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JOINT STANDING COMMITTEE ON TREATIES

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JOINT STANDING COMMITTEE ON

TREATIES

Monday, 8 May 2006

Members: Dr Southcott *(Chair)*, Mr Wilkie *(Deputy Chair)*, Senators Bartlett, Carol Brown, Mason, McGauran, Sterle, Trood and Wortley and Mr Adams, Mr Johnson, Mr Keenan, Mrs May, Ms Panopoulos, Mr Ripoll and Mr Bruce Scott

Members in attendance: Senators Carol Brown, Mason, Sterle, Trood and Wortley and Mr Adams, Ms Panopoulos, Dr Southcott and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

Treaties tabled on 28 March 2006

WITNESSES

Committee met at 10.06 am

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department

GILLIES, Mr John Christopher, Principal Adviser, Policy and Regulatory, Australian Maritime Safety Authority

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

ALCHIN, Mr Robert John, Policy Adviser, Department of Transport and Regional Services

SUTTON, Mr Michael, General Manager, Department of Transport and Regional Services

WILKINSON, Mrs Tracey, Policy Officer, Department of Transport and Regional Services

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (London, 16 May 2003)

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (London, 23 March 2001)

CHAIR (Dr Southcott)—I declare open this meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review of Australia's international treating obligations, the committee will hear evidence on eight treaty actions tabled in parliament on 28 March. I thank the witnesses from the departments and organisations present for being available for discussion on these treaties. I also remind witnesses that these proceedings are being televised and broadcast by the Department of Parliamentary Services. Should this present any problems for witnesses it would be helpful if any issues could be raised now.

We will now take evidence on the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, done at London on 16 May 2003 and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. I welcome the representatives from the Department of Transport and Regional Services and the Australian Maritime Safety Authority.

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

Mr Sutton—I will make some comments about the supplementary fund protocol. The supplementary fund protocol, as it is commonly known, creates a third tier of compensation for damage resulting from spills of heavy oils from an oil tanker. The protocol substantially increases the amount that is potentially available as compensation in the event of a major oil spill

and it is supported by the groups that are mostly affected, potentially, by the protocol, and that is oil importers. Australia is currently party to two conventions: the 1992 civil liability convention and the 1992 fund convention, which establish the international liability and compensation regime for pollution damage resulting from spills of heavy oils, known as persistent oils, from an oil tanker.

The need for a third tier of compensation arose following three incidents overseas where compensation provided through the two existing conventions was proven to be insufficient to provide full compensation to all claimants. The three incidents were the *Nakhodka* off the coast of Japan in 1996; the *Erika*, which broke in two off the coast of Brittany in 1999; and, most recently, the *Prestige*, which resulted in unprecedented costs when the tanker broke in two and sank off the coast of Spain. It had been carrying 77,000 tonnes of heavy fuel oil, of which an unknown but substantial quantity was spilled. The spilled oil reached the coastlines of France and Portugal as well as Spain. Clean-up costs alone are estimated at $A933 million. Other costs include losses in fishing and related industries of $102 million, tourism losses in Spain and France of $50 million each, and removal of the remaining oil could cost in the region $40 million . As such, that is a total of at least $1.125 billion.

In view of these figures, initial compensation payments by the existing IOPC fund were set at 15 per cent of the loss or damage suffered by claimants. In November 2003 the total amount of compensation payable through the ship owners' insurer and the existing fund was approximately $395 million. Under the existing fund the limits were $395 million and these had been increased under the existing fund, but even that increased amount would not have been enough to cover for the costs of the *Erika* and the *Prestige*. The supplementary fund established by the supplementary fund protocol will ensure that much greater amounts of compensation are available in cases of catastrophic oil spills such as these.

Currently, if an incident were to occur in Australian waters, compensation in the first instance is provided to buy the tanker owner, who is required to be insured to cover that liability. The tanker owner's liability is governed by the size of the tanker, with the maximum liability at the moment being $175 million or thereabouts. If the compensation costs exceed the tanker owner's liability limit, or compensation is otherwise unable to be obtained by the tanker owner, the fund convention will make payments up to about $395 million. The existing IOPC fund is financed by levies imposed on persons or entities who receive by sea transport more than 150,000 tonnes of heavy oils in a calendar year. The costs vary from year to year as they are dependent on the number and severity of incidents that occur within states that are party to the fund convention.

The new fund, the supplementary fund, provides additional compensation up to a total of approximately $1.46 billion per incident that affects states that are party to the protocol. The supplementary fund will be financed in the same way as the IOPC fund is financed—that is, by levies on persons or entities who receive more than 150,000 tonnes of heavy oils in a calendar year—though contributions from member states will be calculated as if they had received a minimum of one million tonnes of heavy oils in a calendar year.

The supplementary fund protocol entered into force internationally on 3 March last year. Australia's accession to the supplementary fund will provide for the financial costs attributed to receivers of heavy oils to continue to be spread amongst receivers in all state parties. It will also ensure that compensation to Australian victims following an oil spill from an oil tanker incident

is maximised and that adequate financial resources are provided for clean-up and restoration of Australia's marine environment.

The national interest analysis lists 11 states that were parties to the protocol as at 3 January 2006 and four states that became parties on 6 March 2006. As at 3 April 2006, 15 states were parties to the protocol and two states will become parties by 3 June 2006.

CHAIR—Thank you. We will go to questions on this one.

Mr WILKIE—I am just wondering whether we should do both protocols together.

CHAIR—I thought we could do this one and then the second one; they are separate.

Mr WILKIE—Okay. We are looking at two protocols here—this one and the International Convention on Civil Liability for Bunker Oil Pollution Damage. Why are there two different agreements?

Mr Sutton—They basically cover two different subject areas. The supplementary fund protocol, which is this one, and the two existing conventions, the 1992 civil liability convention and the 1992 fund convention, relate to spills from oil tankers. The bunkers convention relates to oil spilled from ships that carry oil as a means of propulsion not as a cargo. So the bunkers convention is quite different in scope to this one.

Mr WILKIE—I see that this tanker off Spain lost 77,000 tonnes of oil. What would be the largest tanker that would cover Australian waters? I would think that some tankers can now go up to a million tonnes, can't they? We would not have those in Australian waters. What would be the largest ones we would have?

Mr Gillies—Around 100,000 tonnes.

Mr WILKIE—Would that be the total weight of the tanker and cargo?

Mr Gillies—No, probably the cargo. That is a larger tanker.

Mr WILKIE—Basically, it is twice what was lost in Spain.

Mr Gillies—Yes.

Mr WILKIE—Thanks.

Mr ADAMS—I think there is a figure available to us regarding the amount of tankers as opposed to ordinary shipping that lose bunker oil. I think it is ordinary freighters that usually do more damage, isn't it? Is there a percentage between shipping? How many tankers have spilt oil in the last 20 years?

Mr Sutton—I might ask Mr Gillies to comment. Australia has been very fortunate. We have not had many major fuel spills. The largest was the *Kirki* off the coast of Western Australia in the early nineties. The most recent one we have had of any significance was in Gladstone a couple

of months ago. It was a bunker that was damaged and caused that spill. As I said, we have certainly been very fortunate with regard to the number of spills we have had. There have not been many major ones off the coast.

Mr Gillies—Worldwide, there has been a decreasing trend for spills from tankers, but I will have to get you the breakdown of information from other ships.

Mr ADAMS—I think it is in the paperwork here. I think I have it.

Senator MASON—In some of our prepared notes—and this follows on from Mr Adams' question—it says:

Evidence suggests that most oil spills—93 per cent in the 10-year period from 1995-96 to 2005-06—originated from ships other than oil tankers. The bunkers convention specifically excludes oil spills from oil tankers.

What I do not quite understand, and Mr Adams' question was directed to this, is whether that 93 per cent is the number of spills or the amount spilt. They are very different issues, aren't they?

Mr Gillies—Yes. It is referring to the number of incidents, not the percentage or the volume spilt.

Senator MASON—In essence, what that amounts to is that 93 per cent may relate to incidents, but that might only be a fraction of what is lost from one large oil tanker, for example. I suspect Mr Adam's question was directed to that. Can you find that out, Mr Gillies?

Mr Gillies—Yes, I will chase up that information.

Senator MASON—Thank you.

CHAIR—I would like to clarify what would happen in the event that there is a spill and the initial fund is exhausted and the insurers are exhausted. Would there then be a call on the oil-importing companies?

Mr Gillies—That is correct.

CHAIR—And the amount that can be called upon the oil-importing companies is $750 million SDR. Is that capped as well?

Mr Gillies—Yes.

Mr ADAMS—Does it work a bit like the Lloyd's rings? No money is put up front, is it? Do people under-ride the sorts of circumstances and that it is called on if needed?

Mr Gillies—That is correct. The fund would work out the number of claimants and the likely amount of payment and a particular amount per tonne of imported oil would be levied against each of the contributors. For a major incident, that could be over three or maybe four years.

CHAIR—But the risk is spread globally so, if there is a spill off Japan, Alaska or whatever, Australian oil-importing companies would be required to contribute to this fund where there is a shortfall.

Mr Gillies—Yes.

Ms PANOPOULOS—Mr Sutton, you mentioned that an additional two countries will have joined by June or July this year. Who are those additional signatory nations?

Mr Gillies—Croatia and Slovenia, and Lithuania has now joined as has Barbados.

Ms PANOPOULOS—These countries are listed. I want to know the additional two nations that were not listed.

Mrs Wilkinson—Croatia and Slovenia are the two that are going to join by 3 June, and Spain are Sweden are part of it as well.

Ms PANOPOULOS—Croatia is already listed as a signatory.

Mrs Wilkinson—Sorry, 17 May is when Croatia comes into force.

Ms PANOPOULOS—What are the two additional nations that you said would join in June-July.

Mr Gillies—Slovenia and Latvia.

Ms PANOPOULOS—Thank you.

Senator WORTLEY—The states that are party to it are the same ones that are party to the 2003 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and you have listed those 16 states. Have you then just added the two to it—is that correct?

Mr Gillies—Yes.

CHAIR—We should move on to bunker oil. Does anyone want to make a statement about that?

Mr Alchin—Bunkers is another term for fuel oil that is carried on ships, and it is the same oil that causes the same sort of damage as what Mr Sutton was talking about. At the moment there is no international convention in force relating specifically to the spill of bunkers. The situation in Australia at the moment is that if there is a spill of bunkers from a ship, the shipowner is liable for pollution damage and has to provide compensation only if the shipowner is found to be at fault. If the shipowner is not at fault, the shipowner is not obliged to pay any compensation. If the shipowner is found to be at fault, the shipowner's liability is limited by an existing convention: the Convention on Limitation of Liability for Maritime Claims. As an example, the liability limit of, say, a typical ship with a gross tonnage of 40,000 gross tons is roughly 15 million SDRs, which is roughly $A30 million.

