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JOINT STANDING COMMITTEE ON TREATIES

**Reference: Treaties tabled on 28 October 2010 and referred to the committee on
16 November 2010**

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**JOINT STANDING
COMMITTEE ON TREATIES**

Monday, 7 February 2011

Members: Mr Kelvin Thomson (Chair), Senator McGauran (Deputy Chair), Senators Birmingham, Cash, Ludlam, O'Brien, Pratt and Wortley and Ms Bird, Mr Briggs, Mr Forrest, Ms Grierson, Ms Livermore, Ms Parke, Ms Rowland and Dr Stone

Members in attendance: Senators O'Brien and Wortley, Ms Bird, Ms Grierson, Ms Parke, Ms Rowland, Dr Stone and Mr Kelvin Thomson

Terms of reference for the inquiry:

To inquire into and report on:

Treaties tabled on 28 October 2010 and referred to the committee on 16 November 2010

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Committee met at 10.20 am

BURDON, Mr Benjamin, Assistant Secretary, Major Powers Global Interests, International Policy Division, Department of Defence

KNIFE, Miss Sophie Helen, Senior Legal Officer, Defence Legal Division, Australian Defence Force Legal Services, International Government Agreements and Arrangements, Department of Defence

MASON, Mr David, Executive Director, Treaties Secretariat, International Legal Branch, Department of Foreign Affairs and Trade

RUMBALL, Mr Anthony, Director International Logistics, Joint Logistics Command, Strategic Logistics Branch, Directorate of International Logistics, Department of Defence

STAIB, Air Vice Marshal Margaret, Commander Joint Logistics, Vice Chief of the Defence Force Group, Joint Logistics Command, Department of Defence

CHAIR (Mr Kelvin Thomson)—I declare open this public hearing of the Joint Standing Committee on Treaties in its ongoing review of Australia's international treaty obligations. The committee will take evidence on three treaty actions which were tabled in parliament on 28 October 2010 and referred to the committee on 16 November 2010.

Agreement between the Government of Australia and the Government of Japan concerning Reciprocal Provision of Supplies and Services between the Australian Defence Force and the Self-Defense Forces of Japan

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the parliament. If you nominate to take any questions on notice, could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. I invite you to make any introductory remarks you wish to before we proceed to questions.

Air Vice Marshal Staib—Thank you for the opportunity to appear before you today with regard to the agreement between the government of Australia and the government of Japan concerning reciprocal provision of supplies and services between the Australian Defence Force and the Self-Defense Forces of Japan. Defence conducted the negotiation of the agreement in close cooperation with the Department of Foreign Affairs and Trade and the Attorney-General's Department. In my capacity as Commander Joint Logistics in the Australian Defence organisation I am responsible for our international logistics agreements and arrangements.

The agreement was signed in Tokyo on 19 May 2010 at the Japan-Australia foreign affairs and defence consultations by the then Minister for Defence, John Faulkner, and Japan's then Minister for Foreign Affairs, Katsuya Okada. It was tabled in parliament on 28 October 2010.

The agreement will be the principal means for facilitating the reciprocal provision of logistics supplies and services between our respective defence forces primarily during exercises and training but also during United Nations peacekeeping operations, humanitarian and disaster relief, the emergency evacuation of Australian or Japanese nationals or indeed others from third countries, and communication, coordination and routine activities such as ship and aircraft visits. Payment for any supplies and services transferred under the agreement is by either cash reimbursement or replacement in kind. In providing supplies and services under the agreement both Australia and Japan must act in accordance with their respective national laws and regulations and the supplies and services received under the agreement must be used consistently with the charter of the United Nations.

The agreement is significant as it is the only logistic support treaty that Japan has in place in addition to its current logistics agreement with the United States. In particular it will benefit Australia by formalising and enhancing the quality of and potential for defence cooperation with Japan. As the defence logistics relationship between Japan and Australia matures, it is likely that subordinate, non-treaty level implementing arrangements may be developed to address specific bilateral activities. Examples could be the exchange of fuel between defence forces or the sharing of airlift capability.

In closing I note the importance of the agreement to the ability of both Australia and Japan to work together in the field of logistics support and its role in facilitating future bilateral activities in this respect. Consequently, I seek your recommendation to parliament that the agreement be approved.

CHAIR—Has Japan been invited to participate in any exercises to date or are there plans for future engagements?

Air Vice Marshal Staib—We have had several exercises with Japan over the years. For example, there was the exercise Pacific Bond with the US and Japan. That was an inaugural, one-off, trilateral maritime security exercise in September 2009. This year we expect annual staff talks and possibly the Chief of Army counterpart visits with Japan. So over the years there have been a number of bilateral exercises.

CHAIR—Does Japan's role as a self-defence force define in any sense what it can do as a security cooperation partner under the tripartite agreement?

Air Vice Marshal Staib—I will answer that and then I will call on Ben to supplement my answer. You will see in the agreement that we talk about humanitarian assistance and peacekeeping. It is certainly confined to those sorts of operations. There are no offensive military operations included in this agreement.

Mr Burdon—The activities contemplated under this agreement are in the domain of peacekeeping, humanitarian assistance, disaster relief, training and exercises, as Air Vice Marshal has said, not offensive kinds of operations.

Senator O'BRIEN—In the absence of this agreement what, if any, exchange of materials have taken place between Australia and Japan in relation to any activities that have been engaged together or in close proximity to another?

Air Vice Marshal Staib—I can recall one instance where we were working with the Japanese in the Middle East. The supplies were construction supplies. I would have to take it on notice to give you all the instances but, in the past, it has been on a case-by-case basis that we have had to negotiate separately. The purpose of this treaty allows us to set in place the high-level terms and conditions that we work under and that we agree to.

