Have we put any restrictions or limitations in the schedules to protect state or territory needs?

Ms Filipetto: There are some in relation to legal services, where different states have different requirements, and one on maritime services, where there are some issues related to pilot services in different states. We do try to capture where there is no common ground.

THE CHAIR: When the Commonwealth negotiates, how is the consultation process with the states and territories?

MS TUCKER: Could I just follow up the previous question as it has not been answered.

THE CHAIR: Yes.

MS TUCKER: The question was: if you have made a commitment, is that statement true?

Ms Filipetto: If you have made a commitment, you can change your commitment. There are different ways of changing the commitment. The commitment can be changed through recourse, for example, to the general exception. You might have a change in security, public morals or a human, plant and health situation. You can make a change, but you may have other members asking you for compensation for that change if there are market implications for another member. It is not that those obligations cannot be changed; there are a number of ways of changing them.

MS TUCKER: You might have to pay compensation and go through the dispute settlement process.

Ms Filipetto: The first step would not be dispute settlement. The first step would be a consultation process where you try to ascertain the interests of other countries. For example, it is not uncommon for us to be talking to other countries about their changes. If another country has changed its commitment, we look at whether or not that has affected us. If it hasn't, the consultation process will finish. If it does have an impact and we are affected substantially, we would want protection.

In the same way, if we were to change our commitment, we would engage in consultations with those who expressed an interest in those consultations and then we would have to see the extent to which they believe they have been commercially affected. Compensation does not necessarily have to be in the same sector; it could be managed through change in another sector. It is really a process of consultation with members that are affected.

MS TUCKER: An example was given in one of the submissions—you are probably aware of it—where there was a pollutant in a particular fuel in Canada. Are you aware of that case?

Ms Filipetto: Yes, but I do not know the details of that case.

MS TUCKER: I will use it as an example, because Canada had to pay huge amounts of money in compensation and was forced to keep the pollutant in the fuel. Clearly, there have been questions raised about what the dispute panel considers to be in the public or national interest when it makes decisions. I would like your comment on that. This would obviously apply equally to services. It was determined not to be in the public interest for the Canadian population to have this pollutant poisoning their health. Because of the way the rules worked, Canada was about $13 million out of pocket.

At the heart of a lot of community concerns are the underlying objectives of the trade rules as they are being negotiated now in terms of commercial interest versus public interest, described by the average citizen to include social and environmental issues such as not breathing in pollutants, even though this might be the case in a commercial environment.

Ms Filipetto: I am sorry, I do not know the details of this case.

MS TUCKER: That doesn't matter; it is the general principle.

Ms Filipetto: As a general principle, this was not a WTO dispute. It was a NAFTA dispute.

MS TUCKER: We have had similar disputes in the WTO. As you would be aware, we have had similar environmental issues that were seen to be a commercial impediment when the countries concerned, including Tasmania, wanted high standards.

Ms Filipetto: I can only speak in general terms.

MS TUCKER: That is all I am asking for.

Ms Filipetto: I am not privy to the legal details that were in play. Sometimes an outcome may look as though it supports a certain view, but it may have been because of another reason that the panel decided in this way. It is not always self-evident that there was a no to the environmental aspect of that case; it may have been a different legal point. In disputes the panel does not go off by itself and come up with the arguments. Each government member who is a party to that dispute provides a submission. In the submission members argue their case according to the textual references. That is the basis on which the dispute is judged. Obviously, in the services case, a country would argue that it had introduced that environmental measure, strongly supported by the exceptions listed in article 14 of the GATS. So it is open to us to make that argument. Each panel is different; there is no standing panel. Each panel will consider whether the case has been presented in a way which supports the fact that the decision, the measure, by a federal or sub-federal body, was made as part of a general exception provided for under the GATS.

MS TUCKER: What are the qualifications of the people who are generally on dispute panels? You have said that they are changing. What are the fundamental criteria on which they make judgments? Are they based on commercial aspects? Are these people

scientists and do they have the capacity to make decisions regarding scientific arguments?

