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JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 15 March and 11 May 2005

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JOINT STANDING COMMITTEE ON

TREATIES

Monday, 20 June 2005

Members: Dr Southcott *(Chair)*, Senators Bartlett, Jacinta Collins, Mackay, Mason, Santoro, Stephens and Tchen and Mr Adams, Mr Johnson, Mrs May, Ms Panopoulos, Mr Ripoll, Mr Bruce Scott, Mr Turnbull and Mr Wilkie

Members in attendance: Senators Mason, Stephens and Tchen and Mr Adams, Dr Southcott, Mr Turnbull and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

Treaties tabled on 15 March and 11 May 2005

WITNESSES

Committee met at 10.16 am

BALDWIN, Mr Victor Wayne, Manager Valuation and Origin, Australian Customs Service

HINGEE, Ms Louise Ann Mary, Executive Officer, FTA Commitments and Implementation Section, Trade Commitments Branch, Office of Trade Negotiations, Department of Foreign Affairs and Trade

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

LOUNDES, Dr Joanne Elizabeth, Executive Officer, Malaysia, Singapore and Brunei Section, Department of Foreign Affairs and Trade

MELTZER, Mr Joshua Paul, Executive Officer, FTA Commitments and Implementation Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade

THWAITES, Mr Michael Jonathan, Executive Director, Treaties Secretariat, Legal Branch, International Law Division, Department of Foreign Affairs and Trade

VO-VAN, Mrs Chulee, Executive Officer, Malaysia, Singapore and Brunei Section, Department of Foreign Affairs and Trade

WHITE, Mr Damian, Executive Officer, Legal Branch, Department of Foreign Affairs and Trade

ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Law Branch, Office of International Law, Attorney-General's Department

CHAIR (Dr Southcott)—Minutes of meeting No. 10 held on 14 June 2005 have been circulated, and I require a member to move that those minutes be confirmed. Moved Mr Wilkie, seconded Senator Mason and carried. 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 today review seven treaties tabled in parliament on 15 March 2005 and 11 May 2005. I understand that witnesses from various departments will be joining us for discussion of the specific treaties for which they are responsible. I thank witnesses for being available for this hearing. To begin our hearing, we will take evidence on the Singapore-Australia Free Trade Agreement amendments.

[10.17 am]

Singapore-Australia Free Trade Agreement

CHAIR—I call representatives from the Department of Foreign Affairs and Trade. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may

be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Lade—We would like to make a brief opening statement, thank you. The Singapore-Australia Free Trade Agreement provided for a ministerial review of the agreement one year after entry into force and bi-annually thereafter. The first ministerial review meeting took place in Sydney on 14 July 2004. The next ministerial review meeting is scheduled for July 2006. The aim of the SAFTA review process is to keep SAFTA up to date and relevant to Australian and Singaporean business. The review process will identify emerging issues for business in the two countries and build on the platform provided by SAFTA.

The amendments to SAFTA now proposed are those agreed at the first ministerial review on additional measures to be incorporated into SAFTA and represent a balanced package of outcomes for Australia and Singapore, including (1) Singapore undertaking to recognise Australian law degrees from two additional Australian universities, the University of Tasmania and the Murdoch University. This takes the number of Australian law degrees recognised in Singapore from eight to 10 and will help strengthen Australia's position as a major provider of tertiary education in Singapore; (2) agreement to revise arrangements concerning certificates of origin for Singaporean exports to Australia which, when implemented, will facilitate the movement of goods from Singapore to Australia and help reduce administrative costs for Australian manufacturers; (3) the incorporation into SAFTA of the two sectoral annexes on horticultural goods and food, which will provide for streamlined compliance and inspection arrangements for approved products; (4) Australia has added four new entities to the list of Australian government agencies subject to the national treatment provision on procurement. These agencies are the Inspector-General of Taxation; the Office of Renewable Energy Regulator; the Seafarers Safety, Rehabilitation and Compensation Authority—the Seacare Authority; and the National Blood Authority.

Since SAFTA's entry into force in July 2003, Austrade has helped 422 companies, including 192 new exporters, enter the Singapore market, with sales worth more than $297 million. In addition to the entry of new Australian exporters to the Singapore market, a number of established exporters have expanded their operations in Singapore. For example, through its acquisition of the former Singapore Public Works Department, Downer EDI, Australia's second largest listed engineering services firm, has become increasingly active in Singapore and has been successful in developing new business in Asia from the Singapore base. The University of New South Wales has signed a memorandum of understanding with the Economic Development Board of Singapore to establish a campus in Singapore to provide undergraduate and postgraduate teaching and research.

As part of the ongoing review process, the department will begin consultations with other Australian government agencies, state and territory governments and industry to seek their views on how SAFTA can be taken forward. As indicated by ministers after the last review, issues that could be considered in the forward work program include improvement to the rules in SAFTA, particularly in relation to investment and the rules of origin, cooperation in the areas of competition policy, education, e-commerce and telecommunications and ways to promote closer business links and commitments under the government procurement chapter.

CHAIR—Thank you.

Mr WILKIE—Which universities are currently on the list?

Mr Lade—At present, there are 29 Australian university law degrees and 10 are recognised. I will seek guidance on this from my colleagues, but off the top of my head they include the University of Sydney, the University of New South Wales, Melbourne University, Monash University, the University of Western Australian, Murdoch University, Flinders University, the University of Tasmania and the University of Queensland. I have missed one.

CHAIR—The University of Adelaide?

Mr Lade—The University of Adelaide, unfortunately, is not yet included. On the question of seeking recognition of further law degrees, including the University of Adelaide, we have been in constant contact with them trying to push their case. We raised it at the first review, but basically Singapore has indicated a preference to proceed gradually with recognition of further law degrees. We expect that Adelaide is one that we will push strongly at the next review.

Mr WILKIE—What about Curtin University in Western Australia?

Mr Lade—I do not believe that Curtin University is currently on the list.

Mr WILKIE—Do you know if they are trying to get listed?

Mr Lade—We are trying to obtain recognition of all 29 law degrees, and that will be something taken up in the context of the forward work program. Because Singapore has indicated a preference for a phased approach, we expect at the next review, which is due in the middle of next year, we possibly will only be able to get a couple more accepted.

CHAIR—In the annex on consultations there is a long list of businesses consulted. Does that mean that you wrote to them or that they attended one of the seminars? What level of consultation does that indicate?

Mr Lade—There were a number of ways we went about this, but initially Austrade convened a series of business seminars. We then followed up before the review process with consultations in each state. Companies were invited to the consultations. In a number of cases, where they indicated they could not attend the face to face consultations, they sent us written communications.

Mr WILKIE—Were there public advertisements as well?

Mr Lade—Yes.

Mr TURNBULL—I notice that in order for recognition to be given for an Australian law degree the citizen or permanent resident has to finish in the top 30 per cent of the class, but in the reciprocal provision in terms of recognising in Australia a graduate of the National University of Singapore there does not seem to be the 30 per cent level. Does this indicate that the Department of Foreign Affairs and Trade has a higher regard for Singaporean graduates in law than it does for Australians?

Mr Lade—I think the answer to that question partly reflects that we already had a more liberalised environment for law practice in Australia before we negotiated the agreement with Singapore. One of the key benefits of SAFTA was the openings that we sought to achieve in the services sector, while we achieved considerable benefits through SAFTA there is still scope for further opening. On the question of Singapore graduates having to be in the top 30 percentile, this is something we will be taking up in the context of the forward work program because we believe that it is a little restrictive.

Mr TURNBULL—You say you think it is unduly restrictive.

Mr Lade—Singapore imposes restrictions because they wish to avoid a surplus of lawyers in their market environment. We will be seeking to relax that 30 per cent.

Mr TURNBULL—You believe the Singaporeans' motivation in imposing this 30 per cent level is not a reflection of their concern about academic standards in Australia but simply a desire to limit the influx of lawyers into their profession?

Mr Lade—Essentially that is correct.

Mr TURNBULL—That is not very consistent with free trade, though, is it? It is quite inconsistent, isn't it?

Mr Lade—Please feel free to comment additionally after I have answered, but essentially we sought to obtain national treatment in the services sector across the board, with provision on each side to recognise current requirements which were expressed in reservations or through the terms provided in the agreement. We will continue to seek further opening in the legal services area in Singapore. We achieved two additional law degrees through the first ministerial review and we will take it forward in the forward work program.

Senator MASON—On the issue about the 10 law schools that have now been accredited, I think in your opening statement you mentioned there are 29.

Mr Lade—Yes.

Senator MASON—What are the criteria upon which Singaporeans decide that those particular law degrees are ones that should be accredited?

Mr Lade—This is something which goes back to the original negotiating process when we first concluded SAFTA. At that time Attorney-General's consulted with all the Australian universities about their interest in the Singapore market. I cannot give you precise details on how many eventually expressed active interest in gaining entry into the Singapore market but the Attorney-General's Department, in consultation with the universities, worked out those that had a strong interest. They also looked at ensuring that there was geographic spread in terms of the universities that were covered by the degrees recognised.

Senator MASON—You would not say it is a reflection necessarily of the quality of the course?

Mr Lade—No.

Senator MASON—That was the chairman's question about the University of Adelaide, which is one of the G8 universities in this country.

Mr Lade—There is no question of quality. We recognise that the University of Adelaide has a very strong law degree and we are actively pushing to get Adelaide accepted.

Senator MASON—Thank you.