Senator O'BRIEN—That is exactly the purpose of my question to find out why the agreement is needed and how it might facilitate those sorts of activities. Can you elaborate a little further on how that process will take place and what if any limits are intended to be placed on those exchange arrangements?

Air Vice Marshal Staib—Should this treaty be effected we intend in the first instance to work with the Japanese to write up a handbook so that we can teach our staffs how to make use of this treaty. That is very similar, if you like, to the arrangements we have in place with the United States. To that end Japan has an agreement with the United States so the processes would be familiar to them. The next step we intend to take would be to practice using this treaty in an exercise environment. We would be looking for a future exercise particularly in the maritime space where an exchange of maritime fuel would be effected using this agreement. You asked me what is specifically excluded in this agreement. The limits are laid out in the document and in a subordinate procedural arrangement provided for in article V of the agreement where it says we will not exchange military equipment, parent equipment or weapons system and certainly any munitions or explosive ordnance is specifically excluded.

Senator O'BRIEN—Thank you.

Ms PARKE—I understand that ACSA will support Japan's role in the United Nations peacekeeping mission in Timor-Leste. Can you comment on this and the broader engagement that is envisaged under the agreement?

Air Vice Marshal Staib—I will ask Mr Burdon to answer that question.

Mr Burdon—In the broad, the agreement will facilitate the supply of logistic services if we engage in peacekeeping operations together as we have done in the past, such as in Cambodia and, as you mentioned, in East Timor. If we have infrastructure, say a petrol dump, on the ground and the Japanese wish to avail themselves of it, they would do so in those circumstances. As to Japan's reengagement with the East Timor mission for the UN currently—is that what you were referring to?

Ms PARKE—The defence minister stated that.

Mr Burdon—Yes. The Japanese Self-Defence Forces have two liaison officers attached to the United Nations Mission in East Timor. My understanding is that their life support, so to speak, is provided by the UN, but I would need to check the finer detail of that. I am not sure if we have a logistics arrangement or we are providing logistic support to the ongoing deployment of those two Japanese officials within East Timor. The assistance that we provided to the Japanese in the lead-up to the deployment of those two officers was by way of language training and the provision of information about the threat environment in East Timor and general preparatory assistance before their departure to Dili.

Ms PARKE—I understand Japan has an acquisition and cross-servicing agreement with the United States. What are the similarities to and differences between it and the proposed agreement with Australia?

Air Vice Marshal Staib—In the first instance, the arrangements are very similar. I have not read the document between Japan and the United States, but certainly the ACSA we are proposing between Australia and Japan is very similar to the one that Australia has with the United States.

Ms PARKE—You do not have any specific details about that?

Air Vice Marshal Staib—Of the one between Australia and the United States?

Ms PARKE—No, the one between Japan and the United States.

Air Vice Marshal Staib—No, I would have to research that.

Ms PARKE—I would be grateful if you would take that on notice.

Air Vice Marshal Staib—Certainly.

Senator WORTLEY—I understand Australia and Japan have established cooperation arrangements for peacekeeping and disaster relief and I note that the minister had previously said that the signing of the agreement would reduce complexities which could delay the coordination of assistance. Have there been specific problems that this agreement could be expected to correct?

Mr Burdon—Thank you for the question. In the past couple of years, the instances of our cooperation in providing humanitarian assistance and disaster relief have certainly grown. If we go back to the Padang earthquake in Indonesia a couple of years back, the Japanese Self-Defence Forces provided a medical team to assist Indonesia's recovery efforts. The medical team found itself in Jakarta and, with the pressure on internal flight services, was looking for a way to get to Padang. As it happened, we had a C130 that was shuttling supplies between Jakarta and Padang and we were able to assist them in that regard. We have also worked together recently in Pakistan with the flood relief efforts there. They are two positive examples.

Regarding your specific question—whether there have been issues in the past that this agreement would assist in resolving—I think the answer would be yes. We had discussions in relation to what assistance we would be providing the relief efforts in Haiti. As you would be aware, the C17s that the ADF operates provide strategic airlift capability. Particularly in relation to Haiti being so far away, the Japanese side have a capability gap in this area, and we discussed the possibility of the Australian side being able to provide strategic airlift for the Japanese in that instance. Certainly we were willing to do so, and there was will on both sides to do so. Unfortunately we were defeated by some of the technical considerations, which the Air Vice-Marshal might want to go into—they are beyond my understanding. Things like the load capacities and how to put, say, Japanese helicopters and earthmoving equipment into our C17s teams had not been worked through to the level of detail that would have allowed that to happen in that circumstance. I guess our aim, as the Air Vice-Marshal said, is that should the treaty be

put into effect we would be working first through the handbook and then exercising that to really get into the finer detail that will allow that better mesh of capabilities in responding to natural disasters in the future. So the short answer—sorry for the length—is yes, and we will certainly be looking to remedy that in the future.

Ms GRIERSON—I am just thinking of the current events in Cairo. Were our agreements activated at all with the US, New Zealand or Japan in terms of evacuating citizens with logistics?

Mr Burdon—I have some reluctance in straying into the Department of Foreign Affairs and Trade's responsibilities. Obviously they have—

Ms GRIERSON—Would these agreements cover those sorts of opportunities to cooperate and assist each other?

Mr Burdon—Yes, I think that quite specifically—as I think the Air Vice Marshal touched on in her opening statement—one activity that the agreement does contemplate is, if the ADF were called upon to provide non-combatant evacuation operation assistance to Australian nationals overseas, there could be work together with Japan in evacuating nationals from a country. The agreement would cover that circumstance.

Ms GRIERSON—But only if the ADF were involved, are you saying? Not other logistics, like commercial airlines?

