THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Joint Standing Committee on Treaties

Eleventh Report

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1 Replaced Senator the Hon C Ellison (LP, WA) from 26 February 1997.

2 Replaced Senator K Carr (ALP, VIC) from 4 December 1996.

3 Replaced Senator K Denman (ALP, TAS) from 12 December 1996.

4 Replaced Mr C W Tuckey MP (LP, WA) from 24 September 1997.

5 Replaced the Hon W E Truss MP (NP, QLD) from 23 October 1997.

EXTRACT FROM RESOLUTION OF APPOINTMENT

The Joint Standing Committee on Treaties was formed in the 38th Parliament on 30 May 1996. The Committee's Resolution of Appointment allows it to inquire into and report upon:

(a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;

(b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  (i) either House of the Parliament, or
  (ii) a Minister; and

(c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

FINDINGS AND RECOMMENDATIONS

The Joint Standing Committee on Treaties recommends ratification of the following treaties as proposed:

Protocol to the Treaty on Non-Proliferation of Nuclear Weapons (paragraph 3.32);

Asian-Pacific Postal Union: Additional Protocols (paragraph 3.96);

Agreement with the Government of Ireland on Medical Treatment (paragraph 4.21);

Agreement with the International Bureau of the World Intellectual Property Office (paragraph 4.47);

Agreement with the Federal Republic of Germany on the Precise Range and Range Rate Equipment ('PRARE') Project (paragraph 4.67);

Agreement with the Government of Japan for the Geostationary Meteorological Satellite-5 System (paragraph 4.87);

Agreement with the Kingdom of the Netherlands on the Gainful Employment of Dependants of Diplomatic and Consular Personnel (paragraph 4.104);

Films Co-Production Agreement with the Government of the State of Israel (paragraph 4.126), and

Agreement on the Network of Aquaculture Centres in Asia and the Pacific (paragraph 4.171).

In addition, it has made specific recommendations about the following treaties:

Agreement on Economic and Commercial Cooperation with Kazakhstan

The Joint Standing Committee on Treaties recommends that:

- **Australia not ratify the proposed Economic and Commercial Agreement with Kazakhstan at this time,**

- **that Agreement should not be reconsidered for ratification unless and until there are demonstrations by Kazakhstan of good faith in its trade and investment relations with Australia, in particular appropriate compensation for Telstra, and**
- **should the situation change in Kazakhstan, and before a decision is made to ratify such an Agreement, a revised National Interest Analysis should be tabled in both Houses of the Parliament including the reasons for the new circumstances (paragraph 2.60).**

Trade and Economic Cooperation Agreement with Malaysia

The Joint Standing Committee on Treaties:

- **recommends that there be a study to establish what if any other trade or financial agreements are required with the Government of Malaysia to extend the relationship, and in particular,**
  - **whether an Investment Protection Agreement is required,**
  - **whether the 1980 Double Taxation Agreement should be revised or replaced, and**
- **notes the material it has received, and supports ratification of the Trade and Economic Cooperation Agreement with Malaysia as proposed (paragraph 3.76).**

CHAPTER 1

CONDUCT OF THE INQUIRIES

Agreement with Kazakhstan

1.1 The text of the Agreement between the Government of Australia and the Government of the Republic of Kazakhstan on Economic and Commercial Cooperation, together with a National Interest Analysis (NIA), was one of a number of treaties tabled in both Houses of Parliament on 26 August 1997. We reported on the other treaties in this group in our 10th Report, tabled on 20 October 1997.[1]

1.2 With the rest of those treaties, public comments and/or submissions were sought through an advertisement in a national newspaper. One submission was received commenting on this Agreement.[2]

1.3 Evidence was taken on this Agreement from the Department of Foreign Affairs and Trade (DFAT) at a public hearing in Canberra on 1 September 1997.

1.4 Following that hearing, there were newspaper reports of the revocation of the Telstra Corporation's licence to operate in Kazakhstan. On the basis of the issues raised in one of those reports, we believed that it was appropriate to reopen the inquiry into the Agreement with that country.[3]

1.5 A further public hearing was held in Canberra on 30 September 1997. Evidence was taken from representatives of DFAT, Austrade, the Attorney-General's Department (AGs) and Telstra Corporation Ltd. Those witnesses who gave evidence at these hearings are listed in Appendix 1.

1.6 The Minerals Council of Australia was also invited to appear and give evidence, but decided to leave any comments to its members.

1.7 Following the second hearing, it was agreed to put our concerns about the issues raised by this Agreement to the Minister for Foreign Affairs so that he could discuss them with the Foreign Minister from Kazakhstan during their

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1 Senate, *Hansard*, 26 August 1997, p. 5655; House of Representatives, *Hansard*, 26 August 1997, p. 6809.

2 See *The Weekend Australian*, 30-31 August 1997, p. 15. See Appendix 2.

3 See *The Sydney Morning Herald*, 19 September 1997, p. 8.

recent meeting at the General Assembly of the United Nations. Further consideration of the Agreement was suspended, pending the results of the meeting of the Ministers.

Treaties tabled on 30 September 1997

1.8 On 30 September 1997, texts of the following documents, together with National Interest Analyses (NIA), were tabled in both Houses of the Parliament:

- Protocol, done at Vienna on 23 September 1997, additional to the Agreement of 10 July 19974 between Australia and the International Atomic Energy Agency for the Application of Safeguards in Connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968, and
- Agreement between the Government of Australia and the Government of Malaysia on Trade and Economic Cooperation.[4]

1.9 The NIA for the Asian-Pacific Postal Union: Amendments, done at Singapore on 12 September 1995, to the Constitution of 4 December 1985; Additional Protocols, done at Singapore on 12 September 1995, to the Constitution of 4 December 1985; and General Regulations, done at Singapore on 12 September 1995, was also tabled. The text of this treaty action was tabled in both Houses on 18 October 1985.[5]

1.10 The '15 sitting day' period for these agreements expired on 20 November 1997.

1.11 Submissions and comments on these agreements were called for in a newspaper advertisement. Several requests were received for the documents.[6]

1.12 A public hearing was held in Canberra on 20 October 1997, at which evidence was taken from relevant Commonwealth departments and agencies. The witnesses who gave evidence at that hearing are listed in Appendix 1. Submissions received relating to the Agreement with Malaysia are listed in Appendix 2.

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4 Senate, *Hansard*, 30 September 1997, pp. 7035-7036; House of Representatives, *Hansard*, 30 September 1997, p. 8523. The Agreement with Malaysia was signed in Kuala Lumpur on 20 October 1997.

5 Senate, *Hansard*, 18 October 1995, pp. 2095; House of Representatives, *Hansard*, 18 October 1995, p. 2395.

6 See *The Weekend Australian*, 25-26 October 1997, p. 8.

1.13 A further hearing was held on 27 October 1997 to take evidence from the Australia-Malaysia Business Council. The witness at that hearing is listed in Appendix 1.

1.14 These three agreements are dealt with in Chapter 3.

Treaties tabled on 21 October 1997

1.15 On 21 October 1997, the texts of the following agreements together with NIAs were tabled in both Houses of the Parliament:[7]

- Agreement on Medical Treatment for Temporary Visitors between Australia and Ireland, done at Dublin on 12 September 1997.
- Agreement between the Government of Australia and the International Bureau of the World Intellectual Property Organisation in relation to the functioning of the Australian Patent Office as an International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty of 19 June 1970.
- Agreement between the Government of Australia and the Government of the Federal Republic of Germany on the Establishment of a Mobile Ground Station in Australia for the PRARE Project.[8]
- Exchange of Notes, done at Canberra on 20 October 1997, between the Government of Australia and the Government of Japan constituting an Agreement concerning Co-operation on the Project for the Geostationary Meteorological Satellite-5 System.
- Agreement on the Network of Aquaculture Centres in Asia and the Pacific, done at Bangkok on 8 January 1988, as amended by the Fourth Session of the Governing Council in Hong Kong, 8-11 December 1992.

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7 Senate, *Hansard*, 21 October 1997, pp. 7702-7703; House of Representatives, *Hansard*, 21 October 1997, p.9318.

8 The Government of the Federal Republic of Germany has agreed to the tabling of the treaty action prior to signature of the Agreement.

- Agreement between Australia and the Kingdom of the Netherlands on Gainful Employment of Dependants of Diplomatic and Consular Personnel, done at Canberra on 24 September 1997.

- Films Co-production Agreement between the Government of Australia and the Government of Israel, done at Canberra on 25 June 1997.

1.16 The '15 sitting day' period for these agreements expires on 27 November 1997.

1.17 Submissions and comments on these agreements were called for in a newspaper advertisement. Several request were received for the texts of these treaties and their accompanying NIAs.[9]

1.18 A public hearing was held in Canberra on 27 October 1997, and evidence was taken from appropriate Commonwealth departments and agencies. Those people who gave evidence at that hearing are listed in Appendix 1. Submissions received in connection with these treaties are listed in Appendix 2, and additional material received relating to them is listed in Appendix 3.

1.19 These seven agreements are considered in Chapter 4.

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9 See *The Weekend Australian*, 25-26 October 1997, p. 8.

CHAPTER 2

AGREEMENT WITH KAZAKHSTAN

Kazakhstan since 1990

2.1 The Agreement on Economic and Commercial Cooperation with Kazakhstan was done at Almaty on 7 May 1997.

2.2 We have already reported on similar Agreements with Romania, Mexico, the Czech Republic and Lebanon.[1]

2.3 Kazakhstan was one of the republics in the former Soviet Union. It is rich in resources and has attracted the interest of a large number of the world's largest companies. It now seeks to move from a centrally planned economy to an independent market economy. Signing this type of agreement is seen as an important way Kazakhstan can be integrated into the world economy and brought into the global commercial framework. The Department of Foreign Affairs and Trade (DFAT) advised that this is a 'standard trade and commercial agreement'.[2]

2.4 This agreement is the latest of a series of measures which seek to build an Australian commercial relationship with Kazakhstan. This involves supporting economic reforms in the economies of the former states of the former Soviet Union. After Russia, Kazakhstan is seen as having the greatest potential for the development of Australian commercial interests in sectors such as mining, agriculture and services including telecommunications.[3]

2.5 DFAT stated that the rule of law is 'virtually non-existent' in Kazakhstan, and that Western-style commercial frameworks are developing only very slowly. In such a difficult business environment, it was seen as useful to have an internationally binding legal treaty which committed Kazakhstan to its best endeavours to facilitate and develop trade. That country wants to develop its

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1 See *Australia's Withdrawal from UNIDO & Treaties Tabled on 11 February 1997: 7th Report*, pp. 32-34 (Mexico); *Eighth Report*, pp. 13-14 (Czech Republic); *Tenth Report*, pp. 5-8 (Lebanon). There was no specific comment on the agreement with Romania in the *First Report*.

2 Transcripts: 1 September 1997, pp. 32, 29; 30 September 1997, pp. 4, 5. See 'Exotic doors open for $50m trade boom,' in *The Advertiser*, 6 October 1997, p. 17, for a mention of activity, including Australian, in Kazakhstan. 'Australia better cast an eye on the Caucasus', in *The Australian Financial Review*, 28 August 1997, p. 11, deals with oil and mineral reserves in Kazakhstan.

3 Transcript, 30 September 1997, p. 3.

relations with Western nations, to become a partner in Western commercial processes and to join the World Trade Organisation (WTO). Australia will assist Kazakhstan in that endeavour.[4]

2.6 The United Kingdom, Spain and the Federal Republic of Germany are believed to have signed similar agreements with Kazakhstan.[5]

Australia-Kazakhstan relations

2.7 Australia and Kazakhstan established diplomatic relations in 1992 and Australia opened an embassy there in 1995, the second one in the region of the former Soviet Union. The President of Kazakhstan visited Australia late in 1996, and the former Prime Minister of Kazakhstan has also visited this country. The former Governor-General of Australia, the Hon W G Hayden, visited Kazakhstan during his term in office.[6]

Provisions of the Agreement

2.8 Article 1 requires the Parties, subject to their laws, to take all appropriate measures to strengthen both traditional and potential exports with the aim of 'a sustained expansion of mutually beneficial trade'.

2.9 Article 2 sets out the means of advancing the objectives in Article 1:

- negotiation of commercial contracts between relevant commercial enterprises and organisations;
- development of industrial and technical cooperation between relevant commercial enterprises and organisations;
- interchanges, including from agriculture and agribusiness industry, of commercial, technical and training representatives, groups and delegations, and
- holding and participation in trade fairs, exhibitions and promotional activities in trade and technology by enterprises and organisations in each country.

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4 *ibid*, pp. 4, 13.

5 *ibid*, p. 12.

6 Transcript, 30 September 1997, pp. 3, 11.

2.10 This Article also encourages protection of intellectual property in the commercial relations between the two countries.

2.11 Under Article 3, the Parties shall grant most favoured nation (MFN) treatment 'in all respects' for customs duties, internal taxes and other charges imposed on imports, import/export licences and any related provision of foreign exchange. This provision is derived from Article 1 of the General Agreement on Tariffs and Trade (GATT) which allows a nation to receive the best treatment for its products that any other nation's products are receiving from a third country. As a member of the WTO, Australia is obliged to accord MFN status to all other countries.[7]

2.12 Article 4 states that the provisions of Article 3 shall not apply to the establishment of a free trade area or customs union, or accorded to other countries to facilitate frontier traffic.

2.13 In accordance with its laws, each country shall exempt from import duties and taxes articles for display at fairs and exhibitions, as well as samples of goods for advertising. Such goods shall not be disposed of without the prior approval of competent authorities and appropriate payments of import duties and taxes (Article 5).

2.14 All payments for trade shall be made in a mutually acceptable currency, but other arrangements for payments may be made by individuals (Article 6).

2.15 Article 7 deals with dispute resolution procedures arising from contracts between enterprises in the respective countries. Any dispute relating to the interpretation or implementation of the Agreement shall be resolved without unreasonable delay by friendly consultations and negotiations.

