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JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 28 March, 20 June and 8 August 2006

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JOINT STANDING COMMITTEE ON

TREATIES

Monday, 14 August 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, Mrs Mirabella, Mr Ripoll and Mr Bruce Scott

Members in attendance: Senators Mason, McGauran, Trood and Wortley and Mr Adams, Dr Southcott and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

Treaties tabled on 28 March, 20 June and 8 August 2006

WITNESSES

Committee met at 10.05 am

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 treaty obligations, the committee will hear evidence on nine treaty actions tabled in parliament on 28 March, 20 June and 8 August 2006. I thank witnesses from various departments for being available for discussion on these treaties today. I should 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 at this time.

[10.06 am]

BOUWHUIS, Mr Stephen, Principal Legal Officer, International Trade Law and General Advisings Branch, Office of International Law, Attorney-General's Department

GLASS, Mr David Joseph Edward, Acting Assistant Secretary, Canada and Latin America Branch, Americas Division, Department of Foreign Affairs and Trade

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

McNEIL, Ms Kirsty Jane Cameron, Acting Director, Canada and Latin America Section, Canada and Latin America Branch, Americas Division, Department of Foreign Affairs and Trade

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

Agreement between the government of Australia and the government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol

CHAIR—I welcome representatives from the Department of Foreign Affairs and Trade and the Attorney-General's Department. 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. Would you like to make some introductory remarks before we proceed to questions?

Mr Glass—Yes, thank you. Our view is that the agreement stands to make a significant contribution to the Australia-Mexico bilateral relationship. I would like to start by saying a few words about that relationship. Our assessment is that it is currently very strong. It has the potential to grow further. Mexico is a valued partner of Australia's in a range of multilateral fora, including APEC, the WTO and the UN.

Australia and Mexico have negotiated a number of other bilateral agreements and MOUs in recent years based on common interests. That includes an air services agreement, a bilateral double tax agreement and separate MOUs on mining, education and training, and energy. In January this year Mr Downer and his counterpart, Dr Derbez, agreed to commence a joint experts group process later this year which will look at all ways to strengthen the bilateral economic relationship, including a possible negotiation of an FTA at some point in the future.

What underpins Australia's interest in broadening the bilateral relationship through an agreement such as this one is the fact that Mexico is Australia's largest trading partner in Latin America. Mexico is also a significant education and training market for Australian institutions. Mexico and Australia regard each other as potential strategic partners in areas such as energy,

mining and agriculture. This is based on Australia's ability to supply coal and liquefied natural gas and the potential for Australian miners to invest in Mexican projects.

And yet, to date, we have seen relatively modest levels of investment between Mexico and Australia. Australian FDI in Mexico is approximately $285 million, as at the end of 2004, while Mexican investment in Australia is approximately $10 million. Australian investment, including portfolio investment, is predominantly in services, which are followed by manufacturing, mining and extraction, whereas Mexican investment in Australia is in private real estate and manufacturing.

I would now like to say a couple of things about the reasons that this agreement would be in the national interest. Firstly, the agreement provides an important safeguard for Australian companies to participate in major projects in Mexico. Specifically, it provides most favoured nation status and national treatment. It provides guarantees about expropriation, nationalisation and mechanisms for resolving investment disputes. Secondly, we believe that potential exists for greater Australian investment in Mexico given the size and openness of its economy, especially in the mining, resources, energy and agribusiness sectors. We assess that consistent economic growth and ongoing political stability in Mexico will likely lead to increased export and investment opportunities. Mexico is already recognised by many countries as an attractive investment destination and has the largest stock of FDI in Latin America. Mexico is the only Latin American member of the OECD.

Thirdly, this IPA would complement the existing bilateral agreements, MOUs and consultative processes we already have in train or are pursuing with Mexico, including the double taxation agreement and the joint experts group process. Finally, the agreement would send a positive message to the business communities in both Mexico and Australia about doing business in each other's countries. The agreement would put Australian investors in a better position to benefit from investment opportunities in Mexico and would also serve to encourage greater Mexican investment in Australia. Thank you.

Mr WILKIE—I am wondering about consultation. I read that the agreement was announced on the website, which is wonderful. Where else was it advertised and what industry representatives were consulted? The submission says that industry representatives have wanted the agreement. Could you give us some examples and tell us who was consulted from industry?

Mr Glass—My understanding is that consultations occurred through the Australian embassy in Mexico City over a long period of time, because the genesis of this IPA goes back to the mid-nineties. A range of companies have been consulted in connection with the joint experts group process and the preparations for that process, which will commence later this year. As I understand it, one of the companies that was interested in an IPA in the first instance was the ANZ Bank. My understanding is that companies or industry groups such as Dairy Australia and Meat and Livestock Australia have also been consulted.

CHAIR—Were Australian companies who already have interests in Mexico, like Howe Leather or Orica, consulted about the agreement?

Mr Glass—I believe so, but I will have to check on that for you.

CHAIR—If you could. That is quite important. Did the Department of Foreign Affairs and Trade go out to try and find the views of Australian companies that have an interest in investment in Mexico?

Mr Glass—Yes, they did, but I will have to get the details of that for you.

CHAIR—How did they do that?

Mr Glass—By bringing to the public attention this negotiation through public speeches and through the website.

CHAIR—Did you write to the companies?

Mr Glass—I do not know; I will have to check on that for you.

Senator WORTLEY—I understand from your submission that negotiations were encouraged by industry representatives but that no formal submissions were received. Is that correct?

Mr Glass—I will have to check that.

Senator WORTLEY—Thank you.

Senator MASON—What order are we entering these agreements with countries? How do we decide which countries to enter into agreements with? Let me go straight to the point. I note that the summary page of the NIA talks about Mexico's generally liberal and transparent investment laws as a reason, perhaps, that you might enter into this agreement. The same could not be said, for example, for some of the other 19 countries that Australia is currently considering entering into those arrangements with, such as Vietnam. How do you decide the priority with which you enter these agreements?

Mr Bouwhuis—It is a process decided between the Minister for Foreign Affairs, the Treasurer and the Attorney-General. You are looking at a range of factors, such as the trade relationship with the country. Part of the aim of the agreement is to provide reassurance for investors, so you are not necessarily looking for countries which may have a strong framework. You are looking for somewhere where you want to provide reassurances for investors. There are a range of factors: what is the level of investment interest plus what are their domestic laws like? You may want the agreement to shore up your investors. The domestic situation may not exactly be perfect with some of the IPPA, with the investment partners.