Australia has introduced, with effect from April 2001, a requirement that shipowners must have evidence of insurance to cover this liability, even though there is no such current requirement in an international convention that is in force. The bunkers convention will take the Australian requirements a bit further. One of the most important things it says is that the shipowner will be strictly liable for pollution damage. If there is pollution damage from a spill of bunkers from a ship, the shipowner will be required to pay compensation. There are limited defences to that, but generally the shipowner will be required to pay compensation. Also, the extent of pollution damage that is covered is made fairly wide, so it covers economic loss. This is quite important because the main people affected by pollution damage are the fishing industry and the tourism industry. They will be covered and they will be guaranteed compensation under the bunkers convention. The shipowner is still able to limit liability and the liability limit remains as it is under the LLMC convention. The shipowner's liability will not increase in amount. The shipowner will be required by the convention to be insured. They will be required to carry an insurance certificate. The form of that certificate is in the convention. Claimants will be able to go directly to the insurer to seek compensation. This simplifies things for claimants.

When we put in the national interest analysis we said there were nine parties to this convention. There is now one more party. Singapore became a party on 31 March, so there are 10 parties to it. It requires 18 parties before it will enter into force, so we cannot say definitely when it will enter into force. If Australia becomes a party it will make 11. It seems like there is a fairly big push by the European Commission for EU members to become parties, so our expectation is that it will probably enter into force within the next 12 to 18 months.

Mr ADAMS—I see that the Maritime Safety Authority has a role in this. They have been reimbursed for all costs because in the past, with every other incident we have had in Australia, someone has been insured, so we have had that cost. The Maritime Safety Authority becomes involved nationally, but the port authorities are the main players, aren't they, in a port situation? They all have their own response teams, I know, and soakers and things to stop the oil flows and things like that. I am just wondering about the interface there. Do the port authorities get reimbursed as well?

Mr Alchin—Yes. All response costs will be reimbursed. This provides not only response and cleanup costs but also the economic loss. The industry group representing the port authorities is very supportive of this convention coming into force.

Mr ADAMS—I am sure they are. Thank you.

Ms PANOPOULOS—You mentioned the limited defences to the strict liability of the ship owner. In article 3 there is a bit of a description. Article 3(b) states:

the damage was wholly caused by an act or omission done with the intent to cause damage by a third party;

That is one of the limitations to the strict liability. Would that cover an act or omission with intent to cause damage by an employee or does the strict liability of the ship owner cover that?

Mr Alchin—I do not think that an employee would be regarded as a third party. If an employee causes the damage it would not exonerate the ship owner from paying compensation.

Ms PANOPOULOS—So there is still strict liability for either an omission or a malicious act by an employee to cause damage?

Mr Alchin—That is my understanding.

Senator MASON—It is potentially criminal?

Mr Alchin—Yes.

Ms PANOPOULOS—But they are still liable?

Mr Alchin—Yes. If there is any criminal offence committed, that is a separate issue to the civil liability here.

Ms PANOPOULOS—There could always be a fine line in the interpretation of whether something is a criminal offence or just seriously negligent.

Mr Alchin—Yes. The Maritime Safety Authority would look at any of these incidents and try to determine that. If their investigation revealed that there was a criminal offence, they would initiate a prosecution.

Senator MASON—Seriously negligent acts can be criminal offences, can't they?

Mr Alchin—Yes.

CHAIR—Thank you very much for appearing before the committee today.

[10.28 am]

DIRNBERGER, Mr Claus, Executive Officer, Pacific Regional Section, Pacific and New Zealand Branch, Department of Foreign Affairs and Trade

HOOTON, Mr Peter, Assistant Secretary, Pacific Regional and New Zealand Branch, Department of Foreign Affairs and Trade

ROSE, Mr Andrew, Executive Officer, International Law and Transnational Crime Section, Department of Foreign Affairs and Trade

Agreement Establishing the Pacific Islands Forum, done at Port Moresby on 27 October 2005

CHAIR—We will now take evidence on the Agreement Establishing the Pacific Islands Forum, done at Port Moresby on 27 October 2005. I welcome 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 Hooton—Yes, I would like to make a short introductory statement. To give this some context, the Pacific Islands Forum is the region's key political organisation. Australia is a founding member of the forum, dating back to 1971. Forum leaders, heads of government, meet annually in formal session, including at a leaders' retreat, which provides an opportunity for private and frank discussions at the highest level. The most recent meeting of the forum, its 36th meeting, was held in Papua New Guinea in Port Moresby and Madang in October last year. Tonga is to host the next meeting of the forum, which we expect will be towards the end of October of this year. Australia is the largest donor to the forum. The overall forum budget for 2005 is around $A19 million of which we provided $4 million.

I will now turn to the agreement itself. The forum is currently governed by the terms of the agreement establishing the Pacific Islands Forum Secretariat, which dates to 2000. In 2004 forum leaders decided to revise this agreement to reflect the forum's changed priorities and the current roles of the secretariat and the secretary-general. Australia has long advocated a degree of reform of the organisation as part of our broader policy approach to strengthening governance in the Pacific. Importantly for us, this new agreement provides both for a restructuring of the forum secretariat and a refocusing of the forum's attention on the key pillars that leaders agreed to a year or two ago. In brief, these are: governance, security, economic growth and sustainable development.

In line with a decision taken by leaders in the last couple of years to encourage closer contact with non-sovereign Pacific territories whose constitutional arrangements would not permit full membership of the forum—and we have in mind here, of course, the French territories and the US territories—the new agreement provides for those Pacific island territories to be eligible for

associate membership of the forum rather than simply observer status, as was previously the case. Three territories are currently observers: New Caledonia, French Polynesia and Tokelau. East Timor has special observer status.

It is worth noting that the new agreement will in fact establish the forum for the first time as an international organisation with appropriate immunities and privileges. It will create, consistent with existing arrangements, a secretariat and a Pacific islands forum officials committee, which will give general policy directions to the secretariat and make recommendations to leaders. Australia and all other members of the forum are represented on this committee. We were closely involved in the negotiation of this agreement and are very comfortable with the outcome. We see it as important for Australia to ratify the agreement for this reason—and also because the agreement can only enter into force once all forum member states have ratified.

Mr WILKIE—I am reading here where it talks about how an international organisation has been created which would be eligible for different rights and privileges, including changes to Australian domestic legislation. What exactly will that entail for Australia?

Mr Hooton—Very little at this stage. To give effect to the new agreement, it will only be necessary to make some minor amendments to nomenclature in existing domestic regulations. It is possible that further down the track we may need to negotiate with the forum secretariat a separate arrangement on privileges and immunities, in large part to cover the operations of the Pacific Islands Trade and Investment Commission office in Sydney. Of course, any future agreement that necessitated changes to the International Organisations (Privileges and Immunities) Act would have to undergo the usual treaty-making processes, including tabling in parliament. But at this stage there is really nothing to do apart from those minor changes to the nomenclature.

Mr WILKIE—Given that the forum operates on consensus rather than votes, does the forum operate in a similar way to the ASEAN forum?

Mr Hooton—I am not really familiar with the way the ASEAN forum operates; but certainly the Pacific Islands Forum operates, wherever possible, on a consensus basis.

Mr WILKIE—So equal weight is given to every country?

Mr Hooton—It certainly is, yes.

Mr WILKIE—Just one last question: I see that we have got the observer nations and the special observer at Timor Leste. I am just wondering why Indonesia has never been included.

Mr Hooton—I think that Indonesia has never really thought of itself as a Pacific country. The special observer status really reflects an interest that Timor Leste has in being included in that community of countries for certain purposes. I think the fact that it has special observer status also reflects the current inclination of East Timor to keep its options open, because there are many situations in which its Asian identity suits it better. But for Indonesia there has never been any thought that Indonesia—or, in fact, any other South-East Asian nation—might become involved in the Pacific Islands community.

Mr WILKIE—I suppose that Indonesia is obviously not near the Pacific area but they do have some interest. I suppose West Papua is an example of where they would be wanting to have some sort of say.

Mr Hooton—They certainly have an interest in the proceedings of the forum, and I think that is now reflected—although I do not have the detail in front of me—in the fact that they have diplomatic representation in the region that they did not previously have. I think there is, in fact, an Indonesian mission in Suva, and I cannot recall whether Indonesia has Pacific forum dialogue status or not. I think it may not at this stage.

Senator WORTLEY—You state that the Commonwealth's standing committee on treaties has been informed throughout the treaty negotiations. Were they actually invited to comment, or were they just kept up to date and provided with information about what was going on?

Mr Dirnberger—They were provided with information throughout the treaties process.

Senator WORTLEY—Did you receive any response at all from them?

Mr Dirnberger—No, there was no response from the treaties coordination process with the states and territories. There have been no responses.

Senator WORTLEY—New Zealand, Tonga and Tuvalu have not yet signed the agreement. Why is that?

Mr Hooton—In the case of New Zealand, their treaty processes are similar to ours but different. They were not in a position to actually sign on to the agreement at the Port Moresby forum. They were just not quite ready. But we understand that they are now going through the necessary processes and hope to have both signed and ratified the agreement before the next meeting of the forum in Nuku'alofa. As for the other two countries, Tonga and Tuvalu, I cannot really tell you at the moment where they are at.

Senator WORTLEY—You state somewhere that Australia needs to sign, as do the other countries. Are the other two countries expected to sign, or do you not have any information?

Mr Hooton—We do expect them to sign. We are not aware of any particular problems that any of the members have with this agreement. Isn't that the case, Claus?

Mr Dirnberger—Yes. Usually it takes some time for legal processes to run, and I assume that would be the case in Tonga and Tuvalu. In the case of New Zealand, as my colleague has pointed out, there are different processes in place that take longer for signing on.

CHAIR—Who is the depository of this treaty?

Mr Dirnberger—Fiji is the depository.

Senator TROOD—Mr Hooton, you mentioned changed priorities. Did I understand you to say that, in part, these were matters of governance and growth?

Mr Hooton—Yes.

Senator TROOD—Could you expand on these changed priorities and, in doing so, could you say something about whether or not you expect the forum to be a rather more intrusive organisation into the affairs of the member states as a consequence?

Mr Hooton—I think the agreement of leaders to identify four quite specific priorities—and those certainly do include security and governance but also economic growth and sustainable development—was an exercise in refocusing and making the organisation more effective than perhaps it has been hitherto. As to whether or not it is likely in the future to be a more intrusive organisation, I do not think it is in the nature of the forum to insert itself into situations or the affairs of member states where its presence is clearly not welcome. So, no, I do not see it being more intrusive, but I do see it having a greater capacity to respond to requests for assistance from the membership when those requests are received and also, without being intrusive, to make it quite clear that the forum is ready to provide assistance in response to either development needs or particular crises that may emerge in the member states from time to time. It is more a question of them making it obvious or making it clear that they have both the willingness and the capacity to respond to those sorts of requests.

Senator TROOD—Do you have any contemplated areas of activity that were not previously able to be pursued that would now be able to be pursued in light of these changes?

Mr Hooton—We have a framework that we did not previously have, and that is the Pacific Plan, which was adopted at the Port Moresby forum. The plan is intended to enhance regional cooperation and, to the extent possible, to allow Pacific island countries to take advantage of synergies and opportunities to do things together and thereby save resources. Some very small states find it difficult to do everything for themselves and would find it is easier to do some things regionally. The Pacific Plan provides a framework, or a basis, for some of that activity to be taken forward.

Senator TROOD—Would this apply in relation to airlines, for example?