2.16 In Article 8, the Parties agree to encourage a close and constructive dialogue to develop a range of business contacts, by means of commercial missions and periodic meetings of the Governments. These include sessions of a Joint Commission to discuss trade relations and solve any problems which might arise.

2.17 The Agreement will enter into force on the latest date when all domestic requirements have been met by both Parties. It is in force initially for five years and remains in force until 90 days from the date when either Party receives written notice from the other to terminate the Agreement (Article 9).

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[7] Transcript, 1 September 1997, pp. 31, 30.

2.18 Article 10 states that amendments to or termination of this Agreement shall not affect contracts previously concluded between enterprises of the Parties.

Implementation

2.19 The Agreement makes no provision for any other legally binding instruments such as protocols or annexes. No additional direct costs will be incurred as a result entering into the Agreement, although some costs may be incurred in fulfilling its aims by holding meetings of the Joint Commission. Any such costs will be met from existing DFAT resources. No new legislation will be required, and there will not be any changes to the roles of the Commonwealth, States or Territories.

Consultation

2.20 Information on the proposed agreement was provided to the States and Territories through the SCOT process. Australian business has been very interested in the negotiation of this Agreement, and some companies have been monitoring its progress.[8]

Other agreements with Kazakhstan

2.21 DFAT explained that when doing business with economies in transition, there are generally three planks in the raft of legal agreements. The first is a double taxation agreement (DTA), the second is an investment promotion and protection agreement and the third is a trade agreement. Although the enforcement provisions of the latter are weak, it does include MFN status, if only for customs and similar matters.[9]

2.22 This Agreement is fundamentally a trade agreement which has some implications for investment and wider cooperation. Article 7.1 deals with dispute resolution procedures in relationships between commercial enterprises

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8 Transcripts: 1 September 1997, p. 30; 30 September 1997, p. 4.

9 Transcript, 30 September 1997, pp. 15, 10.

which are not parties to the Agreement. The issues which might arise from it could relate to a commercial relationship with the government of one of the parties.[10]

2.23 Investment promotion and protection agreements are generally stronger than trade agreements in providing non-government parties with the ability to take action to resolve disputes. These agreements might also give wider MFN treatment for investments generally and require that investments by Australian companies are treated in the same way as others.[11]

2.24 In reviewing similar treaties, we have asked about the negotiation of DTAs as well as economic and commercial agreements. Kazakhstan and Australian Taxation Office (ATO) officials met on this subject in June 1997. Formal negotiations about a DTA will not start until 1998 at the earliest.[12]

Australia-Kazakhstan trade

2.25 Although two-way trade amounted to only $A2.11 million in 1996, the National Interest Analysis (NIA) for this Agreement states that it demonstrates the importance Australia attaches to promoting further trade and investment in Kazakhstan. There are already 'a number' of Australian ventures in Kazakhstan in telecommunications and mining, and in the provision of services such as transport, public management training and legal services. The NIA suggests that there opportunities for growth in commercial relations in sectors such as mining, petroleum and agriculture. A number of Australian companies have set up offices in Almaty, while companies like Western Mining Corporation (WMC), the Moonstone Group, Normandy Mining Ltd and BHP have shown an interest in the minerals and petroleum industries in Kazakhstan.[13]

2.26 While the current trade flow is 'quite low', Austrade believes that 'strategic investments' in Kazakhstan will ultimately lead to greater trade flows. Austrade stated that it is important to make investments to assist in the future development of trade.[14]

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10 *ibid*, p. 9.

11 *ibid*, pp. 9-10.

12 See: 4th Report, pp. 13-14, 15; 7th Report, p. 33, and 10th Report, p.8. Transcript, 1 September 1997, p. 29.

13 Transcripts: 1 September 1997, pp. 30, 32-33; 30 September 1997, p. 5. 'Australia better cast an eye on the Caucasus', *The Australian Financial Review*, 28 August 1997, p. 11; Submission, p. 2.

14 Transcript, 30 September 1997, p. 5. Given the total of two-way trade, this is somewhat of an understatement.

2.27 No evidence was provided of any interests Kazakhstan businesses have in Australia.

Telstra in Kazakhstan

2.28 The involvement of Australia's Telstra Corporation Ltd in Kazakhstan began in 1991 through the provision of basic international telephone services, giving the local economy greater communications links with the rest of the world. In 1994, Telstra began a joint venture, Satel, with what is now known as Kazakh-Telecom. This joint venture provides high quality telecommunications to the multi-national companies operating in Kazakhstan. Telstra's investment in Satel was about $A7.5 million, and the joint venture was for an indefinite period.[15]

2.29 The Satel partnership was positive and cooperative until late 1996 when, as a result of a change in the law, Telstra was required under Kazakh law to re-register the joint venture company. This needed the signature of both shareholders. In the event, the Kazakh partner withheld its signature, principally as a commercial lever. Management control of the venture seems to have been the cause of the problem. While trying to resolve it, the company was deemed to be operating illegally. A government commission was set up to examine the dispute and to determine if the company was operating illegally because of its failure to re-register.[16]

2.30 DFAT knew that Telstra was having problems re-registering its joint venture from the beginning of 1997, but had been led to believe that the matter could be resolved. In July-August, it became clear that this was not the case.[17]

2.31 Satel's bank accounts were frozen and immediate payment was demanded to the state of the revenue earned from 1 January 1997, when the company was deemed to be trading illegally. Other companies are understood to have found themselves in the same position. The current situation is that Telstra's licence has been revoked and, although it is hopeful of re-entering the market, that is not certain.[18]

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15 Transcript, 30 September 1997, pp. 4-5, 7.

16 *ibid*, pp. 4, 8.

17 *ibid*, p. 16.

18 *ibid*, pp. 4, 8. See 'Telstra forced to abandon $10m investment', in *The Sydney Morning Herald*, 19 September 1997, p. 8, for an account of Telstra's situation and some indication of the difficulties of doing business in Kazakhstan.

2.32 Consistent with its role as a commercial organisation in search of new business, Telstra accepted that ventures in countries such as Kazakhstan included taking and managing risks. As a development of the provision of services since 1991, the 1994 agreement set out the conditions under which the Satel joint venture would operate. Telstra financed the equipment and Kazakh-Telecom was a party to a revenue sharing agreement, without providing any outlay. This was seen by Telstra as a 'reasonably standard' approach to commercial dealings in such countries, just as DFAT saw different types of government structures and ignorance of Western commercial practices as part of the process of doing business in some countries.[19]

2.33 Telstra's problems in Kazakhstan would have been covered more effectively by an investment promotion and protection agreement. Such an agreement with Kazakhstan 'is almost complete' and includes settlement of disputes at the International Centre for the Settlement of Investment Disputes.[20]

2.34 Telstra believed that some treaty would be better than no treaty because anything which encourages evolution of Western business practices in this region is useful. Continuing towards ratification could be seen as a sign of Australia's good faith, especially as Kazakhstan has already completed all of its domestic processes for this action. Non-ratification by Australia could be interpreted as a signal that this country has no interest in trade and economic cooperation with Kazakhstan.[21]

2.35 Telstra's problems in Kazakhstan were not mentioned at the hearing on 1 September 1997, nor in the NIA tabled in the Parliament with the text of the Agreement. That company was not mentioned specifically in the NIA, although there were two references to the expansion of trade in telecommunications in Kazakhstan.[22]

Comments from WMC Kazakhstan

2.36 WMC Kazakhstan has had interests in the Central Asian Republics since the beginning of 1996. In Kazakhstan, it owns two Complex Licenses for both exploration and mining totalling 31 years, with six years for exploration and 25

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19 Transcript, 30 September 1997, pp. 8, 7, 11.

20 See paragraph 2.22 above. Transcript, 30 September 1997, p. 15.

21 *ibid*, pp. 13-14, 3.

22 Transcript, 30 September 1997, p. 12.

years for mining. The legislative regime there requires the holder of a license to negotiate a contract for each license with the State to define all the terms and conditions under which any exploration and mining will take place.[23]

2.37 Draft contracts for each of WMC's licenses were to be submitted early in November 1997, and some negotiations are expected before finalisation and signature in early 1998.

2.38 WMC stated that the commercial environment in Kazakhstan 'is not an easy one', particularly as it is in transition from central planning to market based. Language and cultural differences compound the difficulties and problems inherent in such a situation. With three locally engaged Kazakhstan staff, WMC has been able to conduct its activities there satisfactorily and without problems other than those to be expected in such an environment.

2.39 It is aware that Telstra has left Kazakhstan and that this is not the preferred position, understanding it arose from unexpected changes in and particular application of legislation. This is a concern to WMC, as the minerals industry carries inherently higher risks than telecommunications and looks for stable legislative and fiscal environments. WMC will continue to monitor its position and, should the situation in Kazakhstan change, it may review its presence there.

Committee views

2.40 Doing business in countries which were part of the former Soviet Union is not easy. Even allowing for profound cultural and legal differences, concepts such as 'good faith' which underpin commercial transactions elsewhere seem to be unknown. There are at least three agreements which governments can negotiate to encourage and protect trade and investment in which their nationals may be involved in another country.

2.41 This Agreement has received considerable attention because it raises a number of significant issues, and it is appropriate to focus first on the position in which Telstra has found itself in Kazakhstan.

2.42 This appears to demonstrate both the lack of good faith within the Kazakhstan Government and the consequences of the lack of any agreement to

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[23] Material in this section was drawn from Submission, pp. 1-2.

protect Telstra's operations and investment there. However weak they may be, if it had been in force, the Agreement's provisions might have been used and useful.

2.43 Telstra is a victim of the situation in which it found itself in Kazakhstan. It had been in the country for some time before it negotiated a joint venture agreement which for reasons outside its control, and 'normal' commercial practice, was not honoured. While it accepted that risk was part of a commercial venture, it assumed good faith on the other side.

2.44 At a more general level, this Agreement raises more fundamental issues about the Parliamentary scrutiny of treaties.

2.45 The most obvious of these is why an economic and commercial cooperation agreement was signed with a nation where the two-way trade flow is only $A2.11 million. Other agreements are being, or will be, negotiated to provide protection of trade and investment, but the contacts between the two nations are not great. Kazakhstan does not have an embassy in this country yet. If Telstra's experience is in any way typical, Australian and international companies will be wary of doing business in Kazakhstan and there will be little point in having any agreements for the protection of trade and investment there.

2.46 More importantly, we were not given all the information available about the situation in Kazakhstan. But for a newspaper article, this Agreement would not have attracted additional scrutiny at a second hearing, during which additional witnesses gave evidence which revealed more of the situation in Kazakhstan and Telstra's situation there.

2.47 Both the NIA and much of the information given at the first hearing were seriously deficient. At that hearing, we were told about Kazakhstan's commercial environment only in the most general way:

> Kazakhstan's domestic regulatory environment is not as complete as it could be and this agreement will go some way towards filling the gap.[24]

2.48 Nor were we told then that DFAT knew that Satel's re-registration problems were so serious. At the second hearing, DFAT said it had not believed that the situation was 'something the Department felt could be cited as central to the entire relationship'. Accepting the assertion that this was a commercially confidential matter involving one company, we should have been briefed on a confidential basis, or given the information as in-camera evidence.[25]

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[24] Transcripts: 1 September 1997, p. 29; 30 September 1997, p. 12.

[25] Transcript, 30 September 1997, p. 12.

2.49 We were told about the negotiation of a DTA with Kazakhstan, but not about the ongoing negotiations for an investment promotion and protection agreement. This was revealed only in an aside at the second hearing, and it represents a further gap in the material which was given to us about this Agreement.[26]

2.50 There is another matter of more and continuing substance. We reiterate and emphasise our belief that provision of material on a treaty to the States and Territories through the SCOT process is not 'consultation' as we define it.

2.51 This usage also seems to be inconsistent with the definition used by the Minister for Foreign Affairs in his statement to the Parliament, announcing reforms to the treaty-making process. He said that these reforms would:

> ...ensure that every Australian individual and interest group with a concern about treaty issues has the opportunity to make that concern known. Consultation will be the key word...[27]

2.52 The NIA refers to Australian interests in mining, agriculture, telecommunications and provision of services in areas such as transport, public management training and the law. There is no evidence that any organisation or individual, outside Government agencies, with an actual or potential interest in Kazakhstan was contacted about this Agreement.

2.53 This is quite contrary to the Minister's statement and unacceptable to this Committee. We have commented about poor levels of consultation as a result of our examination of a number of other treaties. In some agreements considered recently, there has been evidence of more appropriate levels of consultation and we hope that this trend continues.[28]

Summary and findings

2.54 At this time, we are not convinced about the benefits of an Economic and Commercial Cooperation Agreement with Kazakhstan. While there is a negligible amount of two-way trade, that country is rich in resources and Australian and international companies are already competing there in various fields. Such an Agreement may have been seen as a way of cementing

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[26] Transcripts: 1 September 1997, p. 29; 30 September 1997, p. 15.

[27] House of Representatives, *Hansard*, 2 May 1996, p. 231.

[28] See, for example, the *First Report*, p. 4; *Treaties Tabled on 15 & 29 October 1997: 4th Report*, pp. 6, 19, 32; *Australia's Withdrawal from UNIDO & Treaties Tabled on 11 February 1997: 7th Report*, pp. 25-26, and *Tenth Report*, pp. 7, 11-12, 17.

Australia's presence there and, at the same time, providing some protection for its companies. Other, stronger agreements negotiated in the future may have been seen as further strengthening both ties and protection.

2.55 Even if this Agreement had been in force, it is unlikely to have prevented the revocation of Telstra's licence. It is also clear that, Agreement or no agreements, Australia's ability to assist Telstra, or any other company, in Kazakhstan is at best limited. In the present situation, it is not clear whether Telstra will be compensated for the losses it has incurred.

2.56 It was argued that failing to ratify this Agreement would send the wrong signal to Kazakhstan about Australia's interest in the relationship, or the commercial intentions of its companies. On the other hand, and in view of Telstra's experience there, it could be said that there is no point in ratification at present.

2.57 Given Telstra's treatment, and regardless of whether or not it is compensated, other Australian and international companies know about the situation in Kazakhstan and will make decisions about investment there, at least in part, on that basis. In such a climate, the existence or otherwise of treaties with its Government may not be a determining factor.