Senator MASON—So it might be more important to enter this arrangement with countries that, in fact, we are more concerned about such as Vietnam?

Mr Bouwhuis—Yes.

Senator MASON—Are we sure though that countries such as Vietnam and other countries among the 19 have sufficient domestic legal frameworks and integrity so that they can uphold this arrangement in their domestic courts?

Mr Bouwhuis—You have a range of mechanisms within the agreement which give you alternatives to relying on the domestic system, so there is state to state and investor-state. There are fallback mechanisms to give you assurances so that investors do not necessarily have to rely on the domestic system.

Senator MASON—They can rely on the state in effect?

Mr Bouwhuis—State to state, or they can bring their own claims under investor-state procedures as well. It is to provide them with an additional level of security for their investment and hence to encourage greater investment into the country.

Senator MASON—Often one of the complaints, which I am sure committee members hear as we journey overseas at times, is that it is difficult to protect one's interests in the domestic courts of many countries. As you say, you need some process like this to do so.

CHAIR—In the consultations have you had representations from liquefied natural gas suppliers who have a very large interest in supplying LNG to Mexico?

Mr Glass—I am aware of the interest that they have in supplying LNG to Mexico and I am aware that Shell-Sempra and Texaco are building facilities in northern Mexico, in Baja California, with the potential for importing Australian LNG to those projects. I am not aware that they were brought into formal consultations on this.

CHAIR—They would have a pretty big interest in this agreement, wouldn't they?

Mr Glass—I would have to ask. I do not know.

Mr WILKIE—Given that the documents talk about LNG resources of something like $50 billion, you would hope that the LNG industry has been consulted and involved in the decision. I want to follow on from what Senator Mason was asking. Some of these countries that we have these agreements with have not necessarily been the world's greatest places to invest for Australians in the past and we have a number of these agreements in place. What mechanism do we have to review the agreements and ensure that they are achieving the results that we want?

Ms Peak—There is no specific review provision within the model IPPA texts themselves. No automatic review comes up. However, at any stage of an agreement there is an opportunity for both parties to have consultations and amend the agreement if particular provisions are not working to their satisfaction. My understanding is that with the range of IPPAs that we have currently there have been no requests for renegotiations for amendments of them or suggestions that the model text, from an Australian perspective, is not meeting the aims of the IPPA. But, certainly, as with any treaty, it can be amended at any stage by agreement of the parties. There is a particular clause within this agreement that has provision for amendment, if I recall correctly. Actually, no—I do not see a particular clause for amendment, but under the Vienna convention on treaties there is an ability to amend at any stage.

Mr WILKIE—You can see where I am coming from here, though. A few of these have now come before the committee. I am concerned that it is fine to sign up to these treaties, but if we have no mechanism to go back in a few years and say that this is or is not achieving the stated

outcomes then I am wondering why we are doing it. It is great to have them in place but we need to know if they are working or not. We might need to make a recommendation about having a review at some point. Thank you.

CHAIR—Thank you very much for coming this morning.

[10.22 am]

DONALDSON, Ms Elizabeth Jane, Executive Officer, US Political and Strategic Section, United States Branch, Americas Division, Department of Foreign Affairs and Trade

GILL, Mr Jonathan Paul, Graphical Forecast Editor and Project Manager, Bureau of Meteorology

McCARTHY, Ms Caroline Anne, Director, International Policy Section, IP Australia

SHRIVES, Miss Kimberley, International Relations Adviser, Commonwealth Scientific and Industrial Research Organisation

SMITH, Mr David, Director, International Science and Technology Relations Section, Science Group, Department of Education, Science and Training

Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America

CHAIR—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 Smith—I do. Australia and the US have enjoyed a long and successful science and technology relationship, underpinned by close political and cultural ties. Scientific cooperation has benefited both countries by enhancing the contribution that science and innovation make to national well-being. It also places each country in a better position for meeting global challenges such as climate security, climate change security and the management of the world's limited water resources. Because of Australia's size and remoteness, collaboration with international partners is essential to preserve the world-class standing of our science and technology system. Given that US researchers produce approximately 30 per cent of the world's scientific output, it is important that collaboration by Australian scientists includes US partners. In this regard, Australia has done well to date. Based on the number of international research collaborations, the United States is Australia's foremost scientific partner. For example, in the last 18 months the CSRIO has reported that 250 of its more than 900 activities with international partners included a US participant.

The Science and Technology Agreement seeks to build on the past success of Australia's relationship with the US to the economic and social benefit of both countries. In particular, the agreement seeks to establish a formal framework to support research collaboration. This framework includes principles which describe the conditions under which collaborative activities are to be conducted. These principles include mutual responsibility for the support of joint activities and the equitable sharing of benefits that arise. The agreement also emphasises the

need to promote the benefits of science and technology collaboration in all sectors and supports links at the researcher and institutional levels.

In addition to outlining these principles, the agreement provides guidance on the type of collaborative activities that the governments of Australia and the US wish to encourage. These include: joint research projects, joint workshops and conferences, the exchange of scientists and technical experts, joint training, and the exchange of information on research results and practices. The agreement sets the imprimatur for the development of formal arrangements between Australian and US institutions to undertake cooperative activities. For example, earlier this year the Australian Bureau of Meteorology and the US National Oceanic and Atmospheric Administration signed a memorandum of agreement to facilitate the sharing of knowledge and technology for weather forecasting. This agreement makes reference to the broader Australia-US S&T agreement and will benefit from support provided by the provisions of the ratified agreement.

This cooperation between the Bureau of Meteorology and NOAA—the National Oceanic and Atmospheric Administration—will have substantial benefits for Australia. In the first instance, we understand that Australia will implement the latest US software system—the Graphical Forecast Editor—which enables forecasters to provide a digital representation of weather elements and to generate an extensive range of forecast services. Similarly, a letter of intent between BOM and NOAA describes a number of joint activities to upgrade deep ocean buoys positioned in the Indian and South Pacific oceans as part of a tsunami early warning system.

The IP provisions of the agreement recognise the growing value of intellectual property and the increasing importance of science and innovation in the global economy. The agreement makes provisions that protect IP brought to a research activity by each research partner and for allocating the rights to exploit IP created during an activity. The key feature of these IP provisions is that the rights to exploit IP are allocated on the basis of the relative contributions of each research partner. In doing so, the agreement will minimise any uncertainty about the treatment of IP—uncertainty which may in the past have impeded collaboration between Australian and US researchers.