Mr Hooton—It could apply to airlines. The Pacific Plan has rather too long a list of immediate priorities. It has some 24 initiatives that it is hoping to advance over the next three years. They include a statement of principles in relation to transport that includes airlines and aviation and maritime security. So, yes, there is certainly provision within the plan framework for some cooperative endeavours in the aviation area.

Senator TROOD—The framework suggests a range of increased activity which may imply—it may not, of course—that there is going to be the need for more forum staff. You mentioned the budget of $19 million. Is that based on the existing activities of the forum, or is that an expectation of the kind of budget that the new forum will require?

Mr Hooton—It is based on existing activities. We would certainly be prepared to look sympathetically at the forum secretariat's resource requirements, including in relation to the implementation of the Pacific Plan. It is also important to remember that the forum secretariat's role in all of this will be one of facilitation, monitoring and reporting. It is not an implementing agency as such. In fact, one of the changes that members have sought to make clear in the last

year or two—or one of the clarifications that they have looked for—is to make it plain that the forum secretariat itself is a policy advisory body, a facilitator, and that it serves the Pacific Islands Forum leaders meeting so that it responds to decisions taken by leaders and makes sure those decisions are implemented. It is not a technical assistance agency as such, so we would not expect it to have to find the money to implement all the initiatives that the Pacific Plan itself identifies. That will be for the regional agencies and donors to do.

Senator TROOD—Is $19 million about the kind of money we are looking at for the future, do you think, or are we looking at an increase?

Mr Hooton—That is something I really could not answer with any certainty at the moment, and it would be something that my AusAID colleagues would also have a very keen interest in, I think.

Senator TROOD—I think we all have a keen interest in that. We are paying $4 million, you said, of the budget at the moment. If it is going to increase, obviously there will be a proportionate increase in Australia's contribution. It would be of some interest to us to see what kind of liability there will be or what the implications might be down the track.

Mr Hooton—I think it is in the nature of these organisations to become progressively a little more expensive, but I will talk to my colleagues and see whether we can get you a helpful figure.

Senator TROOD—If you have some projections in light of the projected work, that would be helpful. Of the $4 million we currently contribute, which is obviously a proportion, how is our proportion determined?

Mr Hooton—Claus is just showing me the relevant article in relation to that. The shares that each member has to meet are decided by consensus from time to time subject to review by forum leaders at their discretion. Obviously Australia will be a major contributor to the forum. It is by far the largest member. In terms of core contributions, New Zealand pays almost as much as we do but, in addition to core contributions, there are also contributions to other forum activities. I think we can assume that, while the cost sharing arrangements will continue into the future, Australia's proportion of those costs would remain pretty much where it is now.

Mr ADAMS—You seem to play a very important role in the future of Pacific Island nations and our involvement with them. Would you say that there have been some difficulties within the old forum in being able to play a constructive role or achieve its goals?

Mr Hooton—I think that in the past the forum has been perhaps a little more reluctant than it is now to get involved in the affairs of its members, although, again, I would stress that it is not by nature an intrusive organisation. But we have seen over the last 10 years or so a steady progression of agreements or declarations that have, I think, shown an increasing willingness on the forum's part to get involved particularly on regional security issues. We have that with things like Biketawa, Nasonini, Aitutaki and so forth.

Mr ADAMS—My colleague on the other side seemed to think that $4 million was a lot of money. But, to keep these states as part of the Pacific forum and for all the states in the region to

be stable and pursuing goals in good governance, I would have thought that $4 million was a very small sum.

Mr Hooton—It is a modest sum, really, when you think of our total aid to the region, which comes to something like $950 million now, but it is still important for us to get value for money wherever we spend it and whatever the amount is. That is very much our intention and has been for a long time—to make sure that the forum works better.

Mr ADAMS—That is right. But some of these nations are very small nations and to reach some of the levels sometimes asked of them in skill levels and expertise in writing things they need a fair bit of assistance. Is that correct?

Mr Hooton—It is, but there are a number of avenues for that. As you know, we are involved in several of them. The forum secretariat is an organisation we strongly support. We are also closely involved with the work of the Pacific regional organisations. We also have our bilateral programs, and we give development assistance through the international financial institutions and UN agencies.

Mr ADAMS—I want to come back to the organisation, or the new forum. The forum leaders appear to have more power now under the restructure. Was that a deliberate attempt when this was restructured to give the leadership more opportunity to make decisions?

Mr Hooton—No, I don't think so. They may now have a clearer framework within which to exercise those responsibilities. The forum secretariat has certainly always seen the leaders as being the peak of the organisation and the group from whom they take their marching orders. There may now be a clearer set of arrangements in place to enable that to function more effectively, but the intention hasn't really changed.

Ms PANOPOULOS—You mentioned that there was about $950 million of aid to the region. So the contributions coming from the other members of the forum are likely to indirectly be paid by Australia anyway.

Mr Hooton—It would be very hard to measure that. Some of those contributions to the forum secretariat are quite modest, particularly for the micro states. It is possible that you could see it that way, but I don't think there would be any way of demonstrating it.

Ms PANOPOULOS—Does that $950 million aid include aid from more relevant Australian government departments?

Mr Hooton—This is an AusAID figure rather than a DFAT figure, but as far as I know, it does encompass all aid to the region, including Papua New Guinea.

Ms PANOPOULOS—So that would include the funding program we had for the textile industry.

Mr Hooton—In Fiji?

Ms PANOPOULOS—Yes.

Mr Hooton—I would imagine that it probably would, but it is something we would have to check.

Ms PANOPOULOS—Could someone get back to us specifically regarding that figure, and also on the more general question of whether it includes all funding through all Australian government departments to those nations? Just to help me understand a little better when you are answering Senator Trood's questions, this funding is really to fund a secretariat to act as an organising body for the periodic meetings. How many staff will this forum have?

Mr Hooton—It exists, so—

Ms PANOPOULOS—How many staff does it currently have?

Mr Hooton—Somewhere between 70 and 80, I think.

Ms PANOPOULOS—Seventy or eighty staff to organise the occasional meetings of the forum?

Mr Hooton—It does a little more than organise the occasional meetings of the forum.

Ms PANOPOULOS—What else does it specifically do?

Mr Hooton—For one thing, the forum secretariat consists of both professional staff and admin staff, so the figure of 70 to 80 is a figure for the total forum secretariat staff.

Ms PANOPOULOS—Where are most of these staff sourced from? Are they sourced equally from member countries?

Mr Hooton—They would be if it worked that way, but unfortunately it has not proven possible to encourage the sort of requisite movement of people from around the region. The forum secretariat's professional staff are drawn from a range of countries. The current Secretary-General is an Australian, as you know. There are two deputy secretaries-general, one of whom is from the Solomon Islands, and the other is from Samoa.

Ms PANOPOULOS—Are the salaries for these individuals referenced to the Australian Public Service?

Mr Hooton—No. They are commensurate with Fiji salaries. We might have to check that as well. It raises an interesting point.

Ms PANOPOULOS—Could you also provide to the committee a list of all the staff and their remuneration.

Mr Hooton—Yes, we can do that.

Ms PANOPOULOS—And which country they are from.

Mr Hooton—Yes.

Senator CAROL BROWN—Do you have the date of the next forum meeting?

Mr Hooton—At this stage we expect it to be 23 to 28 October in Nuku'alofa. But that is subject to the views of members, including us.

Senator CAROL BROWN—What happens if not all of the member states ratify the agreement by that time?

Mr Hooton—It is not a problem. We continue to go on under the 2000 agreement. In fact, I think the 2000 agreement was ratified only some time in 2005. But the forum is covered.

CHAIR—I also draw your attention to a report that the committee did last year which looked at the Enhanced Cooperation Program with Papua New Guinea. In that report we talked of the use of the national interest exemption. That has been used in a number of cases in treaties with South Pacific countries. We made a recommendation that in cases where the national interest exemption is to be used the committee should have an urgent briefing. In that report we looked at the Enhanced Cooperation Program with Papua New Guinea, but there have been some other treaties in the South Pacific area that the treaties committee was unable to look at before they entered into force as the national interest exemption was used.

Mr Hooton—Okay.

CHAIR—Thank you very much for coming.

[10.57 am]

HARWOOD, Ms Mary Beatrice, First Assistant Secretary, Department of the Environment and Heritage

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

Amendments to Annexes VIII and IX of the Basel Convention on the Control of Transboundary Movements on Hazardous Wastes and their Disposal, 1992 (Geneva, 29 October 2004)

CHAIR—I would like to thank Ian Campbell for his letter of 24 March informing the committee that the treaty action entered into force on 8 October 2005. In addition, the committee was informed that new procedures will be implemented to ensure that there will be enough notice of any amendments to the annexes for the domestic treaty process, including prior consideration by JSCOT, to be followed.

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 or 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 Harwood—Just some very brief ones. Firstly, I reiterate the apology for our failure to bring these technical amendments to the attention of the committee. We have processes in place so that will not occur again. They are essentially minor technical amendments relating to the classification of plastic coated wire and the treatment of that waste as hazardous or otherwise by the Basel convention.

CHAIR—Thank you very much. So these amendments were adopted on 25 to 29 of October at the conference of parties in 2004?

Ms Harwood—Yes. The process is that they are automatically adopted for parties to the convention unless they object. In Australia's case we had no objection to the amendments, nor did any other parties to the convention, and they came into force by virtue of the procedures of the convention. In future, if such amendments arise, we need to bring them to attention through the national interest process of the committee so that there is the opportunity for comment on them before they are adopted by Australia.

CHAIR—What consultations were carried out on these amendments?

Ms Harwood—There was consultation prior to the meeting of the conference of parties at which they were adopted. It was with both industry groups and non-government organisations through a formal consultative process that we have, called the Hazardous Waste Act Policy Reference Group. All those groups were comfortable with the amendments as they stood.

CHAIR—Thank you. There have been a couple of similar cases occurring within the Department of the Environment and Heritage, whereby amendments to treaties have entered into force prior to JSCOT having an opportunity to look at this. What procedures are now in place to avoid this happening again?

Ms Harwood—There is a greater awareness of the requirements and basically processes that mean that, where such amendments arise, we will bring them to the attention of the committee.

CHAIR—Was the standing committee on treaties notified of this?

Ms Harwood—In terms of the process or of these plastic wire amendments?

CHAIR—Has the standing committee on treaties been notified of these amendments?

Ms Harwood—As I understand it, they have been now. They were not at the time, because we did not understand them to be subject to the process.

Mr ADAMS—Are we dumping at sea any wire with plastic covers on it?

Ms Harwood—Not to my knowledge.

Mr ADAMS—Are we disposing of anything?

Ms Harwood—Not as far as I am aware, no.

Mr ADAMS—The environment department should know if we are doing it. Do you know or don't you know?

Ms Harwood—I am just—

CHAIR—You are unaware?

Ms Harwood—Yes.

Mr ADAMS—You could make inquiries. We are very interested in this, and the department seems to be reluctant to come before us. I would be very interested in knowing whether there are any processes occurring around the coastline of Australia where we are dumping wire cables.

Ms Harwood—As far as I am aware, there is nothing happening in terms of dumping coated wire around Australia, but I am happy to follow up to clarify that exactly.

Mr ADAMS—Okay.

CHAIR—Thank you very much.

Mr WILKIE—Does this policy reference group include the states or territories?