2.58 Neither are we altogether convinced by predictable arguments about trade agreements as building blocks for the development of trade relations with non-WTO countries. We are also doubtful that the institutional framework such documents can provide, even if stronger agreements are concluded in due course, will fully restore Telstra's position in Kazakhstan or protect other companies from its fate.

2.59 Demonstrations of good faith by the Kazakhstan Government would go some way to restoring the credibility of its processes. It is difficult to define what might be effective but, without a demonstrable change of attitude such as reinstatement of or payment of compensation to Telstra, we believe that any sort of agreement with that Government along the lines proposed serves little purpose.

2.60 The Joint Standing Committee on Treaties recommends that:

- **Australia not ratify the proposed Economic and Commercial Agreement with Kazakhstan at this time,**
- **that Agreement should not be reconsidered for ratification unless and until there are demonstrations by Kazakhstan of good faith in its trade and investment relations with Australia, in particular appropriate compensation for Telstra, and**

- **should the situation change in Kazakhstan, and before a decision is made to ratify such an Agreement, a revised National Interest Analysis should be tabled in both Houses of the Parliament including the reasons for the new circumstances.**

CHAPTER 3

TREATIES TABLED ON 30 SEPTEMBER 1997

Protocol to the Treaty on Non-Proliferation of Nuclear Weapons

The Treaty

3.1 The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was signed in London, Washington and Moscow on 1 July 1968. It entered into force generally on 5 March 1970. Australia signed it with a declaration on 27 February 1970 and it entered into force for this country on 23 January 1973. By notification of 29 August 1985, Australia advised that the declaration made on signature no longer accurately reflected its position.

3.2 In accordance with Article X.2, the Conference of Parties (COP) decided on 11 May 1995 that the Treaty shall continue in force indefinitely.[1]

3.3 The proposed treaty action entails ratification of a protocol which is based on a model developed by an International Atomic Energy Agency (IAEA) Board of Governors Committee in which Australia participated.[2]

3.4 The Protocol will enter into force when the IAEA receives written notification that Australia's statutory and constitutional requirements have been met. Minor amendments to the *Nuclear Non-Proliferation (Safeguards) Act 1987* are required to implement this Protocol. These amendments were included in an Act which received Royal Assent on 17 October 1997. To be effective, the Protocol must also be declared by regulations under the 1987 Act.[3]

3.5 We have previously reported on four other agreements relating to nuclear matters.[4]

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1 *Australian Treaty List, Multilateral* (as at 31 December 1996), Department of Foreign Affairs and Trade, p. 378.

2 Transcript, 20 October 1997, p. 3.

3 *ibid*.

4 On an Agreement with the Korean Peninsula Energy Development Organization (KEDO) in *First Report*, pp. 11-12; on the Convention on Nuclear Safety in *Treaties Tabled on 15 & 29 October 1996: 4th Report*, pp. 3-6; and, in *Tenth Report*, the Nuclear Retransfers Agreement with Korea, pp. 18-20 and the Regional Nuclear Cooperation Agreement, pp. 20-27.

The Protocol

3.6 The Protocol is part of a global effort to strengthen IAEA safeguards in response to limitations in the safeguards system which were highlighted following the discovery of Iraq's clandestine nuclear weapons program in the aftermath of the Gulf War. It is intended to provide the new standard for comprehensive, bilateral safeguards agreements between all individual non-nuclear weapons states and the IAEA.[5]

3.7 Iraq's nuclear weapons program showed that a determined state, prepared to spend enormous resources to developing a separate nuclear fuel cycle clandestinely, could do so without detection by the IAEA. The traditional safeguards approach aims primarily to detect the diversion of nuclear materials from declared activities.[6]

3.8 The international community is always looking for improvements in its safeguards arrangements because none can provide absolute guarantees: the previous system had served well until Iraq showed it needed improvement. It had proved rather successful in dealing with the North Korean nuclear program, enabling the engagement of the international community and, hopefully, bringing about a successful resolution there.[7]

3.9 The new arrangements will enhance IAEA's ability to detect undeclared nuclear activities. They extend existing safeguards arrangements to ensure greater assurances about declared safeguardable nuclear materials, and increase its ability to detect undeclared nuclear activities.[8]

3.10 The purpose of the regime to be set in place by the Protocol is to increase the IAEA's understanding of the nuclear power programs and nuclear programs. To be able to come to conclusions about the correctness and completeness of declarations made by states, the Agency will need access to a range of new sources of information. This will need analysis and comparison with previous declarations about their activities and, if questions arise, further explanations will be sought. Complementary access could be sought to determine whether a particular facility is engaged in clandestine nuclear activity. Previously, the IAEA was restricted in what it could do and the Protocol will give it greater freedom.[9]

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5 Transcript, 20 October 1997, pp. 3, 4. See *The Economist*, 18 October 1997, pp. 16-17.

6 Transcript, 20 October 1997, p. 3.

7 *ibid*, p. 7. See *The Economist*, 18 October 1997, p. 16.

8 *ibid*, p. 3.

9 *ibid*, pp. 4-5.

Obligations

3.11 The Protocol has a Preamble, 18 Articles and two Annexes, and the latter set out in detail the information which Australia has to provide to the IAEA.

3.12 Article 1, which outlines the relationship between the Protocol and the Safeguards Agreement, provides that the provisions of that Agreement shall apply to the Protocol where they are relevant and compatible. In the case of conflict, the Protocol's provisions are to prevail.

3.13 The key elements of the Protocol are:

- Australia is obliged to provide more information on nuclear and nuclear-related activities through a declaration and associated reporting requirements, as set out in Article 2.
- IAEA inspectors will have greater rights of access to any location on a nuclear site in Australia. In addition to the Australian Nuclear Science and Technology Organisation (ANSTO) reactor site at Lucas Heights and uranium mines, other locations where access can be negotiated or is provided have been included in Australia's expanded declaration for environmental sampling.
- IAEA access can be at short notice, two hours or less, if carried out with a routine inspection which can be unannounced. In other circumstances, access will be available on 24 hours' notice.
- The IAEA will be able to deploy the new technique of environmental sampling for indications of undeclared activities. Initially, this would be for specific locations but the Protocol recognises IAEA's right to deploy wide-area environmental monitoring to enable searches for nuclear indications over extensive areas, once the efficacy of wide-area monitoring is established.
- IAEA inspectors will be entitled to multiple visas for at least twelve months, automatically renewable.
- The IAEA's rights of communication while conducting safeguards activities will be clarified to include direct satellite communication. IAEA is obliged to ensure it exercises its rights in a manner which protects any sensitive material it has obtained.

- IAEA is required to protect confidential information it acquires during inspections. It must inform Australia of the activities it undertakes pursuant to the Protocol, and the outcome where there are questions or inconsistencies to be resolved. It must inform Australia also of the individuals it has designated to conduct inspections.

3.14 These procedures will apply to countries which sign the Protocol. For those which have not, the IAEA will be able to invoke Special Inspection Powers. These are seen by some states as accusatory, but the ASO stated that the Protocol was designed to allow the Agency to update its knowledge and to query things without appearing to accuse any state of breaching its commitments under the NPT. In the event that a signatory state would not cooperate, the IAEA must make an explanation, or the Agency can go to the Board of Governors setting out its dissatisfaction. Ultimately, the matter could go to the Security Council.[10]

3.15 Consistent with the objectives of the NPT, the new rights given to the IAEA under the Protocol enhance its ability to provide assurance that all nuclear material in Australia has been declared for safeguard purposes.

3.16 The Australian Safeguards Office (ASO) already provides the expanded information requirements required by the Protocol: extensive access is provided voluntarily to facilities at Lucas Heights. Access to other facilities is to be on a selective basis to assure the absence of undeclared nuclear material and activities, and could not be sought to verify 'mechanistically' the information provided.[11]

Australia and the Protocol

3.17 Australia has been a strong supporter of the IAEA's effort to strengthen the international safeguards system, and has played a key role in bringing negotiations to a successful conclusion. The safeguards system is a vital part of the international security system. Our support also serves fundamental Australian security interests in ensuring that civil nuclear programs and nuclear cooperation do not contribute to nuclear proliferation in our region, or elsewhere.

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10 *ibid*, pp. 5-6.

11 *ibid*, p. 5.

3.18 DFAT saw the Protocol as building on an existing system which was regarded with a high level of confidence. Pursuing non-proliferation objectives involved locking nations into sworn commitments not to acquire nuclear weapons. Part of the broader objective of eventually ridding the world of these weapons was to lock nations in and making them live up to promises.[12]

3.19 Some 186 nations have now signed the NPT, and all the relevant countries with nuclear activities have nuclear safeguards agreements. Australia believes that this Protocol will incrementally improve the operations of those agreements and has been showing the way to other nations. It hopes that, in time, it will become a universal standard. Countries with large power programs have a lot to do, but this is the objective.[13]

3.20 While Australia was the first country to sign this Protocol, other countries are understood to be close to signature. Other countries, particularly those with larger nuclear industries, will probably take longer to get internal regulations and procedures regularised for signature.[14]

3.21 Foreseeable, direct financial costs of compliance, domestic travel and some equipment expenses, will be met from the ASO's budget.[15]

Future Protocols and Implementation

3.22 Nothing in the Safeguards Agreement or the Protocol precludes the negotiation of other legally binding instruments. The Department of Foreign Affairs and Trade (DFAT) understands that IAEA has no plans at present to amend the Safeguards Agreement or negotiate another protocol. Should the need arise to strengthen further the IAEA's safeguards system, IAEA could propose an additional protocol (or protocols) to Australia and other non-nuclear weapons powers which are States Parties to the NPT.

3.23 Amendments to the *Nuclear Non-Proliferation (Safeguards) Act 1987* will fulfil three purposes:

- they will extend operative parts of the Act to include references to 'Supplementary Agency Agreements', a phrase which includes the Protocol and any such Agreements between Australia and the IAEA;

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12 *ibid*, p. 6.

13 *ibid*, pp. 3, 6-7. See *The Economist*, 18 October 1997, p. 16.

14 Transcript, 20 October 1997, pp. 3-4.

15 *ibid*, p. 3.

- they expand the powers of IAEA inspectors under the Act to improve access to nuclear sites, and confer new rights of access to nuclear-related sites, and
- they make it clear that ASO inspectors can act to facilitate such access.

3.24 Consistent with Australian treaty practice, the written notification needed to bring the Protocol into force can only be taken following Royal Assent to the amending legislation.

3.25 No State/Territory action is involved, and there will be no changes to Commonwealth/State/Territory roles as a consequence of implementing this treaty action.

Consultation

3.26 Advice that this Protocol was under negotiation was given to the States/Territories through the SCOT process. In August 1997, the Deputy Prime Minister wrote to Premiers/Chief Ministers informing them of the intention to sign the Protocol and its willingness to consult further. The Commonwealth Government has also consulted with the nuclear industry about the Protocol. Industry representatives, with State/Territory officials, were invited to a seminar convened by the ASO in September 1997 which explained the operation and implications of the document.[16]

3.27 A briefing on the Protocol and implementation plans was provided to the National Consultative Committee on Peace and Disarmament, a body made up of members of Parliament, academics and representatives of non-government organisations. The NIA states that, to the date of its publication, no adverse comments had been received.[17]

Withdrawal

3.28 Article 27 of the Safeguards Agreement provides it remains in force as long as Australia is a Party to the NPT. By virtue of Article 1 of the Protocol, the denunciation provisions in that Agreement apply to the Protocol. To withdraw from the Agreement and the Protocol, Australia would have to withdraw from the NPT.

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16 *ibid*, p. 6.

17 *ibid*.

3.29 Article X of the NPT provides that each Party has the right to withdraw if it decides extraordinary events, related to the Treaty, have jeopardised that country's supreme interests. To withdraw, a Party must give notice of its intentions to all other NPT Parties and to the United Nations' Security Council three months in advance. The notice must include a statement of the extraordinary events the Party regards as having jeopardised its supreme interests.

Committee view

3.30 The prospect of a regime or terrorist group with a nuclear bomb and the determination to use it is one which causes great concern to individuals, and to the international community. Previous safeguards arrangements worked well with North Korea but not with Iraq. Recent events involving the monitoring of nuclear installations in Iraq have reinforced the need for the international community to have confidence in safeguards measures. Accepting that the arrangements under this Protocol may not be adequate for every situation, they are still worth setting in place.

3.31 Australia was the first signatory to this Protocol and has been encouraging other nations to sign. These efforts are worthwhile and should continue.

3.32 **The Joint Standing Committee on Treaties notes the material it has received, and supports ratification of the Protocol Additional to the Agreement of 10 July 1974 for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 as proposed.**

Trade and Economic Cooperation Agreement with Malaysia

Rationale for the Agreement

3.33 The Agreement between the Government of Australia and the Government of Malaysia on Trade and Economic Cooperation was signed in Kuala Lumpur on 20 October 1997.[18]

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[18] *The Australian Financial Review*, 22 October 1997, p. 11.

3.34 Australia wishes to promote and expand mutually beneficial trade and economic cooperation with Malaysia. The proposed Agreement provides a mechanism for substantial deepening of the bilateral commercial relationship by providing a new framework for both sides to explore opportunities for collaboration in industry, science, technology, trade and investment. It provides that each Party will give the other Most Favoured Nation (MFN) status. It will also encourage an intensification of trade promotion efforts by both countries.[19]

Other trade agreements

3.35 We have previously reported on trade and economic cooperation agreements with Romania, Mexico, the Czech Republic and Lebanon. A similar Agreement with Kazakhstan was considered in Chapter 2 of this Report.[20]

3.36 The NIA does not mention Investment Protection or Double Taxation Agreements with Malaysia. An Agreement between the two nations for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income was signed in Canberra on 20 August 1980 and came into force on 26 June 1981.[21]

The 1958 Trade Agreement

3.37 The impetus for the new agreement came from the Malaysian Government which believed the 1958 Trade Agreement between the two countries was archaic, including Commonwealth preferences which were questionable in terms of World Trade Organisation (WTO) obligations.[22]

3.38 From that Agreement, only a 5 per cent preference on canned fruit exported to Malaysia had survived. This meant a tariff of 15 per cent for Australian exporters, instead of the 20 per cent applied to MFN countries. The Malaysians were keen to remove such old preferences and, while Australia

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19 Transcript, 20 October 1997, p. 9. See Article VI of the Agreement.