Mr WILKIE—I wonder if you can provide more information with regard to the rules of origin change. What led to that being changed, exactly what is the change and why did we need to do it?

Mr Lade—I will defer to other colleagues here. But by way of introductory comments, one of the key things we have sought to do through the review process with SAFTA is to take into account the experience with implementation. Following consultations with industry on our side, there were some issues raised in relation to rules of origin. There were more raised on the Singapore side. The original provisions relating to issue of certificates of origin in practice proved to be a little more cumbersome than we envisaged when we started out. The idea was to streamline and facilitate the arrangements.

Mr Baldwin—There are two or three changes. The first one is that with the initial shipment there is no necessity to have a declaration as well. Under the treaty as it stands at the moment, you have to have a certificate of origin stating what the goods are and that they meet the rules of origin. Then you have to have a declaration to say that the goods are exactly the same as that certificate. On the first shipment it is a bit ludicrous to have two pieces of paper for the same goods. The change is that for the first shipment you only have to have a certificate of origin. For further shipments you have a declaration that says that the goods are identical to what was in the first shipment.

At the moment there is a requirement that you have to have a certificate of origin issued before the goods leave Singapore. The second change is to say that the certificate of origin is required before the goods arrive in Australia. The main reason for this is that when bulk cargo is being loaded onto a vessel, they do not know exactly what the quantity of it is until it is on board and leaves Singapore. To have a certificate before the goods leave is very difficult for them. It may delay the ship itself.

Mr WILKIE—You don't see it weakening the provisions?

Mr Baldwin—No.

Mr WILKIE—What happens if that certificate hasn't arrived in Australia before the goods get here?

Mr Baldwin—If it does not arrive before the goods arrive, then the goods are not eligible for preferential treatment. It has to be here before the goods arrive. At the moment it has to be before

the goods leave. It gives them about a week or so extra—that shipment time between Singapore and Australia—to make certain they do get the certificate.

Mr WILKIE—Thanks.

Senator TCHEN—How often do we import bulk cargo from Singapore?

Mr Baldwin—The main bulk cargo is petroleum products. That is about the only one that we get under bulk cargo.

Senator TCHEN—I have a follow-up question on the qualifications for law degrees. I am not a lawyer but it seems to me that one of the requirements under annex 4-III (II) (e) (i) requires a graduate to have been ranked by the university amongst the highest 30 per cent of that batch of full-time students. This should be directed to Mr Lade. As far as I know, no Australian university provides information on how students are ranked amongst their graduates. How is that going to be practised?

Mr Lade—Do you know, Chulee?

Mrs Vo-Van—I am not aware of it. If I could add information on this one, it applies only to Singaporean students studying in Australia. As Mr Lade has already explained, this is simply a domestic requirement by the Singapore government in order to control intake of Singaporean lawyers per year. It may be an arrangement they have with individual universities that when the students graduate each year, they have to graduate at a certain level—higher distinction or some such marking. If you are interested, we can find out.

Senator TCHEN—Do you mean that if you graduate from the National University of Singapore you have to be in the top 30 per cent as well to practise?

Mrs Vo-Van—It is only a requirement in relation to Australia. I am not sure whether or not the requirements—

Senator TCHEN—What about Australian citizens seeking to practise in Singapore?

Mrs Vo-Van—That comes under a separate arrangement. They can practise in Singapore as an individual but if they seek to open a law firm, that would come under different arrangements. They are required to enter into a joint venture with a Singapore company.

Senator TCHEN—This provision only applies to Singapore citizens?

Mr Lade—That is correct.

Mrs Vo-Van—Or permanent residents.

Senator TCHEN—The permanent residents could be Australian citizens?

Mrs Vo-Van—It is possible.

Senator TCHEN—I am sorry, I am a little bit confused now. I thought I understood when I first looked at it but then I did notice that it mentioned about Singapore citizens and permanent residents in the details. How does this amendment impact on Australian citizens seeking to practise in Singapore as legal practitioners?

Mr Lade—The amendments do not impact on Australian citizens seeking to practise in Singapore. They relate to Singaporeans at Australian universities, and so the amendment provides an additional choice.

Senator TCHEN—I see. So Mr Turnbull can go to Singapore and practise!

Mr Lade—As Mrs Vo-Van indicated, there are separate provisions for Australian lawyers to practise in Singapore.

Senator TCHEN—Are those provisions part of the free trade agreement?

Mr Lade—Yes, they are.

CHAIR—Can I clarify? If someone has graduated with a Bachelor of Laws from one of the universities in this agreement, and has a certificate of good standing from their legal practitioners board in the state or territory in which they are registered, is that enough for an Australian to practise in Singapore?

Mr Lade—For establishing joint law ventures. These provisions were provided originally in the Singapore-Australia Free Trade Agreement and those provisions have not been changed. Essentially, to set up a joint law venture I think you need four partners, and 20 years experience to be able to set up with a Singapore counterpart or partner.

Mr TURNBULL—Historically, many Singaporean lawyers have had their academic training in the United Kingdom. Is there any 30 per cent requirement for graduates from the United Kingdom universities?

Mr Lade—I have to take that question on notice. I do not know the answer.

Mr TURNBULL—I am pretty sure there is not. Lee Kuan Yew was admitted in the UK. Actually, a lot of Singaporean lawyers are admitted in the UK first, in fact. Just looking at it from our perspective, this does look like an unattractive judgment on the quality of Australian law schools. The question really has to be put to you: why would you agree to it? Why would you agree to this, given that we do not have any such restriction on the graduates from the Singaporean law schools?

Mr Lade—I would make two comments in reply to that. The first one is that these were provisions provided for in the Singapore-Australia Free Trade Agreement which has already been agreed to and is in force, and so the additional provisions we are looking at now relate to including additional universities.

Mr TURNBULL—I appreciate that. It is definitely a step forward, but surely you should be pushing harder on this point.

Mr Lade—The other point I would make, though, is that when we negotiated the agreement we were seeking a balance of benefits for both sides and we sought the best liberalisation of the Singapore legal services sector we could obtain at the time. The addition of two extra law degrees in the first review process reflects that we are continuing to push further liberalisation in this area. As I indicated, in the context of the forward work program we will be seeking further liberalisation both in terms of the number of law degrees recognised and the 30 percentile requirement.

Mr TURNBULL—It makes no sense, for example, not to have Macquarie University included, just to pluck one with a very good law school.

Mr Lade—Yes.

CHAIR—Are there more Singaporean citizens seeking to practise in Australia or more Australian citizens seeking to practise in Singapore? Do you have any sense of that?

Mr Lade—I am afraid I have no sense of that. We would probably need to go to the respective law councils in both countries to seek some guidance on that.

CHAIR—SAFTA has been around for a while and we are now considering these amendments. Do we have any idea of the numbers of Australian citizens who are practising law in Singapore under SAFTA or the numbers of Singaporean students who are practising here?

Mr Lade—I think Singaporeans practising law here would have to meet our legal requirements, but, as I said, I do not have a clear idea of the numbers. We can certainly try to find some indication. Essentially, these amendments are seeking to give Singaporeans greater choice of where they study in Australia and therefore to promote the extent of education services between our two countries. For how that then flows through to eligibility to practise, as we have discussed there is the 30 percentile requirement at present, but they also have to qualify for the Singapore bar if they wish to practise as a barrister in Singapore.

CHAIR—If a Singaporean student comes to Australia under an education visa and graduates from an Australian university, is in the top 30 per cent of their course and they do their diploma, then they can practise in Singapore. What are their pathways to practice in Australia? We do see quite commonly that a number of overseas students, if they have passed the degree and so on, often have opportunities of obtaining permanent residency in Australia, for example. Is that open to law students?

Mr Lade—These are questions relating to the student visa provisions and we do not have a representative of DIMIA here, but my understanding is that normally under their student visa requirements they would be expected to return to Singapore on completion of their studies, and they could seek permanent residence subsequently.

Senator TCHEN—Mr Lade, is the government considering seeking agreement with Singapore to achieve equivalence of admission standards to the Supreme Court of Singapore and to the Australian Supreme Courts to practise as barrister and solicitor? That is the ultimate equivalence, isn't it?

Mr Lade—I am not sure I completely understand the question.

Senator TCHEN—In Australia, for example, if you graduate from university from one of the states you can seek, after fairly minimal qualifications, to be admitted to other states' Supreme Courts to practise. Is the government looking at seeking equivalent treatment with the Singaporean Supreme Court?

Mrs Vo-Van—Isn't there a citizenship requirement involved in order to be admitted?

Senator TCHEN—Yes. Assuming that is overcome. We are talking about graduates, Singaporean citizens in Singapore and Australian citizens in Australia.

Mr Lade—I am still not sure I quite understand the point of the question, but essentially I think for Supreme Court admission you have to be an Australian citizen in Australia and, conversely, a Singaporean citizen in Singapore. Because we have similarly based but not exactly equivalent legal systems, exact equivalence is not something that we have been actively seeking.

Senator TCHEN—Yes, I understand. What I am getting at is that this free trade agreement provides for a certain class of graduates from Australian universities, be they Singaporean citizens or permanent residents, to be admitted to practise in Singapore as a law practitioner, but it is a fairly strictly defined availability, whereas, for example, in Australia if you are admitted to practise in the New South Wales Supreme Court, after the necessary registration and perhaps undertaking a short course in practice, you can be admitted to, say, the Supreme Court of Western Australia as an equivalent practitioner.