Ms Harwood—Sorry; I should have mentioned that. The states are also consulted directly. I will just check if they are on the reference group itself. No, I think there is a separate process for consultation with the states and, yes, they were consulted.

Mr WILKIE—They were consulted, okay. I suppose I am also—

CHAIR—Sorry—when were the states consulted?

Ms Harwood—I will have to check that exactly, but they are consulted in relation to the preparation for conferences of the parties. I am sorry; I will need to check exactly whether they were consulted specifically on the plastic coated wire amendment.

CHAIR—Thank you. If you would take that on notice, that would be good.

Mr ADAMS—You can also—

CHAIR—Just hold on. Ms Harwood has already undertaken to take on notice the issue of dumping wire at sea.

Mr ADAMS—It is just the territories too—that is, Norfolk Island and those areas as well. Would you check on those?

Ms Harwood—Yes.

Mr WILKIE—This question relates to the timing. I am quite outraged as well that here we have something that was signed back in 2004 and came into effect in 2005, and here we are well into 2006 and we are only now being told that this is going to be enforced. How did it come about that we now realise that there was a mistake made and it has come before the committee?

Ms Harwood—I am in an awkward position, because I arrived at the department after all of this happened. I am uncertain as to the process by which we became aware, but when we did we sought to redress it through the processes that have taken place—that is, the preparation of the statement and the process that we are going through now.

Mr WILKIE—All right. I just want it on the record that I express my disappointment that this has happened, because it should not be happening.

Mr Thwaites—Could I just intervene with a possible clarification. In the government's 1996 statement introducing the treaty making reforms to parliament, it was undertaken that the new arrangements would extend to all actions which amended treaty if the amendment would alter obligations with a legally binding impact on Australia. In this case, it is a lineball call whether these amendments do alter obligations with a legally binding impact on Australia since the amendments were made to clarify the existing obligations rather than add to or subtract from them. My understanding is that the Department of Environment and Heritage was in some confusion as to whether in these circumstances it was necessary to table the amendments.

Mr WILKIE—I am sure people can understand the sensitivities here, because we are talking about dealing with hazardous waste. It is just that in this instance it happens to be coated wire,

but it could have been something far more dangerous that we would have wanted to have had far greater input into and should have had that opportunity.

Senator WORTLEY—In your submission you say under 'Obligations' that the amendment places no additional obligation on Australia to those already existing under the Basel Convention. Do the amendments in any way reduce Australia's or any other signatory's currently existing obligations?

Ms Harwood—No, they clarify the existing scope of the convention and its application to plastic-coated wire.

Senator WORTLEY—You go on to say that by providing clarity as to whether particular substances are regarded as hazardous wastes, the amendments may result in a cost saving for the Commonwealth in terms of assessing whether or not those substances are subject to the convention. Could you elaborate on that?

Ms Harwood—I think it refers to the fact that it just provides a clear way of determining if there is an application that it is a simpler information base on which to judge whether or not the application requires a permit.

Senator WORTLEY—Do the amendments in effect reduce the number of substances previously regarded as hazardous wastes or that could have been considered to be hazardous wastes?

Ms Harwood—No, I do not believe so.

Senator WORTLEY—I find the answer to that question contradicts providing clarity as to whether particular substances are regarded as hazardous. Previously, the situation was that a substance may be regarded as hazardous and, as there was some question about it, it had to be investigated. Now a clear ruling has been put as to those investigations not proceeding. Is that right?

Ms Harwood—It is saying that, if a certain contaminant is present in the plastic coating on wire, it would be treated as hazardous—that is, things like coal tar, PCB, lead, cadmium and organohalogen compounds. So it is providing clarity that, if those compounds are present—

Senator WORTLEY—So that information was not provided in the previous agreement?

Ms Harwood—It is a clarification in the technical annexes to the convention to assist assessment of applications relating to plastic-coated wire, and it is making it clear that plastic-coated wire with those compounds in it would be treated as hazardous waste. And there is an inverse in terms of, if they are plastic coated and do not contain those compounds but otherwise meet the terms of the convention, they would not be subject—

Senator WORTLEY—Is that a clarification or is it an addition? This is saying it is a clarification. A clarification would normally be an explanation; whereas, to me, what appears to have happened is that there have been certain conditions put on.

Ms Harwood—I can understand the point that you are making but I do not think that is the case here. I do not think that is the effect of these amendments.

Senator WORTLEY—So, in that case, there are no substances that previously would have been considered to be hazardous that have been removed?

Ms Harwood—Yes, I do not think anything has been made unhazardous by this amendment.

Senator WORTLEY—Did the consultation regarding the impact on the workers involved in the disposal of hazardous waste take place with health and safety agencies, unions and the environmental agencies?

Ms Harwood—This is in Australia?

Senator WORTLEY—Yes.

Ms Harwood—I would have to take on notice the exact detail of the consultation that took place. As I understand it, there was consultation with the Hazardous Waste Act Policy Reference Group, which includes bodies such as the Minerals Council of Australia, Sims Metal, plastic and chemical industries, the Australian Conservation Foundation, the Nature Conservation Council, and Greenpeace Australia. They did not consider the amendments controversial and were comfortable with them going forward. If there are other specific groups that you want me to advise as to whether they were consulted, I would need to take that on notice.

Senator WORTLEY—Yes, if you would—specifically relating to workers' health and safety agencies and organisations, including unions.

Ms Harwood—I think the issue you are alluding to would in general be covered by the deeper provisions of the convention relating to the circumstances in which Australia does or does not grant export permits where we must be assured as to the way in which the waste is going to be handled or treated in the importing country. So we have obligations there that bind any consideration of export permits by Australia. But I am happy to take that on notice and give you more detail.

CHAIR—Thank you for appearing before the committee today. That concludes the discussion on this treaty.

[11.11 am]

HEARN, Dr Simon, Senior Adviser, Australian Centre for International Agricultural Research

LEONG, Dr Ta-Yan, Senior Adviser, International, Commonwealth Scientific and Industrial Research Organisation

HAYMET, Dr Tony, Director, Science and Policy; and Chief on secondment, Marine and Atmospheric Research, Commonwealth Scientific and Industrial Research Organisation

DYNE, Ms Heather, Director, Science Strategy Section, International Science Branch, Department of Education, Science and Training

ARMITAGE, Mr Miles, Assistant Secretary, Maritime South-East Asia Branch, Department of Foreign Affairs and Trade

PEAK, Ms Elizabeth, Executive Officer, International Law and Transnational Crime Section, Department of Foreign Affairs and Trade

Agreement between the Government of Australia and the Government of the Republic of Indonesia for Cooperation in Scientific Research and Technological Development, done in Jakarta on 11 July 2005

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

Ms Dyne—Australia and Indonesia have worked together with great success in recent years, underpinned by Indonesia's transition to democracy, with close and practical cooperation on key regional and international issues, including countering terrorism, people smuggling, interfaith dialogue, combating avian influenza and post tsunami reconstruction in Aceh. This cooperation reflects our many shared interests, geographical proximity and extensive people-to-people links. As part of an ongoing commitment by both countries to progress this relationship, Australia hosted a successful Australia-Indonesia Ministerial Forum, the AIMF, in March 2005. At this meeting substantial commitments were made to strengthen bilateral ties, including the signing of a new treaty on S and T collaboration.

The new S and T treaty will play an important role in solidifying and expanding our scientific relationship with Indonesia beyond its current modest activity base. The existing science relationship is the fourth largest for Australia when measured by Australian government support for international science activities. However, these activities have predominantly been aid based agricultural research through partnerships with organisations such as the CSIRO, the Australian Centre for International Agricultural Research, AusAID and the World Bank and in the fields of

forestry, agricultural research and marine research. While we acknowledge and appreciate the value of aid based agricultural research to both Indonesia and Australia the wide range of fields in which there are scientific linkages between Australia and Indonesia indicates that there is substantial potential to expand the relationship and generate knowledge and increased scientific and personal linkages in a mutually beneficial way.

For example, CSIRO has recently held collaborative workshops with Indonesia on diagnosing important diseases of livestock, such as classical swine fever, bluetongue and avian influenza, which are of concern to both Indonesian and Australian quarantine officials and potentially have huge social impacts. It would be to the benefit of both countries to form a more solid research relationship to understand these diseases and their implications.

ACIAR is also involved in many projects of mutual benefit to Australia and Indonesia. In one example, researchers have studied the socio-economic and environmental importance of shark and ray fauna in Australian and Indonesian waters. This research is helping to address worldwide concern over the exploitation of shark and ray fishing in Australian and Indonesian waters by determining the impact of over-fishing and illegal fishing and is providing advice to Indonesia and Australia on how to jointly manage shared ray and shark stocks.

This treaty recognises the potential for science and technology cooperation across the wide range of research fields and has identified 12 key areas for mutually beneficial collaboration to occur in. Likewise, the treaty sets the imprimatur for the development of formal arrangements between Australian and Indonesian institutions for cooperative scientific activities such as memoranda of understanding. Already, the Department of Education, Science and Training has in place with its Indonesian counterpart, RISTEK, the collaboration in science, innovation, research and technology between Australia and Indonesia through a memorandum of understanding, known as the SIRTAI agreement, which was signed on the same day as the treaty. Scientific activities are already being planned under this arrangement in the areas of biotechnology, energy, agriculture and water management.

In recognition that this cooperation may take a variety of forms, the treaty has made provisions to encourage cooperation at all levels. Cooperation activities covered by the treaty include exchange of information; visits and exchanges of scientists and other experts or technical personnel; meetings of various forms, such as joint seminars, workshops and exhibits of scientific research and technological development; execution of joint or cooperative projects and programs; provision of necessary materials and equipment; education; training; and participation in ongoing programs.

With respect to managing our scientific relations, the Australia-Indonesia working group on science and technology plays an important role in coordinating and advancing our cooperation with Indonesia in this area. The working group, which incorporates a wide range of Australian and Indonesian government departments and research agencies, annually reviews the science and technology related cooperative activities and is required to report to the AIMF on these activities.

Turning to the agreement itself, its primary role is to amend and extend the existing arrangements between the Australian government and the government of the Republic of Indonesia. In addition to identifying key areas for scientific cooperation and the types of

cooperative activities covered, the agreement includes provisions for the protection of background and foreground intellectual property; the designation of an executive officer for each party; entry and exit of personnel, materials and equipment engaged in or for use in cooperative activities; and dispute resolution mechanisms. We would like to reaffirm that this agreement places no obligations on Australia to amend any of its laws, nor are there any additional costs associated with its implementation.

In conclusion, we have had a great deal of success through this mechanism and welcome the opportunity to extend the agreement. My colleagues from ACIAR, CSIRO and DFAT and I would be happy to answer any questions that you may have regarding the agreement or Australia's current science and technology relationship and activities with Indonesia.

CHAIR—In the proposed new agreement there is a section requiring that responsible steps be taken to keep confidential information secret. Why has this been included in the new agreement?

Ms Dyne—This suggestion was put forward to us by our colleagues in the Attorney-General's Department who felt that it was an appropriate step to take in view of our key issues.

CHAIR—Thank you. Do we have that in similar agreements with other countries?

Ms Dyne—I would probably need to check but I believe that is a fairly standard sort of clause.