In addition to providing a framework that supports cooperation, the agreement includes provisions for the designation of an executive officer for each party who is responsible for managing the implementation of the arrangement. It provides for security obligations to protect sensitive information of national importance, it provides for entry and exit of personnel and equipment for the purposes of science and technology cooperation, it provides for dispute resolution mechanisms and it is responsible for funding of cooperative activities.

With reference to the funding of activities, I should note that it is the responsibility of participants to secure the necessary financial support. Neither the government of Australia nor the government of the United States is obligated to provide additional funding to support research. I would also like to reaffirm that the agreement places no obligation on Australia to amend any of its laws; Australia's existing domestic law is sufficient to allow the Australian government to comply with the provisions in the agreement.

In conclusion, Australia and the United States of America have enjoyed a long-standing scientific relationship. We welcome the opportunity to strengthen this relationship through the

agreement and to ensure that scientific cooperation continues to make a positive impact on both countries. My colleagues from the CSIRO, the Bureau of Meteorology, IP Australia, DFAT and I would be happy to take any questions.

CHAIR—You mentioned the collaboration in the area of meteorology. Could you give the committee some other examples of major research collaborations between Australia and the United States?

Mr Smith—Perhaps I could draw briefly on CSIRO's experience.

Miss Shrives—As David stated, the US is CSIRO's largest international collaborative partner. In addition to the over 250 international activities we have undertaken with the US in the last 18 months, in the last six months alone we have produced 139 joint research publications that involve a US partner. The depth of the relationship is such that it covers all divisions of CSIRO, and it is a longstanding relationship that I think will continue to flourish.

CHAIR—In my own electorate I am aware of the Australian Centre for Plant Functional Genomics. They have a very significant collaboration with the United States but have divided the IP. Australia has the IP relating to research in the area of wheat and the United States has it in the area of maize, and there is a lot of commonality there. That would have been done in the period between 1991 and now when we had no agreement with the United States. What is the benefit of having this?

Mr Smith—I think the benefit is that the agreement provides a framework which participants within a research activity can, if they so choose, draw upon and which sets down the requirement to share IP according to equitable principles. There may have been instances—I am sure there have been many—in the past where individual researchers in the US and Australia have managed to negotiate outcomes, but by providing a framework within this agreement we provide greater certainty for participants, particularly where an Australian research participant may not have the same leverage as a more prominent US participant.

Mr WILKIE—I am curious about projects that are deemed to relate to national security. How are those projects assessed to determine whether they do have a national security focus?

Mr Smith—There is a separate agreement administered by the Prime Minister's department which relates to science and technology cooperation in areas of national security. I think that agreement is possibly the one under which most of the national security related research activities take place.

Mr WILKIE—I am curious to know how a project is deemed to be a national security project.

Mr Smith—I am not sure I can answer that.

Mr WILKIE—I am just wondering if there is an assessment process.

Ms Peak—Perhaps I could just say there is nothing specific in either of the agreements. We may need to get advice from the Department of the Prime Minister and Cabinet as I suspect it is

a decision that is made through interagency discussions and an assessment on a project-by-project basis. So it is an implementation issue. But we can certainly seek advice from PM&C on that.

Mr WILKIE—If you could take that on notice, that would be great.

CHAIR—We do have a separate agreement which has not entered into force yet between Australia and the United States in the area of homeland, domestic, security.

Senator MASON—The chair touched before on the issue of intellectual property. In this committee's deliberations in its consideration of the free trade agreement with the United States, intellectual property, you may recall, was one of the big issues. How does this agreement interact with the free trade agreement with the United States? Is there more detail? Is it entirely consistent?

Ms McCarthy—There is no real direct interaction between these two agreements. The US free trade agreement sets out the obligations of each country regarding intellectual property matters. This agreement would just lay on top of that and the technology agreements management plans would be made consistent with the IP obligations in each country.

Senator MASON—So in effect the, as it were, primary legislation is the free trade agreement. Is that right?

Ms McCarthy—No. The primary legislation is each country's IP frameworks, legislation and common law.

Senator MASON—Do you mean their domestic law?

Ms McCarthy—Yes. In both countries that is consistent with the Australia-US FTA. So the technological management plans and the IP related to those cooperation agreements would be consistent with the laws of both of those countries.

Senator MASON—For both this treaty and the free trade agreement?

Ms McCarthy—Yes.

Senator MASON—So there is no potential inconsistency between this treaty and the free trade agreement in relation to IP because you are talking about the domestic laws of both countries?

Ms McCarthy—Yes. As far as I am aware, there is no inconsistency.

Senator MASON—I hope you are right.

Ms McCarthy—I am sure I am.

Senator TROOD—Mr Smith, perhaps you could take me through a little more detail regarding the sequence of negotiations that led to this. In particular, I noticed that the 68 agreement expired in 1991—is that correct?

Mr Smith—Yes.

Senator TROOD—And yet here we are in 2006 and we are only now trying to recover or put in place a new agreement. The obvious questions are: why have we taken so long; was there a precipitating set of circumstances, an event or a particular set of developments that required attention; or have we been—describing it perhaps generously—slothful in our negotiations of these matters? Could you fill me in on that, please?

Mr Smith—Certainly. I will go through it backwards. The current agreement has arisen from negotiations which commenced in 1999-2000. Those negotiations arose because it was requested by a number of research agencies within Australia that we bolster the provisions under which collaborations could take place. The negotiations themselves took a long time. We found that the US was a particularly challenging negotiating partner. In fact, it was only towards the end of the process that we managed to achieve a turnaround in the US position with respect to IP, which was one of the cornerstones of the agreement. Regarding that turnaround, prior to last year the US sought to pursue an IP understanding whereby, essentially, the rights of IP were generated through research activity and the rights to exploit that IP were held by the parties to exploit within their own countries. So there was a somewhat potential bias towards companies or research agencies in the US having access to IP exploitation in the US market versus Australian companies having exploitation in Australian markets. There was a lot of negotiation and a few steps between US and Australian negotiators, but when we achieved the latest agreement with the US, whereby we establish IP rights on the basis of equitable contribution and subsequent equitable exploitation, we moved to a point where we believed we had a sufficient text that we could sign and then move forward. For the period between 1991 and 1999, I cannot answer definitively as to why no treaty negotiation process was undertaken. I do not have the history of that. I am only aware of when we recommenced negotiations in 1999-2000.