CHAIR—Senator Tchen, I am going to have to ask you to make your question very brief because we have to move on.

Senator TCHEN—Sure. Will we be seeking the same sort of access to the Singaporean Supreme Court under this free trade agreement as exists between Australian states?

Mr Lade—If I understand the question correctly, the answer is no, because this is a matter relating to Singapore's administration of its own legal system and that is beyond the scope of the free trade agreement.

Senator TCHEN—Thank you.

CHAIR—Thank you very much again for coming and presenting evidence on this important treaty.

Mr WILKIE—I would like to also thank you again for that. Keep working on those lawyers. The more lawyers we can export the better it is for the country, I am sure.

[10.47 am]

BAILEY, Mr John, Executive Officer, Korea Section, Department of Foreign Affairs and Trade

RICHARDSON, Mr Neil, Manager, International Cooperation Section, Department of Industry, Tourism and Resources

CHAIR—We will now hear evidence on the Agreement between the Government of Australia and the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources, and I call representatives from the Department of the Environment and Heritage.

Agreement between the Government of Australia and the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources

CHAIR—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. At the conclusion of your evidence would you please ensure that Hansard has had the opportunity to clarify any matters with you. Do you wish to make some introductory remarks before we proceed to questions?

Mr Richardson—Thank you. I have a very brief statement. Let me say by way of background that the two countries, Australia and the Republic of Korea, have had a long history of bilateral cooperation in the fields of energy and minerals. This cooperation is facilitated currently through the meeting of a joint committee for energy and mineral resources consultations which operates under a memorandum of understanding. This current bilateral dialogue is important to both countries as it provides both industry and government with important information to help it make decisions in the national interest. Key aspects of the current dialogue under the MOU include the promotion and facilitation of energy and mineral information, promotion and facilitation of technical cooperation in the areas of energy and minerals and facilitation of bilateral trade and investment in energy and minerals. The Australian government views the signing of an agreement with South Korea as a way of strengthening and developing the existing cooperation which operates under this MOU.

The existing MOU contains a reference to the eventual conclusion of a treaty-level agreement as proposed on energy and minerals and such an agreement appears very important to the South Korean government to secure with its key trading partners. It has such agreements already with a number of other countries, including Russia and Mongolia. Australia is inclined to agree to the South Korean government's request both to ensure that it does not disadvantage itself, when compared to other key trading partners, but also to progress its national interests.

The objectives we believe align clearly with Australia's national interests are in areas such as promoting economic activity, greater employment, greater exports, increased inflow investment and information exchange. There has been widespread consultation with states and territories and within industry on the agreement and they have been supportive and, importantly, we do not

believe that there are any additional costs associated with signing this agreement as against what currently exists under the MOU.

CHAIR—Thank you.

Mr WILKIE—I note that the Western Australian government made a number of submissions or requests for further information. Can you please tell us what they were trying to get further information about, what the result of that was and why they were not happy in the end?

Mr Richardson—The Western Australian government really posed a number of questions more than anything else. Most of those questions revolved around what the obligations to them would be under the treaty. They were interested in knowing whether they would be bound by any of the issues that were addressed in the proposed agreement; whether it would have any implications for existing legislation; whether they would need to make any changes; how it would be implemented and what their role might be in the implementation of that treaty, and a number of minor issues associated with wording.

The tenor of the response from the Department of Industry, Tourism and Resources was that there would be no tangible obligations on the Western Australian government or any other government or, indeed, any other stakeholder—such as the business community—and that the purpose of the agreement was simply to provide a cooperative framework with the South Korean government within which industry or state governments could pursue their objectives, but that there would be no requirement to change legislation. It would not cut across any existing practices they had and it was more an opportunity than an obligation. Those were accepted by the Western Australian government.

Mr WILKIE—Thank you.

CHAIR—Article 1 part 6 says:

> The Parties shall facilitate the development and implementation of greenhouse gas mitigation projects in their respective countries in the context of the UNFCCC.

Is it your opinion that Australia would already be compliant with this section of the treaty?

Mr Richardson—Yes. Essentially that part of the treaty is designed to encourage cooperation, where feasible, between the two countries to share information about greenhouse gas mitigation projects and the like. Australia already has a number of projects that fit underneath its policy for addressing the greenhouse gas issue. This simply provides an opportunity for collaboration and cooperation between the two countries, either on the technical or the policy side.

CHAIR—Can you give us any more information about the response from major industry leaders? You have told us they are all in favour of the agreement and they welcome stronger relations with South Korea. Is there any more information?

Mr Richardson—There was certainly widespread consultation. We wrote to all the people we have on an extensive database who might be interested in closer ties with South Korea. We did not get responses from everybody we consulted with, as you might expect. All of those that came

back, which are substantial major players who are typically involved in our consultations, did so with very positive comments and strongly supported the prospect of an agreement.

CHAIR—Are there any further questions on this agreement? There being none, I would like to thank you very much again for coming.

Mr Richardson—Thank you.

[10.54 am]

CARMODY, Mr Shane, Deputy Secretary, Strategy, Department of Defence

COLEMAN, Mr Benedict Thomas, Assistant Secretary Asia, International Policy Division, Department of Defence

CUNLIFFE, Mr Mark Ernest, Head, Defence Legal, Department of Defence

KENNEDY, Mr Martin Donald, Assistant Director, North ASEAN, International Policy Division, Department of Defence

SHEEHAN, Ms Anne Elissa, Senior Legal Officer, Directorate of Agreements, Department of Defence

WATSON, Mr Paul Thomas, Regional Manager, Corporate Services and Infrastructure, South Queensland, Corporate Services and Infrastructure Group, Department of Defence

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

THWAITES, Mr Michael Jonathan, Executive Director, Treaties Secretariat, Legal Branch, International Law Division, Department of Foreign Affairs and Trade

ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Law Branch, Office of International Law, Attorney-General's Department

CHAIR—We will now hear evidence on the Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Use of the Shoalwater Bay Training Area and the Use of Associated Facilities in Australia. I now call representatives from the Department of Defence.

Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Use of the Shoalwater Bay Training Area and the Use of Associated Facilities in Australia

CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Mr Carmody—Yes, I would like to make a brief opening statement about the Australia-Singapore bilateral relationship. It is amongst the strongest in the region. Singapore is a key defence partner, sharing common views with Australia on many important issues. We also have a substantial training exchange program, which involves Australian officers training with their counterparts from Singapore. This relationship provides us with important insights into the workings of the Singaporean armed forces and encourages a robust, cooperative and friendly

relationship between our two nations. This agreement with Singapore was first signed in 1995. The document being considered by the committee today is part of a regular review process, the last review being by the JSCOT in 1999.

The nature of this agreement is to provide the Singaporean armed forces with continued access to Shoalwater Bay training area to conduct unilateral training exercises, in particular Exercise Wallaby. The benefits of this activity are important. The Singaporean armed forces are a high-quality exercise partner and they use sophisticated technology. With inadequate training areas in Singapore, the use of the Shoalwater Bay training area allows the Singaporean armed forces to hone their military skills and maintain their technologically advanced capability. This capability benefits Australia by making Singapore a more effective coalition partner—for example, in the Five Power Defence Arrangements—and a contributor to regional security. Australia also gains economic benefits from our defence relationship with Singapore. This agreement requires the Singaporean armed forces to engage Australian contractors to provide equipment and services, where available, and this creates business for Australian industry and jobs for Australian workers.

The new agreement varies only in a few respects from its predecessor. It allows for a small increase in the number of vehicles that may be deployed to the Shoalwater Bay training area to accommodate some increasingly complex exercises. This increase has been assessed to be environmentally sustainable. Other additions include the establishment of an environmental monitoring group for monitoring adherence to the environmental compliance conditions, provisions on training and workplace safety to formalise current practice and new liability and dispute resolution provisions that bring the proposed agreement into line with current practice.

At the previous committee hearings on this topic in November 1999, a number of recommendations regarding the use of the training area were made and Defence has since addressed these recommendations. The first was that the department consult the local business community during preparation of any future agreements on the use of Shoalwater Bay training area to ensure that its interests are incorporated to the maximum extent practicable. Our response to that recommendation included a Defence and industry regional briefing in August of 2000, initiation of a contract review meeting in March 2001 between the Singaporean armed forced, Singapore's Defence Science and Technology Agency and local business, information sessions conducted in Rockhampton and informing stakeholders in early 2004 of the proposed renewal process for this agreement and seeking their input.

Recommendations 2 and 3 both concerned the environmental impact of major exercises on the Shoalwater Bay training area. Recommendation 2 sought the provision of extraordinary meetings of the Environmental Advisory Committee prior to major exercises to discuss potential issues if regular meetings are not scheduled. In response, Defence has ensured that committee meetings are held every six months and that Exercise Wallaby is discussed at all of the meetings. These meetings are also timed to coincide with impending exercises. The third recommendation was a request for the circulation of all public documents covering the environmental management of the training area to each member of the Environmental Advisory Committee. Committee members have now been made aware of all public documents concerning the environmental management of the Shoalwater Bay training area and relevant documents are made available at committee hearings.

The Department of Defence has a positive history of environmental management at Shoalwater Bay and we are committed to responsible environmental management. Rehabilitation processes are in place, monitored by both the department and the Singaporean armed forces. While normal range control restrictions apply, the Environmental Advisory Committee members have opportunities to inspect training areas during the exercise if required.