Air Vice Marshal Staib—This particular treaty does just refer to the military logistics aspects.

Ms GRIERSON—Thank you. That is what I wanted to clarify.

Mr Burdon—If it was the civilian side, that would be the DFAT responsibility, and if it did get into the military—

Ms GRIERSON—If the defence forces were involved in the evacuation, then this agreement—this treaty—could be activated?

Mr Burdon—Yes.

Air Vice Marshal Staib—For example, if we were using our C17s or C130s and there was a spare capacity, then we could assist Japan. The other instance you mentioned—

Ms GRIERSON—And vice versa?

Air Vice Marshal Staib—Yes.

Dr STONE—I am not sure if people have explored the issue of the joint exercises and training questions.

CHAIR—We had one question about joint exercises, but feel free.

Dr STONE—Obviously I can understand how joint exercises and training might be fairly readily engaged in at sea. But, in terms of land-based exercises, has there been any bilateral exercising for Japanese troops—their SDF—in Australia and vice versa? Does Australia's ADF—presumably mostly their army and air force—deploy or train in Japan or Japan's territories?

Air Vice Marshal Staib—I cannot recall any exercises between armies of either Japan or Australia. Certainly the chiefs of both armies do engage and talk. In regard to other areas where we have trained and exercised, we mentioned maritime—ships—but also the airspace. That is largely air transport but also our P3s, and the Japanese Self maritime forces operate P-3 Orion aircraft, as does the Australian Air Force. So we have cooperated in exercises over many years in that area.

Dr STONE—So with land-based activity—armies in particular—this treaty would encompass that area of cooperation, it is just that it has not happened yet?

Air Vice Marshal Staib—Yes, that is correct—and particularly where the armies would be cooperating in a humanitarian or disaster relief scenario.

Dr STONE—But it would not exclude just joint exercising as we do with Singapore, for example, and indeed Indonesia? We had joint exercises in Australia. It could be that Japan would be involved in the same on land in Australia and vice versa in theory?

Air Vice Marshal Staib—If that were to happen, this treaty would support the logistics support for that.

CHAIR—Thank you very much for attending to give evidence today. If the committee has any further questions, the secretariat may seek further comment from you at a later date.

Air Vice Marshal Staib—Certainly. Thank you very much.

Mr Burdon—Thank you very much.

[10.41 am]

McCORMICK, Mr Hamish, First Assistant Secretary, Office of Trade Negotiations, Department of Foreign Affairs and Trade

PARLETT, Ms Jane, Director, Food Trade and Quarantine, Agriculture and Food Branch, Office of Trade Negotiations, Department of Foreign Affairs and Trade

POWER, Mr John, Manager, Wine Policy, Crops, Horticulture and Wine Branch, Agricultural Productivity Division, Department of Agriculture, Fisheries and Forestry

HARVEY, Dr Grahame, Section Manager, Legal Metrology Policy, Legal Metrology Branch, National Measurement Institute, Department of Innovation, Industry, Science and Research

World Wine Trade Group Agreement on Requirements for Wine Labelling

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. I invite you to make any introductory remarks before we proceed to questions.

Mr McCormick—I will make a few opening points. The wine industry is an important contributor to the Australian economy. It employs about 28,000 people in winemaking and grape growing and 64 per cent of wine produced in Australia is exported. In January 2007, Australia signed the World Wine Trade Group Agreement on Requirements for Wine Labelling with the aim of harmonising and simplifying wine-labelling requirements amongst members. The WWTG membership includes Australia, Argentina, Canada, Chile, Georgia, New Zealand, South Africa and the United States. The wine-labelling agreement allows the placement of country of origin, product name, net contents and alcohol content details anywhere on a wine container, provided they are presented in a single field of vision and provided this information is not displayed in the base or the cap. The single field of vision will apply only to standard size containers. The Australian wine industry is highly supportive of the agreement and labelling costs represent a significant component of the production cost to exporters.

The wine-labelling agreement will provide significant benefits to Australian wine exporters by allowing the use of at least one label that can be used in both Australia and key export markets. The industry expects cost savings of around \$25 million each year, plus benefits to marketing and distribution. There are minimal costs associated with the implementation of this agreement. Prior to and following signing of the wine-labelling agreement, extensive consultation took place between the Commonwealth and the states and territories, including the Ministerial Council on Consumer Affairs, the Trade Measurement Advisory Committee, the Commonwealth-State-Territory Standing Committee on Treaties and the Council of Australian Governments. Thank you.

CHAIR—Before we go to questions, I will invite Dr Harvey to introduce himself. I am sorry—we started a bit ahead of time.

Dr Harvey—In addition to being the manager of Legal Metrology Policy at the National Measurement Institute, I am the first vice-president of the International Organisation of Legal Metrology.

CHAIR—I think Senator O'Brien has something he wishes to say as well.

Senator O'BRIEN—Yes, Chair. I need to place on the record the fact that my wife operates a small vineyard on our property. I declare that as an interest for the purpose of these proceedings. I am not going to be an expert in wine any time soon, however.

CHAIR—Thank you, Senator O'Brien, for that interest or advertisement—or something. In terms of questions, we have had submissions from the Queensland Consumers Association and the Consumers Association of South Australia which have expressed a couple of concerns, and I might run them past you. It has been noted that the provision of the volume information on the front of the display panel, as required formerly, is the most clear and logical way for consumers to make an informed choice and that under the new requirements the information may be provided by different winemakers on the front or back of differently sized containers. They suggest that that might be more confusing for the consumer.