Ms Filipetto: The panels are brought together and the parties, especially the principal parties, come up with criteria. For example, a country might want an environmental lawyer or a trade lawyer. There are three members on the panel. A country might want an environmental lawyer or someone who has litigation experience. The country that is taking the case, and the country that the case is being taken against, would come up with separate criteria. They also try to come to an agreement on panel composition—which country representatives they would not be happy to see as panel members. Both are trying to preserve their interest and to be as impartial as possible. At the end of the day if one side has a set of criteria and the other side a different set of criteria, you want to make the panel as neutral as possible to your position. If it is not favourable, you want a neutral position.

The formation of the panel takes a while. It can take months to get that sort of agreement. At a certain point the parties may decide that it is really difficult and that they are not getting anywhere. They would then put it to the Director General of the WTO to come up with a list of panel members. I suppose he would be influenced and advised by the criteria that both parties had set. Each case ends up with a panel that the participants feel can best look at this in an impartial way—it could be trade negotiators, lawyers or academics. There is no bias within the system to any of them.

MS TUCKER: Is it a transparent process? I know that the developing countries were raising concerns about that.

Ms Filipetto: It is transparent to the parties in the dispute—principal parties and third parties. Third parties are more than observers because they can make submissions. The principal parties to the case have a strong say in who will be on that panel and they try to exercise that because every country wants to win their case.

MS MacDONALD: There was an example given of Melbourne trams being taken back and being controlled by the Victorian government. The comment was made that, if we enter into the General Agreement on Trade in Services, once the market was opened up and we were to try and go back into a similar type of situation, there was a possibility of state and territory governments being prevented from doing that and in fact being sued. This has already been covered to a slight extent earlier on. I was curious as to whether that is the case. The comment was also made that the ACT government would not be able to oppose a WTO decision unless we had the cooperation of the federal government. Can you clarify those points for me?

Ms Filipetto: I think I will just introduce this point by confirming the fact that we have joined the GATS. We signed on to the GATS—an international treaty—in 1994. So that is not in question. What is in play and what is being negotiated now is our revised schedule of commitments, which are our obligations. As I mentioned earlier, we make those obligations on a sector-by-sector basis. We have to take an active decision on whether or not we are going to include a sector. I am not sure of our commitments on rail transport. There are certain areas where we have not made commitments at all. We would be consulting very closely with a strong state government authority on whether or

not they were prepared to have that sector or that service included. I would assume that where people had strong reservations that would be taken into account.

As we said earlier, once a commitment is made—I have got it a bit more clearly here—there are four ways in which it can be reviewed: there are provisions for a waiver under certain circumstances; if you have a balance of payments problem, you can change it; we have already referred to the general exceptions; and by renegotiation of a binding. So they are possible to change if there is enough interest.

MS MacDONALD: Let us take the example of Melbourne trams. They had not been working, which is why the Victorian government has taken them back. I understand that there have been similar issues with Victorian transport generally and the Victorian government has been talking about possibly taking it back. I am rather vague on the latter instance. If things were not working and had to be renegotiated, if another player became involved and opposed the renegotiation, what would be the scenario?

Mr Filipetto: I think the other issue here is whether or not it is a public service. At the point that the government resumes the tram service, we would then argue that it was a public service and that then would be taken out.

MS TUCKER: You were pointing out that you decide which sectors you will liberalise under the WTO. I have always been a bit fascinated why you go the other way with the other free trade agreements where you say which bits you want. Why is that?

Ms Filipetto: It is just different practices. In the GATS you have 148 members. When you are dealing with the lowest common denominator approach, people do want to maximise their flexibility on the services side as to what they can and cannot put in. The purpose of free trade agreements is usually to expand trade and to increase export between the two countries. There may be more economic value in saying, "We will be very open, except in these areas." It is a different level of ambition about why you have that agreement. The GATS is really quite unusual. It is a hybrid of that negative and positive list of which the only example really is the GATS. This goes to the question: why do you have a bilateral agreement? You have a bilateral agreement because you want it to be liberalising and increasing trade and economic potential, so you try to have the maximum level of ambition and then cut back from that. It is much harder in general negotiations.