CHAIR—Why was it not in the previous agreement but proposed for this agreement?

Ms Dyne—I would anticipate that it reflects a change in understanding and experience in the management of such issues and that it was felt that, while there had been no suggestion of actual specific concerns in this area with respect to Indonesia, it was nevertheless a prudent clause to insert.

CHAIR—So there have not been any occasions during the previous agreement when information has been leaked or inadvertently shared with unrelated parties?

Ms Dyne—Not to my knowledge, no.

CHAIR—In the NIA it is stated that the Minister for Justice and Customs wished to underline the caveat that customs regulations and requirements should be complied with. Have there been any occasions when the customs requirements and regulations of either country have not been complied with?

Ms Dyne—Not in this particular situation. That is a standard clause that Customs wish to have inserted in such documents.

CHAIR—Is anyone able to give the committee any evidence on how the Indonesian ratification process is proceeding?

Ms Dyne—I am able to. Our Indonesian colleagues have informed us that RISTEK, which is the counterpart organisation in Indonesia, is currently in the process of organising an interdepartmental meeting at their end where the treaty ratification process will be discussed.

RISTEK expects to send a formal letter to the Indonesian department of foreign affairs by the end of May requesting that the treaty be ratified. Their department of foreign affairs will then advise RISTEK of the timing of the ratification process. From this information we anticipate that ratification will occur towards the end of this current calendar year.

CHAIR—Thank you for that. We will go to questions.

Mr ADAMS—How is intellectual property being protected under this agreement with different people doing different work in different areas?

Ms Peak—Senator, we have discussed this morning—

Mr ADAMS—I am not a senator.

Ms Peak—I am sorry; I offer my apologies for that, Mr Adams. I thought yours was the Senate side as I saw a number of senators there. We discussed this this morning. Unfortunately, we do not have on our panel any intellectual property lawyers or experts. Some of that expertise resides particularly in IP Australia and also in certain elements of the Attorney-General's Department. What I can describe for you is what the international obligations provide for in this agreement.

Article 5 outlines the obligations. What that essentially does is provide that, in any of the implementing arrangements which will sit under this treaty, there must be a clause that protects both background and foreground intellectual property. Article 5(1) provides that it must protect the intellectual property of the two parties. Article 5(3) provides that there must be a clause that protects the intellectual property of third parties. Additionally, in article 5(4) there is a clause that requires parties to use their best endeavours to have a confidentiality deed so that, prior to discussing any intellectual property issues or prior to developing and implementing arrangements, they should attempt to protect any discussions or information about intellectual property that proceeds in the lead-up to developing and implementing arrangements. They are the actual specific obligations that are in the treaty and then, as you will notice, there is an annex that goes through a whole raft of particular ideal clauses that we would like to see in our implementing arrangements. While the annex does not provide an obligation to have those particular aspects in every implementing arrangement, what it does is provide an indication of best practice, if you like, through clauses that we would like to see in any implementing arrangements. My understanding is that the thinking behind outlining them in so much detail in the annex is to give both parties a flavour of the kind of detail we are looking for in terms of protecting our intellectual property rights at all stages of cooperation.

Mr ADAMS—My last question is on using biological material, which is a big issue these days with trying to find interesting new ways of helping human beings. When the work has been done on that, what protects each country's biodiversity? What are going to be the outcomes? Are there any clauses that look after that?

Mr Campbell—Article 2(4) says:

Should the Cooperative Activities utilize biological materials, the Implementing Arrangements shall take into account the agreed Objectives and Principles under the Convention on Biological Diversity.

Mr ADAMS—Thank you.

Senator TROOD—I have a couple of questions. One relates to the confidentiality matter. I am just looking for the particular article in the treaty where this is raised, apart from the definition of confidentiality which is in article 1. Can you point me to the particular clause that relates to this matter of confidentiality, please. Do the parties have to agree on confidentiality or is it open to one party to nominate a matter for confidentiality, which then obliges the other to keep it secret? Perhaps Ms Peak has a solution to this issue.

Ms Peak—Article 5(4) describes how confidential information will be managed. As you suggested, it is subject to a confidentiality deed. Before the two agencies agree to an implementing arrangement, the expectation is that they would first sign a confidentiality deed so that any information exchanged would be subject to a confidentiality clause.

Senator TROOD—So it necessitates agreement—that is what I am interested in—rather than being designated by one party saying, 'We regard this as being confidential, therefore it is confidential.' Thank you; I had not seen that.

Ms Peak—It will be subject to agreement.

Senator TROOD—Yes. The second question relates to universities. I see that the ARC is included in this. Is the purpose of that to include universities under the cover of the agreement? Is that the implication of that? If it is not, then how are the bilateral activities of universities with Indonesian institutions affected by this agreement?

Ms Dyne—I do not anticipate that universities would be directly affected by this agreement. The ARC is a Commonwealth body and is directly encompassed by this, but the universities themselves are not directly encompassed by this agreement.

Senator TROOD—No.

Ms Dyne—Universities, as a matter of course, enter into their own agreements with many counterpart organisations.

Senator TROOD—As far as you are concerned, that capacity is not affected by the nature of this agreement.

Ms Dyne—No.

Senator TROOD—This relates to Commonwealth institutions' cooperative activities?

Ms Dyne—Yes.

Senator TROOD—Thank you.

Senator CAROL BROWN—I see that you consulted with the Joint Science and Technology Working Group of the Australia-Indonesia Ministerial Forum. Can you provide me with the membership of that group, please.

Ms Dyne—The agencies with whom we would have consulted in that context—and I will try and recall them—are CSIRO, ACIAR, ANSTO, DSTO, the Australian Academy of Science, the Australian Institute of Marine Science and probably the Australian Academy of Technological Sciences and Engineering as well.

Senator CAROL BROWN—What comment did they provide on the agreement arising out of that meeting?

Ms Dyne—They were broadly supportive of the agreement and felt that it would be a useful and worthwhile undertaking.

Senator CAROL BROWN—Did they have any concerns at all?

Ms Dyne—No. There was a dialogue with them and there were no specific concerns identified in that context.

CHAIR—Thank you very much for appearing before the committee today.

[11.35 am]

SAXINGER, Mr Hans, Director, New Zealand Section, Department of Foreign Affairs and Trade

MILLER, Mr Geoff, General Manager, Corporations and Financial Services Division, Treasury

SMITH, Ms Ruth Viner, Manager, Market Integrity Unit, Corporations and Financial Services Division, Treasury

Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings (Melbourne, 17 February 2006)

CHAIR—The committee will hear evidence on the Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings. I call representatives from the Treasury and 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 a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Miller—Yes, we do. My colleague Ruth Smith will make the opening address.

Ms Smith—We welcome the opportunity to make introductory comments to this committee on the Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings. The treaty was signed in Melbourne on 22 February 2006 by the Australian Treasurer and the New Zealand Minister for Commerce and tabled on 28 March this year. These opening remarks address three aspects of the treaty: the problem, the response reflected in the treaty and how the mutual recognition scheme fits into the wider relationship with New Zealand.

First the problem. At present, Australian and New Zealand issuers cannot simply use their home jurisdiction offer documents when making a trans-Tasman offer of securities or managed investment scheme interests. Instead, issuers must comply with the relevant requirements in the host jurisdiction, unless the issuer is operating under an exemption in the host jurisdiction. In addition, in relation to interests in managed funds, the vehicle would need to comply with the specific requirements of the host country—for example, the managed investment scheme requirements in chapter 5C of the Corporations Act.

Issuers of securities report that the current regulatory arrangements impose significant costs on both sides of the Tasman. Costs born by Australian offerers include paying fees for legal advice and corporate advisory services for New Zealand requirements, preparing and filing New Zealand investment statements—although the costs are reduced for issuers relying on exemption

notices—preparing New Zealand compliant advertisements and complying with conditions of exemption notices.

A study has not been undertaken quantifying the aggregate costs to issuers of offering securities in the host jurisdiction. However, according to the Australian Stock Exchange, a number of companies listed on the ASX have advised the exchange that the costs of providing offer documents to New Zealand investors may range from $10,000 to $30,000 on average. These figures encompass circumstances where there may be only 10 to 20 New Zealand investors. The ASX also understands that costs for large companies could total approximately $50,000, although in such cases the shareholder base is likely to be substantially larger.

We have been unable to ascertain the number of trans-Tasman offers that have not proceeded due to the additional costs of compliance with the host jurisdiction's requirements. However, it can be said that there is an opportunity cost involved in not accessing a potential overseas investment market. While such an opportunity cost would appear to be greater for New Zealand offerers because of Australia's relatively larger investment market, the cost to Australian offerers cannot be ignored. The effect of such cost is that, in some cases, the offer will be made in both countries but the additional compliance costs will increase the offerer's cost of raising funds. In other cases, the additional costs will mean that the offer is not extended to the other country. This reduces the offerer's access to potential investors and reduces investment options for investors in the other country.

Turning to the response embodied in the treaty, the agreement obliges both parties to implement the mutual recognition scheme described in it. In brief, the objectives of the scheme, reflected in article 2 of the treaty, are to remove unnecessary regulatory barriers to trans-Tasman securities offerings, increase investment between the two countries, enhance competition in capital markets, reduce compliance costs and red tape for business, and increase choice for investors. Implementation of the scheme in the treaty will allow the offer of securities and managed investment interests that can lawfully be made in one country to be lawfully be made in the other country in the same manner and with the same offer documents as in the home jurisdiction, subject to certain entry and ongoing requirements. This is the mutual recognition principle, which article 3 provides.

Article 4 lists the entry requirements, including the lodging of the offer and other relevant documents and the fact that the offer be a regulated offer in the home country. Article 5 lists the ongoing requirements, which include compliance with the securities legislation of the home country, that the offer remains regulated in the home country and an inclusion in the principal offer document of a warning statement to potential investors, pointing out, for example, that the offer is regulated under foreign law. The parties can impose additional requirements in relation to the entry and ongoing requirements for the scheme only if the Australian and New Zealand ministers mutually agree in writing.

The scheme envisaged by the treaty requires good coordination between the relevant regulators. It is envisaged that the home country regulator will be the front-line regulator in most circumstances. However, the host country regulator will also have a power and role to stop the offer if, for example, it is misleading. ASIC is able to exchange relevant information with the New Zealand regulators and has entered into memorandums of understanding with the two New

Zealand regulators to facilitate coordination. In addition, the implementing legislation will include additional powers for ASIC relevant to this scheme, as envisaged by the treaty.

The consensus underlying the scheme is that the outcomes of the New Zealand requirements relating to fund raising are equivalent to those of the Australian regulation. For this reason, as well as consulting on the implementing legislation, article 8 requires the parties to notify each other of proposals for material changes to the scope or requirements of their securities legislation.

There will be some novelty and, hence, risk for Australian investors. Investors will need to take heed of the warning statement which must accompany the offer document. The detailed requirements of the offer documents are likely to be different from those of Australian offer documents. The issuer will be regulated by foreign law. In addition, investments in foreign companies may involve different taxation consequences and the risk that your country's currency will move against the currency of the company's home country, with an effect on your investment.

