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JOINT COMMITTEE ON TREATIES

Monday, 24 March 2003

Members: Ms Julie Bishop *(Chair)*, Mr Wilkie *(Deputy Chair)*, Senators Bartlett, Kirk, Marshall, Mason, Santoro, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Evans, Mr Hunt, Mr Peter King and Mr Scott

Senators and members in attendance: Senators Bartlett, Kirk, Mason, Santoro and Tchen and Mr Adams, Ms Julie Bishop, Mr Evans and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 4 March 2003

WITNESSES

Committee met at 10.03 a.m.

BOUWHUIS, Mr Stephen, Principal Legal Officer, Attorney-General's Department

BUSH, Mr Richard James, Assistant Secretary, Office of Trade Negotiations, Department of Foreign Affairs and Trade

CHURCHE, Dr Milton Patrick, Services and Investment Negotiator, Free Trade Agreements, Office of Trade Negotiations, Department of Foreign Affairs and Trade

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

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

LADE, Mr Graeme, Director, Philippines, Singapore and Malaysia Section, Department of Foreign Affairs and Trade

RICHARDSON, Mr David Jonathan, Director, World Trade Organisation Regional and Free Trade Agreements Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade

WILD, Mr Russell, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review of Australia's international treaty obligations, the committee will review four treaties tabled in parliament on 4 March 2003. I understand that witnesses from the Department of Foreign Affairs and Trade and the Attorney-General's Department will be with us for the proceedings, with witnesses from other departments joining us for the discussion of the specific treaties for which they are responsible.

Singapore-Australia Free Trade Agreement

CHAIR—To begin our hearing this morning we will take evidence on the Singapore-Australia Free Trade Agreement, done at Singapore on 17 February 2003, and associated exchange of notes. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House of Representatives and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Does somebody want to make some introductory remarks before we proceed to questions?

Mr Deady—I have a couple of very minor points. I was the lead negotiator for the Singapore-Australia Free Trade Agreement and I think it is fair to say that the Singapore-Australia Free Trade Agreement—SAFTA, as we call it—is a genuine milestone for Australian trade policy. It is the first bilateral free trade agreement that Australia has concluded since 1983, with the finalisation of the Australia-New Zealand Closer Economic Relations agreement. It is a very strong and very comprehensive agreement. It sets a very high standard for these bilateral

free trade agreements and is therefore fully consistent with the Australian government's approach to these bilateral trade negotiations.

The agreement is fully consistent with article 24 of the General Agreement on Tariffs and Trade. It covers all trade; there are no exclusions. On both sides there is the elimination of all tariffs. It is also consistent with article 6 of the General Agreement on Trade in Services. Again, the services aspect of the agreement was a crucial one for Australia. It is very much a GATS-plus level of commitment on both sides, and we are very pleased with the outcome. We believe it will help promote Australian commercial, economic and trade integration with Singapore and the region as a whole. It provides, I think, a very good template for further bilateral free trade agreements that may be negotiated between Australia and other countries in the Asia-Pacific region. There is a very strong legal basis for the agreement. It is based very strongly on the WTO rules—it is fully consistent with those rules. It also demonstrates, I believe, that free trade agreements can complement our multilateral efforts and deliver results in a shorter time period than is possible with multilateral negotiations. They also allow a depth of commitment that goes beyond what is possible in multilateral negotiations.

From Australia's point of view, we already faced in Singapore a generally open market for goods trade. The remaining tariffs that applied to Australian products—on beer and stout—have been removed as part of the agreement, but it was really in the services and investment area that Australia was looking for strong commitments from Singapore. We believe we have significantly improved the competitive position for Australian service providers and provided greater protection to Australian investors operating in the Singapore market.

Additionally, the agreement contains a number of elements that will lead to a much greater strengthening in the transparency of the operation of Singapore's services and investment. There are significant benefits also in terms of the movement of people. That was an outcome that was high on Australia's priority list which will facilitate further delivery of services and investment in the Singapore market. The agreement has significant trade facilitating features. There is a strong chapter on competition policy and a strong chapter on telecommunications, which was again a high priority for us. We have also got some good outcomes in intellectual property protection, which was an area of concern amongst Australian business, and some good progress in so-called newer issues like electronic commerce. Government procurement is another area where we have levelled the playing field, I think, for Australian businesses wanting to access Singapore's government procurement market.

There was a high level of consultation right through the process with Australian industry and other stakeholders. I also think it is fair to say that the nature of these bilateral free trade agreements has a significant impact right across the economy, including on state and territory measures. We made a strong effort to involve and consult very closely with state and territory governments right through this process, and that is an ongoing process. As you will note from the agreement, there are aspects of state and territory measures which we will continue to be talking about for the next 12 months or so, until the first ministerial review of the Singapore-Australia Free Trade Agreement. We are also now engaging with Austrade in Canberra and the post in Singapore to begin to develop a program for explaining SAFTA to Australian business and selling the benefits of the agreement as we go forward. That process will be taking place over the next several months. I will stop there, and I welcome any questions.

CHAIR—I am sure there will be questions. Perhaps I could ask a few general questions and then we can go to specifics around the table. Could you give us a little more of the history of this particular free trade agreement, such as which party made the initial approach to begin negotiations? How did that come about? Did you say it was the first bilateral trade agreement since—

Mr Deady—1983.

CHAIR—What happened in the meantime? What was the approach? Why were there not other bilateral negotiations during that period—or were there? Perhaps you could give us some background.

Mr Deady—It was agreed between the Australian and Singapore prime ministers on 15 November 2000 at an APEC leaders meeting that Singapore and Australia would commence negotiations on a free trade agreement. The very clear message from that announcement, right from the start, was the desire for Australia to have a truly comprehensive and liberalising agreement and very much to use these negotiations with Singapore to see if we could come up with a bilateral free trade agreement which could give a strong message to the region about the possible benefits and the shape of these FTAs but also reinforce both Singapore and Australia's very strong support for the multilateral system to genuinely open economies, getting together and seeing how far they could push that envelope to support the multilateral processes.

The negotiations started shortly after the beginning of 2001. There were a number of negotiating sessions throughout that year. I should say that the aim at the time of the announcement was to see if we could conclude the negotiations in 12 months, by the time of the next APEC leaders meeting in 2001. That was never set as a tight deadline. Both sides acknowledged that that was something to aim for—

CHAIR—Do you think it was a little optimistic?

Mr Deady—It was optimistic, but it was based very much on both sides right from the start acknowledging that the important thing was a good, strong agreement and if it took longer then it took longer. And it did take some time. It had been 20 years since we had been involved in these sorts of bilateral negotiations. Singapore had been involved in several in the last few years with Japan, New Zealand and the United States, so they had formed some ideas already. But we believed that the agreements that they had negotiated with Japan and, in particular, New Zealand were not as forward looking and as liberalising as we were looking for from the negotiations with Singapore.

CHAIR—When were their agreements signed with Japan, New Zealand and the United States?

Mr Deady—I am not sure if my colleagues know the precise dates. The final outcomes with Japan and New Zealand were known at the beginning of 2002. The negotiations on the agreement with the United States concluded shortly after our own negotiations with Singapore. That agreement with the US has not yet been signed; it is still going through the legal-vetting processes in both Singapore and the US. In the last week we have seen a text of the Singapore-United States agreement, but even there it is only partially legally vetted. There is still some work going on in that process.

CHAIR—Were you able to benchmark your negotiations against the completed or negotiated agreements with these other countries?

Mr Deady—Very much so. The agreements with New Zealand and Japan certainly provided us with a number of ideas and areas that we wanted to pursue with Singapore. We were using both of those agreements as a benchmark but also using them very much to go forward. The fundamental framework difference between our agreement with Singapore and the Japan and New Zealand agreements is in relation to the services area. All of these countries were looking for commitments from Singapore on services of investment, but the approach of Japan and New Zealand was that they continued the WTO GATS approach to taking commitments in services—that is, the so-called positive list approach, that you actually took a positive decision on which service industry you would take commitments on as part of the bilateral agreement.

CHAIR—And we had a negative list?

Mr Deady—We did the opposite; we took a negative list. So everything is in and then you reserve against those provisions in areas where you want to maintain some flexibility in your service delivery.

CHAIR—I did want to explore that negative list with you. Perhaps now would be a convenient time. I am sorry to break into your history of the negotiations, but perhaps you could explain to us why we adopted that approach.

Mr Deady—The negative list approach has been an element of Australian trade policy for some time. When the initial negotiations were going on in the Uruguay Round on the General Agreement on Trade and Services we were in the camp that was certainly open to doing a negative list approach as part of those multilateral negotiations. It came to pass in the Uruguay Round that that did not happen, and a positive list approach was adopted. We have still maintained the position very much that a negative list approach is more trade liberalising than a positive list. That is the approach we took right from the start in negotiations with Singapore, and that was why in the first year we did not meet the one-year deadline. Singapore were coming from a different position, clearly were comfortable with what they had done with Japan and New Zealand and were not looking to push the envelope out further in relation to the adoption of a negative list. It was probably six months into the negotiations before they took that step and agreed to negotiate on the basis of a negative list. Then, of course, that required a large amount of work on the legal framework, what would actually be the commitments and obligations that we were taking on, and the detail of the reservations that you then take against those commitments on services and investments.

CHAIR—Was there anything in particular—apart from your advocacy skills, of course—that persuaded them to adopt the negative list approach?

Mr Deady—I should say that the announcement of the United States-Singapore negotiations also took place at the APEC leaders meeting in 2000. You might recall that the Americans had a very ambitious time frame at the time—in fact, trying to conclude the negotiations before President Clinton left office in the following January. That was always very ambitious. The United States' approach to bilateral trade agreements is consistently a negative list approach. That is the approach in NAFTA and that is the approach that they brought to the table. They, along with us, had detailed negotiations with Singapore. These things do take time. There was a

need to convince Singapore about what we saw as the benefits of that approach and also to provide a level of comfort to Singapore. It is still gives significant flexibility to both parties to reserve against these measures and to maintain a level of discretion and flexibility for governments in pursuing public policy issues. So it took some time. But we were not pushing against a deadlocked door; there was certainly a willingness and, I think, an appreciation on the Singapore side that if you are negotiating with Australia and the United States then that was something that would be put on the table and something that they would have to come to at some point.