Mr McCormick—I could make a few comments on that. One of the benefits of this agreement is that there are actually four bits of information that have to be in a single field of vision. Those four bits of information, including the volume and the alcohol content, basically ensure that you can see four key pieces of information at the same time whenever you hold a bottle. Consumers, when they look at bottles, tend to pick them up and turn them around. So you have to see those four key bits of information all in the same field of vision. To some extent you can also argue that there are some benefits to consumers, because this will require that you see all those four bits of information in a single field of vision, and that a bottle turns around. Also, it applies only to standard size bottles; it does not apply to any size of wine bottle or wine container. Again, I think there is a balance in here in terms of consumer interest that we would argue provides some benefits to the consumer rather than necessarily being a detriment.

CHAIR—It was also suggested that the changed arrangements could create an inconsistency with requirements for other food products which require volume display on the front, or that such an exemption could flow on to other food products. Do you have a response to that?

Mr McCormick—I might ask my colleagues from the Department of Innovation, Industry, Science and Research to say something about that, although I will just point out to begin that this is a very common exception internationally. Countries that take around 80 per cent of the exports of Australian wine already accept this particular exception for wine. That includes the EU as a whole and also the members of the World Wine Trade Group. The other countries that have signed up to this particular wine-labelling agreement are all moving in that direction. Some of them have already ratified it. So an international consensus, if you like, is already moving forward, and we would simply be partaking, essentially, in that international consensus. My colleagues from DIISR might have some further comments to make.

Dr Harvey—Yes, thank you. We have already been approached by the beer brewers to seek a similar exemption. We have told them that there is no possible way that we would allow it to be extended. Of course, it is always a possibility that more people will come forward.

CHAIR—Okay. I might go back to the question of consultation. Was there consultation with the National Measurement Institute during the agreement negotiations; and what about consultation with consumer bodies?

Mr McCormick—Yes, there was consultation. Do you want to go through the set of consultations that we had, Jane?

Ms Parlett—Certainly. Thank you, Hamish. Both during and following the negotiation of the treaty itself, leading up to today there has been consultation with various Australian government bodies, as well as state and territory and consumer bodies. On the Australian government side, the Prime Minister was informed of the process and there was consultation with the Department of Treasury; Attorney-General's; Agriculture, who are here today, including the Australian Wine and Brandy Corporation, which is now known as Wine Australia; Innovation, Industry, Science and Research, which includes the NMI; the Ministerial Council on Consumer Affairs, which has state and territory involvement, together with the Standing Committee of Officials of Consumer Affairs, including state and territory bodies; and the Commonwealth-State-Territory Standing Committee on Treaties. In addition, the premiers and chief ministers of all states and territories were consulted, together with the Trade Measurement Advisory Committee and the state and territory regulatory authorities responsible for the regulation of the trade measurement components at the time.

Consultation with the industry was largely done through the Winemakers Federation of Australia and Wine Australia, formerly the AWBC, as I said. Wine industry leaders were also briefed through Wine Australia's International Trade and Technical Advisory Committee.

With regard to consumer groups, DFAT and DAFF—the Department of Agriculture, Fisheries and Forestry—briefed the Australian Consumers Association, which is now known as Choice, on the provisions of the wine-labelling agreement. Choice did not oppose Australia signing the wine-labelling agreement, provided that effort was put into a consumer education program across Australia, which the Winemakers Federation of Australia and the AWBC agreed to put time and effort into. Consumer affairs and fair-trade matters were at the heart of considerations early in the process through extensive consultation with the Ministerial Council on Consumer Affairs.

CHAIR—Thanks. Dr Stone.

Dr Stone—Thank you. You mentioned that the labelling is about four mandatory pieces of information: country of origin, product name, net contents and actual alcohol content. Are the net contents a measurement of volume or weight minus the cork, the glass and so on? Does it have anything to do with the ingredients of the wine itself or is it just a weight measurement?

Mr McCormick—I am not an expert. Grahame Harvey could probably—

Dr Harvey—Perhaps I could comment on that. Yes, it means the net contents and it has nothing to do with the composition of the contents.

Dr STONE—The actual ingredients?

Dr Harvey—No.

Dr STONE—The volumes of sulphur, colourings, preservatives or whatever else?

Dr Harvey—No.

Dr STONE—There are countries with their own, other mandatory wine labelling requirements. For example, in the US, some states require information about the danger of consuming alcohol while pregnant; and, increasingly, in some wine-consuming economies there is a requirement to specify the actual contents. The exporter would still be required to comply with those. The four mandatory items are going to be in a single space somewhere on the bottle. Are they required to be a certain size as well?

Mr McCormick—Yes, they are.

Dr STONE—So it is size, the same vision field—

Mr McCormick—Field of vision—a single field of vision.

Dr STONE—Field of vision.

Mr McCormick—It took a long time for me to come to terms with that, I must admit.

Dr STONE—Right. So no turning the bottle; you have to be able to see it in one glance, so to speak.

Mr McCormick—Yes.

Dr STONE—And the size of the font is specified, and that sort of thing?

Mr McCormick—Yes.

Dr STONE—Is there a concern that, if we do not do this, we will be less competitive? Given that those details are always on our wine bottles anyway, can you tell us what the industry is saying about the competitive advantage of signing this treaty, versus them being able to go on doing what they currently do, which is label according to the aesthetics and other matters that they already deal with, like the other information that has to be supplied?

Mr McCormick—The background for this agreement was that there are obviously very different requirements in different countries. This agreement does not affect any other issues that are dealt with by national labelling—all those other labelling requirements in all the markets around the world. But they found that these four items were common and that we could find a

particular way of ensuring, at least for these four items, certain protections for consumers—as you have mentioned, the size and the single field of vision so that people could see them altogether. Before we had this agreement a lot of winemakers had to produce different labels for all different markets. For example, if you had wine going into one market and then there was a change in orders they would not necessarily be able to get it into another market because they would have to change all of the labelling. This agreement essentially allows a little bit of flexibility for winemakers so that they can have at least one label that is common, although in most markets they will require additional labelling as well, which cuts their costs quite significantly.