20 See *Australia's Withdrawal from UNIDO & Treaties Tabled on 11 February 1997: 7th Report*, pp. 32-34 (Mexico); *Eighth Report*, pp. 13-14 (Czech Republic); *Tenth Report*, pp. 5-8 (Lebanon). There was no specific comment on the agreement with Romania in the *First Report*.

21 *Australian Treaty List, Bilateral* (as at 31 December 1996), Department of Foreign Affairs and Trade, p. 144.

22 *ibid*, p. 9.

argued for a two-year phasing in of the new regime, this was not accepted. It was agreed that our request for a reduction in the MFN tariff on canned fruit would be examined.[23]

Obligations under the Agreement

3.39 As provided in Article III, the Parties shall grant each other MFN treatment, subject to their rights and obligations as members of the WTO. Exceptions to this treatment, and the provisions of the Agreement generally, are at Article IV and are made for preferences or advantages accorded by either Party. These include: to adjacent countries to facilitate frontier traffic; or under a free trade area, customs union or established preference system; or as a result of participation in multilateral arrangements aiming at economic integration, or arrangements made for barter trade with third countries.[24]

3.40 Because of these exceptions, privileges granted to New Zealand under CER will not have to be extended to Malaysia.

Entry into force

3.41 Under Article XIII, this Agreement will enter into force on 1 January 1998, provided both Parties have signed it and informed the other that internal formalities have been completed. The Malaysian Government agreed to the treaty action being tabled in both Houses of the Parliament prior to its signature.

3.42 Upon its entry into force, this Agreement will terminate the 1958 Trade Agreement with Malaysia (Article XV refers). Until it enters into force, the old preferences will stay in place.[25]

Costs, Future Protocols and Implementation

3.43 There are no direct financial costs to Australia through this Agreement, although there may be costs involved in running trade fairs, or arranging meetings for trade promotion activities and participation in the Ministerial Joint Trade Committee (JTC), set up under Article X.

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23 *ibid*.

24 *ibid*.

25 Transcript, 20 October 1997, p. 9.

3.44 The Agreement does not provide for future protocols or annexes, and no new legislation is required to give effect to the obligations of this Agreement. It does not involve any changes to Commonwealth/State/Territory roles.

Consultation

3.45 Information on the Agreement was provided to the States/Territories through the SCOT process. Organisations such as the Australian Dairy Corporation and representatives of the canned fruit industry were also consulted.[26]

3.46 The Agreement was 'extensively discussed' with the President of the Australia-Malaysia Business Council, Mr Paul McClintock. This organisation has about 300 members nationally, ranging from in size from BHP to a number of single-person consultancies. Council members welcomed the Agreement as providing an appropriate framework for the growing relationship between the two countries.[27]

3.47 The Council's representative made particular note of the establishment of the JTC, which provides the opportunity for representation of the Australian private sector. The updating of the 1958 Trade Agreement was also noted.[28]

Withdrawal

3.48 Article XIV provides that the Agreement will be in force initially for three years, and thereafter can be automatically extended for similar periods unless notice is given three months before expiration of the intention to terminate it.

3.49 If it is terminated, the Agreement will continue to apply to unfulfilled obligations under contracts entered into until those contracts are completed.

The Malaysian economy

3.50 The Malaysian economy doubled in size between the mid-1980s and the mid-1990s. It grew about 8 per cent in 1996 and this was forecast to continue in

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26 *ibid*, p. 10. Submissions, p. 3.

27 Transcripts: 20 October 1997, p. 10; 27 October 1997, pp. 3, 2. Submissions, p. 1.

28 Transcript, 27 October 1997, p. 2.

1997, with the 1997 budget positing 7 per cent in 1998. There are now some doubts about whether this figure can be achieved.[29]

3.51 Recent dynamic growth, a program of privatisation and infrastructure development projects provide opportunities for trade and investment. A recent report refers to the involvement of Australian multi-media companies in joint ventures with Malaysian companies in the Multimedia Super Corridor Project.[30]

3.52 The Malaysian economy trades much more than the Australian economy in relative terms: it trades over 80 per cent of its Gross Domestic Product (GDP) compared to our less than 30 per cent. It is currently the world's 19th largest trading nation, while we are 20th. Its economy depends on trade and the only ASEAN economy which is more free is Singapore. Generally speaking, Malaysia is not a market where exporters face tariff and non-tariff barriers that they do elsewhere. There are exceptions, such as the motor vehicles and their components, where there are high tariffs to protect a domestic industry.[31]

3.53 There is a strong private sector focus to Government policy making in Malaysia, so that there is widespread consultation with the private sector. For example, the Malaysian Government is looking to the private sector to develop the education sector. There are not enough state-owned universities to provide places, so about 54,000 students study abroad at any time at a cost to the economy of about $A2 billion. Private universities are expected to be developed to provide more places in Malaysia.[32]

Trade with Malaysia

3.54 Two-way trade in 1996 totalled $A3.9 billion, with a slight balance in Australia's favour: about $A2.1 billion to about $A1.8 billion. Malaysia is a substantial trading partner: Australia's 12th largest trading partner and our third largest trading partner in the Association of South East Asian Nations (ASEAN). In 1996, Australia was the 10th largest investor in Malaysia.[33]

3.55 Major imports from Malaysia include TVs, VCRs, radio and telecommunications equipment, computers and electronics.

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29 Transcript, 20 October 1997, p. 13; *Trade Outcomes and Objectives Statement*, Minister for Trade, 1997, p.101.

30 *The Australian Financial Review*, 27 October 1997, p. 33.

31 Transcript, 20 October 1997, p. 12.

32 *ibid*, p. 14.

33 Transcripts: 20 October 1997, p. 11; 27 October 1997, p. 8.

3.56 Malaysia's growth and its current privatisation and infrastructure development program provide opportunities for Australian trade and investment. Over 200 Australian companies have offices there, with investment concentrated in the textiles, non-metallic mineral products, rubber, electrical/electronic fabricated products industries. The Agreement may facilitate access for a number of Australian companies seeking to take advantage of the privatisation process in Malaysia.

3.57 DFAT believes that, despite current economic difficulties, Malaysia is a rapidly growing economy which has trade and investment significance for Australia. Given the preferential access Malaysia already has to ASEAN and the broader Asia-Pacific region, it will continue to provide significant opportunities for Australian companies.[34]

The Malaysian market for Australian goods

3.58 While about half of Australia's exports are commodities, our exports of elaborately transformed manufactures (ETMs) and services are expanding their markets in Malaysia. The services trade with Malaysia was estimated at $A1.2 billion in 1994/95, mainly in education, tourism and consultancies. Australia's direct investment in Malaysia was estimated at $A1.5 billion at the end of 1994/95.

3.59 Malaysia has been moving towards a more liberal trade and investment regime, and is committed to the Asian Free Trade Area (AFTA) target of 0-5 per cent tariffs by 2003 (excluding unprocessed agricultural products) and has been undertaking a progressive process of unilateral liberalisation of its tariff regime. Its Government has made considerable progress towards deregulation and reduction of market barriers, but some Australian exports still face impediments. These include some dairy products, rice, sugar and a wide range of processed foods, and tariffs on these items are to be reduced by 2004.[35]

3.60 The recent dramatic fall in the value of the Malaysian currency could have a serious impact on Australia's markets there. Over the last two months, the value of the ringitt has fallen more than 35 per cent against the American dollar. While a currency with a lower value would make the country more

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34 Transcript, 20 October 1997, p. 8.

35 The source of the material in this section was *Trade Outcomes and Objectives Statement*, Minister for Trade, 1997, pp. 101, 103.

competitive with other economies, there are already reports of changes to markets for Australian commodities and the likelihood of impacts elsewhere.[36]

3.61 The budget brought down on 17 October 1997 withdrew tax breaks for those Malaysians who send their children abroad to study, raised fees for passports and raised tariffs on imported building materials and equipment.[37]

3.62 Shipments of fresh fruit, vegetables, meat and seafood were 'significantly smaller' since the start of the financial year in July. Malaysia is the biggest Asian market for the South Australian citrus industry, and it has been hit hard by the devaluation without other markets being obvious. While not being a major market, exports of live cattle to Malaysia had also declined in the past two months. High levels of residential property purchases in Australia from Malaysia, based on high gearing, are expected to decline.[38]

3.63 Australia's Transfield Defence Systems was recently unsuccessful in its bid, estimated at $A2 billion, to build off-shore patrol vessels for the Royal Malaysian Navy.[39]

The Australian Dairy Corporation in Malaysia

3.64 Under the 1958 Trade Agreement, Australian exports of liquid milk into Malaysia were granted a preference, but this preference has no bearing on the industry, as the applied tariff rate on this milk imported into Malaysia is 0 per cent.[40]

3.65 Dairy products remain Australia's largest exports to Malaysia. In 1996, Australia exported nearly 50,500 tonnes of dairy products which was about one-third of Malaysia's known imports of those products. In 1996/97, Malaysia was our third largest dairy export market and our exports there were valued at $A134 million. While this was down from $A151 million in 1995/96, our total share of that market remained about the same. The change probably reflected internal stock adjustments of skim milk powder and the uneven nature of shipments of the product.[41]

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36 *The Australian Financial Review*, 27 October 1997, p. 33.

37 *The Age*, 28 October 1997, p. B2.

38 *The Advertiser*, 23 October 1997, p. 22; *The Australian*, 23 October 1997, p. 4; *The Age*, 25 October 1997, p. B2; *The Australian Financial Review*, 30 October 1997, p. 18.

39 *The Australian:* 24 October 1997, p. 15; 5 November 1997, p. 34.

40 Submissions, p. 6.

41 *ibid*, pp. 3-4.

3.66 DFAT stated that it consulted directly with the Australian Dairy Corporation in formulating an approach to the negotiations for the Agreement. Underlying the Corporation's demands was a concern that other countries should not benefit through more favourable treatment than Australia received. In return for giving up the preference, the industry sought, in order of preference:

- a guarantee that the out-of-quota tariff be set at a commercially viable rate; or
- an expansion of the quota; or
- a country-specific share of about 80 per cent of the current quota.[42]

3.67 In the negotiations, Australia achieved an informal but clear undertaking in writing that tariffs on liquid milk would not be increased. There has been no indication that Malaysia intends to apply higher tariffs to out-of-quota exports, and milk products were not affected by tariff increases in the recent budget. The outcome did not include either an expansion of the quota or a specific share. A country-specific share of the current quota would have been counter-productive, as Australia already has the largest market share.[43]

3.68 The only Malaysian trade agreement which had contained preferences was with New Zealand, and the agreement signed recently between the two nations does not contain them. Thus, Australian industry competes equally with all countries in the Malaysian market and still has the largest share of the liquid milk market there.[44]

3.69 The Corporation believed that if the industry was to lose its preferences on butter, milk and concentrated milk products, something should be given in return. While these margins of preference were in fact lost, they were becoming less valuable as Malaysia phases its import tariffs down.[45]

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42 *ibid*, p. 6.

43 *ibid*.

44 *ibid*.

45 *ibid*, p. 3.

The Australian Car Industry and Malaysian tariffs

3.70 Exports of motor vehicles and, particularly, automotive parts to Malaysia are important, but the latter are not directly affected by either the new or the old trade agreements.[46]

3.71 In the budget brought down on 17 October 1997, however, the Malaysian Government raised the maximum tariff on imported cars back to 300 per cent, only two years after reducing it to 200 per cent. This reflects its determination to protect its car industry. According to one report, this can be compared to the 22.5 per cent tariff levied on Malaysian cars entering this country, a tariff which will fall to 10 per cent by 2005. At the JTC meeting on 20 October 1997, it was agreed that tariffs on car components, where there are the greatest opportunities for Australian businesses, would not be increased.[47]

Committee views

3.72 There is no suggestion of censure or blame for any of the actions of the Malaysian Government in any of the material set out above. It is a modern, sovereign nation which takes responsibility for its own actions. It has as much, or as little, responsibility for recent developments in its region as any other nation there. In particular, it is clearly understood in this country that the off-shore patrol boat decision was based on commercial considerations.

3.73 Putting its present difficulties aside, Malaysia's economy has a solid record of growth behind it. This record includes extensive deregulation, privatisation and infrastructure development projects.

3.74 With the replacement of the 1958 Trade Agreement, and the establishment of the JTC, the opportunity exists to broaden and deepen the economic relationship with Malaysia. The need for other agreements to foster this relationship further should be examined. In particular, the 1980 Double Taxation Agreement should be assessed to establish its continuing relevance, and also to clarify whether an Investment Protection Agreement would serve a useful purpose.

3.75 The NIA did not include any reference to the consultations with interested bodies during the negotiation of this Agreement. The consultation

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46 *ibid*, p. 1.

47 *The Age*, 28 October 1997, p. B2; Submissions, p. 1.

process seems, in fact, to have been quite thorough. The NIA was therefore deficient in that it only referred to advice on the Agreement being given to the States/Territories through the SCOT process.

3.76 The Joint Standing Committee on Treaties:

- **recommends that there be a study to establish what if any other trade or financial agreements are required with the Government of Malaysia to extend the relationship, and in particular,**
  - **whether an Investment Protection Agreement is required,**
  - **whether the 1980 Double Taxation Agreement should be revised or replaced, and**
- **notes the material it has received, and supports ratification of the Trade and Economic Cooperation Agreement with Malaysia as proposed.**

Asian-Pacific Postal Union: Additional Protocols

The APPU

3.77 The Asian-Pacific Postal Union (APPU) forms a single postal territory, and Australia has been a member since 1969.

3.78 The APPU Congress, the governing body made up of representatives of member-countries, meets approximately every five years to review the organisation's Acts of the Union. These provide a framework for the improvement of postal relations between members, for the consideration of problems of common interest to members and for the promotion of cooperation in postal services.[48]

3.79 The Congress last met in Singapore in September 1995, and its results were signed for Australia, pending ratification, on 12 September 1995. Ratification of the General Regulations denounces the previous Convention of 6 December 1990.[49]

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48 Transcript, 20 October 1997, p.16.