Mr ADAMS—I am interested in how we make sure that everybody is aware that we have signed this. I guess this will not be the front-page story when it is ratified. How do we tell everybody who is dealing with the Americans that we have actually signed up to this and that a treaty now exists?

Mr Smith—We are currently preparing an implementation strategy within DEST and we will be communicating that to all our science and technology research agencies and researchers with a potential interest in utilising the treaty. We will be advising them of the existence of the treaty and the way in which the treaty can be used to benefit their prospective research interests.

Mr ADAMS—That will go to the private sector, the CSIRO and universities?

Mr Smith—Yes, it would go out widely, to all parties that we believe may have an interest in using the treaty.

Mr ADAMS—I noted your words about the Americans being pretty tough negotiators and that it took some time to get there—about six or seven years. I do not know what led to the

breakthrough. What have we benchmarked that against to see that we have achieved what we wanted to achieve in having a tight treaty and that we have protected our interests?

Mr Smith—I am not sure I can answer that. We have not sought to benchmark the process or the relative outcome. We have just moved towards reaching what we believe is a good outcome, so we do not have those comparative measures.

Mr ADAMS—So the basis of what you are saying is that we have the right to exploit the intellectual property in Australia and they have the right to exploit theirs in their country. Is that the bottom line?

Mr Smith—To the best of my understanding, the principles of IP exploitation now are based on—and I could be corrected by my colleagues—the respective contributions by the researchers to the research projects.

Ms McCarthy—That means that there would be sharing of the IP, that the royalties would be shared as a result, and those royalties would be shared, with respect to exploitation, in any other country. The royalties would come on-stream in relation to the shares that have been agreed in any country. As David said, we have moved away from the position where the US wanted to exploit the IP completely in the US and in Australia. That has made a more equitable benefit sharing arrangement, we believe.

Mr ADAMS—Why did they change from their tough position?

Ms McCarthy—I cannot comment on that.

Mr Smith—I could not honestly comment on the internal deliberations that took place between the State Department and the Office of Science and Technology Policy, but we were very pleased when we did manage to move negotiations to a point which we thought was a step forward.

Senator WORTLEY—My questions move on a little bit from there and go back to something that Miss Shrives said. I would like to know specifically what the benefit is for Australia to be part of this agreement. I note that you say in your submission: 'Ratification will be viewed positively by the USA and will strengthen the wider bilateral relationship.' Why is it looked on in such a positive way by the United States? What made them think that it was an agreement that they should be signing? So what are the benefits to Australia and to the USA?

Mr Smith—In my answer to that question I put the caveat that it is slightly speculative. My understanding is that this agreement has been held up as a fairly important agreement by the US Department of State as guided by the Office of Science and Technology Policy. The US does have a strong science and technology relationship with Australia. I think that by providing greater certainty for researchers in how to manage the treatment of IP and by providing a framework under which cooperative activities can take place, the US sees a similar benefit to what Australia sees, in that we have removed some uncertainties for researchers and provided a greater level of surety about how technology management plans and research relationships can take place, so that should increase the level of cooperation.

Senator WORTLEY—Can you just elaborate on specifically what the uncertainties were or are?

Miss Shrives—Recently one of the scientists from our Molecular and Health Technologies Division won a five-year funding grant from the National Institutes of Health in the United States. This was a very difficult process for her. She and her team had to prove not only that they could do the research but also that they were by far and away the best people in the world to do it and that it could not be done in the US. It was a long, laborious process. We are hoping that the agreement will help ease that process and make it easier to access that sort of funding.

Senator WORTLEY—And the advantages to the US in relation to the agreement?

Mr Smith—Again, this is partly speculative, but the US does regard Australia as having international expertise in particular areas of science. Australia does produce three per cent of the world's new research and new ideas as measured by publications in international journals. So whilst we have a smaller research community than the US does, we do nonetheless have one of international standing and, as we are interested in facilitating greater research collaboration with the US, it is a fair assumption that the US is interested also in facilitating greater collaboration with the Australian researchers. Both parties believe, to the best of my understanding, that this agreement will facilitate those genuine bilateral interactions and provide a greater level of encouragement to research collaborators. So both parties increase their connections between the international research communities and ultimately both obtain a benefit from being bigger players in the international science sector.

Senator WORTLEY—I understand that there are some associated costs with the implementation of the agreement and that that will be picked up by the Department of Education, Science and Training. What sort of cost are we talking about? Have we got a figure on that?

Mr Smith—A dollar cost, no, but it will be fairly small. The requirement for the department under the treaty is to manage an executive agent which has a dialogue with the United States. We already have a function within the department where we manage bilateral government-to-government science relationships with other countries. We would simply absorb the need to manage a government-to-government relationship.

Senator WORTLEY—What sort of cost is a 'small' cost, approximately, between—

Mr Smith—It would be in the context of maybe a quarter of a person's resources spread over the year, a quarter or maybe 20 per cent of one person's time, and that perhaps would be a generous estimate. In terms of dollar cost, I am not quite sure. You would have to factor that into the cost.

CHAIR—Thank you very much for coming this morning.

[10.47 am]

DE ZOETEN, Ms Sarah, Executive Officer, International Law and Transnational Crime, Department of Foreign Affairs and Trade

EVERTON, Mr Craig Warwick, Safeguards Officer, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade

LEASK, Mr Andrew Roger, Assistant Secretary, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade

McINTOSH, Mr Steven, Senior Adviser, Government Liaison, Australian Nuclear Science and Technology Organisation

Amendments to the Convention on the Physical Protection of Nuclear Material

CHAIR—We will now take evidence on the amendments to the Convention on the Physical Protection of Nuclear Material. I welcome witnesses from the Department of Foreign Affairs and Trade and the Australian Nuclear Science and Technology Organisation. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceedings 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 Leask—Thank you. The Convention on the Physical Protection of Nuclear Material, otherwise referred to as the CPPNM, came into force on 8 February 1987 and it has been implemented in Australia through the Nuclear Non-Proliferation (Safeguards) Act 1987. As originally conceived, the CPPNM applies principally to nuclear material in international transport. The CPPNM is one of the United Nations family of 13 security treaties and implementation of the amendment is part of Australia's efforts to comply with UN resolution 1540.