The Shoalwater Bay training area agreement with Singapore is important to Defence. It is not only important for Defence, it is also important for us to consult with and maintain positive relationships with the local community, and we believe we are doing that. The Shoalwater Bay training area agreement is a vital element of our bilateral relationship with Singapore and we hope that we can continue to the benefit of both parties.

CHAIR—Thank you very much.

Mr WILKIE—I very much support this agreement. Pearce air base is in Western Australia. I have viewed the Singaporean facilities there, and they get on very well with the local community. I had the pleasure of going up to Oakey last Friday and looking at the helicopter training facility there, which is very good as well, and I am going up to Shoalwater Bay this Friday. I am looking forward to seeing what is up there. Has the government considered entering into similar agreements with reciprocal arrangements with other ASEAN countries. If so, why? If not, why not?

Mr Carmody—We have not to this stage. The Singaporeans are the ones most in need of training area—most in need of land and operating space. Both the training that you mentioned in Oakey and the training you mentioned in Pearce are important to them, but the field training environment that we provide is very important. I do not believe that we have had any requests from other nations to do anything of this scale, and I am not convinced that many regional nations would be able to operate at the high end—the end at which Singapore operates. Within the agreement, over 6,000 troops can be deployed. It is a very high-end exercise. We have not considered inviting anyone else, mainly because there is no-one else operating at quite that level. This relationship provides us with the opportunity to do something special for Singapore.

Mr WILKIE—Obviously, there is a large degree of asset sharing and technology sharing that goes on as a result of these sorts of agreements and cooperation. Have there been any issues raised about security; of other parties gaining access to things that we might not want to share?

Mr Carmody—The exercises themselves are unilateral, in the sense that they conduct the exercises themselves without us being involved. That has not caused any difficulties with observing the exercises and dealing with them on new technology, such as the way they use their UAVs—unmanned aerial vehicles— for example. At a practical level, there is a lot of information sharing between Australia and Singapore, and I think what this activity does for us is allows us to build trust in other areas. It allows us to talk about advances in defence scientific cooperation and meet either at Shoalwater Bay, where sometimes things are tested, or, more frequently, in Singapore and elsewhere. I think the unilateral nature of it actually builds confidence in the relationship. We do not have any issues where we would think the visiting forces had access to something that we might not necessarily wish them to, nor would we expect that we would in their case either.

Mr WILKIE—We are charging $1 for the use of the facility. What other benefits do we get as a result of that? We got it on a cost recovery basis, but people might say, 'Look, you're only charging them $1. What other benefits does Australia get?'

Mr Carmody—One of my colleagues is probably more able to answer the specifics in terms of dollar cost benefits. There are two levels of benefit. The first is the relationship benefit, which is significant to us. It links Singapore to us as a high-end player and allows us to work at that level of technology with Singapore. It builds confidence and helps us to operate in other fora, and it works very well at that level. That is almost a non-costed benefit. In terms of actual benefits to Australian business, Paul may be able to talk about the numbers.

Mr Watson—We have done a comprehensive study in conjunction with Central Queensland University over the last couple of years. The report was presented to the central Queensland community in December last year. As to the financial impact of the Singaporean exercise on Central Queensland, in excess of $6 million directly contributed to the local community, both in the commercial sector and also expenditure on R and R activities by the soldiers themselves.

Mr TURNBULL—I saw the figure of 6,600 personnel. What is the largest number of Singaporean troops that have been at Shoalwater Bay at any given time?

Mr Carmody—Mr Turnbull, one of my colleagues might be able to answer. I do not think we have ever hit the 6,600 level.

Mr Coleman—The Singaporeans have never actually sent as many soldiers as they are permitted to under the agreement. I could not, just off the top of my head, give you an exact figure on the largest number that they have sent. I do not know, Paul, whether you could?

Mr Watson—In 2000 we went around the 6,000 mark for the first time. Since then the numbers have ranged between 3,000 and 4,000, mainly due to economic issues in Singapore. Certainly there was an intent under the last treaty to go towards the 6,600 which is a division-size exercise.

Mr TURNBULL—I noticed in the treaty there does not appear to be any provision for Australia to immediately suspend access to this facility. It is difficult to foresee the future, but there may be circumstances in which it would be regarded as not being in our national interest to have 6,600 troops of a foreign power within our borders, even those of such a friendly nation as Singapore. There does not seem to be a provision to enable us to do that without breaching the treaty? Is that right or am I mistaken?

Mr Carmody—Mr Turnbull, I will wait for my legal adviser on my left to answer the question but one of the points I would wish to make—if I compare the agreements to those in Western Australia and Oakey, for example, which are 15 years, for the Singaporean presence for training activities in Western Australia and training activities in Queensland—is that keeping this one at five years does allow us a degree of flexibility in terms of the circumstances you are talking about, the point that you make about the national interest changing.

Mr TURNBULL—I am thinking if something just came up, there was an issue that arose suddenly.

Mr Cunliffe—Mr Turnbull, Mr Chair, I would like to ask Anne Sheehan if she could address the detail.

Ms Sheehan—For immediate intervention once an exercise has commenced, article 5 paragraph 2 addresses the role of an ADF liaison officer and about halfway down provides:

> The ADF Liaison Officers shall not intervene in the conduct of a SAF training activity, but may prohibit, suspend or cause to stop immediately the SAF training activity if in the ADF Liaison Officer's opinion, in consultation with the relevant commander of the SAF unit or units, or personnel participating in that training activity, that it is necessary to do so for reasons of safety or security.

The provision can be called upon if there is a need to suspend it once it has already commenced. However, there are other articles in the treaty that address Australia not allowing use of Shoalwater Bay for a variety of reasons: for environmental reasons and if we are using the facility ourselves or use by an ally; and there are provisions in there that Australia would not be liable for any costs expended by Singapore.

Mr TURNBULL—So you think there is ample scope there within the fine print to enable Australia, if it were of the view that security or other considerations made it in our national interest not to provide access to Shoalwater Bay, that would be able to be done?

Ms Sheehan—Yes.

Mr Carmody—If I may add, too, that there is the termination clause at the end.

Mr TURNBULL—But I notice that is at 12 months notice.

Mr Carmody—It is, but of course there is only a set period where access can actually be provided to Shoalwater Bay training area in any case. In either case, they do not have access for the entire year. They only have access for a set training period and therefore we have the ability to terminate that with 12 months notice. We think that the provisions are strong enough.

Mr WILKIE—It is probably fair to say too that whilst they are not using those facilities, even though they have built them and put all the money into it, Australia has access to them whilst they are not here.

Mr Carmody—That is correct.

CHAIR—We have a number of joint exercises with Singapore under the Five Power Defence agreement, also Pitch Black, I think, which is joint between United States, Singapore and Australia. What joint exercises are held here? You mentioned Operation Wallaby?

Mr Carmody—Wallaby is the Singaporean unilateral exercise that they conduct during this period. We do not conduct any joint exercises with Singapore at Shoalwater Bay. Our Five Power Arrangements exercise is normally conducted in and around Singapore and the Malacca Straits. Pitch Black is in Darwin where Singapore—Ben, you might know whether they were participants or observers in the last year?

Mr Coleman—They are participants. They do send down aircraft to participate.

Mr Carmody—That is essentially run from the RAAF base in Darwin and the training areas in the Northern Territory.

CHAIR—They do exercises out of Amberley and other places as well.

Mr TURNBULL—I am aware the Singaporean Army has some very well-regarded jungle training facilities in Brunei. What battle conditions does the Singaporean Army train its soldiers to engage in? What sort of war do they expect to be fighting?

Mr Carmody—In the Exercise Wallaby context, it is conventional. It is a very conventional large force in a large training area, so it is a very conventional activity but using all the more modern techniques they have. With the smaller training areas certainly there are elements of jungle training and elements of specified training; but Shoalwater Bay is, much in the same way that we use it for Talisman Sabre that we are just starting now with the United States, very much a large piece of ground where you can do everything from an over-the-beach landing to a major brigade or larger activity. It is that sort of high-end, conventional military training.

Mr Coleman—The only thing I could add would be that in military terms they would practise combined arms combat: use of armour with artillery and infantry and air support as well.

CHAIR—I think I know what Mr Turnbull is asking. The British SAS have units that specialise in Arctic warfare, desert, jungle and mountainous terrain as well. Their focus is on jungle warfare. Do they do anything in desert conditions?

Mr Carmody—Not to my knowledge.

Mr Coleman—Certainly not in Shoalwater Bay.

Mr Carmody—They would do their special forces jungle training in the areas that you indicated, maybe some of their own, and then very conventional combined arms in Shoalwater Bay. They may do something else with the United States or somewhere that we do not have visibility of.

CHAIR—Thank you. Any further questions? Thank you very much again for coming this morning.

[11.15 am]

GOULD, Mr Anthony, Chief GMP Auditor, Office of Devices, Blood and Tissues, Therapeutic Goods Administration

MACLACHLAN, Ms Rita, Director, Office of Devices, Blood and Tissues, Therapeutic Goods Administration

SLATER, Mr Terry, National Manager, Therapeutic Goods Administration

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

McCONNELL, Ms Jacqueline, Executive Officer, Canada Desk, US and Canada Section, Department of Foreign Affairs and Trade

THWAITES, Mr Michael Jonathan, Executive Director, Treaties Secretariat, Legal Branch, International Law Division, Department of Foreign Affairs and Trade

ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Law Branch, Office of International Law, Attorney-General's Department

CHAIR—We will now hear evidence on the Mutual Recognition Agreement on Conformity Assessment in Relation to Medicines Good Manufacturing Practice Inspection and Certification between the Government of Australia and the Government of Canada. I now call representatives from the Therapeutics Goods Administration.