The EU, which is a major wine market for Australia, already has these provisions applying there. If we did not go ahead with this our exporters would be penalised relative to our competitors. Our competitors already enjoy or are about to be able to enjoy these provisions in overseas markets outside of Australia but Australian exporters would have to have one set of provisions that would apply for domestic sales and a different one that would apply for international markets. There has been an estimate of \$25 million of benefit to Australian wine producers as well as the benefit of being able to market and distribute more flexibly. Fundamentally, it does not affect any of the other labelling requirements that are necessary for wine around the world and in Australia.

Dr STONE—This new mandated labelling requirement does not say it must be on the front of the bottle or the back, it just says it must be anywhere on the bottle as long as you can see it in one glance.

Mr McCormick—In a single field of vision, and not on the cap or on the base—it has to be on the main areas of the bottle.

Ms PARKE—I can certainly see the common sense in a single field of vision approach with common mandatory information for consumers. I wonder why volume is not one of the pieces of information that should be supplied on that label.

Mr McCormick—It is one of those four.

Ms PARKE—So what do you understand is the concern by the consumer groups about volume not being included or potentially being able to be put in other places on the bottle?

Mr McCormick—It is only on standardised bottles. It is not clear to me and, as I said, we did consult with Choice. While they had some initial concerns, they seemed not to oppose the changes there. I am not really aware of why there is a problem. Early on there was some discussion about whether this would be allowed on any size bottle, for example. I think there were some people who thought that perhaps winemakers could do something like change the size of bottles for different markets, which is little bit misleading given that the bulk of our wines are exported. Our winemakers are not going to be producing different size bottles for different markets—it would just increase their costs, particularly for small winemakers. There was a sense that maybe if it was not on the front label, some people argued, you would not see it quickly so you could not see that it was 750 millilitres. Now it is on standardised bottles, there have to be 750-millilitre bottles, the content has to be there with those other four pieces of

information, you have to be able to see it with one turn of the bottle and the pieces of information all have to be together.

I guess the industry's view is that this is not a detriment to consumers. It provides additional information that they would not have otherwise and makes the volume contents easily accessible for consumers as well. Normally people who are trying to buy a bottle of wine will pull out a bottle, look at it, turn it around once, look back and front, and see all of this information. This actually requires that these four bits of information can all be seen in one single field of vision, essentially with one turn of the bottle. Again, we think there is a balance in there that is of benefit to consumers and producers, and produces some significant reductions in unnecessary labelling costs.

Ms PARKE—Has the Australian wine industry responded positively to this agreement?

Mr McCormick—Yes, they have been very positive about it and have been involved in the discussions. The history of this one agreement goes back a long way. In fact, I was involved in negotiating it 10 years ago, and it had been going on for a few years before then. The Winemakers Federation and the AWBC are very supportive of the changes and, as my colleague said, they have already agreed to do a consumer education campaign and they have already started providing information for people on that as well if there are any concerns that people still have.

Ms GRIERSON—I understand that this will conform now to major markets like the European market. Will there still be other markets that have separate requirements? For example, does China have any particular labelling requirements? It is a growing market for winemakers.

Mr McCormick—China is becoming quite interested in the World Wine Trade Group, and there has been a lot of dialogue at government and industry level as well with China on their interests in the wine market internationally and trying to encourage them to move in the direction that other countries are moving in as well. That is a promising thing. They do not have this requirement at the moment, but it is also affected by the fact that there is a requirement for Chinese language labels. As I said, they are not there now but there is an overriding requirement for Chinese language labels that renders this a little bit less relevant for the Chinese market.

Ms GRIERSON—Do any other major markets have separate or additional requirements?

Mr McCormick—Not major markets. As I said in my opening comments, roughly 80 per cent of our exports go to the EU and the World Wine Trade Group. All of those countries—the eight members of the WWTG and the EU—account for 80 per cent of our exports, and they all are moving or have already moved to this labelling arrangement.

Ms GRIERSON—How was the \$25 million saving arrived at?

Mr McCormick—There was initially an estimate from the industry, and then there was a study by ABARES, who had a look at this and produced some modelling and calculations of the savings. They confirmed, essentially, the \$25 million savings figure.

Ms GRIERSON—Can you assure us that that has been offset by the costs to the industry to make this transition?

Mr McCormick—The driver of this change has actually been industry, and we have not had anybody saying this is going to be an additional cost. They have all basically been telling us this is going to be an additional benefit and saving to them.

Ms GRIERSON—So you cannot tell me what the relationship is between the cost of changing your labelling and the benefits that are going to flow from this?

Mr McCormick—At the moment you have to provide separate labelling for separate markets. There is no commonality, unless it happens to coincide by some piece of luck. These changes will allow them to have at least one single label that they do not have access to now, so they will not have to produce as many labels and have as many labelling changes as they would otherwise have to have.

Ms GRIERSON—Is there a time when this kicks in? Is there a transition time for the wine producers and exporters to change over, or does it kick in instantly? What happens?

Mr Power—A key element of the agreement is that it is voluntary, and if you wish to keep your volume statement on the front of the label then you can. Australian winemakers are not obliged to make any change, and any winemaker who does not wish to take advantage of this agreement does not have to change their label. It is entirely voluntary as to whether winemakers move to the new regime or stay labelling as they have traditionally.

Ms GRIERSON—That is important. Thank you very much.