MS TUCKER: How do they work together? Is there potential for inconsistency if you have free trade agreements with the WTO? There are many members in the WTO and you are obviously being pressured to take a particular position. If you have already locked yourself in with one of the members straight from a bilateral, what happens then?

Ms Filipetto: Under the GATS it is open for you to negotiate these bilateral trade agreements. One of the specifications is that that bilateral agreement should be as trade liberalising as possible and cover as many sectors as possible. So there is an expectation among the membership that in a sense those bilateral agreements are likely to be more ambitious than what you achieve at a multilateral level. There is the systemic capacity to have differences but obviously we consult closely with bilateral teams. We are the team doing the multilateral agreements.

MS TUCKER: You reassured us that you had not changed the initial offer. If you were to change it, would you have sought open and transparent community consultation? Would the ACT be told that you were considering changing that? Would you involve the Australian community?

Ms Filipetto: We believe we have been very open, particularly with state governments, in our consultation.

MS TUCKER: I understand. I just want to know what the process is if you are going to change your offer.

Ms Filipetto: We plan to continue the level of consultation that we have been having to date.

MS TUCKER: What does that mean?

THE CHAIR: If you change an offer, does that mean that, when you negotiate externally, once the agreement has been reached with the states you would then come back to the ACT?

Ms Filipetto: I assume we would draft an offer and consult with the states. That was the process we adopted this time: we drafted the offer, consulted with the states and gave states and territories the opportunity to get back to us with issues.

MS TUCKER: You said that you have talked to business organisations, NGOs and the community. Would you go through that process if you were going to change your initial offer?

Ms Filipetto: All I can say is that we plan to continue the level of consultation that we conducted in relation to the initial offer.

THE CHAIR: There were some concerns raised by some of the earlier speakers and submissions. Paragraph 5 of the CPSU submission states:

> The ambiguity surrounding public services should be clarified and public services specifically and clearly excluded from Australia's commitment so as to prevent them from being future targets for trade liberalisation.

In your opinion is the definition in need of clarification?

Ms Filipetto: We believe that public services are clearly excluded. We believe that this view is shared by all other WTO members because no other WTO member has taken a case. We are very confident in the interpretation that public services are excluded from the GATS. We do not believe that there is a problem, but if some people say it is ambiguous, the issue then becomes: is it helpful to change it, because you cannot guarantee the direction of the change. As it stands, we think that article provides ample scope for the exclusion of public services, and other members do too. It is not clear to us that changing it would make it better. In the absence of knowing for sure that changing it would make it better, we believe that the current article serves our needs very well.

On 1 April Mr Vaile was quite explicit on this matter. In a sense he did not need to be because public services were already excluded. He reassured the Australian public that public health, public education and ownership of water would not be part of the initial offer or later offers.

MS TUCKER: Has the government basically said publicly that it will exclude all public services?

Ms Filipetto: We believe that we do not need to. If you come out directly and say that it will exclude all public services, that can actually undermine what is in the agreement. The agreement already says that public services are excluded.

MS TUCKER: But there are critiques which say that you can drive a truck through that clause. I am assuming that you have seen those critiques. You would be aware of the British Columbia critique. It would be very helpful if you could give the committee a detailed response to that critique.

Ms Filipetto: As I have said already, the Australian government's view is that article 1.3 excludes public services. We do not have concerns about that and neither do other WTO member states. There has not been a suggestion that this article should be changed.

MS TUCKER: I understand that that is your view, but I need your argument to support that view. Canada has an objective. British Columbia has done a really good, thorough critique, as have other states, but I am not sure what they are at this point. We have seen critiques from the Public Interest Advocacy Centre here too. I understand what the Australian government's view is, but I would like to understand the legal arguments that it is putting in response to the arguments. I am happy to give you a copy of the critiques if you do not have them. I am sure you have them or that you are aware of them.

Ms Filipetto: We are happy to provide you with some points on our interpretation of article 1.3. I cannot guarantee that we will be in a position to specifically critique the British Columbia article but we will address the key issues.