CHAIR—So it was an expectation?

Mr Deady—I think there was a strong expectation. I do not believe that either side would have concluded negotiations if Singapore had not been prepared to take that step. As I said, the complication, or the issue, for us and the United States is that, on the good side, we already have duty-free access into Singapore. So in order for us to take the step to provide that equivalent access to Singapore we needed to have substantial benefits on the services and investments side. The best way—in our view, the only way—to really ensure that was through the negative list approach. One of the great benefits of the negative list approach is, as I said, flexibility. In fact, you could have exactly the same outcome in terms of actual commitments whether you took a positive or negative list approach but one of the pluses of even that outcome would be much greater transparency from the country going through and developing a negative list. Even at that level there are substantial benefits, we believe.

CHAIR—I might come back to the question of negative lists after others have had a chance to ask some questions, but perhaps you could turn to the issue of what we have done between 1983 and 2003.

Mr Deady—The broad approach to trade policy has been for many years the pursuit of multilateral liberalisation, strong support for the multilateral negotiations, very strong support for APEC and pursuit of regional liberalisation in those areas, and that remains fundamental. The No. 1 priority of the government is the pursuit of the multilateral processes. It is recognised that that does deliver the biggest bang for Australian industry from trade negotiations.

At the same time—certainly following the problems of the WTO in Seattle—I think Mr Vaile recognised that, in order to ensure the prosecution of the interests of Australian industry and exporters, we would be aggressively pursuing opportunities wherever they arose. That included a move to looking at bilateral free trade agreements, where they could deliver benefits to Australia in a shorter time frame, with countries that would pursue them in ways that would be truly comprehensive and liberalising and would reinforce the multilateral rules. Those are the broader criteria on which these things are being taken forward.

CHAIR—Do we have a list of priority countries?

Mr Deady—The first of these bilateral FTA negotiations that we have actually concluded—and the first since 1983—has been with Singapore. We are currently engaged in negotiations with Thailand. They have been going on for several months now. I think there have already been three rounds of formal negotiations with Thailand. Also, you would know that, last week, we had our first round of formal negotiations with the United States.

We have also been very active in other countries. The Australian government was open to looking at bilateral free trade agreements with Japan and China—certainly with Japan. However, neither of those countries is really prepared at this point in time to embrace the full comprehensiveness required under those FTAs for them to be compatible, in our view, with the WTO rules. So the things we have been pursuing actively with those countries are trade and economic agreements, as they can also lead to substantial improvements and export facilitation—they can help Australian export industries in those markets. But they are short of the full comprehensive rules-based FTAs that we have pursued with Singapore, Thailand and now the United States.

CHAIR—Could you expand on what you mean by GATS-plus?

Mr Deady—Yes. The framework issue is the negative list compared with the GATS positive list approach. But then it comes down to the specific commitments that Singapore has made in the Singapore-Australia FTA compared with the commitments it has made in Geneva. Those obligations go well beyond the commitments that Singapore made as part of the Uruguay Round commitments on services. A lot of that reflects the liberalisation that has occurred in the Singapore market since the end of the Uruguay Round in 1993. We managed to bind a lot of the liberalisation that has occurred in Singapore into that agreement. That gives greater transparency and avoids the prospect of any slippage or retreat in that liberalising process that is going on in Singapore. Right across all of the service sectors—legal, education and professional services—the commitments that Singapore has made to Australia in SAFTA go far beyond the commitments it has made in the multilateral process in Geneva. They also go well beyond what it has done with Japan and New Zealand.

Singapore has the negative list approach with the United States. The United States was seeking elements of particular priorities in the services area, some of which are slightly different from what we were after. So there are differences in various aspects of the commitments that have been made by Singapore to the United States. But, in important areas, our agreement is even stronger than some of the commitments that the United States got out of Singapore. That is certainly the case with legal services—that was a high priority for us. This was to do with the operation of Australian law firms in Singapore practising Singapore law—the so-called joint law ventures—and with education. Additional law schools have been recognised for Australia. We have gone from four recognised law schools to eight. The United States previously had no recognised law schools and now it has four. So we have eight compared with the United States four.

Given that we concluded before the United States—and you will see this in the exchange of letters attached to the agreement—we were insisting that, if better outcomes came from the US-Singapore agreement, they would flow automatically through to Australia. We were looking for some important key points and outcomes there and a couple of those have been achieved.

CHAIR—Just to clarify that, in communications, audiovisual content is on the negative list.

Mr Deady—It is on the negative list. The negative list contains essentially two lists. There is annex 1, which is a commitment to standstill: non-conformity measures—measures that are inconsistent with the obligations in the text—but you agree not to make them any more inconsistent over time, so you are binding those at a level. Annex 2 allows for sectoral carve-

outs which allow you maximum flexibility against those commitments. Audiovisual is annex 2, so the government maintains full flexibility in relation to audiovisual as a result of the SAFTA.

CHAIR—How is it treated in the US-Singapore FTA?

Mr Deady—I might ask my colleague Dr Churche, who has had a closer look at that aspect, to respond.

Dr Churche—It is important to emphasise in relation to the Singapore-US FTA that we have only a first version; it is still going through what is known as a legal scrubbing process.

CHAIR—A what?

Dr Churche—It is what is known as a legal scrubbing process. When the negotiators have finished the negotiated text the lawyers have a close look at the agreement to ensure consistency and things like that. We went through exactly the same process after we concluded negotiations. All we have seen from the US-Singapore FTA is this draft text, so there could be some changes. We know that not all the text is there, so there are some things we have not seen. Certainly, as we understand it, on audiovisual there is a rather similar approach to ours in the Singapore FTA.

CHAIR—At Singapore's request?

Dr Churche—Specifically there is a reservation that Singapore has taken in relation to local content on television, but it certainly is a narrower carve-out or narrower reservation than that taken by both Singapore and us in our FTA.

Mr WILKIE—I had a sense of deja vu when I read the NIA. We looked at recent joint tax agreements and we saw in them that there was a cost to Australia but we had a lot of trouble justifying the benefits because they were not costed. I see that over the next four years we are looking at losing some $130 million but there are no figures on what the gains to Australia are likely to be. Have you done any costings or any analysis to determine what financial benefits we will see from this agreement?

Mr Deady—That cost to Australia is the revenue forgone in the tariff concessions that have been made to Singapore. Access Economics did some qualitative economic analysis prior to the commencement of negotiations with Singapore. That work certainly demonstrated some substantial benefits that would flow to Australian service providers in financial services, education and broader areas as a result of achieving some liberalisation out of the Singapore market. The modellers could not do a formal modelling exercise with Singapore, given the nature of the agreement we were talking about: one that is more about services and investment than traditional goods trade. So it was done through a series of consultations and surveys with Australian services providers to work out what would be the benefits of this agreement.

The other thing that Access Economics certainly identifies—this has come through in a number of reactions we already have from Australian industry—is that while these tariff concessions are a cost to revenue they certainly improve the competitive position of Australian manufacturing industry, using those inputs. The economic benefits of that greater competitiveness of Australian industry as a result of those areas are identified by Access Economics as a substantial positive outcome from the FTA.

Mr WILKIE—You would think that they must have done some sort of modelling to determine even a broad benefit that we are going to get out of this in terms of financial income.

Mr Deady—As I mentioned, the modellers at Access did not believe that a satisfactory modelling effort could be done. It was done through these surveys; they did identify gains in the order of $8 million to $20 million for financial services—perhaps as much as $50 million or $60 million. In education, the figure was an increase in exports of around $50 million. They flagged that, if we got some improvements in access and opportunities for the government procurement market in Singapore, that would lead to substantial benefits for Australian manufacturers and service providers. They are the sorts of things—you look at those numbers, you look at the dynamic from the improved competitive position of Australian industry using Singapore inputs, which would lead to higher levels of activity, higher economic growth, higher employment.

CHAIR—Essentially we already have a very liberalised relationship in the trade of goods, so we are looking at services as the area of major impact.

Mr Deady—That is right.

CHAIR—And that is what Access did their survey on?

Mr Deady—That is right. I think it is the case with modellers that they cannot plug in to models those sorts of outcomes that you might get. Chair, you talked before about GATS-plus. I think it is in the important area of telecommunications that we certainly have a GATS-plus outcome as a result of these negotiations with Singapore. An important objective for us in the negotiations was to level the playing field in telecoms to ensure that Australian telecoms service providers in Singapore were given due process, that there was greater transparency in the processes. They were a number of the complaints that we had, and that is one of the chapters of the agreement that is a very strong one. When Access Economics were doing this work they really could not come at what sort of number you would put on an improvement in due process and an improvement in transparency that would flow from that sort of competition—ensuring in telecoms that the competition policy that Singapore actually has is in force properly, is in force transparently. So I think there are substantial benefits that accrue to Australian service providers in the Singapore market. Telstra is there, of course; also some of the smaller telecom companies are very supportive of the outcome in that area.

Mr WILKIE—In the national interest analysis you refer to the Access Economics document *The costs and benefits of a free trade agreement with Singapore*. We have downloaded that from the Web and it has been presented to us. Is that the document that you are referring to?

Mr Deady—Yes, that is right—September 2001.

Mr WILKIE—We conducted an inquiry into the World Trade Organisation last year or the year before. One of the areas of concern that I had in relation to the agreements we have with the United States is that there was tariff protection there to try to free up trade. We found that, even under the rules, they could subsidise their industry to a point that would make them far more competitive against our industry, thus taking benefits away from Australia. I think that was particularly in relation to wheat and agriculture. Are there any protections in this agreement for Australia in relation to those sorts of subsidies?

Mr Deady—That is a very good question. Of course, we are looking at a very different beast, as you realise, with Singapore. With respect to reinforcing messages that Australia believes are crucial that we want to deliver in Geneva about reform of world agriculture, yes, this agreement does contain a couple of provisions that I think are worthy of note. Most importantly, Singapore and Australia have agreed to prohibit export subsidies on agricultural products as part of this agreement. You could say that is symbolic because Singapore does not provide export subsidies to agriculture and nor does Australia. Nevertheless, under the WTO rules export subsidies on agricultural products are still permitted; under the rules they are prohibited for industrial products. Australia very strongly believes, as do all the Cairns Group member countries and a number of other countries, that that key area demonstrates where the rules are unbalanced in relation to agriculture. More generally on subsidies, we have basically recommitted to each other the obligations and commitments that we already have under the WTO subsidies agreement. So they are just carried forward as part of the legal process into this agreement. Again, it reinforces what I believe is a very strong link between the nature of a truly comprehensive FTA and the multilateral rules based system.