49 *ibid*.

Convention, Regulations, Protocols

3.80 At the time of the 1995 Congress, the Acts of the Union were:

- the APPU Constitution of 4 December 1985 (the 'Basic Act of the Union');
- the existing Convention of 6 December 1990, embodying the provisions concerning the international postal service between member countries;
- the General Regulations, embodying those provisions which ensure the application of the Constitution and the working of APPU. They also provide that those provisions, postal and transit rates, which concern the international postal service between members, shall be binding on all member countries;
- the APPU Detailed Regulations, which contain the rules of application needed for the implementation of the Convention, as well as those provisions of the Convention relating to the Letter Postal Service;
- the Additional Protocols annexed to the APPU Constitution and the General Regulations, and
- the Final Protocols annexed to the Convention and its Detailed Regulations, embodying the reservation to those Acts.

3.81 Amendments to the Constitution or General Regulations are the Additional Protocols to the Constitution or General Regulations respectively.

3.82 Proposals to amend the APPU Constitution must be approved by two-thirds of member countries. Member countries either ratify, accept or approve amendments to the Constitution and General Regulations as soon as possible. Other proposals which do not relate to amendment of the Constitution must be approved by a simple majority of member countries.[50]

The amendments

3.83 The 1995 Congress adopted the amendments which are the subject of the treaty action. These were proposed by Japan and rationalise the Acts of Union

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[49] *ibid.*

[50] *ibid.*

by reconstituting them. They are intended to make the APPU more business-oriented, as well as maintaining and strengthening competitive behaviour within the regional postal industry.

3.84 The following amendments were adopted at the Singapore Congress;

- the existing APPU Convention of 6 December 1990 to be move to the General Regulations;
- the APPU Detailed Regulations will become the 'International Postal Service Rules applicable between member countries';
- the Additional Protocols annexed to the Constitution and General Regulations will become the Acts of the Union, and
- the Final Protocols annexed to the General Regulations will now contain the reservations to those Regulations.

3.85 The NIA does not mention that the matters agreed in Singapore in September 1995 came into force on 1 July 1997.

Obligations

3.86 These amendments do not impose any substantive obligations on Australia.[51]

3.87 The General Regulations regulate the postal rates and transit rates for items exchanged between member countries. Article 122 of the General Regulations provides that they and the International Service Rules, determined by APPU's Executive Council, 'regulate all matters and services relative to letter post items exchanged between' member countries. Article 106 provides for the functions and responsibilities of the Executive Council which is responsible for the conclusion of agreements between the Union and the Universal Postal Service.

3.88 Failure to ratify the amendments agreed at Singapore in 1995 may send negative signals to postal administrations in the region regarding our preparedness to embrace competitive behaviour. It could also result in a reduction in the level of cooperation in postal services between Australia and other members which have ratified.[52]

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51 *ibid.*

52 *ibid.*

Costs

3.89 The proposed treaty action does not impose any additional financial contributions on Australia. We pay 'some $US1000 per year' to the APPU budget of $US100,000, based on our Universal Postal Union contribution class. This sum is paid by Australia Post.[53]

3.90 In addition, Australia Post contributes $A50,000 per year to the running of the APPU Training Centre. The Centre trains postal officials from South Asia, and some from Pacific countries.[54]

Implementation

3.91 Ratification of the proposals adopted by the Congress should take place as soon as possible, but no legislative measures are required by Australia to implement its obligations. The changes will be implemented by Australia Post's administrative action, supervised at portfolio management level.

Consultation

3.92 State/Territories were informed of this treaty action through the SCOT process. While the then Department of Communications and the Arts consulted with Australia Post before the 1995 Congress, the NIA makes no mention of any consultation with any other bodies, such as philatelic organisations or postal unions. As the Australian postal market becomes more commercial and, as there is the possibility of more deregulation of services, it was accepted that consultation with bodies outside Australia Post will become more important.[55]

Withdrawal

3.93 Article 7 of the Constitution provides that any member country may withdraw voluntarily from APPU by giving notice of the renunciation of the Act of Union to the Director, Central Office, APPU, and then by the Director to other member countries. Withdrawal takes effect one year after receipt of the notification by the Director.

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53 *ibid*, p. 17.

54 *ibid*.

55 *ibid*, pp. 17-18.

Committee views

3.94 Formal consultation with postal unions and the peak bodies/y representing Australia's philatelic organisations about these amendments would have been appropriate, and should be undertaken before the next meeting of the APPU Congress.

3.95 When the Congress next meets, we hope that the agreed amendments and the accompanying NIA will be tabled more promptly. This would aid speedy ratification of the measures.

3.96 **The Joint Standing Committee on Treaties notes the information it has been given, and supports ratification of the Additional Protocols amending the Asian-Pacific Postal Union's Constitution of 4 December 1985 and General Regulations as proposed.**

CHAPTER 4

TREATIES TABLED ON 21 OCTOBER 1997

Agreement with Ireland on Medical Treatment

The Agreement

4.1 The Agreement on Medical Treatment for Temporary Visitors between Australia and Ireland was signed on 12 September 1997. It will come into force when the Parties notify each other that their domestic requirements have been met.

4.2 This is the first such agreement to be tabled since revised treaty-making procedures were introduced in 1996.

Reasons for Proposed Treaty Action

4.3 Australia has bilateral medical agreements with New Zealand, the UK, Italy, Malta, Sweden, the Netherlands and Finland. These are countries with health systems equivalent to Australia's, providing a comparable level of health care.[1]

4.4 Consideration will be given to an agreement with a country where the number of people from one country visiting the other is approximately the same, and there is a public health care system of a similar standard to Australia's. This Agreement proposes to add Ireland to the list of those countries.[2]

The Agreement

4.5 This Agreement provides for reciprocal access to public health facilities for residents of either country travelling, or otherwise temporarily, in the other country. By providing the ability to deal with urgent medical conditions, it contributes to a safer travel environment for Australians travelling in Ireland on

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1 Transcript, 27 October 1997, p. 9.

2 *ibid*, pp. 5, 9.

business or holiday. It is not intended to deal with the situation where a person stays in a country for twelve to 18 months, in which case other arrangements would be necessary.[3]

4.6 Under the Agreement, costs associated with provision of any necessary hospital care will be offset by similar costs borne in Ireland for Australian visitors there. Similar numbers of visitors from each country, about 20,000, are involved each year.[4]

Obligations

4.7 The Agreement provides for:

- Necessary treatment as a public patient, including in-patient and out-patient care.
- Subsidised prescription drugs.
- Provides diplomats, consular officers and their families with a broader range of treatment than is available to visitors, including private medical treatment.[5]

4.8 It does not cover or apply to:

- Subsidised services for out-of-hospital care.
- Pre-arranged or elective medical care, or where there is no immediate medical necessity.
- Those entering Australia on student visas (but does apply to Australian students in Ireland).

4.9 In Australia, broad private and public health cover is available at affordable rates for overseas students through Medibank Private.[6]

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3 *ibid*, p. 7.

4 *ibid*, pp. 7-8.

5 *ibid*, p. 8.

6 *ibid*, pp. 6-7.

Costs

4.10 Based on the usage of existing reciprocal agreements with other countries with similar numbers of travellers, this Agreement will cost Australia about $A40,000 annually with Ireland bearing a comparable cost. Neither country is responsible for reimbursing costs for treatment provided, so that payments which may be required for treatment are the responsibility of the patient.[7]

Implementation

4.11 The *Health Insurance Act 1973* provides the necessary legislation for the Agreement.

4.12 State/Territory Governments have been advised of the provisions of the Agreement. Hospital admission procedures will permit Irish residents to receive necessary treatment in State/Territory public hospitals.

Consultation

4.13 The States/Territories were advised of the Agreement through the SCOT process, and their health authorities were advised of its arrangements. According to the NIA, Queensland Health and the Health Department of WA 'raised concerns' about costs which could be imposed on public hospitals. The Department of Health and Family Services 'responded' to those concerns.

4.14 Queensland Health indicated it was not altogether satisfied with this Agreement. There was also correspondence with the WA Department of Health about the initial costs of the Agreement.[8]

4.15 The Department of Health and Family Services advised that there were 'phone discussions' with the Queensland Department, but that the latter 'had not raised any further matters'.[9]

4.16 The WA Department was advised that the Agreement was cost-neutral, with the cost to each side small and offset by the treatment provided to its nationals in the other country. It has written again to Health and Family

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7 *ibid*, p. 7.

8 *ibid*, p. 6; Submission, p. 1.

9 Submission, p. 1.

Services, raising 'broader policy issues and suggesting alternative funding mechanisms for consideration'. These suggestions have been 'noted' by the Commonwealth Department.[10]

Withdrawal

4.17 The Agreement allows for termination twelve months after either party gives written notice of the intention to terminate. Medical and hospital treatment will continue to be provided to those receiving treatment prior to, or at the expiration of, the period of the notice.

Committee view

4.18 Agreements such as this, with countries which have comparable public health systems have shown that the standard of care given in public hospitals has been adequate. They will provide an opportunity for visitors of one country to the other to attend to urgent health problems without great expense. It is a reciprocal and reasonable arrangement.

4.19 It is also an Agreement which requires the cooperation of the health systems of the States and Territories. Additional information was provided on the concerns of the Queensland and WA Departments about the Agreement. The letter from the Department of Health and Family Services did little more than repeat material already received. It was also, whether consciously or not, somewhat dismissive in tone.

4.20 It is one thing for the Commonwealth to enter into these agreements with other countries, but it is on the already tightly funded health systems of the States and Territories that the impacts will fall. When other agreements of this type come forward, we will expect additional information on both the costs and the numbers of people likely to be involved.

4.21 **The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the Agreement on Medical Treatment for Temporary Visitors between Australia and Ireland as proposed.**

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10 *ibid.*

Agreement with the International Bureau of WIPO

The Agreement

4.22 Australia's existing agreement with the World Intellectual Property Organization (WIPO) expires on 31 December 1997. The proposed Agreement extends the current role of the Australian Patent Office (APO) as an International Searching Authority (ISA) and an International Preliminary Examining Authority (IPEA), under the Patent Cooperation Treaty (PCT), from 1 January 1998 to 31 December 2007.

4.23 The PTC was signed in Washington on 19 June 1970 and it entered into force generally on 24 January 1978, except for Chapter II which entered into force on 29 March 1978. Australia's instrument of accession was deposited on 31 December 1979, and it entered into force for this country on 31 March 1980.[11]

4.24 The first of these Agreements under the PCT was completed in 1980 for a period of seven years. The second Agreement was completed in 1988 for ten years and, with the proposed Agreement, WIPO seeks to bring all the offices appointed as ISAs/IPEAs together for another ten years from 1998.[12]

4.25 Our *Eighth Report* included consideration of a related matter, the Trademark Law Treaty which came into force generally on 1 August 1996.[13]

Reasons for the Agreement

4.26 This Agreement represents a continuation of the appointment of APO as an ISA and an IPEA, an arrangement which has been in place for 17 years. There is considerable international prestige associated with these appointments, and APO is the fifth largest of the nine appointed. These appointments also represent a considerable advantage to Australian industry and Australian users of the patent system. They are means of economic and efficient access to the international patent system, and continuation of the arrangement will provide ongoing certainty and convenience to users and industry.[14]

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11 *Australian Treaty List, Multilateral* (as at 31 December 1996), Department of Foreign Affairs and Trade, p. 384.

12 Transcript, 27 October 1997, p. 11.

13 *Eighth Report*, pp. 21-23.

14 Transcript, 27 October 1997, p. 11.

4.27 The purpose of the PCT is to simplify and streamline the process of filing for patent protection in a number of countries by filing a single 'international' application. An essential element in the simplified process is the appointment of ISAs to conduct the international search and examination. This avoids unnecessary repetition in each country, and gives significant cost savings to applicants.

4.28 The level of usage of PCT provisions indicates their value to applicants, and the wide reliance on this means of obtaining international protection for Australian patents.

The Agreement and APO

4.29 APO is part of the Australian Intellectual Property Organisation (AIPO) which operates on a revenue-neutral, full cost recovery basis. It issues reports on about 1400 international searches each year, and about half of the examination staff work on PCT-related applications. It is expected that this work will continue to increase. APO has entered into bilateral arrangements with countries in Asia and the Pacific to conduct patent searches for them. It also does searches for New Zealand, Singapore, Thailand and Fiji, and has been approached by other countries to do this work.

4.30 There is a variety of on-line sources of information, and APO has had reciprocal arrangements with all patent offices of note this century. It has a store of patent material which can be accessed, but the emphasis is increasingly on electronic means.[15]

4.31 APO's standing as an international Authority gives it a strong and respected voice in international forums, particularly in PCT-related maters in WIPO. This reflects in turn on Australia's standing in the international intellectual property community, and its ability to influence that community to the benefit of our holders of intellectual property rights.

4.32 Locally, the existence of APO as an international Authority has considerable benefits for industry and technology. Representing a large, conveniently available skills and knowledge base for the business and research sector, APO staff are accessible to applicants and/or their legal advisers.

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15 *ibid*, p. 12.

ISAs and IPEAs

4.33 The PCT provides for its Assembly to appoint a national patent office as an ISA/IPEA, subject to an Agreement of the kind proposed being concluded between WIPO's International Bureau and a member country's national patent office.