In implementing the CPPNM, Australia took a broad view of its obligations under the Treaty on the Non-proliferation of Nuclear Weapons to protect nuclear material and nuclear facilities from proliferation, theft or sabotage, and thoroughly enacted CPPNM requirements to apply domestically to use, storage and transport, and the safeguards act fully applies the CPPNM domestically. As a consequence, many of the provisions of the amended CPPNM apply already in Australian law.

The amendment to the CPPNM adopted by consensus at a diplomatic conference in July 2005 is the result of six years work that started in 1998, the events of September 2001 giving impetus and focus to this work. One objective in strengthening the CPPNM was to ensure it explicitly included domestic use, storage and transport, introduced the offence of sabotage and established a robust and comprehensive domestic security regime for protecting nuclear material and nuclear

facilities. As stated above, Australia has implemented domestic nuclear security robustly through the safeguards act.

New requirements arising from the amendment to the CPPNM add to existing obligations and will be incorporated into the safeguards act through the Non-Proliferation Legislation Amendment Bill 2006 which is due to be tabled in parliament during the spring session. New obligations include establishing a formal national regime to protect nuclear materials and nuclear facilities in domestic use, storage and transport, which is in place already; and the criminalisation of sabotage of a nuclear facility, trafficking, conspiracy—that is, organising, directing and commissioning an offence—and damage to the environment.

While considering an amendment to the CPPNM, an IAEA open-ended group of international experts developed the fundamental principles of physical protection of nuclear material and nuclear facilities. These were adopted by the IAEA in August 2001. These fundamental principles of nuclear security have been incorporated into the amendment to the CPPNM under article 2A. Without suggesting any complacency, all of these principles are being applied in Australia as far as is reasonable and practical. The most significant demonstration of this is their comprehensive use by ASNO and ARPANSA to develop and evaluate the security system implemented by ANSTO at the OPAL reactor, a system that has been recognised as world class for a research reactor.

Ratification and implementation of this amendment to the CPPNM is important to Australia's national security, specifically with regard to the security of nuclear material and nuclear facilities. Firstly, it will strengthen domestic controls; secondly, it should act as a deterrent against theft and sabotage; and finally, it has the potential to enhance regional security as Australia leads by example. Ratification of the CPPNM by Australia will strengthen our hand in regional advocacy. In the last three years Australia has hosted two IAEA physical protection regional training courses which, inter alia, have promoted the principles encapsulated in the CPPNM amendment. Ratification and implementation of the CPPNM form an integral part of Australia's security and counter-terrorism regional outreach programs.

Mr WILKIE—First of all I want to recognise Steve McIntosh and thank him very much for a fantastic day on Friday. I went down to Lucas Heights, as you would know, and had a look through all the facilities there and it was very, very impressive—particularly the security that is in place at the new OPAL reactor. Could you tell us if it was successfully put online on Saturday?

Mr McIntosh—That is a good question. I am afraid that I came straight down here this morning and I did not go in. But it was certainly scheduled for Saturday.

Mr WILKIE—In a press release issued by the International Atomic Energy Agency the Conference President, Dr Alec Baer, said:

All 89 delegations demonstrated real unity of purpose. They put aside some very genuine national concerns in favour of the global interest and the result is a much improved convention that is better suited to addressing the nuclear security challenges we currently face.

Could you provide some more information on the types of national concerns some states have in relation to the amendments?

Mr Leask—There are a number that I will specifically mention, and I will mention them without necessarily elaborating on them. One related to the sharing of security information and how we should craft that. One certainly related to concern over the Law of the Sea and transit access for shipping routes. Another related to specific concern about the phrase in the amendment which talked about 'without lawful authority', exactly what that meant and to whom it would apply. Another referred to article 2A and whether or not they should be binding 'shalls' in the convention or whether, as they are now, as far as is 'reasonable and practicable'.

Mr WILKIE—Could you provide more information on the background and context which led to the inclusion of new articles 11A and 11B? You might want to tell us a little about how they would operate in practice.

Mr Leask—I would make a number of observations on that point. The first one is that the negotiations for this amendment, and indeed the final diplomatic conference, came at a time when there was a hiatus in New York over another convention, the Convention on the Suppression of Acts of Nuclear Terrorism, and there was quite an effort by a number of delegations, particularly those that had ownership in New York, to bring across provisions from what they saw as a stalled treaty there into this convention in order to expand its remit. As we know, shortly after the CPPNM diplomatic conference, the Convention on the Suppression of Acts of Nuclear Terrorism also was agreed in New York. So what we had was in a sense a tension between some countries that wanted extradition to be more open and other countries that wanted to put some caveats on the reason and purpose for extradition. Whilst it might seem a little unusual to put such conditions into a convention of this kind, I would have to say—to be frank about it—it was part of the horse trading to get the bigger picture benefits that we wanted from the security angle.

Mr WILKIE—Why was article 11A, which provides that blanket assertion that none of the offences in article 7 be considered political offences, seen as necessary? Why was that put in?

Mr McIntosh—There is a general provision in the law on extradition, and you will find it in Australian national law on extradition, that you should not be extradited for political offences; in other words, if you were an Iranian who is being prosecuted for dissent, there is no extradition obligation in Australian law to extradite a person who has been prosecuted for that purpose. The purpose of article 11A is to say that if you are doing something with nuclear material that cannot be treated as a political offence. It is not a defence to the extradition.

CHAIR—Australia has long been active in the area of non-proliferation. In the NIA you say that Australia chaired the committee in Vienna in July 2005. Could you give us more information about the role that Australia took in seeing these amendments come about?

Mr Leask—Certainly. There has been a recognition for quite a long time that the convention needed strengthening to change its focus from international to domestic. In the IAEA in 1998 it was agreed that there would be an open-ended expert group to decide whether or not, and if so how, the convention should be amended to strengthen it because, whilst a number of countries

certainly felt it should be strengthened, there were a number of others who were resisting that. As you can see, that activity certainly predates 11 September 2001.

I was head of delegation for the whole of the open-ended expert group meetings, from 1999 through until about 2001. With that having been endorsed by the IAEA, we then moved to negotiations of the actual text of the treaty. I was head of the Australian delegation from 2002 until 2005, when we moved to the diplomatic conference, which my colleague Steven McIntosh chaired.

In the second series of negotiations—where we were actually negotiating the text—hardly surprisingly we reached a point where there was a hiatus and the text was stymied. At Australia's initiative, we formed a core group, primarily with the US, Canada, France and the UK, to carry forward a draft text within the terms of reference of the existing convention for amending a change and were extremely active in garnering sufficient support for a finally un-square-bracketed text to carry that to a diplomatic conference.