Senator MASON—Mr Deady, Mr Wilkie asked a very interesting question which relates to, in a sense, how Singapore or indeed Australia could circumvent or undermine the free trade agreement with hidden subsidies. Another way they might do that is by using what are referred to as rules of origin. With the rules of origin I know, and everyone here would know, that Singapore, particularly with its manufacturing industry, is producing more and more offshore. Firstly, how do the rules of origin work; secondly, do you trust Singapore's policing of the rules of origin; and, thirdly, does Australia have an oversight of that capacity?

Mr Deady—The rules of origin were a very important part of the whole negotiations for Australia and certainly the one area where Australian industry were particularly anxious that we did get this right. It is revealing to me that the Australian industry were prepared to move to tariff free entry for products from Singapore, that they were prepared to face the increased competition that might emerge as a result of that, but they were equally adamant that we have strong and effective rules of origin to ensure that that did not lead to, as you have said, non-Singapore origin product taking advantage of those tariff preferences and concessions.

Overall we have negotiated the same broad rule of origin that applies to the Australia-New Zealand CER agreement. Singapore were certainly looking for something more generous than that as part of the outcome for them. That is a 50 per cent value added ex-factory price rule of origin, and that applies generally across the board for Australia-Singapore trade. We did make some additional concessions to Singapore in the rules of origin to finalise the deal. For a certain select group of products—around 100 items, mainly electronic and electrical equipment—there was a 30 per cent rule of origin. So that was a concession we made that goes beyond what we have in fact done even with New Zealand in that area. We also agreed that the 30 per cent rule of origin would apply to products covered by the so-called tariff concession orders. Tariff concession orders apply to those products which are not produced in Australia. Many of those have, effectively, a three per cent revenue duty, and again we have agreed that a 30 per cent ROO, rule of origin, would apply to those products.

We also agreed to take account of the specific nature, and you mentioned that a lot of Singapore manufacturing is now done in the islands of Indonesia and some is done in Malaysia. Again we agreed to what is called accumulation under the agreement. The nature of that manufacturing process is that the first part of the manufacturing process would be done in

Singapore. That product would then go offshore and come back to Singapore for some finalisation. Then, under the CER rules as they apply, it is in that final stage of processing that you have to meet the 50 per cent ROO. What we have done for Singapore is that, if 25 per cent was value added in Singapore to begin with, then 50 per cent was added in one of the Indonesian islands and a further 25 per cent was added at the end, that would meet the 50 per cent test for Singapore.

Senator MASON—Who determines whether the goods meet the 50 per cent test?

Mr Deady—I might ask my colleague Richard Bush, who is the lead negotiator on ROOs, to elaborate. But it is up to the exporter-manufacturer to keep the records to be able to demonstrate that they do in fact meet these rules of origin.

Senator MASON—So, in effect, the onus is on the Singaporean companies to prove that the goods to be exported have at least 50 per cent local content?

Mr Deady—That is right.

Mr WILKIE—On all occasions or only if they are exchanged?

Mr Deady—Again, I will ask my colleague to answer that because he is familiar with it, but there is a certification process that they need to go through.

Mr Bush—The onus is on the exporter to certify that the goods meet the preferential rules of origin before they are eligible for the preferential or duty-free entry into Australia. They have to do that for every shipment, not just if they are asked. We have also introduced a double-barrelled requirement in Singapore—which does not exist in the case of New Zealand—for the exporter to have a certificate of origin issued by a government agency in Singapore. That certificate of origin can have a life of two years, so they do not have to do that for every shipment—the certificate has to accompany the shipments. That has to be renewed every two years. We sought that sort of assurance, and Singapore gave us that. Because of the goods that are transited through Singapore and because we were concerned that we did not want those goods to necessarily qualify for duty-free entry into Australia if they did not meet the requirements, we asked for the second certificate of origin.

Senator MASON—Are the requirements that we sought from Singapore similar to the requirements that the United States have sought from Singapore in relation to their free trade agreement?

Mr Bush—I am not sure. We will have to check on that. I do not think they asked for a second certificate of origin.

Senator MASON—So we have more, in a sense?

Mr Bush—Yes. I think they are just relying on the certification by the exporter to accompany the goods, but let me check on that.

Mr WILKIE—Following on from that, with the certificate of origin, have we seen the conditions that they would use when someone applies for a certificate so we know what they have to prove before they get that certification?

Mr Bush—No, the exporter can just certify that he complies with one of the rules—in other words, that his goods meet either the 50 per cent rule or the 30 per cent rule. If Customs for some reason or other doubt that that is the case they can check up on compliance later on. It is incumbent on the exporter to retain all his documents to verify that the goods fall within one of the rules of origin.

Mr WILKIE—Where I was coming from was, with the certificate they would get from Singapore saying that the goods came from Singapore, have we seen the rules that Singapore is applying to the people applying for that certificate?

Mr Bush—The Singapore authority is the Singapore board of trade, which is now called International Enterprise Singapore. They issue the certificate of origin. They must be satisfied that these goods have undergone processes which qualify them for the rules under the agreement.

Mr WILKIE—But do we know what they actually ask the manufacturer or the provider of those goods to give them to demonstrate that?

Mr Bush—The agreement is quite specific about how you calculate your ex-factory costs—it has to be either 50 per cent or 30 per cent—and it is quite specific about the costs that are included in the 50 per cent. So the Singapore authority would have to be convinced that they are following those rules.

Mr Deady—There are certainly strong, explicit requirements and obligations in the chapter on rules of origin to verify claims that are being made by, in this case, the Singaporean manufacturers. As I said, we were conscious of this as an issue. We have worked very hard to ensure that we have a process that is transparent and allows us to go in and look very hard at those numbers if there is any doubt held by Customs authorities in Australia or if there are any complaints from Australian industry that somehow these things are being circumvented.

Senator MASON—The following is a comment rather than a question, Mr Deady. I am sympathetic to Mr Wilkie's concerns. Intellectually I support free trade, but trade is so complex now. Depending on where goods are made, as Mr Wilkie said, you have government inputs, but sometimes there are tax breaks or breaks on electricity—it just becomes so complex. I am not criticising, but with the integration of the world economy it becomes extremely difficult to follow what is local and, with transparency, whether there has been government input of a significant sort that has affected the price of goods et cetera. But that is for another time. Suffice it to say that we have certainly come across it before in other contexts.

Senator TCHEN—Mr Deady, I want to follow up on the issue that the deputy chair raised with you about the discussion of benefits and costs in the NIA. It seems to me that one of the problems with the NIA—I am not sure whether it is done deliberately or whether it has just come in as a practice because you cannot do it any other way—is that when you look at benefits you tend to look at the intangible, potential-growth types of benefits, whereas when you talk about costs you look at specific costs to the Treasury in terms of revenues. That is really

comparing apples with bananas—not even with pears. As I said, I am not sure whether it is deliberate, but we are looking for some way to compare direct costs with direct benefits, or indirect costs with indirect benefits. Can you see some way of doing that?

Mr Deady—It is difficult with the nature of this sort of agreement, but the point is that—and I think the point was made by the chair—with Australia and Singapore we are looking at two very open economies on the good side. Yes, there is certainly a cost to the revenue through reductions in the tariff, but it is actually very modest. Given that Singapore is a substantial trading partner with Australia, I think the annual tariff loss is actually low. That reflects the nature of the trade that is going on now. A very large proportion of Singapore's exports to Australia are already duty free. To that extent, the impact on that side is relatively small. The information we have from a number of Australian manufacturers is that they are very much looking forward to the entry into force of the agreement, because these are very low tariffs. Three or five per cent is basically what we are talking about here; the higher tariff items of automobiles, textiles, clothing and footwear really are not a big component of Singapore trade to Australia—so the 'costs' of all that are, I think, very low.

You are right, though, you are then into the benefits of trade, the benefits of liberalisation, the more open markets and the economic integration that I think does flow from these sorts of agreements. That is reflected in the built-in agenda we already have with Singapore. There are a number of issues—which you will see from the exchange of letters—and we have effectively already got quite a good working agenda for the first ministerial review of the agreement. These are areas where both sides will want to push this agreement further. My own view is that the transparent nature of this agreement that we have with Singapore will lead to us getting a better fix from Australian service providers and investors, for example, where they still have some problems in Singapore. They will see these things much more transparently now and be able to bring them to our attention and see if we can continue to push that envelope with Singapore. The value of these FTAs over time is that they are living documents. If any proof is needed of that, it is the CER agreement with New Zealand, which over time has continued to develop and to deliver substantial benefits. I believe that is also the case even with NAFTA. Again, there are issues and discussions about that, but that agreement also has driven a high level of economic growth in the three NAFTA partners.

Senator TCHEN—I was just wondering whether the department might look at the structure of the NIA. I sympathise with the deputy chair, because when we look at it there is always this feeling of deja vu. We seem to be losing. Is that possible? Do you have access to that information so that you can you provide us with some indication of what the corresponding benefits and costs to Singapore would be?

Mr Deady—We can certainly take that on notice and have a look to see what sort of work, if any, Singapore have done as yet. Again, the public presentation of the agreement in Singapore has not been dissimilar to our own. I think it is much more descriptive, pointing to the benefits that come to Singapore. One thing is that it is easier for Singapore to demonstrate: they can turn to their manufacturing producers and say, 'From the date of entry into force, if you are now facing a five per cent tariff into Australia that will be zero.' I believe it is tougher looking at the benefits from a services and investment competition policy—the sorts of things that were crucial to us in our business dealings with Singapore.

Senator TCHEN—Chapter 11 deals with movement of people. I am a little bit confused about article 13 which seems to say that, for Australians going to Singapore, no visa is required.

Mr Deady—I will ask my colleague Mr Richardson to answer that question.

Mr Richardson—Sorry, Senator, could you repeat the question regarding article 13.