4.34 When any patent application is filed, the ISA conducts a search of patent literature from around the world to ascertain whether or not the invention has been described is something new. That entails access to a database of 30 to 40 million patent specifications, plus material in technical journals, as a compulsory part of the PCT process. This automatic process gives applicants the opportunity to decide whether or not to commit themselves to the cost of proceeding with the applying for a patent.[16]

4.35 The IPEA process is an optional part of the PCT, but more applicants are using it because it looks at whether the definition of an invention is adequate and distinguishes it adequately from others like it.[17]

4.36 The schedule of the costs of searches is set out in Annex C of the Agreement. The overall cost of filing an international application depends on how many countries in which it is to apply, but the initial cost is between $A3000 and $A4000.[18]

4.37 One of the advantages of PCT is the use of an application in English in any country. Outside that process, an application in a number of countries increases costs because of translation fees, without any certainty of the granting of a patent. The international search process conducted by APO gives an applicant a reasonable idea of that likelihood, with a significant cost saving.[19]

Obligations

4.38 APO carries out international search and international preliminary examination in accordance with the PCT, its Regulations, the Administrative Instructions and the Agreement itself. All patent applications under the PCT are subject to a mandatory international search, covering an extensive range of

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16 *ibid*, pp. 11-12.

17 *ibid*, p. 12.

18 *ibid*.

19 *ibid*, pp. 12-13.

technical literature. The result allows evaluation of the originality of the invention. The preliminary examination provides an opinion about the originality and industrial applicability of the invention.

4.39 In carrying out its activities, APO applies and observes all the common rules of international search and international preliminary examinations. In particular, it is guided by PCT Search Guidelines and PCT Preliminary Examination Guidelines.

Costs

4.40 Under this Agreement, no additional costs are payable above Australia's current $A750,000 annual contribution to WIPO.

Future Protocols

4.41 While there are no provisions for future instruments, under Article 10, Parties are required to begin renewal negotiations at a date not later than January 2007.

Implementation

4.42 No Commonwealth, State or Territory action is required to implement this Agreement, nor will it affect existing roles. It reflects previous Agreements already implemented by the *Patents Act 1990* and its associated regulations. These empower APO to perform ISA/IPEA functions.

Consultation

4.43 The NIA states that AIPO, of which APO is a part, 'consults regularly' with a variety of industry and professional organisations. This includes meetings which include opportunities for providing feedback on the PCT and APO's role as an ISA/IPEA.

4.44 Notification of the proposed treaty action was provided to States/Territories through the SCOT process.

Withdrawal

4.45 The Agreement shall be terminated if Australia gives the Director-General of WIPO written notice, or vice versa. Termination takes effect one year after receipt of the notice by the other party, unless a different period is agreed.

Committee view

4.46 The benefit to Australia, and its inventors, from membership of WIPO is obvious and very great. APO's work as an ISA/IPEA gains credit for this country in the area of intellectual property rights and must continue.

4.47 **The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the Agreement with the International Bureau of the World Intellectual Property Organization relating to the functioning of the Australian Patent Office under the Patent Cooperation Treaty as proposed.**

Agreement with Germany on the 'PRARE' Project

The Agreement

4.48 The Agreement with Germany on the Establishment and Operation of a Mobile Ground Station for the PRARE Project will enter into force when each country notifies the other in writing that requirements for entry have been met.

PRARE

4.49 PRARE (Precise Range and Range Rate Equipment) is a German-developed, fully automated, satellite-based navigation system. It is designed to determine a satellite's precise position and the absolute position of ground stations for the German Space Agency through a master station in that country.

Australian personnel will operate and maintain the station, working with German contractors who will educate and train our scientists and technicians in its use.[20]

4.50 The system comprises a master ground station in Germany and a global network of about 20 subsidiary stations, one of which will be in Australia. It will provide important coverage in the South Pacific and will be at a site precisely positioned in Hobart, or Townsville, or in the Canberra region. An Australian site in the network will result in better information from earth observation satellites for international scientific programs, particularly in the Asia-Pacific region.[21]

4.51 The location of the Australian facility is yet to be determined, but the station is expected to be operational by the end of 1998. Once a site is selected, installation would be prompt following the arrival of a technician bringing equipment from Germany.[22]

4.52 The satellites, the Meteor 3 meteorological series, PRARE serves can also deliver significant social and economic benefits to Australia. The system will be used to understand better earth processes related to environmental change and the impact of weather patterns within Australia, such as El Nino. It could also be used to monitor activities in waters south of Tasmania.[23]

4.53 Participation in the Project will facilitate access to PRARE data, enhancing Australia's contribution to international geodetic research and the science of orbit determination for earth observation satellites. It will also significantly advance Australia's scientific knowledge and application in space geodesy. PRARE's instruments will help improve the in-flight performance and the quality of data obtained from the satellites.[24]

4.54 The Department of Defence was consulted and accepted the degree of exposure involved in this facility. It is seen as a 'fairly low key activity'. The satellite which operates the system must have a PRARE on-board system so that it will work, and Australia can determine this. If there are any doubts about its operation, the PRARE beacon in this country can be switched off.[25]

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20 Transcript, 27 October 1997, p. 14.

21 *ibid*.

22 *ibid*, pp. 14, 18, 15.

23 *ibid*, pp. 14, 17.

24 *ibid*, p. 14.

25 *ibid*, pp. 17-18.

4.55 The Australian Surveying and Land Information Group (AUSLIG), the national mapping and land information agency, will manage the project for the Department of Industry, Science and Tourism (DIST). The AUSLIG management team will operate on a cost recovery basis, with the German Government bearing all direct and other associated costs. These include establishment, transport and licensing of transmissions through the Australian Communications Authority.[26]

Site location

4.56 The ground station needs to be placed on a primary, very accurately known point. Australia's 'very strong points' are at Hobart, Townsville and Canberra. Coupled with their requirement to get as much coverage in the South Pacific as possible, this makes Hobart the Germans' preferred site. However, the University of Tasmania which occupies the Mount Pleasant site has some reservations about this system being located close to its radio-astronomy facility. The Germans and the University are negotiating and, if the matter cannot be resolved, the ground station would be placed at the Australian National University's Mount Stromlo Observatory in the Canberra region. The primary geodetic system there is optical, not electrical.[27]

Obligations

4.57 The Agreement is for five years from entry into force, and most of the obligations are borne by Germany for its use of the ground station. That country must:

- ensure Australia's full knowledge and concurrence about the Project;
- incorporate procedures for the operation of the ground station;
- provide data;
- publish results of relevant studies, and
- indemnify Australia against third party claims not caused by Australians.

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26 *ibid*, p. 14.

27 *ibid*, p. 15.

4.58 Australia's obligations include:

- doing what is reasonable to facilitate the establishment, use and transport of the ground station;
- facilitating admission of all PRARE equipment and related property into Australia;
- not levying duties or taxes on scientific property certified as imported for the project; facilitation of admission to/exit from Australia of non-resident personnel,
- on receipt of prior notice, permitting Germany to dismantle the ground station if necessary.

Indemnification

4.59 The treaty provides that all the activities of the facility will be operated with the full knowledge and concurrence of the Australian Government. It ensures that this country has unimpeded access to PRARE data, and it indemnifies the Australian Government against a range of third party actions.[28]

4.60 The negotiation of this Agreement followed an earlier treaty with Germany, the German Express, which involved landing a satellite in South Australia. There was considerable negotiation of the liability provisions for that treaty, and some of its wording has flowed into the PRARE treaty to get the best possible result.[29]

Costs

4.61 While we will make a significant contribution in terms of personnel, budgetary participation will be minimal. There are no direct financial costs to Australia, no contributions to international organisations or establishment of new domestic organisations.[30]

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28 *ibid.*

29 *ibid*, p. 17.

30 *ibid*, p. 14.

Future Protocols, Implementation

4.62 No other legally binding instruments will be required, but agency-to-agency working arrangements will be made. No State/Territory actions are involved. No legislation is required to implement the Agreement, but the Commonwealth will facilitate a range of matters. Operation of the ground site will require the issue of transmission licenses.

Consultation

4.63 States/Territories have been informed of the proposed Agreement through the SCOT process.

4.64 While consultation on the location of the ground station is continuing, proposed sites in Townsville and Canberra are at Commonwealth facilities.[31]

Withdrawal

4.65 The Agreement expressly provides for Australia to suspend the operation of the ground station if it considers it is not employed in a manner consistent with the terms of the Agreement. Either party may terminate it by giving six months' notice to the other party through appropriate diplomatic channels.

Committee view

4.66 There appear to be considerable benefits at minimal cost to Australia through the PRARE project. This country is probably in a fortunate position to have so much, in the way of location, to offer which will lead to such potentially large rewards. The Agreement has been negotiated in such a way that Australia is indemnified and retains a control over the system's operation.

4.67 **The Joint Standing Committee on Treaties notes the information it has received and supports ratification of the Agreement with Germany on the Establishment and Operation of a Mobile Ground Station in Australia for the PRARE Project as proposed.**

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[31] See paragraphs 4.50 - 4.51 and 4.56 above.

Agreement with Japan for the Geostationary Meteorological Satellite-5 System

The Agreement

4.68 The proposed Agreement, constituted by the Exchange of Notes, will enter into force when Australia notifies Japan through diplomatic channels that all processes necessary to give it effect have been completed.

4.69 This Agreement concerns cooperation with Japan on the Geostationary Meteorological Satellite-5 (GMS) System, the satellite for which was launched in March 1995.

4.70 It essentially an updating of an arrangement with Japan which has existed since 1977, governing the operation of the GMS satellite. This is a remote sensing satellite which produces pictures of the world every hour. These enable meteorological services to keep track of weather systems over Australia for such things as tropical cyclone warnings and flood forecasting.[32]

Geostationary Meteorological Satellite Systems

4.71 Australia does not operate its own meteorological satellites, relying on free access to data from other countries' meteorological satellites to support its weather forecasting and warning services. The GMS program is 'overwhelmingly of benefit' to Australia, as it costs the Japanese Government over $US100 million per year to maintain the satellite in the sky.[33]

4.72 There have been four previous agreements with Japan which have enabled Australia to maintain special access to data from the GMS, in return for provision and maintenance of a Turn Around Ranging Station. This forms part of the facility required for monitoring and navigating these satellites.

4.73 The station which helps to keep the satellite in the sky is at Crib point, near Westernport, Victoria. For the first satellite in the series, it was at Orroral Valley in the ACT, but it was moved to Crib Point 'ten to 15 years ago'.[34]

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32 Transcript, 27 October 1997, p. 19.

33 *ibid*.

34 *ibid*.

Benefits of the Agreement

4.74 The Station is able to provide political and technical stability for Japan's navigation facilities, and Australia will incur ongoing operational and maintenance costs of about $20,000 per year. In addition to free access to all the data, this country is able to present itself as contributing in a cooperative way to an international system from which we and all other countries benefit.[35]

4.75 The NIA states that the Agreement is 'of substantial advantage' to Australia: Japan provides access to essential regional meteorological data not available from any other source. This data is critical for the provision of accurate weather forecasts and weather warnings. If we lost free access, the cost of purchasing or providing equivalent data would be in the range of $30 to $100 million per year.

4.76 The Bureau of Meteorology in the Department of the Environment will be the agency for implementing this Agreement.

Obligations

4.77 This Agreement obliges Australia to operate and maintain, at its own expense, the Turn Around Ranging Station as long as the GMS-5 System operates in a normal condition. Japan must give due consideration to Australian requests for information and data from meteorological observations.

4.78 There will also be an implementing arrangement, of less than treaty status, providing details and procedures for cooperation and access to data, and consultation on problems which may arise.

4.79 GMS-4, which is in the same terms as GMS-5, remains in operation. The earlier Agreements terminate when GMS-5 enters into force. GMS-5 provides that implementation is subject to appropriated funding and to the legal regimes of both countries.

Costs

4.80 Apart from annual operational and maintenance costs, there are no direct financial costs to Australia.[36]

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35 *ibid*.

36 See paragraph 4.74 above.

Future Protocols, Implementation

4.81 There is no provision for more legally binding instruments, but agency-to-agency working arrangements will be made. Should a successor to the GMS series be developed, or a new satellite be launched, a new agreement or international arrangement may need to be negotiated. Its nature will depend on Australia's meteorological needs at the time, other options for data, the economic environment and Japan's data dissemination policy at that time.

4.82 No legislation is required, and no State/Territory action is involved.

Consultation

4.83 Information on the proposed Agreement, and on past Agreements on the GMS series, has been passed to the States/Territories through the SCOT process. The States and Territories have benefited from past GMS Agreements through weather forecasting and warning services which have used data from these systems.

Withdrawal

4.84 There are no provisions dealing with denunciation in the proposed Agreement, but Article 54 of the Vienna Convention on the Law of Treaties may apply.

4.85 Australia's obligation to operate and maintain the Turn Around Ranging Station continues as long as the GMS operates.

Committee view

4.86 The GMS-5 Agreement continues an arrangement with Japan which has been in place since 1977. It presents Australia with the opportunity to gain a great deal of useful information, in a crucial area, for a very small outlay.

4.87 **The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the Exchange of Notes constituting an Agreement with Japan concerning Cooperation on the Project for the Geostationary Meteorological Satellite-5 System as proposed.**

Agreement with the Netherlands on Gainful Employment of Dependants of Diplomatic and Consular Personnel

The Agreement

4.88 This Agreement with the Kingdom of the Netherlands on Gainful Employment of Dependants of Diplomatic and Consular Personnel will enter into force when the Parties notify each other they have completed all domestic procedures necessary to give it effect. It was signed on 24 September 1997.

Purpose of the Agreement

4.89 Bilateral employment arrangements are usually in the form of memorandums of understanding (MOUs) which are of less than treaty status. The Netherlands has expressed a 'strong preference' for a treaty and this document closely follows the model Australian text for MOUs.

4.90 These arrangements encourage DFAT's diplomatic and consular officers overseas to balance work and family responsibilities. They recognise that overseas postings are a significant dis-incentive for applications for postings where spouses or dependants are not allowed to engage in paid work. If this is the case, family income drops and there is no compensation through the system of allowances. If officers are accompanied to such posts, career paths and aspirations in Australia can be affected and potential superannuation benefits can be forfeited.[37]

4.91 DFAT therefore finds it difficult to fill postings to some countries, especially where families decide not to accompany officers on posting. This contributes to an unbalanced profile of Australian representation in some posts, as fewer families are present, and as a result of separation there are sometimes more personal consequences as relationships and families break up.[38]

4.92 Australia has one other such Agreement (with Chile) and 14 MOUs about employment of dependants and negotiations are under way with another 21 countries. DFAT aims to conclude as many of these arrangements as possible. Negotiations are under way with another 24 countries for agreements of this type, with only one of treaty status under consideration.[39]

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37 Transcript, 27 October 1997, pp. 20-21. The broad term 'dependants' will be used for convenience hereafter.