CHAIR—Do the HIFAR and OPAL reactors comply with what will be Australia's obligations if we do see these amendments enter into force?

Mr Leask—Absolutely.

CHAIR—They do comply? So no changes will be required following the entry into force of the amendments?

Mr Leask—No.

CHAIR—Could you also clarify why the convention only covers nuclear material used for peaceful purposes?

Mr Leask—Nuclear weapons states, both those that are recognised under the NPT, and also the three 'threshold states'—India, Pakistan and Israel, two of which have nuclear weapons and one of which is suspected to have nuclear weapons—are responsible for the safety and security of their material for nuclear weapons. They have obviously put a fence, if you like, around that security which they would claim is better than anything else, and it is specifically excluded from this convention as being their responsibility. You will notice that one of articles—I forget which—says up-front that the physical protection of nuclear material and facilities is the sovereign responsibility of the state, and they take that obligation seriously.

Senator TROOD—It is good to see you again, Mr Leask.

Mr Leask—Thank you, Senator.

Senator TROOD—You are saying that we are in substantial compliance with the terms of this treaty already. Is that correct?

Mr Leask—That is correct.

Senator TROOD—And 'substantial' means what? That we have almost nothing to do, or that there are various measures that have to be taken for us to fully comply? Can you just explain that a bit further?

Mr Leask—There are one or two aspects of the amended convention which we do need to implement. Specifically, damage to the environment is something that we have not thoroughly covered in our domestic legislation. There are also aspects of conspiracy which, while possibly being covered in other legislation, we will enshrine in the safeguards act. In making the assertion that we are essentially compliant with the new regime, I specifically mean that we have applied the original CPPNM completely to our domestic use, storage and transport, and furthermore that, regarding the fundamental principles of physical protection—which are now embedded in article 2A—we apply all of those already and, indeed, have done since the advent of the safeguards act in 1987.

Senator TROOD—So these provisions would apply—and we perhaps would have done this anyway, going on what you have just said—to the movement of low-level waste to the facility in the Northern Territory, for example, when that is established? Is that correct?

Mr Leask—They would only apply to any form of waste where nuclear material is included. So we are talking here quite specifically about nuclear material, as defined under the safeguards act and the Statute of the IAEA, which, in that sense, is limiting.

Senator TROOD—Tell me about the ratifications by other states that are parties to the treaty that this has so far received. In particular, has the United States ratified the amendments?

Mr Leask—To the best of my recollection, there is one smallish European state—I think a former Soviet Union state—that has ratified the amendment at this stage. For most countries, particularly those with substantial nuclear infrastructure, there will be quite a bit of work. Indeed our processes have taken a while to date, and will take quite a while yet, because the overall ratification and implementation involves changing legislation. So, whilst there has been no ratification to date, from, if you like, the United States and the other big nuclear states, as far as I am aware they are all very busy and active in working, as we are, to bring this into force.

Senator TROOD—And do you have any sense of a time line in relation to the United States and the other nuclear states' ratifications?

Mr Leask—I think that, like us, most of these countries will take probably between two and three years to bring the whole thing online. There is then the issue of the amendment formally coming into force internationally, and for that we require two-thirds of the parties to have ratified the amendment. So that, in fairness, is some way off. Our outreach programs to South-East Asia and to North Asia, which the Safeguards Office has been running for a good number of years, have in the last few years been focusing on the convention, on the provisions of the convention and obviously on physical security to encourage regional states to implement this even for the relatively small amounts of material and the small facilities that they may have.

Senator TROOD—Have you received a generally encouraging response from around the Asian region?

Mr Leask—We have. The education required presents a fairly steep learning curve because we are asking many of them to be much more rigorous, formal, structured and disciplined in their approach to physical security, but they certainly are responsive. They understand the issues.

Mr ADAMS—I want to go to the question which we just touched on of physical protection and maintaining a protection regime. Do we have enough expertise in Australia? Are we falling behind in any way in terms of having enough people graduating in the nuclear sciences—and also having enough for the region?

Mr Leask—I think there are two elements to that question. In terms of the number of graduates coming out of our academic institutions in nuclear science the answer probably is the same for us as it is for the rest of the industrialised world—that is, there are not enough. There are a number of government studies and reviews in hand at the moment which will articulate that, I suspect, in some detail. With regard to ASNO's own expertise, we are satisfied that we are able to maintain that expertise. We grow it in-house. We work closely with the IAEA. We liaise very closely with our United Kingdom and particularly our United States counterparts on nuclear security. We are also very satisfied that ANSTO itself has an appropriate level of expertise, which it makes considerable efforts to maintain.

Mr ADAMS—I have another question dealing with that nuclear waste and the definition. I take it that the state governments of Australia, with their second-level waste, do not come under this treaty.

Mr Leask—Yes, this convention will apply only to nuclear material—which in this context is uranium and plutonium.

Senator WORTLEY—You say that the changes may affect permits issued under the Nuclear Non-Proliferation (Safeguards) Act 1987 to possess or transport nuclear materials. In what way would it affect the permits?

Mr Leask—The only way at this stage that it may affect the permits is the way in which we structure the security requirements on permit holders. I do not see any changes to the permit that we have issued to ANSTO, because obviously as our single nuclear facility—and particularly with a new research reactor being built and now being operated in hot commissioning phase—we have applied all of the best practice methodologies to developing and designing the security system associated with that. So I see no change there at all, but we are reviewing our permits with the mines, for example, and we keep under review all the permits we issue which are associated with nuclear material and nuclear facilities.

CHAIR—Thank you very much again for coming this morning.