Mutual Recognition Agreement on Conformity Assessment in Relation to Medicines Good Manufacturing Practice Inspection and Certification between the Government of Australia and the Government of Canada

CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Mr Slater—Thank you, Mr Chairman. The mutual recognition agreement, MRA, on conformity assessment in relation to medicine's good manufacturing practice inspection and certification between the government of Australia and the government of Canada covers medicinal good manufacturing practice inspection of manufacturers and batch certification. The MRA is an important international treaty that will enhance bilateral medicinal products regulatory cooperation between Australia and Canada. The MRA is a single sector bilateral agreement that provides for the mutual recognition of the certification and acceptance of certificates of GMP of manufacturers of medicines issued by the Therapeutic Goods Administration, Department of Health and Ageing of Australia, and the Health Products and Food Branch of Health Canada.

This agreement will allow both Australia and Canada to recognise and accept each other's technical competence to certify products for compliance with their domestic standards and regulatory requirements. It will minimise barriers to trade by reducing or eliminating the risk of time delays and costs associated with the non-acceptance by Australia and/or Canada of the other's GMP conformity assessment activities, while allowing each country to maintain its own standards to preserve public health and safety. It will improve market access by reducing or eliminating the time delays and costs associated with obtaining approvals for products entering into each other's markets. It will allow the manufacturers' certification of the specifications of each batch of medicinal products to be recognised by the other party without reanalysis at import.

It will be beneficial in reducing regulatory costs and duplication, thus ensuring faster delivery of products to market, enhancing the competitiveness of both Australian and Canadian exports to each other. It will formalise the current Pharmaceutical Inspection Convention Scheme arrangement to a government to government level treaty. Both Australia and Canada are members of PICS, which is an international arrangement which established minimal standards internationally for the inspection of manufacturing premises of medicines.

The scope of this agreement covers prescription and over-the-counter medicines. It excludes vitamins, minerals, herbal remedies and homoeopathic medicines as Canada does not audit manufacturers of complementary medicines. The agreement also excludes medicines derived from human blood and plasma because of the particular high-risk nature of these products due to the possible transmission of blood-borne pathogens.

The original impetus for the agreement was the 1995 Trade and Economic Cooperation Arrangement signed between Australia and Canada, where both parties expressed an interest in establishing a more formal framework for the conduct of collaboration in relation to conformity assessment. With a view to strengthening health regulatory cooperation and trade relationships between Australia and Canada, the Therapeutic Goods Administration and Health Canada in late 2000 commenced discussion in establishing a bilateral single sector mutual recognition agreement. Consultation has occurred with relevant government representatives and federal, state and territory governments and peak associations from industry for medicines.

The comments received as a result of the consultation indicate a broad level of support for the MRA with Canada. The national impact analysis outlines the benefits Australia can expect from the agreement. The key benefit for Australia will be to strengthen the health regulatory cooperation and relationship between Australia and Canada, and formalise the current agency level PICS arrangement. Furthermore, it will increase certainty and, for those Australian manufacturers who would otherwise be required to go through retesting, the reduction or removal of associated delays and costs. Additionally, as the agreement is between governments, it will provide immediate and longer term benefits to industry, such as reduced costs to exports and imports as a result of a reduction in regulatory duplication without reducing the health or safety of the community or access to new medicines.

Implementation of the agreement will not require legislative amendments. The Therapeutic Goods Act 1989 contains provisions enabling the acceptance of conformity assessment attestations from conformity assessment bodies in countries with which Australia has a mutual recognition agreement. To implement the agreement the minister will have to make a declaration

under section 3B of the act to the effect that Canada is a country covered by a MRA. The declaration is required to be published in the gazette. In addition, the secretary of the Department of Health and Ageing will have to approve in writing that Health Canada is a conformity assessment body that can issue attestations of conformity for the purposes of the act. The agreement was tabled in parliament on 11 May 2005, together with the national interest analysis and the regulatory impact statement.

I commend the agreement to this committee. It is an important step in international regulatory cooperation, assisting Canada and Australia to introduce new medicines to the Australian community more speedily and at reduced costs.

CHAIR—Thank you very much. There is a very interesting market in pharmaceuticals in North America whereby it is a common practice for US citizens to source pharmaceuticals from Canada. Often those pharmaceuticals have come from a third country. Is there the potential that we may be sending Australian manufactures which will ultimately end up in the United States?

Mr Slater—This is no change to the arrangements for import or export of medicines from Canada or Australia. Both countries will still have to approve the medicine for marketing in their countries. This is an arrangement to recognise manufacturer conformance only.

CHAIR—Okay. Because of the disparity in pharmaceutical prices between Canada and the United States, this practice occurs. Was this any impetus to the agreement?

Mr Slater—No. This agreement came about to recognise that both countries assess their manufacturers to the same standards. There are savings to be had for both countries from having an agreement to recognise each other's decisions. The issue around the differential of prices between Canada and the US, as you said, relates to the different schemes for how medicines may be subsidised in Canada versus how they are subsidised in America. This agreement will not affect the prices of medicines on the Canadian market as a result of those subsidy decisions in Canada.

CHAIR—What is the bilateral trade in pharmaceuticals between Australia and Canada at the moment?

Mr Slater—It is $67 million, with $17 million of imports from Canada to Australia and $50 million of exports from Australia to Canada.

CHAIR—Right now there is no real obstacle to Australian manufactured pharmaceuticals ending up in the United States via Canada anyway?

Mr Slater—The products that we export from Australia to the US go through a process that allows them to be marketed in the US. Those products are approved by the FDA. The products that we export to Canada are approved by Health Canada for marketing in Canada. What happens to them once they are imported into Canada—whether they are then re-exported to the US—is not an issue for our regulation reach.

CHAIR—What triggered this was in a recent edition of *Atlantic Monthly* I noticed an advertisement that was warning Americans, 'When you get your stuff from Canada it may have

come from a third country.' They mentioned a whole lot of countries including Israel and New Zealand. They did not mention Australia but they mentioned a whole lot of countries these pharmaceuticals are sourced from.

Mr Slater—I am aware that the US is very concerned. There has been investigation as to products that do cross the border from Canada into the US and come at a considerably cheaper price. The other issue is US citizens crossing the Canadian border to purchase their medicines more cheaply there than they can acquire them in the US.

Mr WILKIE—I see that trade has grown from $33 million to $50 million. Where has the main growth occurred.

Mr Slater—The main growth, from Australia's point of view, has been a significant increase in exports in the last three years and we have been the beneficiary.

Mr WILKIE—What sorts of products?

Mr Slater—These are principally all in the area of prescription medicines, such as vaccines, that we export to Canada.

Mr WILKIE—Would these be goods that would not be available in Canada?

Mr Slater—Not necessarily. If they meet Canadian market approval standards, they would be able to compete on an equal or otherwise footing with Canadian products. Equally that applies to Australia. We have Australian manufacturers and we also accept applications for imported products that meet the quality, safety and efficacy standards for marketing in Australia.

Mr ADAMS—Mr Slater, is this for all manufacturing medicines, not only prescription medicines?

Mr Slater—It excludes what we term complementary medicines: herbals, vitamins, homoeopathic—

Mr ADAMS—It excludes them?

Mr Slater—Yes.

Mr ADAMS—Why does it exclude them?

Mr Slater—It excludes them because at this point the standards for manufacture in Canada of these products are not the same as the standards for manufacture in Australia. Australia requires GMP from manufacturers of these products and Canada has a self-certification system with industry. They are not inspected by Health Canada, so we cannot recognise each other's decisions because the inspection is not undertaken in Canada by Health Canada.

Mr ADAMS—Do we say we have a higher level? Is that what we are doing?

Mr Slater—We have a requirement for manufacturers to be inspected by the regulatory agency in Australia. In Canada the manufacturer is able to self-certify that they meet good manufacturing practice standards.

Mr ADAMS—That is not what I asked you. I asked you if we say that ours are of a higher standard. Do we look at those medicines at a higher standard than the Canadians?

Mr Slater—What I am saying to you is that we certainly assess our manufacturers externally rather than having the manufacturers self-certify and hence, by implication, if you are saying that that is a higher standard, which I would accept—

Mr ADAMS—I do not know. I am asking if is it so. We closed one down last year.

Mr Slater—Yes.

Mr ADAMS—There was a fair bit of controversy about that decision. I am trying to find out if we claim to have a higher standard than generally in the world. Canada is a country that we look upon as being pretty similar. They have self-regulation in that area and we do not. Are we saying we will not accept their self-regulation?

Mr Slater—The Canadians have introduced a framework for these medicines which is comparable to Australian requirements—except in this area of manufacturer assessment where they allow self-certification, whereas Australia requires the regulator to assess and audit externally. If you want to make that comparison—

Mr ADAMS—I am aware of all that.

Mr Slater—By implication we are saying it should give a uniformity and a consistency of manufacturer that self-certification may not.

Mr ADAMS—Was there any push to have those complementary medicines as part of this treaty?

Mr Slater—We would like to see that in the future. We have had discussions with Health Canada about what the results of their introduction of the new system might be over the next years. As the two systems may align, I think it gives us the opportunity to include them.

Mr ADAMS—Did you speak to the organisation of complementary medicines here?

Mr Slater—Yes.

Mr ADAMS—The organisation?