The treaty will facilitate investment between the two countries; that is clear. However, taking the next step to quantify the benefits is relatively difficult. The national impact assessment attempts to quantify the benefits which flow as a result of the treaty and analyse the form those benefits take. We believe that we have shown in the assessment that the treaties entering into force will provide a long-lasting, positive economic and political benefit to Australia and its relationship with New Zealand. In addition, the scheme envisaged by the treaty is consistent with the report of the task force on reducing regulatory burdens in business.

Fitting the treaty into the wider context, Australia and New Zealand share a close relationship which has been shaped by factors like migration, trade, tourism, defence ties and strong people-to-people links. The two countries also maintain a close political relationship and cooperate in the international arena and in regional bodies.

The economic and trade relationship between the two countries has been shaped since 1983, by the Australia-New Zealand Closer Economic Relations Trade Agreement. New Zealand is Australia's fifth largest merchandise export market, and Australia is New Zealand's top merchandise export market. New Zealand is the sixth largest foreign investor in Australia, and Australia is the largest investor in New Zealand. In 2004, two-way investment between the two nations was $A61.8 billion.

This treaty represents a significant step in fulfilling Australia's commitment towards a trans-Tasman single economic market. The scheme will not have a direct effect on the states and territories; however, in accordance with the Corporations Agreement 2002, the Commonwealth will consult the states and territories about the proposed amendments to implement it and, if required by the agreement, obtain the approval of the Ministerial Council for Corporations. The council has already been advised about the proposal and kept in informed of its progress.

We believe that this treaty achieves a balance of outcomes that will remove unnecessary regulatory barriers for business, allowing for increased investment with New Zealand and increased choice for investors while ensuring investor confidence in the regulation of securities offerings is maintained. The proposed treaty when implemented will produce a positive

economic and political benefit. Gains include a reduction in compliance costs and red tape for companies offering into New Zealand with enhanced competition in capital markets and increased choice for investors. The treaty also reaffirms Australia's previous commitment to a single trans-Tasman economic market based on common regulatory frameworks.

CHAIR—Thank you very much. Why was securities offerings decided to be the first area to look at in terms of harmonisation between Australia and New Zealand in the Corporations Law area?

Ms Smith—I think there is a series of facets of the corporations legislation being examined for this purpose, but some areas were not sufficiently comparable. It was considered that the regulations in relation to securities disclosure were sufficiently comparable, and that means that this one aspect is ahead of the others.

CHAIR—We do have a proposed a common therapeutic good regulator between Australia and New Zealand—we have looked at a treaty for that—and we have the CER as well. What other areas are being looked at with regard to Corporations Law?

Ms Smith—Mutual disqualification of directors and those involved in managing a company and mutual disqualification of financial intermediaries or mutual recognition of qualification as a financial intermediary. They are some of the aspects that we are looking at. Also, accounting standards are being examined.

CHAIR—Will this treaty involve a greater coordination between ASIC and its New Zealand counterpart?

Ms Smith—Yes, it will in this area, but there is already the mechanism for that to be undertaken. There is legislative capacity to exchange information and there is also a memorandum of understanding between ASIC and the two New Zealand regulators.

CHAIR—In the NIA you talk of the trans-Tasman economic market. Obviously we have a very close trading relationship. Could you expand any more on the trans-Tasman economic market?

Mr Saxinger—I might be able to respond. Could you perhaps be a little more specific about what you are looking for?

CHAIR—The NIA states that the agreement is a further step towards a single trans-Tasman economic market based on common regulatory frameworks.

Mr Saxinger—Ruth has already referred to some of the areas where there is further development in a single economic market. You also touched briefly on the work towards a joint therapeutic products agency. There is also work ongoing between the various attorney-generals' departments on closer harmonisation of court proceedings. We have now also launched negotiations between Australia and New Zealand on adding an investment protocol. They are some additional examples of moving closer to a single economic market.

Mr ADAMS—Did you mentioned that the Attorney-General is doing something with corporations.

Mr Saxinger—Court proceedings. Closer harmonisation with court proceedings and regulatory enforcement.

Mr ADAMS—If someone were barred from being a director in New Zealand, could they come to Australia and become a director of a company?

Mr Saxinger—At present?

Mr ADAMS—Yes, at present. That is what I mean. Or vice-versa?

Ms Smith—There is some overlap at the moment but, as I understand it, it is not complete. Can we give you details?

CHAIR—That is not the subject of what we are looking at today. The present situation is a disqualification in New Zealand—

Ms Smith—It would not be automatic, but some grounds of disqualification would carry over.

CHAIR—Okay. Thank you very much for that.

[11.50 am]

BANNON, Mr Matthew James, Director, Valuation and Origin, Australian Customs Service

PYNE, Mr Dominic, Manager, Free Trade Agreement Coordination, Free Trade Agreement Taskforce, International Division, Department of Agriculture, Fisheries and Forestry

HOOTON, Mr Peter, Assistant Secretary, Pacific Regional and New Zealand Branch, Department of Foreign Affairs and Trade

PEAK, Ms Elizabeth, Executive Officer, International Law and Transnational Crime Section, Department of Foreign Affairs and Trade

SAXINGER, Mr Hans, Director, New Zealand Section, Department of Foreign Affairs and Trade

WEINBERG, Ms Sonja, Executive Officer, New Zealand Section, Department of Foreign Affairs and Trade

MALYCHA, Mr Kym, Assistant Manager, Department of Industry, Tourism and Resources

MILEY, Mr Kenneth James, General Manager, Trade and International, Department of Industry, Tourism and Resources

Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to Amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983

CHAIR—I welcome the next witnesses. Although the committee does not require you to give evidence under oath, I remind you that this hearing is a legal proceeding of the parliament and, as such, warrants the same respect as proceedings of the House or 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 Hooton—Yes we do. I will speak on behalf of my colleagues. Australia's relationship with New Zealand is the closest and most comprehensive relationship that we have with any other one country. On the economic and commercial fronts, both governments are strongly committed to closer integration of our two markets and creating a more favourable climate for trans-Tasman business. The centrepiece of the economic relationship is the Australia-New Zealand Closer Economic Relations Trade Agreement, ANZCERTA or CER, which was signed in 1983.

Over the last 22 years, the context of the CER has altered considerably. Progressive policies of tariff reduction and structural reform have led in both countries to changes in the range and type

of products manufactured, changes in the production processes used and an increased use of imported inputs. Consequently, some industry groups have complained that ANZCERTA rules of origin, referred to colloquially as ROO, were no longer appropriate and, in fact, acted in some cases as a barrier to growth and trade. Preferential rules of origin, or preferential ROOs, are used to determine where a good has been made so that only the products of countries that are party to the agreement obtain concessional or tariff-free entry. Negotiated over 20 years ago, the existing CER ROOs are based on the ex-factory cost method, which in CER's case has a two-fold requirement. The last process of manufacture must be undertaken in either Australia or New Zealand and 50 per cent of the factory cost of producing the finished goods must be incurred in the place of last process of manufacture of the goods. Determining whether a good meets this ROO can be time-consuming, administratively burdensome and uncertain, especially when shifts in exchange rates and fluctuations in the international prices of materials are taken into account.

In a study released in May 2005, the Productivity Commission confirmed that CER ROO had not kept pace with changes in technology and in the organisation of production and that this had the effect of reducing efficiency and increasing economic costs and acted as a constraint on further trade. This finding was consistent with the general tenor of discussions then being undertaken by trade officials of Australia and New Zealand. The Productivity Commission advocated liberalising the ROO by applying a waiver to provide duty-free entry for goods manufactured in Australia and New Zealand which faced Trans-Tasman tariff differences of five percentage points or less, but consultations with Australian industry indicated that there was in fact significant opposition to the waiver approach.

In light of the PC report, Australian and New Zealand officials, again, discussed options for updating CER ROO and, in particular, this time considering the possibility of adopting a change of tariff classification approach. Our recent experience in negotiating FTAs with the US and Thailand confirmed that rules which confer origin through a change of tariff classification are simpler, cheaper and more friendly to business. Australian industry groups were consulted extensively in the development of the proposal and supported it. The expected benefits of adopting the CTC approach to determining CER ROO include enhancing the transparency of government decisions on whether goods meet ROO requirements for duty-free entry by providing a single clear rule for each tariff line; lowering administration and compliance costs for business by eliminating the need for time consuming and detailed calculations to demonstrate the ex-factory costs on the vast majority of goods; improving efficiency by enabling inputs not produced in Australia and New Zealand to be incorporated into goods during manufacture and for those goods still to be able to meet the ROO requirement; and facilitating increased trade between Australia and New Zealand by eliminating the disincentive created by current ROO to reduce costs or use higher value imported materials.

Where substantial transformation may not result in a change of tariff classification or where it is agreed that a change of tariff classification is insufficient to confer origin on products that previously met the 50 per cent rule, an alternative regional value content or RVC based rule will be applied. In some cases RVCs are used as a supplementary rule to ensure products are substantially transformed before gaining a preference. Under the package of rules agreed with New Zealand, less than 14 per cent of 2,836 tariff lines will be subject to RVC requirements. Those that are include some agricultural and food products that are produced by mixing and some elaborately transformed goods such as clothing, in particular structured men's apparel, and passenger motor vehicles.

To facilitate a smooth transition to CTC and ensure that no exporters are disadvantaged by the change, the amending agreement provides for a grandfathering of the ex-factory cost method until 31 December 2011 or five years from the anticipated date of implementation. Until that time, Australia and New Zealand will be obliged to allow imports to enter duty-free if the goods meet ROO requirements under either the CTC or ex-factory cost methods. The agreement also provides for a review of the new rules to be completed within three years of the agreement coming into effect. This will provide an opportunity to assess the impact of the changes and to make any amendments prior to the expiry of the grandfathering period. To give effect to the changes, treaty amendments are required to article 3 of CER.

CHAIR—Thank you very much. The amending agreement was initially opposed by the Federal Chamber of Automotive Industries and, after further consultation, a regional value content of 40 per cent applied for vehicles and vehicle parts under ANZCERTA. What is the position of FCAI now?

Mr Hooton—As I understand it, they are now comfortable with the proposed change to CTC. Ken Miley might have a view.

Mr Miley—As background to this, we have to observe that only Australia produces motor vehicles out of the two parties. I think they are duty free going into New Zealand. The issue of the application of a rule of origin was mainly one of precedent for other possible FTAs, not for the operation of it in this particular circumstance. The FCAI expressed some concern about that. I think that they have now accepted the outcome. They were concerned to maintain the existing level under the Australia-US FTA. It had previously existed in a slightly different form. It now exists under ANZCERTA. They have accepted that this can go into this agreement. It has no material effect on the operation; it is simply a matter of how it positions you for negotiations with other countries. It has always been our position that whatever is agreed in any individual FTA is quarantined to that FTA. The negotiation of rules of origin and other outcomes in other FTAs are things to be negotiated within the context of that particular negotiation alone.

CHAIR—Thanks.

Mr WILKIE—I am looking at the consultation that was undertaken with the states and territories. A comment was made that the state and territory governments were consulted through the Joint Standing Committee on Treaties. We recently had a treaty seminar where a number of state and territory representatives suggested that this forum was quite ineffective and did not meet very often. Could you look into when they actually met to discuss this issue and what sorts of issues were raised at that meeting?