Senator O'BRIEN—I have a question which follows up on Dr Stone's questions, particularly in relation to markets like the US, where it is common for there to be an additional label on bottled Australian wine. I am taking it that that will not change as a result of this because of particular requirements of certain states in the United States for certain types of labelling?

Mr McCormick—No, that is correct; it will not change, just as the domestic labelling requirements in our domestic market will not change as a result of this agreement.

Senator O'BRIEN—Are there requirements which make necessary additional labelling on imported wines? I am not a great buyer of imported wine, so I do not know. I mean wines that are imported into Australia.

Mr Power—Yes, there are. You have to have the name and address of the importer and you have to have the standard strengths labelling. When you buy an imported bottle of wine, you usually see that there is an additional sticker.

Mr McCormick—And, of course, one of the four pieces of information is the country of origin.

Senator O'BRIEN—Yes.

Dr STONE—I will just follow on from the answer you gave a moment ago. If it is voluntary that there is wine exporters' participation in this new wine labelling with the four mandated items of information, I am wondering: why do we need an agreement then? Surely it is just a communication exercise to say to the various wine exporters in Australia: 'By the way, if you want to save yourself some trouble, there are these four mandated requirements for the EU or some other country. If you wish to save yourself some effort, you can comply.' Given this voluntary nature, why do we need an agreement?

Mr McCormick—Because, while it is voluntary for Australian producers whether or not they use this particular exception—and not all of them, of course, produce for export markets; some of them produce domestically—the only way we could get this provision was through the international agreement with the World Wine Trade Group. The World Wine Trade Group members are the United States, which, again, is a very major market for us; Canada; New Zealand; Argentina; et cetera. Our capacity to access these provisions and get the benefits of these provisions in those markets is basically dependent on us signing and ratifying this agreement.

Dr STONE—But then it is voluntary whether our exporters comply or not or choose to stick another little label somewhere or whatever.

Mr McCormick—Well, it is voluntary in the sense that, if they want to have additional costs and do it some other way, that is open to them. It is voluntary in that sense. Or they can simply stick with the individual requirements in the export markets, or they can take advantage of this new provision in those export markets, which they may not necessarily have had before without this agreement.

Mr Power—Before the agreement was signed, Australian wine producers had to put the volume statement on the front of the label, so Australian producers did not have access to the single field of vision. We have had to make one change so that our wine producers can now have access to the single field of vision. The wine producers do not have to use the single field of vision, so to that extent it is voluntary, but the benefit of the treaty is that it allows winemakers to use the same single fill division approach for their largest market, the domestic market, and for the export markets, whereas previously they had to use different labels for the different markets.

Dr STONE—I see. And the US will be a co-signatory?

Mr McCormick—It is.

Dr STONE—It is not mentioned in your list that it will be.

Mr McCormick—Yes, it is; it is the last one: Australia, Argentina, Canada, Chile, Georgia, New Zealand, South Africa and the United States.

Dr STONE—We have a different list. Okay.

Ms BIRD—I wanted to clarify this line of discussion about the export side of it. I am interested in what Senator O'Brien was raising on the import side of it. Are there particular competitive advantages being provided to importers through the new labelling, given that the

labelling of Australian wine will change under this? I am just wondering about what the impact on importers and on internal competition for domestic producers would be.

Mr McCormick—I think having the wine agreement in place and put into force will make sure that our producers are not disadvantaged relative to imported wine.

Ms BIRD—Can you explain to me how that is?

Mr McCormick—At the moment, when producers overseas access our market we are trying to have a setup where our producers have the benefit, for the domestic and international market, of essentially the same requirements. If we did not go ahead with this our competitors overseas, who export around the world, would basically be able to access the benefits of the wine labelling agreement. When they come into Australia they may have the same requirements as Australian producers but their other production would be benefiting from the single field of vision approach.

Ms BIRD—I suppose you are looking at it from an international trade perspective; I am looking at it from an Australian consumer perspective. I see Australian wines at the moment and I see particular information that I assume anybody importing wine into Australia to sell to me would have to also comply with. Now that is changing. So what I am I going to see? Are there going to be different types of labels if I am buying wine that is only sold domestically? Will they still have the volume in that particular format and importers will have this other standardised one? I am trying to see it from the perspective from a consumer in Australia about what information I currently get and whether that will change.

Mr McCormick—At the moment there is the requirement, say, on the volume side for it to be on the so-called front label of a bottle, and that applies also to imports—except for New Zealand where we have an equivalency agreement with them. They have already implemented this particular agreement. They had a single field of vision there. So if you see a New Zealand wine it may be in the format already where the four bits of information are in a single field of vision and not necessarily on the front label. It could be still be on the front label. It does not say ‘not on the front label’—it just depends on how you do your marketing and how the labelling best fits for distribution and marketing purposes.

Ms BIRD—At the moment I assume that, if the wine is sold domestically, when I look at the shelves everybody is required to have it there on the front label.

Mr McCormick—The volume, but not necessarily the other labelling requirements.

Ms BIRD—But now I will go in and there could be a variety of forms of labelling, depending on whether people are signed up. Is that what I am actually going to look at?

Mr McCormick—Well, there are only two options. I cannot even say it is the current option because the states have already implemented this change anyway, but the current arrangement is already for the single field of vision. What we do not have is access to that internationally until the agreement is ratified.

Ms BIRD—Okay.

CHAIR—The national interest analysis refers to projected savings on label production at some \$25 million. Can you tell us about when and how that estimate was arrived at?

Mr McCormick—Originally, the Winemakers' Federation did some analysis and came up with a figure there. Then there were questions about whether it was a reliable estimate. So we asked the Australian Bureau of Agricultural and Resource Economics—whose name may have changed recently—to do an analysis of it. They did an analysis and that is publicly available. They analysed what the possible impact on costs would be and basically said that they thought that \$25 million was a reasonable estimate of the benefits.