Senator TCHEN—I was looking at chapter 11, article 13 of the agreement.

CHAIR—Page 93?

Senator TCHEN—Actually, I lost the page.

CHAIR—I think it is page 93.

Senator TCHEN—The chair is absolutely right—it is page 93. Point 2 of article 3 seems to imply that, for Australians going to Singapore, unless they are dual citizens of a third country, no visa is required. Is that correct?

Mr Richardson—That is the current situation, that you do not get a separate visa; you simply get a stamp in your passport as you go in the immigration gates at Singapore airport. They say that is not a visa.

Senator TCHEN—And stay as long as they like?

Mr Richardson—No, there is a specified period of time.

Senator TCHEN—I see. So there is no entry—

Mr Richardson—We would say that was an immigration formality requirement, but they would say it is not a visa. There is a slight difference in terminology.

Senator TCHEN—But it is not reciprocated?

Mr Richardson—No, we do not do that. We have the electronic travel authority, which in a sense is a less burdensome requirement on businesspeople coming to Australia or indeed visitors at large.

Senator TCHEN—So it is not quite the same as the agreement between New Zealand and Australia?

Mr Richardson—No.

Mr ADAMS—Dealing basically with services, can law firms of Australia now establish offices in Singapore?

Mr Deady—There are no restrictions, as I understand it. Australian law firms can operate in Singapore and do so-called Australian law or third country law—and there are a number of

firms doing that. We now have that bound in the agreement. Singapore has given the commitment that that situation will not change. There are additional commitments that we have got out of Singapore in relation to Australian law firms wishing to do Singapore law in Singapore. There is a requirement that that be done in joint ventures with Singapore law firms. Conditions of those joint ventures which were very unattractive to Australian law firms previously have been significantly liberalised and bound at a lesser level. We do not know how many Australian law firms will take up that opportunity. We had a long discussion with a number of law firms. All of them welcomed it as a step forward. A number of them want it to go further. They still see it as a constraint on delivering law services in Singapore. But they certainly accept it as an important step forward, and we certainly see it in those terms.

The way these joint law ventures operated in the past disadvantaged Australian law firms relative to big law firms in the United States and the UK, particularly in the way they calculated the sort of experience and years of experience that the lawyers had to have to operate in Singapore. That of course took out a big chunk of an Australian law firm in Melbourne, Sydney or Brisbane, whereas the big law firms in the UK and the United States could manage that more simply. I think it is a very positive outcome of the negotiations.

Mr ADAMS—In educational services, is Singapore going to recognise all Australian university degrees?

Mr Deady—Again, it is not as broad as that. As I said, in law they will now recognise eight law schools compared to the previous four. It depends on—

Senator MASON—They recognise the degrees, but does that mean you have a right to practice, which is a different thing?

Dr Churche—The situation in relation to the recognition of Australian law degrees is about Singaporean citizens being admitted to local practice in Singapore. They still have to meet those local requirements in terms of good character and certain other training and experience requirements but, in terms of being admitted to local practice in Singapore, a degree from one of these eight universities is sufficient to meet the educational requirements.

CHAIR—So it is not reciprocal admission to practice per se?

Dr Churche—No.

CHAIR—It is simply that if you were an Australian lawyer with an Australian degree wishing to practice in Singaporean law in Singapore and you went to the University of Adelaide Law School—and I am sure that is one that has been recognised—

Dr Churche—No, it is Flinders University in South Australia.

CHAIR—you would then apply for admission to the Singaporean High Court and your degree would be acknowledged, but then all the other requirements would have to be ticked off.

Mr ADAMS—Just as long as you were of good character.

CHAIR—That is what I am saying.

Dr Churche—To clarify, this is in relation to Singaporean citizens. This is really more about our ability to educate—

CHAIR—Sorry, you mean Singaporean citizens who have got an Australian law degree?

Dr Churche—Yes. It is really an opportunity for us to export our education services.

CHAIR—So this is not about Australian lawyers practising in Singapore?

Dr Churche—No.

Mr ADAMS—No, we did that a minute ago.

CHAIR—I appreciate that; I was just trying to follow up.

Mr ADAMS—This is about getting recognition for Singaporeans coming to Australia and being educated here.

Dr Churche—Yes.

Mr ADAMS—We now have eight universities being recognised instead of four?

Dr Churche—That is right.

Mr ADAMS—And that was the best we could get?

Mr Deady—Yes, it was. As part of this building agenda—if that is the right term—we have made it clear to the Singaporeans that we still have some ambition in that area and we have flagged that we will be raising this again in the first review so as to extend that further.

Mr ADAMS—Are there any restrictions on medical people? I know they used to be strict in Singapore as to how many doctors went to university so that they only got so many. We do similar things but not so transparently.

Dr Churche—We do not have a similar situation. The law degree situation is quite different, because they have a very restrictive approach. On the whole issue of things like mutual recognition of qualifications, we have a clause in the agreement encouraging our professional bodies to enter into mutual recognition agreements. In fact, our architects and engineers have been doing that in parallel with the agreement. We understand the architects are very close to finalising that agreement. The engineers are still making some progress. So there are certainly opportunities under the agreement in the whole range of professional services where there is an interest from Australian professional bodies to look at developing these mutual recognition agreements. Even though you do have scope within the WTO for this sort of mutual recognition, we actually have a much more positive clause here to encourage that to happen.

Mr ADAMS—When are we reviewing this? I would be interested to look at this in two years time and see how far forward we have actually moved.

Mr Deady—There is to be a review one year after the entry into force of the agreement and then I believe it is a biennial review subsequently, or when either party requests it.

Mr ADAMS—I have one further question in relation to financial services. Can we start a bank in Singapore now? Can an Australian company go there and start a bank or can Singaporeans come to Australia and start a bank?

Dr Churche—In relation to financial services, Singapore has quite a different approach, depending on the nature of the banking service you want to provide. It is fairly liberal when it comes to investment banking or merchant banking, and quite a range of international banks, including Australian banks, are involved there. This agreement actually gives us quite a strong binding commitment in that particular area of banking. In relation to full banking services, full retail banking, it is quite restricted and we have no additional benefits from this agreement. But there was actually no interest—it was not an area where Australian banks said they wanted to go into Singapore and provide retail banking. It is just too competitive a market; they said, 'It is not an area of interest for us.'

They did indicate an interest in what is known as wholesale banking, which involves providing various sorts of corporate type services. We have got a number of commitments in that which are actually quite important. One is to do with more transparency in the requirements which will be imposed on wholesale banks. There is currently a quota restriction on the number of wholesale banking licences which will be given, and that will be lifted for Australian banks within four years of the entry into force of the agreement.

In the side letter we got an undertaking from Singapore—if they actually reached a better deal with the US on lifting the quota for wholesale banking licences—that that deal then be extended to Australia. We understand the Americans obtained an agreement that the quota would be lifted for their wholesale banks within three years of entry into force of their agreement. So we are going to have to look at when our agreement and the US agreement enters into force, but we expect it will be lifted probably at least six months earlier than it is in the agreement at the moment.

Mr MARTYN EVANS—I understand why the government has turned to bilateral agreements, but when you look at the detail of this agreement with Singapore you see we have reached a fairly specific range of commitments with Singapore and some highly specific agreements about what we will and will not do in legislation and the reservations which we have reached. We even make specific legislative commitments. We say we will maintain laws in relation to electronic signatures, we will maintain domestic laws on this and that and we will reach domestic law commitments on various things about broadcasting and so on. We have all of these commitments. We then have our commitments with New Zealand and the CER. We are looking at your list of commitments with Thailand next, for example. Then I assume there are a range of countries stacked behind that. I can see that over the next 12 months we will have a wad of these on our desks that will reach very high. As the Australian parliament, the government and the departments do their work over the next five to 10 years, we are going to have legislation and be judging legislation based on our commitment to Singapore to maintain the digital signatures, our commitment to Thailand to not maintain digital signatures, our

commitment to New Zealand to maintain digital signatures with 128 bits, our commitment to the United States to maintain 256 bits and our commitment to Japan to maintain them with 512 bits. How are we going to reconcile all of this?

Mr Deady—I do not believe that at this point we are necessarily getting ourselves into quite that situation. Yes, we are taking on commitments, and we have done with Singapore. It is true that these are binding commitments and, if there are changes down the track in Australian legislation in areas that are relevant to commitments taken under the SAFTA, they would have to be taken into account, just as they are with New Zealand, as you say. But I believe that there is much greater coherence in the approach that we are taking to all of these negotiations than that. The way that these negotiations go on are that the lead negotiators all come from the Department of Foreign Affairs and Trade, from the Office of Trade Negotiations. There is a great deal of consultation with other agencies in Canberra, with state and territory governments and with industry. It is reinforcing the coherence because of the processes that we go through.

We will not and cannot be negotiating contradictory commitments to Singapore and then to the United States, because there needs to be coherence and consistency in the approaches that we are undertaking. We may or may not take on additional commitments in relation to further bilateral agreements down the track. We have to ensure that there is no conflict between the commitments that we have in Geneva, where we already have significant obligations, and the various bilateral agreements that we enter into. That is a very important part of the work that we go through in the negotiations, in talking to other agencies and in going through the process of reviewing and ensuring that there is this overall coherence and consistency in the agreements that we are doing.

Mr MARTYN EVANS—But how do you take that into account? I am not surprised to see a whole series of reservations and general commitments regarding working towards certain things—working towards international standards on telecommunications and various things. But I was a bit surprised to see a commitment to maintaining domestic laws in relation to a certain area. I can understand how you make commitments to do general things, to work towards agreements on certain things and to work towards international standards, but how do you make treaty commitments to maintain the domestic law?

Mr Deady—In the example you have used there is no commitment there to any specificity about that law; rather there is a commitment that we will have legislation that deals with those issues. So that is the commitment that we are taking on in relation to that. I think that gives the government substantial flexibility to ensure that it is consistent across agreements and that it has legislation in place which delivers these outcomes. If we are talking about transparency, due process and a commitment to make information or regulations publicly available, that is the nature of the openness of the Australian system and that is what we are committing to, and to maintaining that into the future.