Mr Miley—We will have to take that on notice.

CHAIR—Did the Standing Committee on Treaties get back to you?

Ms Weinberg—No. My recollection is that we just put in a brief summary of what we were doing and no-one ever came back to us on the issue.

Mr WILKIE—That is what I want to know. But did they actually meet or were they just written to and then it was assumed that they did not have any concerns? My thought varies.

Whilst we are saying that they were consulted, written to and may not have had a meeting to discuss this particular issue, I would just like to know what the process was and whether they did have that meeting.

Mr Hooton—We will take that on notice.

Mr WILKIE—Thank you.

Mr Campbell—I would like to make a clarification about the Joint Standing Committee on Treaties, which is the body for Commonwealth, state and territory consultation on treaties. My understanding of what happens is that the states and territories are provided with a schedule of information and a summary of the negotiations that are occurring in relation to treaties, but there is also information in relation to treaties that are being considered for ratification and signing. The opportunity is there for the states and territories to say, 'We would like more information on this particular treaty,' and/or 'We would like to discuss this treaty at the next meeting of the Standing Committee on Treaties.' As to the frequency of those meetings, I am not quite sure, but a number of them are held each year. At least two are held each year. I am not sure; there may be more. But the opportunity is there for the states and territories to raise a particular treaty on that list, taking into account the information provided, ask for further information and actually call for a discussion of that treaty at the next meeting of the standing committee.

Mr WILKIE—I would still like to know whether issues were raised by them when it was discussed at a meeting—that is, if it was discussed—because the actual comment is that they were consulted. Does 'consultation' mean just telling them that this is on and that they could comment if they wanted to or does 'consultation' mean actually asking for their comments?

Mr Campbell—I will respond briefly to that. There is a standing invitation for them, once the information has been provided to them, to ask for further information and to ask for discussion of it at a meeting. That is the standing process that is there.

Mr WILKIE—Can we find out if that happened?

Mr Campbell—Yes.

Mr ADAMS—I understand that, after five years, the change of tariff classification approach will be applied and the regional value content method will not apply. Is that your understanding?

Mr Hooton—For the first five years both systems will operate side by side, effectively. A person who is exporting or importing goods will be able to choose. So you will have the ex-factory cost method and CTC method operating side by side. After five years and after the grandfathering period expires, only CTC will operate.

Mr ADAMS—So it will just be—

Mr Hooton—Ken might have some clarification.

Mr Miley—I think in the wording of the treaty it specifies that date or some other date that is mutually agreed between the parties. So there is some flexibility in that date. If there is no

mutual agreement to change the date then the five years would apply. I think that is the way the provision has been written.

Mr Malycha—Also, within the schedule or under annex G, where there are requirements for regional value content, they will remain. It is only about the ex-factory cost approach—it is the 50 per cent factory cost requirement that will cease on that date.

Mr ADAMS—So that 50 per cent that has to be done in the country of either party—Australia or New Zealand—will cease?

Mr Malycha—Yes.

Mr ADAMS—So then it will just be based on the tariff that has to be paid and which we have presently in place or which is being reduced?

Mr Saxinger—I will clarify that. Notwithstanding that the current system will be grandfathered in five years time, there still will be regional value content attached to some products—that is, some products now under the new CTC, or CTC plus regional value content. That will still play out and there will still be 40 per cent, as in the case of motor vehicles. Textiles, clothing and footwear will be 50 per cent. That is only on a very small proportion of products. But the current system, if both parties agree, will cease to exist.

Mr ADAMS—Do we know the issues? We have a lot here in annex G. Are these the products that are going to have the same percentage applied to them that has applied in the past? I see at 6107 it says:

Men's or boys' underpants, briefs, nightshirts, pyjamas, bathrobes, dressing gowns and similar articles, knitted or crocheted.

They have 40 per cent based on the ex-factory cost method. Will that continue or will that be eliminated?

Mr Miley—If it is in the schedule it will continue. Certain male apparel is to continue to have an ex-factory cost basis even beyond the five years. The percentage will fall in five years time by a small amount, but that approach will still apply to men's structured clothing. I would have to look at the tariff to see whether underpants fall within that.

Mr ADAMS—For women and girls there are slips, petticoats, briefs, panties, nightshirts and negligees. It goes on. It does not give a percentage on that one.

Mr Miley—No. By and large, women's fashion from the outset will have no regional value content. That was the view of the industry itself. It wanted that flexibility. If fashion changed, the inputs were expensive and they had to be brought in from abroad in both countries, it did not want to be impaired by having to meet a rule and source that locally. This whole system has allowed certain flexibilities between sectors and segments to meet the requirements of their trade.

Mr ADAMS—I am not quite on top of the foodstuffs area. I do not know if there is a tariff on lamb. Can I buy a leg of New Zealand lamb in Tasmania?

Mr Pyne—The very simple answer is that a product like lamb would be wholly obtained in New Zealand, so the rule of origin would be the 'wholly obtained' rule. Hypothetically, if it was canned lamb which was combined with vegetables which were imported into New Zealand, to determine 'origin' and qualification for the tariff preference we would need to look at the value of the imported component.

Mr ADAMS—I take it there are many changes taking place for food imports. There are debates about having state-of-origin labelling. Have these issues become part of these discussions? Have the farmers of Tasmania put in a submission about labelling? I bet the Australian Food and Grocery Council has been involved and Woolworths and Coles have had their say. There are some big issues here, and I find it strange that stakeholders have not had a bit of a say.

Mr Pyne—We have been talking very closely with the Australian Food and Grocery Council, but it is important to realise that we are talking about rules of origin, not country-of-origin labelling laws, which are quite distinct. These are the rules of origin which will be used to determine qualification for preference, and it is a very separate issue. In the discussions we have had—and this was particularly the case for processed foods—the industry was very keen to ensure that, where it currently enjoyed a preference in the New Zealand market, that preference was maintained. So it was more about the offensive interests in the New Zealand market than any defensive interests here, which is also driven by the extremely low level of tariffs on agricultural products in Australia.

Mr ADAMS—So you are telling me there has not been input from other stakeholders? You have spoken to the groceries council. Has the NFF not any input?

Mr Hooton—There has been extensive consultation with Australian industry groups in all states.

Mr ADAMS—Are they all okay with this?

Mr Hooton—They are okay now. There were certainly issues raised during the consultations, but we think we have reached a satisfactory conclusion.

Mr Saxinger—The NFF was part of that consultation, as was Australian Pork Ltd.

CHAIR—Was the consultation done by letter? Did you meet with them or hold a roundtable?

Mr Saxinger—As I understand that, there were two processes. Public notices were placed in the media—the *Financial Review*, the *Australian* and the *Age*—and there were face-to-face consultations in the state capitals and discussions over the phone.

Senator CAROL BROWN—Is the consultation list that is in the brief a list of everyone you received submissions from?

Mr Hooton—I imagine it would be.

Mr Saxinger—That is a list of the organisations we had consultations with, whether by submissions or face-to-face.

CHAIR—Thank you for appearing before the committee today.

[12.14 pm]

CLEMENTS, Dr Robert John, Executive Director, ATSE Crawford Fund

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department

O'KEEFFE, Ms Annmaree, Deputy Director-General, Global Programs Division, AusAID

HUETTER, Mr Pierre, Policy Officer, Fragile States and Africa Section, AusAID

MADDEN, Mr John, Senior Manager, Trade and the Environment, International Technical Branch, International Division, Department of Agriculture, Fisheries and Forestry

PEAK, MS Elizabeth, Executive Officer, International Law and Transnational Crime Section, Department of Foreign Affairs and Trade

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

LOGAN, Mr Vincent Paul, Executive Manager, New Products, Grains Research and Development Corporation

Agreement for the Establishment of the Global Crop Diversity Trust, done at Rome on 1 April 2004

CHAIR—We will now take evidence on the agreement for the establishment of the Global Crop Diversity Trust done at Rome on 1 April 2004. On 6 April 2006, the Hon. Alexander Downer, MP, Minister for Foreign Affairs, informed the committee that Australia is seeking to secure a position on the executive board of the Global Crop Diversity Trust. Further, the minister stated that Australia's position on the board would ensure appropriate consideration of Australia's interests and that Australia's executive board campaign would be strengthened if Australia were in a position to become a party to the trust agreement at the time of the board's first meeting. The board's first meeting is scheduled to take place from 12 to 15 June 2006. To allow Australia to seek a position on the board, the committee is aiming to table its report by the end of May, even though, under the 20-sitting-day inquiry period provision for this treaty action, the committee would not be required to table its report until mid-August 2006. On behalf of the committee, I thank the minister for his letter.

I welcome the representatives from the various departments. 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?

Ms O'Keeffe—I am sure everybody has read the NIA but, by way of introduction, I would still like to do a quick summary of what we have before us. The creation of the Global Crop Diversity Trust was prompted by the International Treaty on Plant Genetic Resources for Food and Agriculture, which Australia ratified on 12 December 2005 and which entered into force in Australia on 12 March 2006. As part of its funding strategy for the treaty, signatories agreed to establish a permanent endowment to finance conservation of crop genetic diversity in gene banks ex situ. This endowment fund is the Global Crop Diversity Trust and its establishment agreement—a treaty level agreement—is currently before you.

The aim of the trust is to establish a permanent endowment fund to finance the ex situ conservation of crop genetic diversity. The trust will also provide technical and capacity-building assistance to eligible collections of genetic resources. Australia has been a driving force in the progress of the trust to date, as we rely more heavily than most countries on imported genetic resources for food and agricultural research. The trust also complements the Australian aid program's objectives with respect to poverty reduction and food security in our development partner countries. New varieties of high-yielding crops help secure export markets for agricultural produce and increase domestic and export earnings, thereby contributing to economic growth in a developing country.

The trust itself is a public private partnership aiming to establish a permanent endowment of $US260 million that will generate between $US10 million and $US14 million a year for the maintenance of eligible national, regional and international gene banks or collections of crop diversity. Implementation of the establishment agreement would not require an amendment to domestic legislation and may be undertaken administratively. Accession to the establishment agreement would not result in any financial contributions from or costs to the states and territories. There will also be no additional costs to industry. As noted, contributions to the trust's endowment fund and administration costs are made on a voluntary basis. In 2003-04 Australia pledged a total of $A16.5 million over five years.

As of 1 May 2006 21 countries had signed the establishment agreement for the Global Crop Diversity Trust. This includes both developed and developing countries. Through the NIA process, AusAID consulted 12 Commonwealth departments or agencies, eight relevant state and territory agencies, 27 private organisations—in total, 47 organisations. We received 11 responses from government departments or agencies, three responses from private organisations and six responses from private individuals. All responders supported Australia acceding to the trust.

GeneEthics Network raised seven points, largely of a technical nature. These points were mirrored by responses from the six private individuals. The NIA addressed some of these concerns and the executive secretary of the trust also responded to those concerns. Two state governments also raised concerns verbally that acceding to the establishment agreement might impose costs on states. However, assurances were made that there were no additional obligations and these eased those fears. Thank you.

CHAIR—Thank you very much. In paragraph 22 of the NIA it is stated that a decision not to accede to the establishment agreement or to delay accession may increase the vulnerability of Australia's food supply and agricultural exports to threats posed by pests, disease and climate change in the long term. Would you care to elaborate on that?