38 *ibid*, p. 21.

39 ibid, pp. 20, 22.

Previous consideration

4.93 The Agreement with Chile was considered in our *Eighth Report*. While supporting the document, we observed that:

> We have signalled two matters with such agreements. First, it would be a concern if the privileges afforded by employment agreements were used by the dependants of diplomatic and consular personnel to secure favourable treatment and alter their status in order to reside in Australia beyond the term of the posting. Second, the question of immunity needs to be carefully monitored to ensure that the privilege is waived when appropriate.
>
> Nevertheless, agreements such as these and the opportunity for spouses and dependants to be employed in Australian missions abroad are important if the Commonwealth is to have access to as wide a field of candidates as possible to serve in positions overseas and if officers are to have full opportunities to pursue their careers. We therefore, endorse the negotiation of further agreements to allow employment opportunities to spouses and dependants of Australian Government personnel.[40]

Obligations

4.94 Dependants of Australian diplomatic and consular personnel are allowed to engage in paid work when posted to a country with which an agreement has been concluded. These arrangements are reciprocal and only last for the period of a particular posting.[41]

4.95 Such dependants are obliged to waive the immunity, enjoyed under the *Vienna Convention on Diplomatic Relations 1961*, from civil prosecution in employment-related activities. This includes a waiver of immunity from execution of civil judgements.

4.96 Waiver of immunity from criminal jurisdiction for employment-related activities is also required, except where the sending state considers such a waiver would be contrary to its interests. Sending states are also encouraged, although not required, to waive immunity from the execution of criminal sentences.

4.97 Dependants are also subject to local taxation and social security laws.

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40 *Eighth Report*, p. 6.

41 Transcript 27 October 1997, p. 20.

Costs

4.98 While there will be no direct costs to implement this Agreement, it will apply to dependants of a small number of officials in each country. There are currently six Australian diplomatic and consular personnel posted to the Netherlands, and that country has eight such personnel in this country.[42]

Future Protocols, Implementation

4.99 The Agreement does not include provision for negotiating future protocols. No new legislation is required to give effect to this Agreement in Australia.

Consultation

4.100 Organisations with a particular interest in this matter, the Foreign Service Families Association and the Foreign Affairs and Trade Association, were consulted about this agreement. It was said to be 'very popular' with Departmental officers. The President of the Foreign Service Families Association welcomed the Agreement, stating it would continue to encourage the conclusion of such arrangements.[43]

4.101 The State/Territory Governments were advised of this proposed treaty action through the SCOT process.

Withdrawal

4.102 Either Party may terminate this Agreement by giving six months' notice in writing to the other Party.

Committee view

4.103 Arrangements of this type, whether treaties or MOUs, will assist Australia in having the very best diplomatic and consular representation overseas. They also assist families to fulfil this important role with reduced stress and difficulty.

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42 *ibid*, pp. 21-22.

43 *ibid*, p. 21; Submission, p. 1.

4.104 **The Joint Standing Committee on Treaties notes the information it has received, and supports ratification of the Agreement with the Kingdom of the Netherlands on Gainful Employment of Diplomatic and Consular Personnel as proposed.**

Films Co-Production Agreement with Israel

The Agreement and its purpose

4.105 The Agreement will enter into force after an exchange of notes between the Parties, stating that the procedures to give it effect have been satisfied. It was signed on 25 June 1997.

4.106 The purpose of the Agreement is to foster cultural and technical cooperation and exchange by facilitating international film co-productions with Israel. It can be seen as an opportunity to allow film producers of both countries to create films where none might otherwise exist. This is done by allowing any eligible production to be considered a national production of each country, and therefore eligible for the benefits each country awards national productions.[44]

4.107 A primary aim of this Agreement is the employment of both Parties' nationals in a range of positions in co-productions. It is hoped that as a facilitator, not as an initiator, that the Agreement will open new markets for Australian films and enable a creative and technical interchange between personnel. It has the potential to increase the output of high quality productions from both countries through sharing equity investment.[45]

4.108 Australia has a number of these agreements and, since they began, the total budgeted cost of co-productions has been $A250.162 million. Of this, the Australian financial investment has been $A109. 288 million, or 44 per cent. Total foreign investment has been $A140.874 million or 56 per cent.[46]

4.109 The NIA sets out the financial benefits for co-productions: eligibility to apply for finance from the Australian Film Commission (AFC) and the

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44 Transcript, 27 October 1997, p. 24.

45 *ibid*.

46 *ibid*.

Australian Film Finance Corporation Ltd. Tax concessions are also available under Divisions 10 and 10B of the Australian *Income Tax Assessment Act 1936.* In Israel, an official co-production is considered as an Israeli production for official financial support. It is entitled to investment from two special funds and investors can also deduct their investment from their taxes, and any profits from such productions are only taxed at 25 per cent.

4.110 The Agreement will be administered by the AFC, as part of the Films Co-Production Program. There has been a total of 33 such co-productions under this Program.[47]

Previous consideration

4.111 We reported on the Films Co-Production Agreement with Italy in our Fourth Report.[48]

Obligations

4.112 Each country is obliged to provide producers from the other, or producers from other countries working with producers from the other Party, with all the benefits which are or may be accorded to national films.

4.113 Within their laws, each country is obliged:

- to facilitate temporary admission free of duties and taxes of cinematographic equipment for the co-production, and
- to permit the other Party's citizens or citizens of any third co-producer to enter and remain to make or exploit a co-production.

4.114 The Agreement establishes a Mixed Commission of equal numbers from each country. It will meet initially 18 months after the Agreement is in force, and thereafter within six months of a request by either party, to supervise and review its operation. It will meet when officers of the two competent authorities are available, taking advantage of visits for other purposes.[49]

4.115 The Commission is required to verify an overall balance has been achieved in:

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47 *ibid*.

48 *Treaties Tabled on 15 & 29 October 1997: Fourth Report*, pp. 6-8.

49 Transcript, 27 October 1997, p. 25.

- fund transfers;
- financial contributions, and
- the employment of creative, craft and technical personnel.

4.116 An Annex, forming part of the Agreement, specifies the conditions for approval of co-productions.

Costs

4.117 Costs of complying with the Agreement will be in attending meetings of the Mixed Commission, and these will be met by the AFC.

Future Protocols and Implementation

4.118 No provision is made for legally binding protocols, and no new legislative measures are required to implement the obligations under this Agreement.

4.119 The *Income Tax Assessment Act 1936* allows for tax concessions, and the *Migration Act 1958* and regulations for entry to and residence in Australia.

4.120 There will be no changes to existing Commonwealth/State/Territory role as a result of this Agreement.

Consultation

4.121 The AFC's Industry Panel, representatives of peak industry bodies listed in the NIA, was consulted 'at all stages' of negotiations to ensure the Agreement was in line with current industry practice, and would provide potential benefits to the Australian industry.

4.122 This Agreement has received wide publicity within the Australian Jewish community and has been very well received.[50]

4.123 The States/Territories were informed of the Agreement through the SCOT process.

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50 *ibid.*

Withdrawal

4.124 This Agreement remains in force initially for three years from its entry into force, and shall be renewed and remain in force 'by tacit acceptance' for successive three-yearly periods unless written notice to terminate is given at least six months before the end of any three year period.

Committee view

4.125 Agreements of this type can only assist the film industries of Australia and the other countries involved. In addition to the various financial benefits, but not mentioned in the documentation, professional experience and knowledge can also be gained through these agreements.

4.126 **The Joint Standing Committee on Treaties notes the information it has received and supports ratification of the Films Co-Production Agreement with Israel as proposed.**

Agreement on the Network of Aquaculture Centres in Asia and the Pacific

The Agreement

4.127 It is proposed that Australia accede to the Agreement on the Network of Aquaculture Centres in Asia and the Pacific (NACA) by the end of 1997.

4.128 The question of Australian membership of NACA has been discussed in different forums since 1987. When it was formed, Australia did not become a member because aquaculture was at an early stage of development. The second wave of aquaculture was beginning and the cost of membership was significant.[51]

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[51] *ibid*, p. 26.

Obligations under the Agreement

4.129 Under the terms of the Agreement, Australia would be bound by measures adopted by NACA's Governing Council, on which each member is represented. The more important decisions, including the program or work and the budget, require a two-thirds majority of members. Other decisions require a majority of votes cast.[52]

4.130 As a member, Australia would be required to collaborate in determining the technical activities of NACA and provide the reasonable information it requests. It would be required to undertake agreed assignments, and would accord to other members facilities for the functioning of NACA. It would also be required to accord to NACA, Parties' representatives and its staff the same privileges and immunities accorded to United Nations' Specialised Agencies. In general, it would be required to collaborate in the fulfilment of NACA's objectives and functions.

Costs

4.131 Annual membership of NACA has been assessed at $A77,000, based on a formula based on Gross Domestic Product and the contribution of fisheries makes to it.

4.132 Funds for four years of membership beginning in 1997/98 were made available to the Department of Primary industries and Energy (DPIE) in the 1997 Budget, in the context of the Government Response to *Australian Quarantine: A Shared Responsibility* (the Nairn Review) and the *Report of the National Task Force on Imported Fish and Fish Products.* At the end of the four year period, the benefits of membership will be evaluated prior to the making of a commitment to long term membership.[53]

4.133 NACA projects undertaken in this country are anticipated to be funded by NACA and existing structures will be used, especially research and development institutions. The cost of new projects is estimated to be minimal.

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52 *ibid*, pp. 29, 31.

53 *ibid*, pp. 28, 35.

Future Protocols, Implementation

4.134 The Agreement does not provide for Protocols. No legislation will be required if Australia becomes a member of NACA, but regulations will be needed to grant privileges and immunities and it is planned they will be in place at the time of accession.

Consultation

4.135 Consultations have been undertaken with the State/Territory fisheries agencies which comprise the Standing Committee of Fisheries and Aquaculture (SCFA). This is a forum for consultation and the development of policies consistent with integrated action on aspects of fisheries and aquaculture.

4.136 There has also been consultation with and involvement of the Australian Centre for International Agricultural Research (ACIAR) in the negotiating process. This body has undertaken a number of projects with NACA and conducted joint workshops. ACIAR supports NACA membership because of the benefits which will accrue to Australia.[54]

4.137 The Commonwealth Scientific and Industrial Research Organisation (CSIRO) is a member of the Aquaculture Committee, a sub-committee of SCFA. CSIRO has supported Australian membership of NACA for some time.[55]

4.138 The Australian Seafood Industry Council (ASIC), the Australian Aquaculture Forum (AAF) and the Pearl Producers' Association and a number of other peak industry bodies representing fisheries and aquaculture were consulted about this Agreement. ASIC deferred to AAF in this matter and, while that body had some concerns, they have been answered.[56]

4.139 Letters supporting membership of NACA were forwarded by DPIE from a number of organisations.[57]

4.140 The State/Territory Governments were advised of the Agreement through the SCOT process.

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54 *ibid*, pp. 31, 27-28.

55 *ibid*, p. 30.

56 *ibid*, p. 28.

57 See these letters listed in Exhibit No 7.

Withdrawal

4.141 Australia may withdraw from the Agreement at any time after three years from the date it became a Party by giving notice to the Depositary, the Director-General of the United Nations' Food and Agricultural Organization (FAO). The withdrawal would take effect twelve months after notice was received, or at any later date specified.

Aquaculture in Australia

4.142 Aquaculture is now Australia's fastest growing rural industry, and the NIA states that, in the five years to 1995/96, the gross value of production increased by 77 per cent to $465 million. It has a growth rate of 18 per cent, and provides employment growth and infrastructure in a number of Australia's rural and regional areas. It supports 5100 jobs directly and this figure is forecast to increase more than twofold by 2005. This labour-intensive industry makes significant contributions to fisheries' exports, through salmon from Tasmania, tuna from South Australia, prawns from northern New South Wales and Queensland and pearls from northern Australia.[58]

4.143 Australia has numerous advantages compared with likely competitors in this field:

- out-of-season production to northern hemisphere producers;
- clean water;
- a good reputation for high quality seafood;
- reasonably cheap land, and
- a good fish health and disease status.[59]

Benefits of membership

4.144 Benefits of membership fall into three categories:

- knowledge of Asian aquaculture and aquaculture development;

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58 Transcript, 27 October 1997, p. 27. See also Exhibit No 8.

59 *ibid*.

- disease monitoring, fish health and quarantine, and
- aspects of the fisheries trade.[60]

4.145 NACA membership will provide Australia with the opportunity to contribute to the sustainable development of aquaculture in the region, and will allow the forging of strong links with its aquaculture and fisheries policy makers.

4.146 Australia's international trade in fish and fish products is steadily increasing, particularly as our involvement in Asia-Pacific Economic Cooperation (APEC) and the World Trade Organization (WTO) grows. As this trade develops further, so does the risk of transferring diseases which could cause significant damage to aquaculture industries, wild fisheries and the environment of regional countries. Linkages which assist in improving quarantine and aquatic animal health in the Asia-Pacific region merit encouragement.[61]

4.147 It would be advantageous to Australia's industry to build on Asia's aquaculture experience by becoming a Party to the Agreement. NACA relies on the collective strength and resources of Members, and on technical cooperation in research and development. By becoming a Party, Australia will be firmly engaged in the transfer of technology, industry development, resource management and coordinated research activities in the region.[62]

4.148 Membership of NACA will provide the opportunity to contribute to the sustainable development of aquaculture in this country and throughout the Asia-Pacific region. It will allow Australia also to forge strong links with Asia-Pacific aquaculture and fisheries policy makers.