CHAIR—So they confirmed it at \$25 million?

Mr McCormick—They confirmed it.

CHAIR—When was that?

Mr McCormick—That was in 2006.

CHAIR—Finally, for Dr Harvey I guess, what has been the role of the National Measurement Institute in the negotiation of the agreement? Were you involved on the way through? What has your role been?

Dr Harvey—We were involved in some interdepartmental meetings about it. We pointed to some of the EU requirements and I understand that at the time that this was formed there was certainly a requirement for a single field of vision for all prepackaged foods in the EU—I think 20/13/EC is the directive. There were also wine regulations—1999 and 2002 regulations—which required the single field of vision and the four mandatory requirements, including the quantity statement, to be in that single field of vision. Following the review in 2005 that is referred to in the RIS, those regulations have been revised. As I understand it—and it is not easy to understand EU regulations, but to the best of my understanding—the quantity statement has now been removed from the four mandatory requirements and there are now just three in the latest regulations, which are 2009 and 2008 regulations, although the 2008 regulation, which included those requirements, has been repealed and wine has now been put into the common agricultural market. So EC 1234/2007 has been now amended to include wine and it reflects the latest wine labelling requirements—in other words, it does not include the quantity statement in that group of mandatory requirements.

CHAIR—There being no further questions, thank you for attending to give evidence today. If the committee has any further questions the committee secretariat may seek further comment from you at a later date.

[11.17 am]

DANIELS, Ms Helen, Assistant Secretary, Business Law Branch, Civil Law Division, Attorney-General's Department

PONO, Ms Debrah, Acting Principal Legal Officer, Copyright and the Digital Economy Section, Business Law Branch, Civil Law Division, Attorney-General's Department

United Nations Convention on the Use of Electronic Communications in International Contracts

CHAIR—Welcome. Although the committee does not require you to give evidence under oath I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. If you nominate to take any questions on notice could you please ensure that your written response to questions reaches the committee secretariat within seven working days of your receipt of the transcript of today's proceedings. I invite you to make any introductory remarks before we proceed to questions.

Ms Daniels—I have a brief opening statement. The UN Convention on the Use of Electronic Communications in International Contracts 2005 was developed by the United Nations Commission on International Trade Law, UNCITRAL, and is the first UN convention addressing legal issues arising from the digital economy. Eighteen countries have signed the convention, including significant trading partners such as the Republic of Korea, China and Singapore. The purpose of the convention is to facilitate international trade by removing possible legal obstacles or uncertainty in the use of electronic communications in the formation or performance of international contracts. It is based on the principles of functional equivalence and technological neutrality which seek to establish international standards for the recognition of electronic communications as a legal equivalent of paper based documentation.

The convention also seeks to accommodate technological developments in the field of e-commerce by incorporating flexibility into the methods of electronic communication it recognises. It also supports the principle of party autonomy in electronic contracting and merely provides default rules that apply in circumstances where the parties are silent or have not agreed to alternative terms. The convention reflects the view that party autonomy is vital in contractual negotiations. It contains provisions dealing with issues that commonly arise in electronic agreements, such as the location of the parties, information and form requirements, time and place of dispatch and receipt of electronic communications, invitations to make offers and errors.

The convention also allows electronic communications to satisfy the requirements of other international conventions. As a result, companies and traders will get important reassurance that electronically negotiated contracts are as valid and binding as paper based versions. Accession to the convention requires amendments to Australia's domestic electronic transactions regime. Each Australian jurisdiction has implemented legislation based on the 1996 model law on electronic commerce, which was also developed by UNCITRAL. The convention before the committee

updates the model law based on a better understanding of the use of electronic communications since the model law was finalised. The convention addresses the challenges of existing new and emerging technologies in e-commerce. These amendments are an important step in ensuring Australia's legal regime is up to date with internationally recognised legal standards on e-commerce to support and promote firms and businesses operating in a digital economy.

Implementation of the convention should encourage confidence and further growth of electronic contracting, both domestically and internationally. It offers practical solutions for issues arising from the use of electronic communications in the formation or performance of contracts between parties located in different countries. It aims to provide commercial predictability for the use of electronic communications in international contracts but, importantly, does not otherwise purport to vary or create contract law. Consultation on Australia's proposal to accede to the convention has not attracted a lot of interest from stakeholders or the public. In November 2008, the department issued a public consultation paper containing an article-by-article analysis of the convention, the differences between it and Australia's electronic transactions laws and proposed amendments to the current regime required to accede to the convention. Nine submissions were received, all providing positive comments and supporting Australia's accession to the convention. Thank you.

ACTING CHAIR (Dr Stone)—Thank you. Ms Pono, do you have any further comments?

Ms Pono—No.

ACTING CHAIR—Then we will move to questions. Ms Rowland.

Ms ROWLAND—You mentioned those 18 signatories to the convention. Does each of those have a domestic law regarding electronic transactions?

Ms Daniels—We can certainly follow that up if this is not quite the right answer, but I would imagine definitely yes, to support the articles that are required.

Ms ROWLAND—I have not looked at the ETA in a couple of months, but my understanding is that it says that contracts are not invalid merely by virtue of the fact that they were conducted by electronic means.

Ms Daniels—That is right.

Ms ROWLAND—What sort of practical problems have needed to be addressed by the amendments to the convention? I understand that our ETA is based on the model law and I note the comments in the brief, that these amendments are intended to address some practical problems. What have those practical problems been?