Ms O'Keeffe—The management of the Global Crop Diversity Trust is a rather complicated procedure. If you look at attachment 2 you will see that there is a donor council as well as the executive board. Australia is the chair of the donor council and the donor council has the right to nominate four people for the executive board. We had been very keen that Australia be represented on the executive board and felt that a decision not to accede to the establishment agreement, although we are financially supporting the trust itself, would have increased our vulnerability in terms of issues related to the trust.

Mr WILKIE—Can you elaborate on that? In what way? I would have thought that the head treaty would protect us from a lot of those things, but here we are saying that, 'No, if we don't go down this path, we are going to be vulnerable.' Can you cite examples?

Ms O'Keeffe—I am going to ask Dr Clements to comment on that particular technical issue. In terms of the broader administrative arrangements, we were very keen to make sure that Australia was playing a very strong role both in the donor council, which it is, and also on the executive board.

Dr Clements—The key point in answer to this is that the most important plant genetic resources for Australia are not in Australia; they are outside in the international system and in the plant genetic resources of other countries. In order to maximise our ability to get access to those resources, we need to be a part of the system—we need to be a good player in the international scene.

CHAIR—Will Australia have one vote on the trust? How many votes will Australia have?

Mr Logan—Australia has two votes, one through the representatives of AusAID and the other through the Grains Research and Development Corporation, which is a representative in its own right because we separately contribute to the trust.

CHAIR—How many votes are there in total?

Ms O'Keeffe—There are 13 members on the executive board. Four are from the governing body of the treaty—that is the governing body of the Treaty on Plant Genetic Resources for Food and Agriculture. Four are from the donor council; one of those voices is expected to be ours, which is Professor Lovett. One is from FAO, which has a non-voting role, and another is from CIGIAR, which also has a non-voting role. The executive secretary of the diversity trust will be ex officio and there will be two others appointed by the executive board.

CHAIR—Could I ask a question of either the Crawford Fund or the Department of Agriculture, Fisheries and Forestry? In general, against which countries would Australia benchmark itself in agriculture research, specifically in the area of plant genetic resources?

Dr Clements—I think Australia would benchmark itself not only against some other countries but also against the international agricultural research centres. The leading centres in relation to management and research on plant genetic resources would be the International Centre for the Improvement of Maize and Wheat in Mexico, the International Rice Research Institute in the Philippines, the International Potato Centre in Peru and maybe another two or three. Other countries, including like-minded countries, would include Canada and the USA.

Mr ADAMS—Mexico is where the genetic material of wheat, barley and oats is kept. Is that right?

Dr Clements—There are unknown millions of plant genetic resource samples in the world—somewhere between five and 10 million; one figure is 5.7 million. The most important collections are in those international agricultural research centres. The one in Mexico, CIMMYT, has the world's major wheat and maize collections.

Mr ADAMS—We had some in Australia, but we have made them available to the world, haven't we? Over the years, we have let people utilise our resources and we have utilised theirs. This is a global process that we are part of. Is that right?

Dr Clements—We have very significant introduced plant genetic resources in Australia and we have genetic resources of our own—wild relatives, trees and other things. Of the collections that would be considered alongside the nominated species that are involved in this trust, there would be maybe 200,000 accessions held in five or six centres around Australia. Those collections, for the most part, are in the public domain.

Mr ADAMS—What particular process will be looked after by the money for this trust?

Dr Clements—That is a very good question. The purpose of the trust is to protect the most significant resources on a global scale. They are targeting, firstly, the collections that are held in these international centres. However, some other centres are also very important on a global scale and are important to Australia, including the Vavilov Centre in Russia.

CHAIR—Looking at the current state parties to the Global Crop Diversity Trust, I am a little uneasy that there are no members, for example, of the Cairns Group. Why is that?

Dr Clements—That is another very good question. The negotiations to get money to go into a trust are quite complicated. Some countries, for reasons of national policy, find it quite difficult to invest money in a trust, so they are seeking other ways of making their investment. The understanding I have—and perhaps one of my colleagues could add further information—is that, of the major developed countries that you might expect to contribute, the European nations are close to agreeing to be major donors, in particular, as I understand it, the UK and Germany.

Mr Madden—That is correct. Also, Italy is seeking to be the home nation for the trust and is looking to provide resources to house it and to provide infrastructure for the trust. We have recently sought advice from a number of developed countries to see what their intentions are in terms of contributing to the trust and, as a result of that, some have started their processes, others are still considering it. It is early days at the moment. We understand that there are a number of countries looking at it. We will just have to see how things develop, but we are providing a little bit of pressure to those countries to see what they can do.

CHAIR—Thank you. What is the position of Canada, the United States and New Zealand?

Ms O'Keeffe—I can tell you how much they have contributed. As to their actual positions and policies, I am afraid I do not have that information. There are two things with Canada. Dr Margaret Catley-Carlson is one of the four nominees who have been put forward by the donor

council, so clearly they are interested in playing a significant executive role. In terms of dollars, Canada has already contributed something like $C10 million. You will not have those figures before you; I have them here.

The United States have contributed $US5.5 million. I understand that the thinking in the trust was that because there are significant philanthropic organisations in the US that will be targeted for support by executives from the trust there was not a more concerted effort to get more funding out of the United States government.

CHAIR—That is very helpful because it occurs to me that, in terms of the member states for the Global Crop Diversity Trust, some of what we would think of as the heavyweights of agricultural research are not represented on this list. Are they?

Mr Madden—In terms of the parties to the establishment agreement, yes. But, again, it is a process that other states have to go through, and they may have a long period in which they have to get consultation in order to agree to that process. There are contributions to the trust and there is agreement to the establishment of the trust, and those are linked but separate processes.

Mr WILKIE—To follow on from that, one of the reasons we have been asked to look at this matter fairly urgently is so that we can be involved in the June 2006 inaugural meeting of the governing body, with a view to getting someone on that. If being party to this trust is that important for trying to gain membership, why haven't those other key players seen that as important and also decided to get their people involved as well? It just seems that we are being told we need to do this because to do so strengthens our position in trying to get on the executive board, and the meeting is being held in June, yet it would appear that none of the major players in the world are doing the same thing. Why not?

Ms O'Keeffe—I will say one thing, and others may have something to add. The list that you have before you is a work in progress so it may be that others have already signed as state parties to the establishment agreement—and that others may be able to comment on. That is a very important issue in terms of the June meeting.

Mr ADAMS—Genetics and genetic material are probably going to play a very important role this century. I am still interested in what the trust is actually going to look after and who has access to its material. Can someone give me some clarity on that? How many species in the world are going out the back door? Is this to do with protecting species? We have heard from some of the evidence here that it is important to us as a nation, but I am interested in finding out if it is the species that are going to be lost that we are going to put into this depository and use this money for?

Dr Clements—There are about 120 species that are critically important for human food supplies, and the trust will provide a funding mechanism for the main genetic resources of those species. There are some others that could be on the list but are not.

Mr ADAMS—I think I have it now.

CHAIR—As you know, there was quite a long process in the parliament for the overarching treaty for this. The GRDC had one position and subsequently that changed. You mentioned there

has been consultation with the Seed Industry Association of Australia—and I believe they are also sometimes called the Australian Seed Federation. Have they put a position to you on the Global Crop Diversity Trust? They were against ratifying the overarching treaty to begin with.

Mr Madden—I can comment on the treaty question and I might pass to my AusAID colleagues in terms of the consultation on this matter. Essentially, the Seed Federation have agreed to an accession to the treaty. We have asked them for subsequent consultations as we move towards the meeting of the governing body of the treaty, which is going to be in early June. They have chosen not to respond in terms of providing input into that, so I take it that they have agreed with the position that we have taken generally on the treaty and I assume that they are happy with the progress that we have made. Up to now, as I say, we have sought their input and they have chosen not to respond. So we will continue to ask them to participate, but we will see how we go on that.

Mr WILKIE—I want to go back to my point, because I think it is important for us. The Minister for Foreign Affairs made the observation in his letter to us that it took a while for us to get to recommending ratification of the initial agreement, and said:

> Australia is seeking to secure a position on the Executive Board of the Trust to ensure appropriate consideration of Australian interests. An important meeting in our campaign to secure such a position is the June 2006 inaugural meeting of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture. Australia's Executive Board campaign would be strengthened if Australia were in a position to become a Party to the Global Crop Diversity Trust Agreement at the time of this meeting.

What he is saying is that we need to be doing this to strengthen our position for getting executive membership of the other board. I want to know, given that other nations do not seem to be putting the same emphasis on that, why we are. Why is it so important that we sign up to this trust? Is it that important, given that others do not think it is? I can see there are some benefits. Is it a political benefit, so that we can say, 'Look at us; we are committed here'? Let's lay our cards on the table: is that what we are talking about?

Ms O'Keeffe—No. I think it is very clear from the work that has been done to date that on a technical basis it is a very important trust for us to be part of, and Dr Clements might—

Mr WILKIE—Yes, but that is not why we are being told that we need to consider this urgently. We are being told that we need to consider this urgently because of a meeting that is coming up in June.

Ms O'Keeffe—That is right.

Mr WILKIE—It is not relating to the trust itself. I have no problem with this being part of the trust but at looking at the reasons the minister is giving us for looking at this as a matter of urgency.

Mr Madden—I think that there are two processes running parallel. One is the meeting of the trust and the other is the meeting of the governing body of the treaty. They are connected in the sense that the governing body of the treaty at that meeting will decide on its set of members for the trust. So there are two broad issues here. Firstly, we need to be clear that we are fully

supportive of the trust, and that is one of the reasons why we are having this meeting at the moment. Secondly, we need to be clear that we appreciate the connections between the trust and the treaty. In order to maximise our capacity to influence the outcomes of the governing body we need to ratify the treaty and it would help significantly if we were seen to have lined up all the possible actions that we need to take in order to complete this suite of activities. So that is the real sense, I think. We need to be seen to be on the front foot, to have gone through the processes which are necessary for us to be fully-fledged members of this complex of treaties and then use that to improve our bargaining position when these meetings actually occur.

Mr WILKIE—I can see that and it makes a lot of sense. The question is: why do you believe that other countries that would want to have equal say and that are large players do not appear to be putting the same sort of emphasis on signing the trust?

Mr Madden—It may well be that they have not put quite so much money into the trust—point 1. Point 2: I think that this is an issue for which some countries find it difficult to get traction in a policy sense. We have been able to ensure that the right level of attention is being paid to these issues. It may well be that equivalent officers and officials in other countries have not been as successful as we have.

Mr WILKIE—Thank you for that. This is important because we would need to fast-track the treaty process here in order for this to be brought forward as a special item rather than going through the normal length of time that we would consider a treaty. In order to do that we need to be able to justify that, I would think. That is one of the reasons I am asking those questions about urgency.

CHAIR—As I said earlier, we are planning to consider this on 28 May and we hope to be able to table a response in the week following that when parliament is sitting.

Ms O'Keeffe—I would like to thank the committee for the taking account of those issues and for expediting matter.

CHAIR—Thank you very much and thank you for your evidence today.

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

That, pursuant to the power conferred by paragraph (o) of sessional order 28B, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 12.43 pm