Mr MARTYN EVANS—Do you work against a set of frameworks or guidelines? When you go to the negotiations with all of these countries, are you doing it against a manual which all of the departments, ministers and cabinet have signed off against—an evolving framework of Australian interest guidelines, a checklist of regulatory frameworks, so that we have an objective of moving towards freer trade, of consumer guidelines, of domestic broadcasting requirements? This almost covers the whole panoply of our domestic interests, from broadcasting to consumer protection to newspapers. When your negotiators go to Singapore,

Thailand or China—wherever you end up discussing these things—do you have a set of frameworks which cover this whole range of domestic issues that our respective ministers, and effectively the government as a whole, have agreed to and which cover the relevant principles—not the detail, because you do not know that until you negotiate it—and targets that we will negotiate against? As I say, I am not referring to the detail; I understand that cannot be done. Clearly, there must be an agreed framework that you are targeting.

Mr Deady—Yes, very much so. Certainly we as negotiators are given a mandate by cabinet as we enter into these negotiations. That is a mandate that obviously we work very closely towards. The broad principle that we take into the negotiations is that we believe these things need to be fully consistent with the multilateral rules, and that in itself provides us with a broad framework of the sorts of things you need to come out of the other end of the process—that is, they have to be comprehensive and truly liberalising. They are the sorts of broad principles that we take into the negotiations that the government has committed to. But that mandate is certainly established by cabinet, it is done through detailed, ongoing consultations with other interagency processes and consultations with industry as we give more specificity to some of those things. Certainly we operate very much under a mandate that is determined by the government and it does very much guide our abilities as negotiators to take the negotiations forward. As we get into more specificity, very clearly there is an ongoing dialogue with ministers as we develop and finalise any package.

Senator KIRK—I wonder whether you could list for us the eight law schools that will be recognised.

Dr Churche—The four which are already recognised are the University of Sydney, the University of New South Wales, the University of Melbourne, and Monash University. The four additional ones are the Australian National University, the University of Queensland, Flinders University and the University of Western Australia.

Senator KIRK—Are the law schools involved in the negotiation process in terms of whether their degrees will be recognised? What is the process? Does the government do that or will the law schools become involved?

Dr Churche—You mean things like consultations?

Senator KIRK—Yes.

Dr Churche—This was a negotiated outcome between the two governments involved in the negotiations. Australia's starting point was always that all of Australia's law degrees equally merited recognition. Singapore has a very restrictive approach to this, but there was a process of consultation overseen by the Attorney-General with all of Australia's law schools, particularly inviting them to indicate their interest in being recognised. That certainly influenced the process by which the final additional four law schools were selected.

Senator KIRK—So they were invited to put in submissions, for example, to talk about the quality of their degree in the subject?

Dr Churche—That is right.

Senator KIRK—What sorts of things are taken into account? Is it the nature of the degree, the sorts of subjects studied or just the status of the law school generally?

Dr Churche—Because it was a very restrictive outcome in being able to get only eight law schools recognised, one key consideration was certainly some sort of geographical representation of all Australia. Because the existing four law schools that were recognised were all in Sydney or Melbourne a key part of the exercise was to get a more even geographical balance.

Senator KIRK—You said that there will be a review in how many months—12 months?

Dr Churche—The first review will be 12 months after the agreement enters into force.

Senator KIRK—What are the prospects of getting all 30 or so law schools throughout Australia recognised?

Dr Churche—From our perspective they are all equally merited. Once you give recognition to one, there is no reason why all the others should not be recognised. A lot of it depends on Singapore's domestic processes. Certainly, as we heard during the negotiations, they recognise that the world is changing and they want to make sure that they have a competitive legal services sector and they recognise that there are some downsides in the very restrictive approaches they take at the moment. A lot of it depends very much on the reform process, plus the continuing pressure that they get from us and other countries in trying to liberalise their approach in this area.

Senator KIRK—So in that process there will be that pressure applied by the government.

Dr Churche—The fact that we have this already identified as a key area for the first review certainly does give it a certain degree of profile.

CHAIR—I think some of us are quite attracted to the notion of a degree from the University of Adelaide Law School and just cannot work out why it is not on the list. There is obviously a degree of complementarity between the two economies, but Singapore has no agricultural-mining sector to speak of, and the perception is that the Australian economy is agriculture and mining. What benefits do you see overall for our high-tech sector? Are we envisaging that Singapore will invest in Australian high-tech companies? Is that the expectation?

Mr Deady—There is the expectation that this will deepen the economic and trade relationship in many different ways. The conversations that we had, particularly with Australian industry operating in Singapore, flagged to us the benefits of getting greater transparency out of Singapore in important areas and giving them greater confidence in taking those investment and other decisions as they go forward. That is a big plus. There is already a substantial level of Singaporean investment in Australia. A great deal of it is in real estate. It is a matter of extending it into different types of economic activity. That is something we would certainly see. Again, there are real spin-offs from these negotiations—unforeseen circumstances, if you like; things that develop as a result. We saw some of that in the negotiations. Dr Churche mentioned the mutual recognition agreements. We were able to push along very genuinely this agreement between the architects in the two countries as a result of the fact that parallel negotiations on an FTA were going on.

Some other things that came out of the negotiations assisted the relationship between Australia and Singapore. For example, for some time we were pressing for air side access at Changi airport. I am not saying that that came about as a result of the FTA, but the fact that we have a dialogue going with Singapore in this important area helped in that process. Already we have had someone mention the medical situation. I think, again, Singapore is moving down a path of deregulation and I think they already have further liberalised some access to Australian doctors operating in Singapore.

I think there is a dynamic there that does build on these FTAs. There is a level of confidence generated and a level of dialogue between officials that carries forward. I think Mark Vaile and George Yeo had a number of discussions about aspects of these negotiations as we went through the process, and I think there again you could see the negotiations taking on the dynamic and resulting overall in a much bigger package. I should have said that if we had settled for the deal after one year I think we would be looking at a very different document and a much lesser outcome than we were able to achieve by continuing to talk and by continuing to press our interests, listening to what Singapore were saying and coming up with an agreement that at the end of the day that both governments are very comfortable and happy with. That is the nature of these FTAs.

CHAIR—Given the level of trade that already exists between these two mature economies, do you see the potential in the area of small to medium sized companies and enterprises rather than the larger players?

Mr Deady—It is a bit hard to say. I think you would like to see that there are potential benefits right across the board. Many of the service providers would be relatively small and medium sized businesses. To the extent that we have been successful in reducing the costs—it is obviously very expensive to set up an operation in Singapore—and to the extent that we have removed those requirements in certain service areas where a local presence is no longer required and where a service can be adequately supplied from Australia, then that certainly improves the competitive position of those smaller service providers, on whom it is such a big impost to set up a business and do the business directly out of Singapore if there is regulation that requires that. There are benefits there. We would like to see more transparency and more opportunities in the government procurement areas as an opportunity for Australian SMEs. We understand that we now need to talk to Australian industry in a different way, to explain the agreement, to encourage Australian industry to look at SAFTA and see what opportunities it does generate for them as we go forward, and we will be doing that with Austrade and others.

CHAIR—So this will be an education program?

Mr Deady—Yes. In our view, having done the deal and having come up with the agreement, there certainly is follow-up work required, and that follow-up work is explaining the agreement, identifying the opportunities and, quite frankly, using what I think now is a much more transparent understanding of the Singapore service and investment market to see if that can generate some greater activity and interest amongst Australian providers.

CHAIR—One of the concerns often raised is abuses of intellectual property—not necessarily in Singapore but most certainly in the region. Does this address those concerns sufficiently?

Mr Deady—I think it goes a long way. It certainly strengthens the IP protection significantly. One of the biggest areas of concern amongst Australian industry was the process of tendering for business in Singapore. It was certainly put to us that there was a concern that often IP somehow found its way into the bids or tenders of Singapore companies in that process. We certainly have tightened that up as part of the agreement. Primarily in the intellectual property area but also in the government procurement area there are strong commitments for the protection of intellectual property as part of the tendering process. That was very high in the demands of industry, and also a number of state governments mentioned that to us as a concern in the Singapore market. So it is all very important and good progress in moving that forward.

CHAIR—Finally, did any issues arise in relation to the tax systems of the two countries or the tax treatment of specific aspects?

Mr Deady—No. Tax issues were not part of these negotiations.

Mr WILKIE—How much consultation has taken place with the states?

Mr Deady—We have actually had a lot of consultations with the states. As we got into this process and the negative list, it was very clear that there are significant impacts on the state government that go, I believe, beyond the multilateral processes. We have worked very hard with the states. I believe that we have developed a very good relationship with them as we have gone through the process. We were able to negotiate with the Singaporeans an agreement that the state governments have 12 months to finalise their reservations lists. They have now seen the whole agreement and we will be consulting them. We have worked with them very closely, and we already have drafts of the reservations that they have. We will be going back to the states and working with them over the course of the next several months so that, by the time of the first review, we will be in a position to finalise that.

The states have been very cooperative in the work that we have done with them. We have developed a very good relationship with officers of the Premier's department and the trade and industry departments in the various areas, and a third area is the government procurement area. We have worked very closely with the states, explaining what we were doing in the government procurement area. At the end of the day, the commitments that we have entered into in the government procurement chapter apply only to federal government departments. We will continue to talk to and encourage state government involvement and participation, but that is something that will be part of the dynamic of the agreement over time. The dialogue and the level of understanding about government programs in some of the states and territories that we have developed as part of the process are very good.

With regard to the sorts of questions that Mr Evans was asking, as we are entering into these negotiations with Thailand, the United States and even with Geneva we are deepening our understanding and knowledge of those state measures, some of the trade impacts of some of those and the things that other countries might be looking for in relation to state government measures over time.

Mr WILKIE—Thanks for that. Of course, we do have such wonderful state governments!

CHAIR—That is a matter of conjecture. Mr Fewster, did you have anything to add?

Mr Fewster—I just wanted to point out that if you look at annex 1 of the NIA you will see a full list of the consultations.

CHAIR—Thank you very much. I thank the representatives of the Department of Foreign Affairs and Trade for coming along this morning. It has been most helpful. Thank you all for your attendance this morning.

[11.22 a.m.]