Mr Slater—Yes.

Mr ADAMS—What is their view?

Mr Slater—They were concerned that products which were not required to meet the same standards in Australia would be able to enter the market, because of this differing good manufacturing practice—

Mr ADAMS—It is less standard than what we would see.

Mr Slater—They were concerned that there would not be a level playing field as a result of accepting self-certification as a GMP assessment in Canada, so they were in favour of having these products excluded from the agreement.

Mr ADAMS—Thank you very much.

ACTING CHAIR (Mr Wilkie)—Thank you for giving evidence.

[11.31 am]

HYMAN, Mr Mark Gordon, Assistant Secretary, Environment Protection Branch, Department of the Environment and Heritage

SATYA, Dr Sneha, Senior Manager, Review and Treaties Team, National Industrial Chemicals Notification and Assessment Scheme, Department of Health and Ageing

THWAITES, Mr Michael Jonathan, Executive Director, Treaties Secretariat, Legal Branch, International Law Division, Department of Foreign Affairs and Trade

ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Law Branch, Office of International Law, Attorney-General's Department

ACTING CHAIR (Mr Wilkie)—I will now hear evidence on the Amendments to Annex III [2005] ATS 9, and additional Annex VI [2005] ATNIF 5, to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. I now call representatives from the Department of Environment and Heritage, Department of Health and Ageing, and Department of Agriculture, Fisheries and Forestry.

Amendments to Annex III [2005] ATS 9, and additional Annex VI [2005] ATNIF 5, to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

ACTING CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Mr Hyman—I do, thank you. The Rotterdam convention is an information exchange arrangement. It allows governments to inform a central international clearing house of actions taken to ban or severely restrict movement of certain chemicals for health and environmental reasons. Once a certain threshold of such notifications has been passed, information about listed chemicals is available to all countries participating in the PIC—prior informed consent—procedure. Countries can use this information to make informed decisions on whether they wish to receive future imports of these chemicals.

The convention has provided Australia with an effective tool to obtain and exchange information about hazardous chemicals that are traded internationally. We also benefit by encouraging better management of toxic chemicals in our surrounding region. The convention entered into force in February 2004 and Australia ratified it on 20 May 2004, just over a year ago. The convention entered into force for Australia on 18 August 2004.Implementation of the convention within Australia requires the cooperation of several agencies, particularly my own department—the Department of the Environment and Heritage—which is the designated national authority for industrial chemicals; also, the Department of Health and Ageing, through the National Industrial Chemicals Notification and Assessment Scheme, NICNAS, which is the

implementing agency for industrial chemicals; and the Department of Agriculture, Fisheries and Forestry, which is the designated national authority for pesticides.

The Minister for Environment and Heritage wrote to the chair of this committee in August last year, providing details of the amendments to the convention in advance of the first conference of the parties, COP1. Due to the timing of COP1 and the election process, full domestic treaty action could not be finalised before the COP meeting was held. The treaty action in question involves amendments to annex III to list two further chemicals; the change of one already listed chemical in annex III into a different category—that is, from severely hazardous pesticide formulation to pesticide; and four minor amendments to previously listed chemicals to encompass their salts and esters. The treaty action also involves the addition of annex VI to the convention, which sets out the arbitration procedure for the purposes of article 22A and the conciliation procedure for the purposes of article 20 paragraph (6) of the convention.

I would like to make a small clarification on paragraph 17 of the national interest analysis. Paragraph 17 states that parties are obliged to make a declaration in relation to their preferred method of dispute settlement under the treaty. In fact, that is not quite correct. Parties are not obliged; rather they have the option of making such a declaration. It is not obligatory. Australia is currently considering whether to make a declaration, whether it accepts either arbitration in accordance with the convention, or adjudication by the International Court of Justice, or both.

ACTING CHAIR—Thank you. On that conciliation and arbitration process, what procedures are currently in place and what sorts of disputes would the convention deal with?

Mr Hyman—Article 20 of the convention provides for disputes, should they arise, to be resolved in a variety of ways. The normal practice would be for parties to confer between themselves to see if they could sort it out by normal processes of discussion, mediation, conciliation, negotiation, I suppose, but article 20 provides for disputes to be resolved in other ways if those sorts of processes cannot or do not lead to resolution of a dispute.

ACTING CHAIR—Could you give some examples of the sorts of disputes that might occur or have occurred?

Mr Hyman—I am not aware that any have occurred in the past. As you would be aware, this is a very new convention. To the best of my knowledge there have been no disputes between parties in the past. I can imagine that the sort of dispute you could contemplate would be, for example, where a country has had a chemical exported to it, it finds out that the country of export has restricted the use of this chemical in various ways and it believes that perhaps the export notification provisions of the convention should have been triggered by the exporting country but it has not done so. There might then arise a dispute as to whether or not the regulatory action taken by the exporting country against that chemical in the domestic context constituted action of a degree which triggered the export notification requirements of the convention. I would have to say that I regard such a concept as a bit fanciful and far-fetched. It is probably not all that likely that a lot of disputes will arise, but those sorts of definitional ones are the sorts of things that in conventions of this kind sometimes do arise, and annex VI of the convention, which provides for dispute settlement, is a fairly standard addition to conventions of this kind to provide for such eventualities should they arise rather than because, I think, the parties expect that they will.

ACTING CHAIR—When the committee looked at the Rotterdam convention and Report 55, we noticed that some of the benefits to Australia would be access to information on hazardous chemicals, obviously, and to provide, particularly to Pacific Island countries, a mechanism to adopt and maintain sound chemical management. Have any of those benefits eventuated?

Mr Hyman—It is difficult to answer this question without going and asking the countries in question. The convention is still very new. I am also acutely conscious that most of the Pacific Island countries have bureaucratic resources, shall we say—governmental resources—which are severely constrained, and the amount of attention they can therefore pay to issues of this kind is often extremely limited. It would probably be a question that would need some research, to provide a sensible answer to you. What I could undertake to do is to ensure that we consult with some of the Pacific Island countries, perhaps at the second meeting of the conference of the parties, and perhaps I could write or my minister could write—whoever is appropriate could write—to the chairman of the committee and provide a view on that point. I think, though, that the results are likely to be over a slightly longer term, I would have to say, just because of the infrequency with which treaty actions are likely to arise in those countries and the limited resources that those countries can allocate to issues of this kind—to chemicals management generally, indeed.

Mr ADAMS—Isn't this about information? Wouldn't we go to the Pacific Forum which we are the chair of? Isn't this about pushing information out to those governments?

Mr Hyman—It certainly is. Most of that information arrives in those countries through the procedures set out in the convention. That is, they would receive notification and information, for example, from the secretariat. They might receive information from us through an export notification procedure or the like. The information does not necessarily arrive in a single package or through a single channel. What I imagined we might do is consult with some of them over, for example, how much information they have received, has it arrived in a form which is useful, what uses have they put it to if so—those kinds of questions. The likely node for us would probably be the South Pacific Regional Environment Program—SPREP—which is based in Samoa. That is likely to be in many ways a kind of regional node for many of those countries to try and facilitate the use of this kind of information.

Mr ADAMS—The 'hazardous pesticide formulation' has changed in one of these. It is changing something to just be 'pesticide'. What is the formula for doing that and why do you do it?

Mr Hyman—The category of 'severely hazardous pesticide formulation', which until this time methyl parathion has been listed under, was instituted during the negotiations on the convention to recognise the particular problems confronted by many developing countries while using pesticides, and so it has a different set of criteria for its listing. The bar is set a good deal lower. This is designed to enable developing countries, which are confronting problems on the ground but are not in a position to undertake a robust risk assessment in the way that a developed country would readily be able to do, to have their pesticide problem recognised through the convention, and so there is a lower hurdle for listing of those severely hazardous pesticide formulations and that is recognised to some degree by the phrasing that is used there. It is about particular formulations that are causing a direct problem of use in the country.

If, on the other hand, the chemical is to be listed in annex III as a pesticide, it must have had full risk assessments, basically, done by countries from two different regions and it must pass a much tougher set of criteria. There is a Chemical Review Committee that reviews the notifications and ensures that those risk assessments meet a series of tests and that the chemical therefore warrants full listing, and that is what has happened here. Indeed, one of the risk assessments and one of the notifications was from Australia. It means that the Chemical Review Committee has examined those risk assessments, has determined that they meet the criteria, there are now at least two such listings from two different regions and therefore the chemical may be listed as a pesticide, which means it has met that higher hurdle.

CHAIR—Thank you very much, again, for coming this morning and thank you for your evidence as well.

[11.45 am]

ASHURST, Dr Jason, Acting Manager, ITU Governance and Policy Section, International Branch, Department of Communications, Information Technology and the Arts

TERRILL, Dr Greg, General Manager, International Branch, Department of Communications, Information Technology and the Arts

KERANS, Mr Andrew James, Executive Manager, Radiofrequency Planning Group, Australian Communications Authority

MORRIS, Mr Wayne, Assistant Manager, International Radiocommunications Team, Australian Communications Authority

CHAIR—We will now hear evidence on the Final Protocol and Partial Revision of the 2001 Radio Regulations, as incorporated in the International Telecommunication Union Final Acts of the World Radiocommunication Conference (WRC-03). I call representatives from the Department of Communications, Information Technology and the Arts and the Australian Communications Authority.

Final Protocol and Partial Revision of the 2001 Radio Regulations, as incorporated in the International Telecommunication Union Final Acts of the World Radiocommunication Conference (WRC-03)

Dr Terrill—The department has a general policy overview of this process, although certainly the Australian Communications Authority is responsible for implementation and technical issues.