[11.09 am]

DE ZOETEN, Ms Sarah, Executive Officer, International Law and Transnational Crime, Department of Foreign Affairs and Trade

EVERTON, Mr Craig Warwick, Safeguards Officer, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade

LEASK, Mr Andrew Roger, Assistant Secretary, Australian Safeguards and Non-Proliferation Office, Department of Foreign Affairs and Trade

McINTOSH, Mr Steven, Senior Adviser, Government Liaison, Australian Nuclear Science and Technology Organisation

WOOD, Mr Michael, Director, Japan Section, Department of Foreign Affairs and Trade

Exchange of Notes constituting an Agreement between the government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program

CHAIR—We will now take evidence on the exchange of notes constituting an agreement between the government of Australia and the government of Japan to replace the delineated and recorded Japanese nuclear fuel cycle program. I welcome representatives from the Department of Foreign Affairs and Trade and the Australian Nuclear Science and Technology Organisation. 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 the 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 Leask—Yes. Under Australia's 30-year uranium export policy, uranium can only be exported to countries that are a signatory to the NPT and which are in Australia's network of bilateral safeguards agreements. These agreements apply stringent safeguards conditions to ensure that Australian uranium, and nuclear material derived from its use, is used solely for peaceful purposes. One such agreement—that being considered this morning—is the agreement between the government of Australia and the government of Japan for cooperation in the peaceful uses of nuclear energy, which was concluded in 1982. Japan operates 55 nuclear power reactors, providing approximately 30 per cent of its electricity needs. In 2005 Japan was Australia's second-largest uranium export market.

This agreement contains an annex of facilities eligible to use Australia's uranium, known at the working level as the Capsule. The Capsule includes all elements of the nuclear fuel cycle, including conversion plants, enrichment plants, fuel fabrication plants and nuclear power reactors. Given the international nature of the nuclear fuel cycle, a number of listed facilities are in other bilateral safeguards partner countries outside Japan—I specifically mean in Europe, the US and Canada. While additions and deletions to the facility list are purely mechanical in nature

and are made from time to time to reflect changes in Japan's contracts and arrangements supporting its nuclear power industry, the types of facilities new to a listed country, including Japan, must be affected through a treaty level exchange of notes.

At present the Capsule lists 121 facilities, including conversion, enrichment, fuel fabrication and reprocessing facilities both in Japan and around the world, as well as 70 Japanese nuclear power reactors. An important element of Japan's nuclear fuel cycle program is the use of mixed uranium/reprocessed plutonium oxide, known as MOX fuel. The use of MOX fuel can increase the energy derived from the original uranium by 10 to 20 per cent, essentially increasing the useful life of the original uranium. Currently there are four MOX fuel fabrication facilities listed in the Capsule, two in France and two in Belgium.

Japan has proposed the addition of two new facilities, the operational Sellafield MOX plant in the United Kingdom and the planned Rokkasho MOX fuel fabrication plant in northern Japan. This amendment is completely consistent with the objectives of the agreement and will enable Japan to effectively and economically manage its energy requirements. ASNO and the embassy of Japan will coordinate to determine a convenient time to exchange the notes, likely to be some time over the next month or so. Once the notes are exchanged, the amendment will enter into force when Australia notifies the government of Japan through diplomatic channels that its constitutional and domestic requirements for the entry into force of the agreement have been satisfied—and that includes consideration by this committee. It is hoped that this can be done late in September or shortly thereafter.

Senator WORTLEY—How does Australia ensure that Japan meets its obligations under the Australia-Japan Nuclear Safeguards Agreement—and also the other 19 such nuclear safeguards agreements in force?

Mr Leask—The first and primary mechanism for ensuring that our bilateral partners use Australian uranium solely for peaceful purposes is the IAEA's system of safeguards. Safeguards have to apply in the country of our bilateral partner. The material we supply and the facilities in which it is used have to be covered by the safeguards agreement between the country concerned and the IAEA. In the case of Japan our first and foremost line of defence is safeguards. Japan has a very extensive fuel cycle. In fact the IAEA has a permanent office of inspectors in Japan to ensure that they are able to do their job in a timely and efficient manner. Another thing that we do is the reconciliation of accounts, whereby we check the data that they give to us concerning the use of material and we also hold at least annual bilateral consultations with our equivalent agency.

Senator WORTLEY—Is that the same process for the other nuclear safeguard agreements that we have?

Mr Leask—Absolutely. Obviously, where there is only very little material then less effort is put into those countries, but we do the round of bilateral visits, we do the accounting procedures. In the case of the European countries we have an agreement with Euratom, covering generally the European countries, but as you would see from our list of bilateral agreements, we do have some specific bilateral ones which essentially predate the Euratom agreement and continue to exist in parallel.

Senator WORTLEY—Could anything further be done to ensure that the agreements are abided by?

Mr Leask—We are satisfied that the agreements give Australia the appropriate level of confidence that Australian obligated nuclear material is used solely for peaceful purposes and remains exclusively in peaceful use.

Mr WILKIE—You mentioned safeguards, and inspectors in Japan. How many inspectors and how many inspections would they conduct in a year?

Mr Leask—The office in Japan has between 20 and 30 inspectors. I cannot tell you how many times they visit any one facility but that is essentially a 365-days-of-the-year inspectorate. Many of the inspections are conducted at short notice—usually two hours notice—where they can turn up at a facility and request access.

Mr WILKIE—These are the same sorts of safeguards we will be looking at introducing with China?

Mr Leask—Exactly. Let me just qualify that. I say 'exactly'—obviously it is different because it is China, but the key point with the China agreement is that first of all they signed a treaty agreeing to peaceful uses and certain safeguards conditions. They have agreed that the facilities at which Australian uranium will be used will be subject to their safeguards agreement with the IAEA. As a nuclear weapons state, they do not have to declare all of their facilities. Clearly their military facilities they keep to themselves. So there is a distinction there.

Mr WILKIE—We will be looking at that in a little while.

Mr Leask—In a month's time.

Mr WILKIE—Yes. In the study of the accounts, could you just outline what you do there to ensure that the material is only going to peaceful purposes?

Mr Leask—Sure. We are particularly concerned about what we call the flow of nuclear material through the fuel cycle. So we have reports from all of the facilities, whether they be, in this case, in Japan, or in the international fuel cycle, as to where our material goes, the quantities. We know the quantities shipped, we know the quantity received, we check those records. Calculations and measurements are done as the material goes through the fuel cycle and obviously changes form and quantity and shape and the type of material that it is. It is going from perhaps an ore through to a metal, for example, then fabricated into fuel elements. We check the records on those. We do our own calculations to be satisfied that those records are accurate. There is also what we call transit matching series of records that take place, whereby the countries concerned also have to report to the IAEA. So the IAEA, whilst not at quite the same level of detail as ourselves, is nonetheless doing a gross check as well, and the comparison of those figures also enables us to be satisfied concerning where the material has gone.

Mr WILKIE—Having said all that, all we are doing with this treaty is recognising two other facilities for the purposes of—

Mr Leask—That is correct.

Mr ADAMS—Is the fuel fabrication, MOX fuel, part of the process that the new generation nuclear reactors are going to use? More and more of their fuel back again, is what I have heard.