BOUWHUIS, Mr Stephen, Principal Legal Officer, Attorney-General's Department

BROMLEY, Ms Robyn, Director, Marine Species and Fisheries, International, Marine and Water Division, Department of the Environment and Heritage

DELAHUNT, Ms Anne-Marie Josephine, Assistant Secretary, Wildlife Branch, Approvals and Wildlife Division, Department of the Environment and Heritage

FEWSTER, Mr Alan, Executive Director**, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade**

WILD, Mr Russell, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade

Amendments to the Convention on International Trade in Endangered Species of Wild Flora and Fauna

CHAIR—We will now take evidence on the amendments, done in Santiago in November 2002, to appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973. I welcome representatives of Environment Australia. Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House of Representatives and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Ms Delahunt—Yes, thank you. Australia has been an active party in the CITES convention since 1976. CITES works through international cooperation; its aim being to protect species of wild flora and fauna from overexploitation. As the document states, there was a meeting in Santiago last year where a number of amendments were put, particularly to the lists. The lists are the means by which the treaty regulates international trade and thus conserves wild species of flora and fauna.

The amendments are explained in the document we have presented to you. Also, the consultation that was undertaken is listed in some detail, including the range of industry and community organisations and the state governments that were consulted. We were also very pleased that we had representatives from the fishing industry involved on our delegation to the last meeting. The state governments and NGOs also participated.

CHAIR—As I understand it, most of the amendments have automatically entered into force.

Ms Delahunt—That is correct.

CHAIR—The committee had notice last year that entry into force for Australia would occur automatically. One of the intriguing aspects of it, I must say, is the Australian trade in seahorses. Can you provide a little more detail about Australia's trade in seahorses and, perhaps, some reasons why Australia did not nominate seahorses?

Ms Delahunt—The context for trade in wild species is important for Australia. We have very strong domestic legislation which complements the CITES legislation. So, under the domestic legislation, trade in seahorses for export purposes has been regulated for some time. We do have a number of industries engaged in that trade, and, at the same time, Australia has been concerned, particularly in the international arena, for the conservation of the range of species of seahorses. There is a quite dynamic and large trade, particularly through South-East Asia, and we were concerned to ensure that we supported conservation efforts. Last year, Australia supported an international meeting looking at trade in and conservation of seahorses in South-East Asia. When the proposals were put forward, Australia did work with international governments on whether or not we would ourselves nominate. But, in fact, other parties chose to nominate.

CHAIR—You mentioned the domestic regulatory measures that exist in relation to seahorses. Can you indicate what they are?

Ms Delahunt—Under the Environment Protection and Biodiversity Conservation Act, the wildlife trade provisions in part 13A regulate the export of Australian species. In a similar way, there are lists. There is a list of species which are unregulated, and any species not on that list are de facto regulated. The seahorse industry that we have in Australia, though quite small, is both authorised and permitted by our department for the purpose of export.

CHAIR—What do people do with seahorses?

Ms Delahunt—It is a live trade for aquaria, and both live and dead specimens are used for complementary and traditional medicines.

CHAIR—Thank you.

Mr WILKIE—I have some queries about the ivory trade. I see that some of the amendments relating to African elephants potentially permit the trade of government owned stocks of registered raw ivory from South Africa, Botswana and Namibia. Can you advise the committee as to under what circumstances this trade may occur? I am particularly concerned that this refers to government owned stocks. What would prevent Namibia, for example, purchasing stocks from neighbours such as Zimbabwe—who I am not a great fan of—and selling those stocks, which might not necessarily be obtained in the proper way?

Ms Delahunt—Certainly, the potential trade in ivory has been one of the most controversial issues at the convention for some time. The changes to ivory trade were in relation to what is called the annotations—that is, the rules by which any trade could, in the future, occur. Generally speaking, the elephant ivory is in authorised warehouses. They are inspected regularly by two different international trade inspections. One of them is MIKE; I cannot remember what that stands for, but it is about the illegal killing of animals. The other one is ETIS, which is about monitoring trade in ivory. Certainly, the convention is very aware that there is a significant amount of concern about the changes to the potential for ivory to be traded.

These requirements basically set out a range of steps that the parties which have got the annotation need to be able to address before any trade can occur. Trade can occur only between authorised parties. My understanding, and the aim of the convention, is to ensure that there is a very tight control on trade so that illegal poaching or illegal stocks entering into train is cut off. The convention is spending a significant amount of its enforcement funds and capacity building funds to provide an opportunity for these nations to have controlled trade. It is a delicate matter which is always an issue of very high controversy and a lot of debate at the meetings, because of the significant concern for species like elephants. At the same time there is a recognition that, for these nations which have developing status, it is a substantial potential trade which could be used to alleviate poverty within those areas. For some countries like South Africa, the potential to use that trade to support their conservation actions—for example, in Kruger National Park—is quite important. So it is a very difficult position to be in. The Australian government is concerned very strongly mostly with poaching, and we did not take an active role in this debate.

Mr WILKIE—Thank you for that. I should also point out that I am a fan of Zimbabwe but not of the regime.

CHAIR—That has clarified it.

Senator TCHEN—Following on from the deputy chair's question, how many elephants does 10,000 kilograms of tusk relate to?

Ms Delahunt—I have no idea. I would have to get an answer for you on that.

Senator TCHEN—Supposing it is 10 kilos per tusk, that is 5,000 elephants. That is in Namibia alone, and there is 20,000 kilograms from Botswana and 30,000 from South Africa. This excludes seized ivory and ivory of unknown origin, so do we have that many elephants of known origin slaughtered every year, legally, in those countries?

Ms Delahunt—This is talking about a maximum amount to be traded under the annotation. South Africa, for example, has had an authorised warehouse and ivory has been in there for at least a decade. But I am not sure on that. For conservation reasons, each year the national parks service does cull a certain small number of animals because of the impact on biodiversity—for example, at Kruger National Park. All of that ivory is stockpiled.

Senator TCHEN—Reading this, with my suspicious mind I have to share the deputy chair's concern about this trading in hunting trophies for non-commercial purposes. If you have trade, how can it be non-commercial, I wonder. Anyway, I am sure you did not draw this up. Can I also draw your attention to page 2 of the NIA and the reason for Australia to take the proposed treaty action, which is at line 8. I wonder whether it is a typographical error or whether the word 'not' should be there—the last word on line 8.

Ms Delahunt—Yes, you are quite right; it is a typo.

Senator TCHEN—Thank you. On the same line, from what you say here, seahorses and other native animals are protected in Australia under Australian legislation. Are various species of seahorse listed in appendix 3; that is, identified by parties as being subject to regulation within their own jurisdictions for conservation purposes?

Ms Delahunt—No, they are not listed in appendix 3.

Senator TCHEN—Shouldn't they be listed by Australia? Presumably, we need cooperation from other countries as well.

Ms Delahunt—Because of the Environment Protection Biodiversity Conservation Act, we already regulate the international trade in Australian seahorses, so we are fully aware of the amount of animals that leave the country. We are certainly aware of the state of the industry within Australia and the conservation status of the animals.

Senator TCHEN—I was reading the definition under appendix 3. If Australia supports this type of treaty action we should be proactive and include our species that have been identified as needing protection under this treaty.

Ms Delahunt—They are already covered under appendix 2.

Senator TCHEN—Yes, I know, but I wondered whether they should have been under appendix 3 to start with, as an Australian initiative.

Ms Delahunt—There was discussion but we decided to support international workshops and a range of activities internationally instead of the issue of pursuing appendix 3 listing.

CHAIR—There is one matter that I would ask you to clarify. The conference of the parties voted to delay implementation of the listing of seahorses for 18 months and mahogany for 12 months. What was the rationale behind those decisions?

Ms Delahunt—Part of the rationale behind those decisions was to ensure that some of the export nations have sufficient time to get their house in order, so to speak. Certainly some of the South American nations, particularly Brazil, wish to have more time to ensure that their certification standards are sufficient in order to have an easy transition for the industry.

CHAIR—So there were no scientific reasons behind this; it was a matter of economic or political convenience?

Ms Delahunt—As far as I am aware. I was not in the room where that debate was occurring; I was in the other room most of the time.

CHAIR—So you do not know the answer as to the reasons why—

Ms Bromley—It might be useful for me to provide some information. In both cases, as Anne-Marie has indicated, there were implementation issues with respect to the listing of those species. It was the first time a significantly important commercial timber species was listed on CITES, so there were a number of implementation issues that countries that are particularly involved in the export and import of mahogany wish to work through. So there was a delayed implementation. In the case of seahorses, once again it was an implementation issue. As a lot of countries involved in the trade are developing countries, once again there were capacity building issues and issues regarding making sure that regimes were set up and in place well before the listing came into effect.

CHAIR—As there are no further questions, I thank you for attending this morning. It has been most helpful.

[11.37 a.m.]

ALCHIN, Mr Robert John, Policy Officer, Maritime Regulation Section, Transport Regulation Division, Department of Transport and Regional Services

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

GILLIES, Mr John Christopher, Principal Adviser, Policy and Regulatory, Environment Protection Standards, Maritime Safety and Environmental Strategy, Australian Maritime Safety Authority

HOGAN, Mr Robert, Assistant Secretary, Surface Transport Regulation and Reform Branch, Transport Regulation Division, Department of Transport and Regional Services

MAYNE, Mr Andre, Senior Manager, Agriculture and Veterinary Chemicals Product Safety and Integrity, Product Integrity—Animal and Plant Health, Department of Agriculture, Fisheries and Forestry

NELSON, Mr Paul Eric, Manager, Environment Protection Standards, Australian Maritime Safety Authority

RAMPAL, Ms Veena, Assistant Director, Maritime Regulation Section, Surface Transport Regulation and Reform Branch, Transport Regulation Division, Department of Transport and Regional Services

WILD, Mr Russell, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade

Regulations for the prevention of pollution by sewage from ships—annex IV of the International Convention for the Prevention of Pollution from Ships

CHAIR—I understand that evidence on the next two treaties will be heard consecutively with the same witnesses appearing for each treaty. First we will hear evidence on annex IV—regulations for the prevention of pollution by sewage from ships (revised) of the protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships 1973, as amended (MARPOL 73/78), done at London, 17 February 1978, revised text adopted at London on 13 March 2000. We will also hear about the International Convention on the Control of Harmful Anti-fouling Systems on Ships done at London on 18 October 2001.