Mr Kerans—Australian Communications Authority essentially manages radiocommunications on behalf of the Australian government.

CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Dr Terrill—Yes. The International Telecommunication Union, the ITU, is a specialised agency of the United Nations. Its membership includes 189 governments and about 500 non-government entities. Its purposes are to maintain and extend international cooperation between all members for the improvement and rational use of telecommunications of all kinds, including of the radiofrequency spectrum.

In pursuing its purposes, the ITU establishes treaty agreements and recommends world standards for telecommunications and radiocommunication services, including satellite services. Australia has been a member of the ITU and its predecessor union since Federation. Our participation in ITU activities is focused on supporting uniform international telecommunication standards and appropriate use of the radiofrequency spectrum.

The basic instruments of the ITU are the constitution and the convention, which set out the rights and obligations of members of the ITU. They are complemented by the International Telecommunication Regulations and the radio regulations, which together constitute the administrative regulations of the ITU. The provisions of the administrative regulations have treaty status and are binding on members.

The purpose of the radio regulations is to ensure the rational, efficient and equitable use of the radiofrequency spectrum. To ensure that they facilitate the introduction of new technical advances, the radio regulations are periodically reviewed and may be revised by the World Radiocommunication Conference, the WRC. The 2003 WRC was such a conference and resulted in the revisions to the radio regulations that are currently under consideration.

The Department of Communications, Information Technology and the Arts coordinates Australia's general participation in the ITU. The Australian Communications Authority coordinates Australia's input to the ITU's radiocommunications activities. In preparation for the WRC, the Australian Communications Authority oversaw extensive industry and stakeholder consultation through their international advisory committee, preparatory groups and study groups. The long list of industry and stakeholder representatives who participated in the preparatory process included Australian telecommunications and satellite operators, commercial television and radio groups, aerospace organisations, amateur radio groups and relevant Australian government departments and agencies. Many of the representatives consulted were also present at the WRC, which was held in Geneva from 9 June to 4 July 2003.

The proposed treaty action, that Australia consent to be bound by the revisions to the radio regulations, would place Australia in line with the rest of the world in its regulation of the radiofrequency spectrum. It should be noted that Australia would retain its sovereign right to control transmissions within and into its territory and to protect Australian users from interference from foreign systems. The revisions to the radio regulations make possible the introduction of new communication technologies and greater access to wireless networking and broadband data services. They ensure that the radio regulations are up to speed with developments in technology, such as new satellite delivered broadband services, protection of rural telephony services from potential satellite interference, satellite navigation, new aviation systems and protection for meteorology and radioastronomy observations.

Australia's obligations under the radio regulations are implemented through the Australian Radiofrequency Spectrum Plan prepared by the ACA in accordance with the Radiocommunications Act of 1992. Through a subsequent consultation process, the existing Australian Radiofrequency Spectrum Plan has been updated to accord with the 2003 WRC revisions. There is general support for the proposed treaty action from relevant stakeholders, who also acknowledge the benefits to Australia of the revisions to the radio regulations. Thank you.

CHAIR—Have any other countries put in reservations to equatorial countries receiving preferential rights to the geostationary satellite orbits?

Mr Morris—Yes. A number of nations have put in reservations, and this has been raised at ITU meetings. Australia is just one of the signatories. I will check on those countries.

Mr Kerans—We could come back to the committee with a list of administrations who have put in reservations. However, most administrations which file satellites through the ITU that are not members of the Ecuador type group have put in reservations. We are talking about the US, Europe, Australia. Countries with satellite filings generally tend to put in a reservation against the Ecuadorian statements.

Mr ADAMS—Why is that so?

Mr Kerans—Why do we put in reservations?

Mr ADAMS—Yes.

Mr Kerans—Some of the equatorial countries have decided that, because they live on the equator, they should therefore own the airspace above them or the geostationary orbit. So they put reservations into the final acts to try and get hold of it. Where you can put satellites is quite valuable real estate and they feel that they can make some mileage from it.

Mr ADAMS—Yes, the 40th floor is—

Mr Kerans—It is a little bit higher than the 40th floor—about 36,600 kilometres—but if they could achieve this, they could get some significant rents.

Mr WILKIE—They would not be getting much support, though, would they?

Mr Kerans—They do not get any support from the filing nations. Usually the nations that are doing this are the poorer nations of the northern South America region. Of course, the US, France, Europe and Australia, who are filing the satellites, do not recognise their sovereignty over the geostationary arc.

CHAIR—What is the status under international law?

Mr Kerans—The status under international law is that the geostationary arc is a global asset; it is anybody's. If you wish to file a satellite, you first of all have to find a slot—it is quite crowded up there—and then you file it through the ITU and you go into a technical coordination process to ensure that you can live with your neighbours.

Mr WILKIE—Currently under law at what height would the country's sovereignty diminish or stop?

Mr Kerans—I think that one is a bit beyond me. Airspace goes up to 60,000 feet, and I only know that because I fly aeroplanes. I do not know how we define where sovereignty ends vertically, and I am not sure that the department would be able to help you.

Mr TURNBULL—I seem to remember learning at law school that it goes up indefinitely!

Mr ADAMS—What constitutes interference into the frequency?

Mr Kerans—Harmful interference is quite difficult to define, because it depends on the service that you are talking about, but generally if you are operating a service and you can no longer operate that service because of interference from another one, that is harmful interference. With GSM mobile phones that you carry around, if your call was dropping out or you were unable to hear the person you were calling because of a nearby service, that would constitute harmful interference. In the case of more complex systems, such as microwave bearers that carry traffic to rural and remote areas, there is what is called a bit error rate, which is quite high. One in one billion bits failing constitutes harmful interference. It is service dependent and it is really a definition of service breakdown.

Mr ADAMS—Isn't a lot of the noise out there because of transformers? Sending out the frequency is where the noise comes from that we pick up on radiofrequency. Is this the new technology, where the receiver might be in the consumer's radio or whatever and therefore it will do away with some of this frequency allocation that we get involved in? Is that the new technology or aren't you up to there?

Mr Kerans—There are a number of new technologies available. One is called ultra-wide band, which is extremely low power. If you think of power as like a block, you can actually spread it out and push it down, so you can make it sound very quiet and then in the radio you build it back up or reconstitute it. That is known as ultra-wide band technology, and that works in what we now call 'the noise'.

There are a number of other technologies which are capable of self-coordinating. In other words, the radio will sit up, it will listen. If it does not hear any other transmissions, it will commence transmission. Once it shuts down, that lets any other radio in that sort of system transmit and receive. These are self-coordinating systems. An example of that is the new WiMax technologies in about the three gigahertz bands. These sorts of technologies do away with local area coordination. Ultra-wide band essentially does away with radio coordination completely, because it operates below the level of noise that normal radio receivers can receive.

Mr ADAMS—So we cannot sell spectrum?

Mr Kerans—You can sell the spectrum above it. The department may wish to comment, but we are looking for some changes to the act.

At the moment where we sell the spectrum we cannot have a class licence operating under it. We would like to change the act so that we can still sell the spectrum but allow these noise based radio systems to operate because they will not affect the value of the spectrum that we sell. It is essentially getting two uses out of the spectrum.

Senator STEPHENS—In relation to national interest analysis, I am interested in paragraph 15(b) which discusses the introduction of new aviation navigation issues. I am interested in the issues of the uptake of digital communications and the mention in paragraph (a) about administrations being encouraged to include a capability to offer digital transmission. In terms of the aviation navigation, is this—I would assume it is—a very active study group that Australia is participating in—at the end of that paragraph (b):

> Australia is actively participating in the relevant ITUR study group work on this matter.

Mr Kerans—Yes, this is a very active area and if you look at the band in question, between 108 megahertz and six gigahertz is actually a huge amount of spectrum. At the lower end of the spectrum, around 108 megahertz, we have aeronautical VHF communications, which are those where pilots communicate with each other and with air traffic controllers. Airservices is looking to expand the number of frequencies available to them, because as air traffic increases, particularly in Europe but also in Australia, they are finding they need more frequencies for that sort of thing all the way through to the six gigahertz band. You might have heard of a system called the microwave landing system, which Airservices was trialling. That is in about the five gigahertz band. They are also trialling some data to aircraft type transmissions in five gigahertz, so instead of an air traffic controller talking to the pilot and giving him an airways clearance, for instance, to enter controlled airspace, the air traffic control system would transmit that data straight into the aircraft's autopilot and the aircraft would then be able to follow that communication which obviously breaks down any potential danger of misunderstanding the air traffic controller's wishes. It is a very active group within the SEA study groups.

Senator STEPHENS—So the work that Airservices Australia is doing, the things that they are piloting at the moment, would contribute to some of the work of the study group?

Mr Kerans—Airservices Australia does contribute significantly to the work of the ACA and the department in the lead-up to the WRC.

Senator STEPHENS—Obviously this is an annual conference, is it? You have referenced WRC 07. I presume that is probably the year 2007?

Mr Kerans—It is between three to four years. The last one was three years, this next one is four years I believe, which is a long time frame in terms of technology.

Senator STEPHENS—In relation to that previous question, if you go then to paragraph (k) where administrations are invited to participate in monitoring programs, employ interference mitigation techniques et cetera—that is, Airservices Australia and who else?