MS TUCKER: The key issues are fundamentally, as I understand it, that you say that your exclusion is around services that are exercised in the authority of government and not in competition with other people, but most of what the Australian citizen regards as a public service—education, health and so on—does not fit into that category. People in the street think that a public service is education and health. You are saying, "Don't worry, it is safe." The community is asking, "Can you tell us that it is safe? Are you telling us that it has been exempted?" You are saying, "We do not need to because we have a clause that makes us safe." I am confused about what you are actually saying and that is why I am interested to hear why you think it is safe. If you think it is safe, why are you not telling the Australian public—we would not then need to have this inquiry—that public services—education, health, postal, water and cultural services—have been exempted?

THE CHAIR: I think we have had a commitment that we will be given an interpretation of 1.3. It becomes almost an ideological argument and you can parallel it to the bill of rights.

MS TUCKER: No, it is not ideological. I am just trying to understand what the statement is, with respect.

THE CHAIR: I hear what you are saying, but it could become an ideological argument if you are not careful.

MS TUCKER: I am not saying whether or not I want public service. I am just trying to understand what the government is saying public service is.

Ms Filipetto: I suppose the clearest exposition we have at this point is Mr Vaile's statement on 1 April that Australia will not be making any offers in the areas of public health, public education or the ownership of water. We picked these ones in particular because there was obviously concern and public interest. The government will ensure that the outcomes of negotiations will not impair Australia's ability to deliver fundamental policy objectives in relation to social and cultural goals and to allow for screening of foreign investment proposals. That is our negotiating mandate, in effect. There are limits for us.

THE CHAIR: Have you seen that statement of 1 April?

Ms Filipetto: This is Mr Vaile's statement.

THE CHAIR: Could we get a copy of that statement, if possible?

Ms Filipetto: You are welcome to have it.

THE CHAIR: I do not want to keep you too long. How would it impact on a jurisdiction when the federal government makes an agreement? Tasmanian salmon is a good case. The Canadian and Australian governments have an agreement. We have one state that has a different opinion. For instance, the ACT has recently had a health committee report that said we should not be allowing genetically modified products in the ACT. Under a GAT agreement, for instance, if a multinational wanted to sell GM seed to the ACT, which was clearly against a decision of the ACT government, where do we stand? How do we stop that? How do we assert our sovereignty against the sovereignty and the agreement that the federal government has signed up to?

Ms Filipetto: As you know, the GATS applies to federal and sub-federal measures. Once we make a commitment, it applies equally to the federal, state and local governments under the authority of state government regulations and measures. I suppose that goes back to the actual offer and commitment process. We have a very strong interest in avoiding disputes. We try to be very careful when we are making an offer to take into consideration where states are on separate issues. In the GATS we have the ability either not to include that sector or to put a state based limitation on it. With the agreement on agriculture or the GAT, which covers industrials, I am not familiar enough to comment on the specific GMO issue. You probably know that there is a dispute at the moment on GMOs.

THE CHAIR: Yes.

Ms Filipetto: In terms of services and the GATS, it is in our interests to have feedback from the states on where they think sensitive and difficult policy areas are because it is in nobody's interest for Australia to be the defendant in a dispute.

THE CHAIR: Is there a document or a statement on the GM dispute at the moment? Does the Australian government have a position on it?

Ms Filipetto: I could check. I assume there is something on the web site. There is a dispute newsletter which provides updates for the different disputes and where they are at. I will check who is on the circulation list. It may be that someone in the government is already getting access to that.

MS TUCKER: Have you consulted with the ACT government about opening up the areas that you have wanted to progress?

Ms Filipetto: We are not into opening them up. We are interested in knowing what the open areas are already. Our offer does not go beyond any existing regulatory regime. Our offer would not require any legislative change because it is well within the limits of Australian policy. We try to look at the sectors that are open that we have not made commitments on. We might start thinking: is that a sector that would be worth including? We would talk to—

MS TUCKER: Sorry, I used the wrong language. I should have said: when you are negotiating the free trade agreements and the GATS agreement have you consulted with the ACT government about its view on potential sectors?