I welcome the witnesses from the Department of Transport and Regional Services, the Australian Maritime Safety Authority and the Department of Agriculture, Fisheries and Forestry, as well as Mr Fewster and Mr Wild from DFAT. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant 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 parliament. Would you like to make some introductory remarks before we proceed to questions?

Ms Rampal—The International Convention for the Prevention of Pollution from Ships, MARPOL, is an important international mechanism to protect the marine environment from ship-sourced pollution. Australia acceded to the MARPOL convention in 1987 and has to date ratified and implemented all four of the six annexes that have entered into force. Annex IV of MARPOL relates to the prevention of pollution by sewage from ships. It received the necessary level of acceptance in September last year and will enter into force internationally on 27 September 2003. The annex will come into force in Australia three months after indication of Australia's acceptance is conveyed to the International Maritime Organisation, the IMO.

Annex IV sets out in detail how sewage should be treated or held aboard a ship and the circumstances under which discharge into the sea may be allowed. The annex will apply to the following ships on international voyages: all new ships of 400 gross tons and more and new ships of less than 400 gross tons but which are certified to carry more than 15 persons. In the case of existing ships that match these criteria, the provisions of annex IV will apply five years after the date of entry into force—that is, on 27 September 2008. These ships will need to be equipped with either an IMO-approved sewage treatment plant, a sewage comminuting and disinfecting system or a holding tank for the retention of sewage. Before a new ship is put into service, it will be surveyed to ensure that its sewage disposal system meets the required standard. In Australia, this survey will be undertaken by the Australian Maritime Safety Authority or an authorised organisation.

Regulations in annex IV prohibit the discharge of sewage from ships at sea unless the discharge is carried out through the sewage treatment plant or a comminuting and disinfecting system, provided that the ship is more than three nautical miles from the nearest land, or that it is carried out from a holding tank, provided that the ship is more than 12 nautical miles from the nearest land. In effect, the regulations stipulate that sewage from ships may be discharged within the 12 nautical mile zone only if it has been treated. Sewage remaining in holding tanks aboard ships may be discharged at waste reception facilities located at various ports.

The annex places an obligation on ports to provide facilities for the reception of sewage from international trading vessels. Most major Australian trading ports and many small ports already have waste reception facilities in place, either through a direct connection to the city's sewerage system or through the use of private contractors using tankers for its removal. At present there are no enforceable international standards for the discharge of sewage from ships. This sewage poses numerous environmental and health risks for marine life and humans who come into contact with it.

Commonwealth legislation to implement the provisions of annex IV was passed in 1986; however, this legislation was not proclaimed to commence as, at that time, annex IV had not received the required level of international acceptance. In 2000, the IMO made amendments to some of its provisions which had not been considered acceptable by a number of countries. In 2001, the Australian Transport Council agreed that Australia should adopt and implement annex IV; however, development of legislation was held in abeyance until such time as the annex received the necessary international acceptance.

Since 1973, the international shipping industry has been aware that the IMO would be implementing sewage discharge standards, and this has been taken into account in the construction of ships since that time. In Australia, the shipping industry has been consulted at all stages in the development of annex IV, commencing in the 1970s. The views of the states and the Northern Territory have been sought through the deliberations of the Australian Transport Council, and all jurisdictions have provided support for annex IV. In the year 1999-2000, some 3,254 international trading ships visited Australian ports. By becoming a party to annex IV, Australia will ensure that consistent national and international standards can be to applied to foreign ships visiting her ports and that the marine and coastal environments receive the protection they deserve.

CHAIR—You were just mentioning the history of annex IV. As at 1985, how many countries were needed to accede to annex IV?

Ms Rampal—Normally 50 per cent of the world's shipping tonnage has to accede, in relation to this annex, for it to gain international acceptance.

CHAIR—So that number of nations did not accede to annex IV until which year?

Ms Rampal—Last year.

CHAIR—They did not accede until 2002?

Ms Rampal—September, 2002.

CHAIR—Can you indicate, in general terms, what the hurdles and delays were in obtaining a sufficient level of international acceptance for annex IV, and how they were overcome?

Ms Rampal—Some of the provisions were different back then. For example, as I just indicated, the new regulations apply to ships of 400 gross tons and more undertaking international voyages. The previous provisions related to ships of 200 gross tons and more undertaking domestic and international voyages. That posed a problem to many of the governments because it would have increased the administrative work that they would need to do to regulate all those ships.

CHAIR—Why did it take so long then for that to come to fruition? Obviously that must have been an objection from the outset. From 1985 onward there must have been this objection to the tonnage and the fact that international and domestic routes were considered. So was it a question of everybody eventually giving up? How did it come to the point that, by 2002, annex IV was sufficiently acceptable to a sufficient number of nations?

Mr Nelson—Perhaps I can address that in part. The problem of the size of ships and the burden on administrations was addressed in about 2000 when IMO said, 'We realise this is taking so long.' The International Maritime Organisation asked the countries that had not signed annex IV what the problems were and the feedback was that the annex would apply to too many ships and that the countries would have to do too much work. That is not a problem that would arise for Australia but for some other administrations it would. So amendments to the convention were passed. The process of signing on a convention can take two or three years in most administrations. Those amendments were passed in 2000 and it was only last year that the

additional governments—the governments for which the amendments addressed the problem—signed the Annex. Now it is ready to come into force.

CHAIR—In the case of Australia, didn't we feel sufficiently comfortable to accede until last year?

Mr Nelson—That is right. Back in 1986, when the original legislation was passed, we reached agreement that Australia should sign annex IV. However, there was an awareness that the annex would be amended in the future and we were a little uncomfortable committing ourselves to a treaty when we were uncertain of exactly what the final wording would be. Those amendments were made; they did not cause us any problems. So we are now proceeding on a path towards adoption.

CHAIR—Does the current status list, which is at the back of the NIA, represent 50 per cent—or how many more of the potential countries?

Ms Rampal—It represents over 50 per cent.

CHAIR—How many are there—I do not mean in numbers; I mean the percentage?

Ms Rampal—When it was 89 countries, it was 51.14 per cent. The list has an additional two countries. I tried to get into the IMO web site to find out but hackers have taken over so we could not access the information.

CHAIR—What have hackers taken over?

Ms Rampal—They have taken over the IMO web site. They are protesting against the war.

CHAIR—I see. Of the 53, or however many there are here—

Ms Rampal—There are 91 here.

CHAIR—are you able to tell us how many more have acceded since 31 December?

Mr Nelson—I think there are an additional two countries. I think the percentage would be in the order of 52 per cent or 53 per cent by now, but, as I said, we would need to check those were the latest figures.

Mr WILKIE—Have there been any studies undertaken to determine the impact of commercial shipping versus the impact of private vessels in Australian waters?

Mr Nelson—The regulations apply for ships of 400 tons and above on international voyages. By implication, that is generally commercial trading vessels. Smaller vessels such as, I guess, tourist craft operating in the Great Barrier Reef and so on are not subject to this convention but they are generally subject to very similar state legislation, much of which is emerging at the moment.

Mr WILKIE—So pleasure craft, for example, would come under state legislation and not under the national standards?

Mr Nelson—That is correct. International voyages in vessels of 400 tons and above is the standard for annex IV of MARPOL.

Senator SANTORO—I am interested in the regulatory regime that backs up the provisions of a treaty such as the one that we are considering today. I want to draw on a personal and practical experience I had during my holidays when I was driving on the southern stretch of the beach leading up to Double Island Point. I was taking my kids to see—

CHAIR—Just give me a location, please. Where are we?

Senator SANTORO—That is just north of Noosa, heading along a very pristine piece of beach. As we were driving along the beach, we witnessed what looked like sludge, which had a smell to it. When an incident like that is observed, presumably by somebody in authority, what mechanism or what procedure kicks in to investigate where that matter is originating? In that particular case, who would have responsibility to investigate where it is coming from? In particular, what role would a state like Queensland or Victoria have in finding out what went on there?

Mr Nelson—The focus of a convention like MARPOL is, as you say, oil, because it is mostly oil spills that occur, not sewage spills. In an instance such as the one you mention, Maritime Safety Queensland, who have the jurisdiction in that area, would let us know. They would undertake any clean-up, but in conjunction with Maritime Safety Queensland we would try and determine what shipping had passed that area in perhaps the 24 or 48 hours before the spill. We would get a sample from the beach and have it analysed in a laboratory to tell us what sort of oil it was and how long it had been in the water, and perhaps try and do a backtrack. We might end up with half a dozen or a dozen ships that had passed that area in the previous 24 hours and we would try and sample them when they got to their various ports and match any oil that came up on the beach. It is not an easy task, because there are a lot of ships, but we do have some successes. To answer your question, the Australian Maritime Safety Authority and all of the state jurisdictions work very closely together on this sort of issue, because the state is involved in the clean-up operation and doing the analysis and so on, and of course they look to us to provide them with information on ships that may have caused the spill.

Senator SANTORO—What amount of substance needs to be identified or ascertained before an investigation kicks in? What size spill, for example, would prompt a full-on investigation or is there a certain amount of spill for which somebody will say, 'Just let it go'?

Mr Nelson—No, there is not. For example, the New South Wales authorities had a prosecution under this convention several years ago for somewhere around five litres of hydraulic fluid leaking into the water.

Senator SANTORO—So it is quite a small amount.

Mr Nelson—It is quite a small amount. We do not apply any test such as 'If it is less than a tonne, we will not bother.' Any discharge in excess of convention requirements is illegal and is investigated.

CHAIR—How will entry into this treaty affect Australia's livestock industry?

Mr Nelson—We have consulted—and I think there is a mention of this in the regulatory impact statement—the Australian Livestock Export Corporation. There is very little impact on that industry. The ships involved in that industry are, I think in all cases, foreign registered vessels, so the burden of ensuring certificates are on board those ships rests with those foreign flag states. The only other impact is that the ships will be subject to more thorough inspections in Australian ports once this legislation comes into effect, so we will be able to go on board those ships and make sure they have the necessary arrangements in place. For those ships it would probably be holding tanks, which they would discharge once they get more than 12 miles offshore.

CHAIR—In the national interest analysis under the heading 'Implementation', you talk of the requirements that will need to be undertaken at most Australian ports. Are you indicating here that Australian ports in the main already have facilities that will meet the requirements of this annex IV?