4.149 As Australia's lead agency for this Agreement, DPIE intends to involve both industry and academic institutions in linkages with NACA. Industry is particularly interested in the technology it can gain through membership.[63]

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60 *ibid*, p. 28.

61 *ibid*, p. 27.

62 *ibid*, pp. 28-29.

63 *ibid*, p. 34.

Aquaculture in Asia

4.150 Aquaculture is an established industry in Asian countries, where it is important for trade, foreign exchange and for food security. NACA is a significant Asian-based provider of aquaculture research and education, and is increasingly prominent in regional international forums on disease, quarantine and other trade-related matters.[64]

4.151 There are two major diseases in Asian aquaculture, yellow head and white spot, which have had 'a fairly devastating' effect on the prawn industry. Where there are reasonably strong environmental controls over the industry in Australia, this is not always so in Asia. Many of the problems with disease are linked into such factors as stocking densities and the quality of water and feed. There is also a problem of the movement of disease with infected larvae from one location or country to another. Finally, investors seem prepared to move their funds to avoid locations where there is disease.[65]

4.152 A number of Asian nations are not aligned with OIE, also known as the World Animal Health Organisation. It has funded a program with NACA to develop a set of regional standards which it was hoped would be internationally acceptable, a standard Australia already accepts.[66]

Women in aquaculture

4.153 One of the objectives in Article 3.2 of the NACA Agreement is to 'promote the role of women in aquaculture development'.

4.154 A number of Third World projects recognise the important if often unrecognised role women play in aquaculture in Asian countries, particularly in producing low-grade species for domestic consumption. These are one of the major protein sources for people in developing countries. Apart from their contribution to such traditional sectors as fish processing and marketing, women are also playing a key role in aquaculture, fisheries research, education and extension activities. Despite these important roles, their involvement in decision making is not strong, with most projects formulated by men for men.[67]

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64 *ibid*, pp. 28-29.

65 *ibid*, pp. 30-31. See the Article in *The Australian*, 5 November 1997, p. 6, which refers to diseases in Asian prawn farms.

66 *ibid*, p. 32.

67 *ibid*, p. 35; Submission, p. 2.

4.155 At the family level, women have a strong and controlling role in managing the household food and its budget. This role in fisheries relates to issues of household food security and, with greater involvement, there tends to be a greater degree of financial independence. Increasing women's involvement in fisheries is seen as important to assist in breaking the cycle of poverty in less developed countries.[68]

4.156 In some other countries, such as India, in some areas women are not allowed to work cattle and other livestock for religious reasons. Involvement in aquaculture has provided an important opportunity for some women in such countries.[69]

Quarantine issues

4.157 Increased trade in fisheries' products, and the prevalence of disease in aquaculture products from overseas sources, have increased awareness of the need for continued vigilance in quarantine, translocation and disease management. There are barriers to continued growth of the industry in Australia, including:

- environmental aspects;
- access to suitable sites;
- outbreaks of disease;
- quarantine issues for imported fish and fish products such as prawn food and pilchards;
- reliance on overseas fishmeals for diets and food, and
- enclosing the knowledge of the breeding cycle for key species such as the black tiger prawn.[70]

4.158 Under the terms of the Agreement, Australia would be bound by measures adopted by NACA's Governing Council. Nothing in the Agreement, however, would affect Australia's sovereign rights to set the level of its own

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68 Transcript, 27 October 1997, pp. 35-36; Submission, p. 3. See Exhibit No 6 for further information on this topic.

69 *ibid*, p. 36.

70 *ibid*, p. 27.

quarantine protection. Thus, the obligations set out in Article 7.2 of the Agreement do not require Australia to adopt particular quarantine standards.[71]

4.159 The consultation process in Australia about the development of draft quarantine standards remains to be finalised. DPIE acknowledges the importance of effective and extensive industry involvement as part of Australian engagement with NACA, if we are to realise the potential benefits for the broad range of temperate and tropical aquaculture activities already being undertaken. Discussions and consultation with the industry will continue, and the mechanisms which exist will continue to be used to disseminate information.[72]

4.160 The various consultation mechanisms are being enhanced by the Australian Quarantine and Inspection Service (AQIS) as part of the Government Response to the Nairn Review and the *Report of the National Task Force on Imported Fish and Fish Products*. A register of stakeholders is being set up, and the Internet will be used increasingly to disseminate information.[73]

4.161 NACA already has a quarantine research program under way through OIE, which has been recognised by the WTO as the key international body developing recommended guidelines and standards. The International Office of NACA has agreed to develop quarantine guidelines to implement a consistent approach to aquatic animal quarantine in the region, and looks to Australia to provide a lead in quarantine policy and management. This is consistent with the Nairn Review, which recommended that Australia take a leading role in the development of international definitions, standards, rules and procedures for quarantine.[74]

4.162 Because of its record in this area, Australia is seen as a useful conduit to make a strong link to OIE with NACA in cooperation with the FAO in developing a strategy which is seen as having two elements:

- a disease monitoring system for farms and industries in Asia, and
- development of a quarantine policy for the responsible movement of live animals.[75]

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71 *ibid*, pp. 30, 32-33.

72 Submission, pp. 1-2.

73 Transcript, 27 October 1997, pp. 33-34; Submission, p. 2; see Exhibits Nos 1, 2 and 3. See paragraph 4.132 above.

74 See Exhibit No 1; Transcript, 27 October 1997, pp. 31, 30.

75 Transcript, 27 October 1997, pp. 31, 34.

4.163 Development of a fish disease reporting system has been recommended by NACA and other bodies as a means of dealing with some problems of disease. A regional strategy for the responsible introduction of aquatic animals would assist in development of the other strategy, and this project has set up a regional working group on which Australia is a member.[76]

Committee views

4.164 This is the first Agreement of this type to come before us, and it has been an interesting subject which touched on a surprisingly wide range of subjects.

4.165 The most significant issue which arose during our consideration of this Agreement was quarantine and Australia's right to set its own standards while remaining a member of NACA. The quarantine issue is being taken very seriously in Australia: it has been addressed in two important reports and the Government Response to them. This is a vital matter to the long-term future of our aquaculture industry and we are confident it will continue to receive the attention it needs from all those involved, and especially from DPIE.[77]

4.166 A great deal of work, especially in consulting with the various parts of the aquaculture industry, clearly went into the NIA for this proposed Agreement with NACA. It is also one of the most detailed and useful documents of its type to come before us. We commend it to other Departments and agencies as a valuable example of how to approach the process of Parliamentary scrutiny of treaties.

4.167 Women in development projects has been an important part of Australia's development assistance programs for some time. The emphasis on encouraging women in less developed countries in the Asia-Pacific region to break out of the cycle of poverty through aquaculture is commendable.

4.168 We hope that NACA continues to bear this focus in mind and avoids concentrating solely on projects formulated by and for men. Australian representatives on the Governing Council should do their best to ensure this does not happen.

4.169 Funding has been provided on the basis that, after four years, Australian membership will be evaluated before a decision is made about permanent

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[76] *ibid*, pp. 33, 34. See Exhibit No 4.

[77] See paragraphs 4.132 and 4.160 above for these reports.

membership. This is not a particularly long commitment, particularly for an industry which is growing so quickly, and we hope that there is wide consultation of its different parts during that evaluation.

4.170 We believe that membership of NACA will bring great benefits to Australia in the Asia-Pacific region, and to its aquaculture industry.

4.171 **The Joint Standing Committee on Treaties notes all the material it has received, and supports ratification of the Agreement on the Network of Aquaculture Centres in Asia and the Pacific as proposed**.

W L Taylor MP
Chairman

APPENDIX 1

WITNESSES AT PUBLIC HEARINGS

Agreement on Economic and Commercial Cooperation with Kazakhstan

Monday, 1 September 1997, Canberra

Department of Foreign Affairs and Trade

Mr A Barnes, Desk Officer, Russia, CIS and South-Eastern Europe Section

Tuesday, 30 September 1997, Canberra

Department of Foreign Affairs and Trade

Mr A Barnes, Desk Officer, Russia, CIS and South-Eastern Europe Section

Mr I Biggs, Executive Director, Treaties Secretariat

Mr G Lemmon, Manager, Europe Office, Austrade

Mr G Rose, Executive Officer, International Economic Law and Antarctic Unit

Mr M Scully, Legal Officer, International Economic Law and Antarctic Unit

Mr I Wille, Director, Russia, CIS and South-Eastern Europe Section

Attorney-General's Department

Mr M Lennard, Acting Assistant Commissioner, Office of International Law

Ms F Musolino, Acting Senior Government Lawyer, Office of International Law

Telstra Corporation Ltd

Mr A Hamit, General Manager, Finance, Business and International

Mr K Wijeyewardene, International Counsel, Asia South and China

Monday, 20 October 1997, Canberra

Protocol to the Treaty on the Non-Proliferation of Nuclear Weapons and Trade and Economic Cooperation Agreement with Malaysia

Department of Foreign Affairs and Trade

Mr J Bardsley, Deputy Director of Safeguards, Australian Safeguards Office

Mr I Biggs, Executive Director, Treaties Secretariat

Mr J Dauth, First Assistant Secretary, South and South-East Asia Division

Mr P Green, Director, Philippines/Malaysia/Singapore/Brunei Section

Mr L Luck, Assistant Secretary, Nuclear Policy Branch

Mr D McGrath, Director, Nuclear Safeguards Section

Mr S Riley, South-East Asia Office, Austrade

Ms M Tsirbas, Executive Officer, Treaties Secretariat

Ms M Turley, Desk Officer, Philippines/Malaysia/Singapore/Brunei Section

Attorney-General's Department

Mr W Campbell, First Assistant Secretary, Office of International Law

Mr M Lennard, Senior Government Lawyer

Asian-Pacific Postal Union: Additional Protocols

Department of Communications, the Information Economy and the Arts

Mr P Emery, Legal Officer

Mr J Neil, Assistant Secretary, Enterprise and Radio Communications Policy

Monday, 27 October 1997, Canberra

Department of Foreign Affairs and Trade

Mr B Bennet, Executive Officer, Middle East and Africa Section

Mr I Biggs, Executive Director, Treaties Secretariat

Mr B Goodwin, Director, Protocol Services and Protection Section

Mr B Smith, Research Program Coordinator, Fisheries Program, Australian Centre for International Agricultural Research

Ms S Storey, Legal Officer, Administrative and Domestic Law Group

Mr A Todd, Director, Western Europe and European Institutions Section

Ms M Tsirbas, Executive Officer, Treaties Secretariat

Attorney-General's Department

Mr W Campbell, First Assistant Secretary, Office of International Law

Trade and Economic Cooperation Agreement with Malaysia

Australia-Malaysia Business Council

Mr P Gallagher, Executive Director

Agreement on Medical Treatment for Temporary Visitors between Australia and Ireland

Department of Health and Family Services

Mr M Burness, Director, Medicare Eligibility

Mr C Rayner, Assistant Director, Medicare Eligibility

Agreement with the International Bureau of the World Intellectual Property Organisation

Australian Industrial Property Organisation

Ms S Farquhar, Director, External Relations Section

Mr D Herald, Acting Commissioner of Patents

Agreement with Germany on the PRARE Project

Department of Industry, Science and Tourism

Mr E Grohvaz, Manager, Space Policy Unit

Ms P Kelly, General Manager, Pharmaceutical Government Purchasing and Environment Industries Branch

Mr J Manning, Manager, Geodesy, Australian Surveying and Land Information Group

Agreement with Japan for the Geostationary Meteorological Satellite-5 System

Bureau of Meteorology

Dr J Zillman, Director of Meteorology

Films Co-Production Agreement with Israel

Department of Communications, the Information Economy and the Arts

Mr M Coley, Director, Film Development Section

Ms M Morris, Acting Assistant Secretary, Film Branch

Mr T Read, Director, Film Development, Australian Film Commission

Agreement on the Network of Aquaculture Centres in Asia and the Pacific

Department of Primary Industries and Energy

Dr P Beers, Acting Senior Principal Veterinary Officer, Australian Quarantine and Inspection Service

Ms M Harwood, Assistant Secretary, Fisheries and Aquaculture Branch

Mr G Hurry, Director, Aquaculture Section, Fisheries and Aquaculture Branch

Mr S Jarzynski, Assistant Director, Aquaculture Section, Fisheries and Aquaculture Branch

Dr P Thornber, Special Veterinary Assistant, Office of Chief Veterinary Officer

APPENDIX 2

LIST OF SUBMISSIONS

Agreement on Economic and Commercial Cooperation with Kazakhstan

1. WMC Kazakhstan

Trade and Economic Cooperation Agreement with Malaysia

1. Department of Foreign Affairs and Trade
2. Australian Dairy Corporation
3. Department of Foreign Affairs and Trade

Agreement with Ireland on Medical Treatment

1. Department of Health and Family Services

Agreement with the Netherlands on Gainful Employment of the Dependants of Diplomatic and Consular Personnel

1. Foreign Service Families Association

Agreement on the Network of Aquaculture Centres in Asia and the Pacific

1. Department of Primary Industries and Energy

APPENDIX 3

LIST OF EXHIBITS

Agreement on the Network of Aquaculture Centres in Asia and the Pacific

1. *Australian Quarantine: A Shared Responsibility*, Department of Primary Industries and Energy, 1996.

2. *Australian Quarantine: A Shared Responsibility: The Government Response*, August 1997.

3. *Report of the National Task Force on Imported Fish and Fish Products: A report into the implications arising from aquatic animal imports*, Department of Primary Industries and Energy, 1996.

4. Article titled *Strategies on Fish Health Management.*

5. Australian Aquaculture Forum (AAF) Member Organisations

6. 'Women in fisheries in Indo-China countries', by M C Nandeesha in *INFOFISH International*, 6/96, pp. 15-21.

7. Letters supporting the Agreement from:

   Australian Aquaculture Forum

   Pet Industry Joint Council of Australia Ltd

   Australian Prawn Farmers Association Inc

   Australian Barramundi Farmers Association

8. Australia Aquaculture Projected Production Levels- 1995, 200 and 2005