Ms Filipetto: We are not at a phase of the negotiation where we are talking about making new offers or putting sectors on the table. The stage of the negotiation we are at is clarifying what we put in our offer back in March and explaining what that means to other countries.

MS TUCKER: You did that when developing the initial offer. You have not gone back to the state governments. I thought that you were continuing to rethink this.

Ms Filipetto: Yes. I was going to continue and say that we then have regular debriefs with the state and territory governments—I think we have had two since March—where we say, "This is where the negotiations are at. This is what we may or may not need from you." At this point, though, the discussion we are having is really with other countries. I cannot comment on the free trade agreements, because we do not work on them. In the WTO, what we are talking about with other members is what the offer we have made means. We are not looking ahead to the next one yet. There are no deadlines for the next one. The issue is when the next offers will be due. It would be a decision for members or ministers to say when and if revised offers are due.

The negotiation has phases. As I said, the phase we are at is explaining our offer to others and in prioritising the requests we have made. We are not necessarily at this point focused on what our next offer would be.

MS TUCKER: Are you getting requests as well?

Ms Filipetto: Yes.

MS TUCKER: What do you do with those requests? I am just trying to understand the process. As I understand it, you take requests from other countries. This is all about dealing. You do the deals and then go back to the states and territories and say, "This is what we have come up with. Do you like it?" Are these requests all made public? I know that some of them have been. I have noticed that America's requests on arts and the like are very public; they want open access to practically everything. Some requests seem to be public and some not. Is that right?

Ms Filipetto: Some requests may have become public, but it is WTO practice not to publish requests. We are talking about the WTO negotiations, not the US free trade agreement?

MS TUCKER: Yes.

Ms Filipetto: I understand that EU requests to us were leaked. Someone got access to them and posted them on the net. It is WTO protocol, if you like, for requests not to be made public. It was very unusual that we made our offer public. Traditionally initial offers are not made public. A number of members took into account the strong community interests and did publish offers, as we did. At the end of the day, six or eight countries published their offers, but not everybody has. The tradition in the past has been not to publish offers. But on the requests that remains confidential. You can publish your own offer because it is your own, but a request belongs to another country and that country has the proprietary right to that request. It is not in our gift to publish those requests. In terms of our own requests, we do not want to give away our negotiating position by letting everybody know what we have requested of different countries. That is why requests are not published but why we can publish the offer. I am happy to provide the explanatory material.

MS TUCKER: We have gone over time.

THE CHAIR: Are there any final questions?

MS TUCKER: I have many, but I will leave it.

Ms Filipetto: This might be helpful because we have not had as much time perhaps as we would have liked. I do not know if this is the right protocol. As you know, the Senate is inquiring into this matter. The *Hansard* of Thursday, 2 October, has an even more detailed exposition of our position and also some responses to questions similar to the ones you have been raising.

THE CHAIR: Is that on the net?

Ms Filipetto: I assume it is on the net.

THE CHAIR: Do you want to get a copy and distribute it to members?

MS TUCKER: That would be good.

Ms Filipetto: I also refer the committee to the discussion paper on the GATS, which is available on the DFAT website, prepared back in January. I am happy to give you this copy. There are also updates on that web site. Every time we go to a meeting, we put on the web site what we did at the meeting; we put the main issues on the table. We try to keep that information flowing.

We have a newsletter and anyone can join the email mailing list. As I said at the beginning, we welcome the interest shown. The challenge is to explain the different parts of the GATS puzzle. You might understand the agreement, but, unless you understand the commitments individual countries have made, the puzzle is not quite complete. It is a difficult agreement to understand. It is not always apparent if you are not involved with the processes.

It is not always possible for us to provide instant feedback. When people ask us to do something or want something done, we take it on notice and look at how we can incorporate it in the negotiating process. You would see it reflected then, perhaps, in the offer or the fact that the offer is public. People may sometimes be disappointed that they do not get instant feedback, but we do take very seriously the issues that people raise with us and consider how that can be reflected in our negotiating position.

THE CHAIR: Lisa, thanks very much.

The committee adjourned at 4.20 p.m.