Ms Daniels—You ask a very good question. In 2008 we were hoping to maybe hear some of those problems in our consultation process. Moving to this convention will confirm what a lot of businesses, especially big business, are doing anyhow—because they are really default rules. I suppose it is the ceiling for if something goes wrong that this convention deals with. The greatest thing it offers is more certainty. If there are legal obstacles, you have somewhere to turn to as to

what the situation is. I will get Debrah to say something different if she has more detail, but there were not a lot of problems raised by business.

Ms Pono—There was nothing raised in any of the submissions.

Ms ROWLAND—It just makes me curious. You mentioned more certainty as well. Where was the uncertainty? Has there been any case law to do with the ETA?

Ms Daniels—Also a very good question. No, the only relevant case law to do with the ETA is to do with the Electoral Commission and not business at this point. So, no, it is not a litigated area of the law thus far. It tends to be more about good practice. As I said, if things do go wrong then a company has somewhere to turn to, but it seems that other than that companies are sorting out the problems themselves.

Ms ROWLAND—I am also interested in something. I think it was about a year ago that the DBCDE did an extensive report into the digital economy. Did they raise anything? Was there anything in that report regarding the ETA in terms of any legislative reform that might be needed or its functioning?

Ms Daniels—I do not think there were any proposals for legislative reform out of that paper, but we were keen in the discussion paper that went out to refer to this convention and Australia's likely accession.

Ms ROWLAND—I have not put the two conventions side by side. What do you envisage would be the main legislative changes that are going to happen there?

Ms Pono—They are actually quite minor changes but, because it is part of the model scheme with the states and territories, there were some constitutional provisions which were a part of the Commonwealth bill. There were some minor amendments to the time of receipt and dispatch provisions, which were basically to recognise that sometimes an electronic communication is sent within the same information system because they operate as if they are going into two different information systems. So there are some minor changes there and some default rules so that parties can work out the location of the other party based on some presumptions, basically. I think that is about all.

Ms GRIERSON—I do not quite understand this, to be quite honest, in terms of its enforceability. Does it strengthen the case for litigation if a contract is breached in some way between two commercial parties internationally? Does this strengthen the chance of enforcement or redress, or is that still up to different laws?

Ms Daniels—Obviously each country has its own laws. What we would hope would happen is that, if there is the dispute that you are referring to and both parties are members of the convention, these default rules will apply—such as when the contract was made or in which location it was made. If you are both members of the convention, that would be clearer. Obviously if the location of the other person is a country that is not a member of the convention then, yes, we would be where we are now.

Ms GRIERSON—So it offers very little change in terms of the lack of consumer protection in online transactions.

Ms Daniels—We would hope it is a step forward, but it is not a massive change. But we would hope that obstacles are removed and there is greater certainty for the business environment.

Ms GRIERSON—We are talking ‘better than nothing’, really, are we?

Ms Daniels—Yes. Australia participated in these negotiations on the text. So I think it is all about taking steps forward to helping the digital economy deal with rules that we all live with in the hard copy environment, and they are ones we can adapt—even if a little more roughly—for the electronic environment. So it is a step forward; that is what we would see it as.

Ms ROWLAND—I take the point that Ms Grierson made as well, because sometimes when you read some of the headings of the articles in this convention they seem to promise more than they actually contain. To give you an example, there is article 13, ‘Availability of contract terms’. The reality is that, with so many contracts done online—if, say, I am downloading music legally from a provider—I cannot negotiate the terms of that agreement, so I may as well just click, ‘Yes, I agree,’ because I cannot negotiate it. Sometimes you see these terms and conditions, and sometimes you see in American contracts that, if it is in capital letters, that makes it better! It makes it valid! I query whether this is an opportunity to try to address some of these problems through this convention—or is that for another class action?

Ms Daniels—Yes, the convention does not deal with the issue of inequality in bargaining power or the shrink-wrap licences. It really is for dealing business to business, I suppose, where one would hope there is a slightly more even environment. It is not really even about the terms of the contract. It is really for when things go wrong in contracts.

Ms ROWLAND—Yes.

Dr STONE—I have a very simple question. If it is a requirement that both parties agree that the contract will be negotiated electronically can one of them, in not initially agreeing and overtly agreeing, say: ‘But, hang on, I never saw a bit of paper. I never signed something’? Is it the case that both have to agree that the electronic treatment of a communication is as valid as the hard copy?

Ms Pono—The convention preserves the principle of party autonomy, so the parties can agree to their own terms. The Electronic Transactions Act requires consent to be given, which can be implied. So that if parties are already communicating electronically, that would be an implied consent that they are dealing electronically, I guess. Unless there is an intention by either party not to do it, they can agree to those terms separately.

Dr STONE—I am wondering about the issue of identification—that is, the old-fashioned notion of signature versus how else do you prove electronically, other than biometrics or whatever, that the party is who they say they are?

Ms Pono—The ET Act has some default signature provisions that apply. There is a minor amendment to make sure that the signature used reflects the parties' intention rather than their approval of the information contained. It does not really go into the terms of the contract or anything like that; it is just about the time and what signature provisions will be used and accepted by both parties. If the parties are not going to accept signatures electronically, that is something that will need to be dealt with outside the contract.

Dr STONE—It is about identification of the parties, about how you can identify without having biologically based or biometrically based identification.

Ms Pono—I think the signature provisions go into using a signature method that is as reliable as is appropriate. If it is a contract that is for a smaller amount, it is not going to require really high-tech security provisions for signature methods.

CHAIR—As there are no further questions, thank you for attending to give evidence today. If the committee has any further questions the committee secretariat may seek further comment from you at a later date.

Ms Pono—Thank you, Chair.

Resolved (on motion by **Ms Rowland**, seconded by **Dr Stone**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.33 am