Mr Nelson—Yes.

CHAIR—Are there any obvious exceptions to that?

Mr Nelson—The regulatory impact statement draws attention to the ports of Geelong, Westernport and Port Hedland as not having facilities when we put this document together. We have since had discussions through the Association of Australian Ports and Marine Authorities and determined that those ports now do have facilities in place. They have mobile facilities, tank trucks available—

CHAIR—So they have upgraded them since discussions began?

Mr Nelson—Realising that this annex would come into force soon, most ports have been upgrading. So, yes, certainly all the major ports and most of the smaller ports also have facilities, whether they are fixed or whether they are mobile and portable, like a truck.

Mr WILKIE—I wonder whether livestock carriers would have to comply with this treaty, given that you are talking about animal waste rather than human sewage?

Mr Nelson—The annex does apply to animal waste.

CHAIR—There was also reference in the papers to the Australian Maritime Group. Who is represented within that group? Who does it comprise?

Mr Hogan—Under the Australian Transport Council is a Standing Committee on Transport, SCOT, which comprises the CEOs of the transport agencies, and then under that body is a number of what are called modal groups. The modal group for marine is the Australian Maritime Group. It comprises representatives of the Commonwealth, states and territories.

International Convention on the Control of Harmful Anti-fouling Systems on Ships

CHAIR—We will move on to the next treaty, the International Convention on the Control of Harmful Anti-fouling Systems on Ships, done at London on 18 October 2001. We have the same witnesses appearing on this treaty, and the same requirements as before apply. Could we have some introductory remarks in relation to that treaty and then we will proceed to questions?

Mr Alchin—Conceptually, the International Convention on the Control of Harmful Anti-fouling Systems on Ships is fairly simple. As recognised in the preamble to the convention, the use of antifouling systems to prevent the build-up of organisms such as barnacles on the surfaces of ships is important to enable those ships to move efficiently through water and also to impede the spread of harmful aquatic organisms and pathogens. The usual method currently employed to prevent this build-up is the use of antifouling paints. Various antifouling paints have been used over the years but the most successful of these have been paints containing tributyl tin, or TBT, which remains effective for up to five years. This is convenient for ships' operators because ships generally operate on a five-year dry docking cycle. But studies conducted over the last 20 years or so have indicated that TBT and other organotin compounds have an adverse effect on the marine environment and they may also have an adverse effect on the health of humans who consume large quantities of seafood as part of their normal diet.

The purpose of the convention is to ban the use of organotin compounds such as TBT which act as biocides in antifouling paints. The most important part of the convention is that from 1 January 2008, with minor exceptions, ships shall be required to either remove any organotin compounds that are on their surfaces or ensure that any organotin compounds on their external surfaces are sealed to prevent those organotin compounds from leaching into the water. Industry are well aware of this and have assumed that the convention is going to come into force and, because of their five-year dry docking cycle, are now starting to apply alternative antifouling paints.

The convention has certification requirements for two different groups of ships. Ships of 400 gross tons or more and which are engaged in international voyages will be required to undergo a survey to ensure that their antifouling systems comply with the convention. Then, following successful completion of a survey, these ships will be issued with an international antifouling system certificate. Ships which are less than 400 gross tons engaged in international voyages but which are 24 metres or more in length will be required to carry a declaration on the antifouling system signed by the owner or the owner's agent which states that the ship's antifouling system complies with the convention. There are no certification requirements for other ships.

To determine if a ship complies with the convention, it may be inspected in a port, shipyard or offshore terminal. Inspectors determine whether a ship complies by verifying that there is a valid certificate or declaration on board or by actually taking a sample of the ship's antifouling system.

Australian legislation is currently being drafted to implement the convention, and it is expected that this legislation should be ready for introduction into parliament during this year's spring sittings. However, the proposed legislation will not commence until the convention enters into force in Australia, which is expected to coincide with international entry into force of the convention. One requirement of the convention's entry into force requirements is that 25 states are party to the convention. Currently only two states are parties to the convention. It is important to note that the convention has been drafted so that if, in the future, any other

antifouling systems are found to be harmful to the marine environment or to human health, they may be listed by a simple amendment to annex 1 of the convention, without the need for other amendments to it. The detailed process for this is set out in article 6 of the convention. Of course, any such changes to annex 1 would be accepted by Australia only after the usual consultations with the states, territories and industry and would be subject to the JSCOT process and passage through parliament of implementing legislation.

Finally, I want to mention two things that have assisted domestically for the implementation of this convention in Australia. The first is that the states and the Northern Territory have already implemented legislation to prohibit the application of antifouling paint containing organotins on vessels less than 25 metres in length. In some cases that legislation extends to the application of these sorts of compounds to other structures, such as piers.

The second thing that has occurred domestically is that the Australian Pesticides and Veterinary Medicines Authority—which until a couple of weeks ago was known as the National Registration Authority for Agricultural and Veterinary Chemicals—has set in place a process for the deregistration of antifouling paints containing TBT. That basically comes under the responsibility of the Department of Agriculture, Fisheries and Forestry, and Mr Mayne will be able to answer any questions the committee has in relation to that process.

CHAIR—Could I just test the question of the attitude of other countries. You indicate that other countries are generally in favour of this convention. The national interest analysis also indicates that most states accept the standards covered by this convention, but there does not seem to be a huge amount of enthusiasm for signing the convention, let alone ratifying it. Which two states have now ratified?

Mr Alchin—The two parties who are parties to it are Denmark and Antigua and Barbuda.

CHAIR—And Antigua and Barbuda was not on the current status list as at 31 December 2002.

Mr Alchin—It became a party since 31 December.

CHAIR—So it signed and ratified since 31 December?

Mr Alchin—Yes. I might add: you say that there is not too much enthusiasm.

CHAIR—It is just an observation.

Mr Alchin—Yes, but the convention was adopted by IMO only about 18 months ago. Again, it takes individual states some amount of time—as Australia has—to get through their parliamentary processes and other processes that are necessary for them to become parties.

CHAIR—Given that you say that most states accept the standards, it seems that there is not a great deal of controversy about this convention.

Mr Alchin—We are confident that a number of other countries will be parties fairly soon. Certainly, the European Union has issued a directive so that it applies throughout the European Union.

CHAIR—Do you anticipate that the European Union nations will come en masse to signing?

Mr Alchin—Quite a lot of them are in the process of carrying out whatever processes are necessary.

CHAIR—We should not be too optimistic about that, I guess, but that is what you anticipate?

Mr Alchin—Yes, and it is probably significant that Denmark is one of the parties.

CHAIR—I guess it comes down to the question of why an internationally binding agreement is needed in this regard, if most states are abiding by these standards in any event. Perhaps you could offer an opinion on that. Also, are there any countries that are not willing to adopt these standards?

Mr Alchin—In relation to your first question, the purpose of a convention is just to ensure not only that is there compliance with this requirement but also that there is some uniformity in the way it is regulated and that we have a uniform certificate so that each state can check that ships coming in from other parties have this certificate, because that is the easiest way to check compliance—although it is not the only way. In relation to your question about countries that may be reluctant, somebody from the Maritime Safety Authority may be able to answer that; I am not sure.

Mr Nelson—There have, on occasion, been other international maritime organisations where countries like the United States, for example, have expressly said they disagreed with some provisions in the convention. But in this case I do not recall any countries saying that they objected to anything in the convention.

CHAIR—In fact, the United States have signed this agreement.

Mr Nelson—I think they have signed, subject to ratification.

CHAIR—Should we read anything into the fact that the United States have signed this? There are plenty of agreements that they do not sign.

Mr Nelson—That is right. As Mr Alchin said earlier, about a dozen countries have signed this convention subject to ratification. Of course those numbers do not appear on the IMO web site. Those countries are working on their legislation just as we are. So we expect in the next 12 months or two years to have an 'en masse signing'—to use your words—of this convention.

Mr WILKIE—I have a technical question. I support the treaty. I think all antifouling paints have some sort of negative impact on the environment. If this particular antifouling paint is very successful you probably only have to put it on every four or five years, as opposed to the antifouling paints we are using now—which also give off toxins—that you probably have to apply every 12 to 18 months. Has a study been undertaken as to whether it is worth having a

paint that lasts for five or six years—I do not know what the period is—as opposed to something you would put on every 18 months to two years? In other words, is preventing the use of this paint, while it sounds good in theory, beneficial in practice?

Mr Mayne—My colleague from the National Registration Authority has just advised me that there are a number of alternatives and the data that they have received prior to registering these alternatives indicate that they have an effective life of three to five years. So it may be a little bit shorter in some cases, but five years is expected.

Mr WILKIE—Okay, so it is more beneficial but it probably costs more. That is the key.

Senator SANTORO—Under the heading of 'Obligations' in the national interest analysis, it is stated that the convention does not apply to warships, naval auxiliary or other ships used only on government non-commercial service. What are the reasons for that? Why is there that exemption for that category of shipping?

Mr Alchin—This is just a usual thing that occurs in probably just about every IMO convention. While it does not apply to these ships, there is also something in the convention which says that parties should ensure, as far as possible, that their warships and other non-commercial ships do comply with the requirements of the convention.

Senator SANTORO—Is it usually the case that governments do comply?

Mr Alchin—I expect it is. I have no reason to say whether it is or not.

Mr Nelson—I can say that, in Australia's case, we work very closely with the Department of Defence in respect of naval vessels, and they are certainly at the forefront of some of this technology—in particular antifouling paints. So, while the convention does not specifically apply to them, they take and we take our obligations seriously. As for how other governments treat it, we cannot say. But exemptions for naval vessels of this type do seem to be a longstanding tradition of this type of maritime law. They are excepted from the MARPOL convention we just spoke about, and the sewage discharge standards do not specifically apply to Defence vessels.

CHAIR—They are all the questions we have on this treaty. When the IMO web site is reinstated—as I assume it will be at some point—would you be able to provide to us an updated list of signatories or ratifications for the first and second treaties that we have just been dealing with? Please provide that at some point to the committee so we can complete the report.

Ms Rampal—Yes.

CHAIR—Thank you for your attendance. It has been most useful.

Resolved (on motion by **Mr Wilkie**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.12 p.m.