Mr Kerans—The Australian Communications Authority also operates monitoring facilities throughout the country, with the main one being in Quoin Ridge in Tasmania. We have one in Brisbane, Capalaba, and one in Western Australia where we monitor these services, particularly the lower frequencies. We have problems with Indonesia and interference coming from maritime vessels in Indonesia.

Senator STEPHENS—And the military?

Mr Kerans—The military do monitor but the Australian Communications Authority does not take part in that monitoring.

Mr WILKIE—In the notes that I have here, I notice that there is a statement made:

There is general support for the proposed treaty action from relevant stakeholders including all state and territory governments.

That suggests that there has been also some opposition. When anybody uses the words 'general support' there is usually someone who is saying they do not like it. Can you give us some examples of the sorts of complaints that you have had?

Mr Kerans—When we enter into the ITU process there are a number of consultants who come and work with us and work in our consultative processes who may, for instance, represent the interests of companies or corporations from overseas. We have one consultant who represents Orange France. To give you an example, there is a particular band which is going to be very useful for broadband wireless access that is currently used by Australian broadcasters for electronic news gathering. The consultant for Orange France would like to see that band used globally for third generation mobile telephone applications.

The ACA has to make a value judgment on where community benefit would lie in the use of that band and that value judgment goes through our international processes, through our IRAC, our advisory bodies, and we go to the ITU. Not everybody can be happy with that. If, for instance, we fall on the side of the electronic news gathering service until the next WRC conference, Orange France may say, 'That's not suitable. We don't like that,' and the consultant will come back and not be completely happy.

Generally though these things are resolved to a mutual sort of arrangement and we carry them forwards because the bands are dynamic. If we decide it is going to be an ENG band now, by the time we get to 2007 we might decide we need more spectrum for rural applications and then the consultant from Orange in France will have achieved what he was after.

Mr WILKIE—From Australia's perspective, would Telstra be a stakeholder?

Mr Kerans—Telstra is a very large stakeholder in what we do, for both terrestrial and satellite interests.

Mr WILKIE—I imagine that if Orange France is saying, 'This is something that we don't like because it would affect out access,' would Telstra be doing the same?

Mr Kerans—Telstra will have a look at the technology and how applicable it may be to its business plan. We have to think a little bit beyond Telstra because when you are talking about rural communications, they are a single source provider. We like to look at all of the people out there, for instance, who will be using this spectrum. We look at Telstra's interests and if they are interested in the technology, we would then talk to the smaller stakeholders who would not become part of this process, to see where they sit and we would go forward with an Australian position. But, yes, Telstra usually are very interested in the large European, Asian or US technologies and they watch very closely what the Australian position might be on particular frequency bands.

CHAIR—I would like to thank you very much again for coming and for giving evidence this morning.

[12.04 pm]

THWAITES, Mr Michael Jonathan, Executive Director, Treaties Secretariat, Legal Branch, International Law Division, Department of Foreign Affairs and Trade

TSIRBAS, Ms Marina, Director, Sea Law, Environment Law and Antarctic Policy Section, Department of Foreign Affairs and Trade

PAPWORTH, Mr Warren, Australian Antarctic Division, Department of Environment and Heritage

ZANKER, Mr Mark Andrew, Assistant Secretary, International Trade and Law Branch, Office of International Law, Attorney-General's Department

CHAIR—We will now hear evidence on Measure 1 (2003), the Secretariat of the Antarctic Treaty, adopted at Madrid, Spain on 20 June 2003 under the Antarctic Treaty, done at Washington on 1 December 1959. I now call representatives from the Department of Foreign Affairs and Trade and the Department of Environment and Heritage.

Measure 1 (2003), the Secretariat of the Antarctic Treaty, adopted at Madrid, Spain on 20 June 2003 under the Antarctic Treaty, done at Washington on 1 December 1959

CHAIR—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. Do you wish to make some introductory remarks before we proceed to questions?

Ms Tsirbas—Yes, Mr Chairman, with your indulgence. The particular treaty action that you have before you, Measure 1 (2003) adopted at Madrid precisely two years ago, on 20 June 2003, at the 26th meeting of the Antarctic Treaty Consultative Parties, relates to the establishment of a permanent secretariat to the Antarctic Treaty. Such a secretariat is an important advance on the pre-existing arrangements under which the particular country hosting the annual meeting was required to provide the secretariat services. As a result, there was no central repository of the documents and proceedings of the annual meetings. Establishment of such a repository will greatly facilitate the workings of the Antarctic Treaty system.

It has been recognised since 1990 that a secretariat is required, through a series of statements by the parties at the annual meetings. However, agreement on the establishment was delayed due to the inability of the parties to agree on the location of the secretariat. In particular, agreement could not be reached by two of the parties to the Antarctic Treaty who are also claimant states like Australia: they were Argentina and the United Kingdom. However, in 2001 in St Petersburg at the 24th meeting of the parties, agreement was reached that the secretariat should be located in Buenos Aires.

Since that meeting, Australia has been active in negotiating the text of the legal and operational instruments for the secretariat's establishment, culminating in the adoption of Measure 1 (2003) at the 26th meeting in Madrid. NGOs, industry and the Tasmanian state

government are supportive of the measure. The permanent secretariat, as outlined in paragraph 9 of the national interest analysis, will manage the administrative side of annual and intercessional meetings, facilitate contact between parties, maintain contacts with other international organisations, develop and maintain databases relevant to the operation of the treaty and produce reports and publications.

Until measure 1 is adopted by all 28 ATCM members, it will remain provisional in nature, although there is no reason to suspect that all members will not adopt the measure. As at the time of the writing of the national interest analysis, eight had already approved it. At the recent meeting in Stockholm, ATCM 28, which finished on Friday—and my colleague Warren Papworth is fresh off the plane from that meeting—a number of countries informed the meeting that they had approved measure 1, with other parties indicating that their processes will also shortly be concluded.

The provisional secretariat, although only functional for the past five months, has already significantly improved the flow of information between the parties and improved the efficiency of the last treaty meeting.

CHAIR—What did we tell the Stockholm meeting?

Mr Papworth—At the Stockholm meeting in relation to this measure?

CHAIR—Yes.

Mr Papworth—We did not make an intervention in that regard.

CHAIR—You said that the parties indicated whether they had approved the measure or not approved the measure, or whether it would be approved shortly.

Mr Papworth—Yes.

CHAIR—Did we say anything on that?

Mr Papworth—No. We are required to inform the depository government when we approve a measure. Because we had not done it, we had not reported that to the depository. There were one or two parties who indicated that they had approved it since the report was lodged. As we had not, we did not make an intervention.

Mr WILKIE—I see the consultative committee appoints the executive secretary and sets the budget et cetera. Who has been appointed the executive secretary and from what country?

Mr Papworth—Mr Johannes Huber from the Netherlands.

CHAIR—Did Australia get a vote at that meeting in determining who was appointed?

Mr Papworth—Every party who is a consultative party has a vote and, yes, we voted at that meeting.

Mr WILKIE—Are we happy with the appointment?

Mr Papworth—He was not the candidate that we were supporting—there were two main contenders—but we are happy with Mr Huber's appointment.

CHAIR—Do we have any direct representation on the secretariat?

Mr Papworth—No, we do not. At this point in time there is only Mr Huber, an assistant, an executive secretary, an information officer and an executive assistant. It is still in the start-up phase.

CHAIR—All right. Thank you.

Mr ADAMS—What was the arrangement before measure 1 came into force? What did we do before then?

Mr Papworth—The host governments provided the secretariat support for the Antarctic Treaty meetings in alphabetical order. Australia hosted the first Antarctic Treaty meeting in 1961 in Canberra. It has been going down through the list of consultative parties since then.

Mr ADAMS—Where will the secretariat be?

Mr Papworth—It is located in Buenos Aires.

Mr ADAMS—Who made that decision?

Mr Papworth—The consultative parties. That was the reason why it was difficult to get agreement to the establishment of a secretariat. Since 1990 the parties have recognised that there has been a need for a secretariat. There was discussion about that for about four years. At that time Argentina proposed Buenos Aires as the headquarters. That is when the process stalled, because we could not get agreement between the UK and Argentina. It is a consensus system, so all of the consultative parties have to agree.

CHAIR—Did the Australian government consider at any time housing the secretariat for the Antarctic Treaty?

Mr Papworth—We did in response to a proposition from the Tasmanian government. When there was no resolution, and it did not look like there was going to be a resolution, the Tasmanian government put forward a proposal. The Australian government, I believe, supported that proposal and took it to an Antarctic Treaty consultative meeting. However, it did not get the support of all the parties, so at that time we could not progress it any further.

CHAIR—What year are we talking about?

Mr Papworth—I was not involved in the negotiations at that time but it would have been towards the end of the 1990s.

CHAIR—I see.

Ms Tsirbas—I believe a proposal for Hobart as a possible headquarters was taken off the table in 2001 when agreement was reached by all the parties in relation to Buenos Aires.

CHAIR—The secretariat is currently operating on an interim basis?

Ms Tsirbas—Yes.

CHAIR—It requires the agreement of all parties before it is—

Ms Tsirbas—Yes, that is right. It is required to be adopted by all of the parties before it is a legally binding instrument. We are about to take the step, following this process and with the indulgence of the committee, to adopt the measure.

CHAIR—Yes. Thank you very much for coming and for presenting evidence this afternoon.

Resolved (on motion by **Mr Wilkie**, seconded by **Senator Stephens**):

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

Committee adjourned at 12.14 pm