Mr Leask—It is a component of fuel cycle development. Obviously, it has been around for some 10 or so years now as opposed to ideas that are emerging or that have emerged this year and will develop over the next few years. MOX fuel is particularly helpful because of the efficiency that it brings to the use of material. Also, in recycling plutonium, you make it even less attractive for weapons use, so it is helpful from a non-proliferation perspective as well.

Mr WILKIE—So there is less used fuel left over when you have finished the process?

Mr Leask—Eventually, if you did it in significant quantities, that would be true.

Mr WILKIE—Thank you.

CHAIR—Thank you very much for coming this morning.

[11.20 am]

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

GALLAGHER, Ms Ruth, Manager, Tariff and Trade Policy, Department of Industry, Tourism and Resources

GORDON, Ms Prudence, Executive Officer, Free Trade Agreement Commitments and Implementation Section, Department of Foreign Affairs and Trade

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

RAYNER, Mr Peter Brian, Director, Malaysia, Brunei and Singapore Section, Department of Foreign Affairs and Trade

WATEGO, Ms Charlene, Executive Officer, United States Trade Section, Department of Foreign Affairs and Trade

Exchange of notes constituting an agreement between the government of Australia and the government of Singapore to amend annex 2C and annex 2D of the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the harmonized commodity description and coding system to come into effect on 1 January 2007

Exchange of notes constituting an agreement between the government of Australia and the government of the United States of America to amend annex 4-A and annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the harmonized commodity description and coding system to come into effect on 1 January 2007

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

Ms Gordon—Yes, thank you. Might I begin by stating our appreciation of parliament's agreement to our request to submit the amendments to each FTA jointly to the extent possible. As you will see, parliament is only being asked to consider amendments to the Singapore-Australia free trade agreement annexes 2C and 2D and the Australia-US free trade agreement annexes 4-A and 5-A. We are still in discussions with Thailand and the United States in relation to similar amendments to the Thailand-Australia free trade agreement annexes 2 and 4.1 and the Australia-US free trade agreement annex 2-B. These amendments will be tabled as soon as we have reached agreement with the Thais and the US respectively.

We also appreciate that parliament allowed us to provide the relevant documents in CD-ROM format. The annexes, as you can see, are lengthy. We have provided you with the original, the working and the final versions of the annexes to ensure that the changes are as clear as possible. Using CD-ROM has greatly facilitated the tabling process and has also saved significantly on resources, so thank you for that.

The amendments that parliament is being asked to consider are technical changes to those annexes in AUSFTA and SAFTA where specific goods are listed by their harmonised system number and corresponding description. These amendments were necessitated by changes to the harmonised system that resulted from the third review of this system which is conducted by the World Customs Organisation.

Changes to the harmonised system will come into force on 1 January 2007. The key point we would like emphasise in this statement is that the negotiations undertaken with our FTA partners ensured that the harmonised system changes—the 2007 changes—would not substantively change in any way Australia's or our FTA partners' obligations under the respective FTAs. At this point we are happy to answer any questions that the committee might have.

CHAIR—Thank you. Are the changes here the same as the amendments recently made to the ANZCER trade agreement?

Ms Gordon—The harmonised system amendments to ANZCERTA were one part of a number of amendments made to ANZCERTA, but, yes, they are.

CHAIR—You made some comments about the Thai free trade agreement as well in your opening remarks.

Ms Gordon—I did that just to flag with you that we are still in discussions with Thailand and that we are yet to reach agreement with Thailand regarding the changes that need to be made to TAFTA.

CHAIR—I was of the understanding that we were going to consider all three together—Singapore, US and Thailand as well.

Ms Gordon—Yes. When we wrote to you, that was our understanding, too, but there have been delays with reaching agreement with Thailand, so we have at this stage only tabled the SAFTA and AUSFTA amendments.

Senator WORTLEY—I was wondering if you could perhaps for the committee's benefit describe what the benefits of the 2007 HS agreement are, and also the drawbacks.

Ms Gordon—I might ask our representative from Customs to answer that question.

Mr Bannon—Certainly. The advantages are that internationally we all use the same harmonised system. Signatories to it rely on the same classification of goods, so to not update it would mean that we would be out of sync in trading with the other countries that use the harmonised system. The idea of changing the tariff came up because, where, for example, goods are no longer manufactured anywhere in the world, there is no need for that classification.

Similarly, new goods that are invented or manufactured that did not previously have classifications need new ones. It is important to align in a global sense the classification of goods.

Senator WORTLEY—Are there any disadvantages or drawbacks for Australia?

Mr Bannon—Not that I would consider, no.

Mr ADAMS—It basically says that this removes the issue of looking at putting a tariff on a new product. Is that what you just said?

Mr Bannon—No. A better way to think about it is that under these agreements the tariff classifies all goods. Those goods still in existence or new goods that come on simply need a classification assigned to them. Does that answer your question?

Mr ADAMS—No. Once it has a number assigned to it, that then relates it to the other country's system. Is that how it works?

Mr Bannon—Correct.

Mr ADAMS—And that is called harmonising, isn't it?

Mr Bannon—Correct.

Mr ADAMS—If the manufacturer of a product objects to their product being harmonised, where do we go with that? What if an Australian manufacturing company says, 'I don't believe that this product is anything like that one'?

Mr Bannon—It depends on the country that they are trading with, but many customs administrations have an advance ruling mechanism under which you can apply to that country for an advanced ruling on that classification. That gives you certainty about how your goods will be treated. I do not know every country's policy on that. The World Customs Organisation has guidelines for all customs administrations to use that mechanism. Then it is up to the individual country whether or not they want to put that in legislation or leave it as an administrative procedure. But it is laid down to provide that certainty for exporters and importers.

Mr ADAMS—We have it as an administrative process, don't we?

Mr Bannon—In Australia?

Mr ADAMS—Yes.

Mr Bannon—I would have to check, but I am pretty sure that for tariff classification it is in legislation. The valuation and origin mechanism are administrative.

Mr ADAMS—Origin and valuation are originally agreed to by the manufacturers. But I am interested in any change that takes place. This treaty seems to be saying that any change is taken care of administratively. Don't you think that I am correct in saying that?

Mr Bannon—I am sorry; I am not sure I understand the question.

Ms Gordon—Can I just seek clarification?

Mr ADAMS—Sure.

Ms Gordon—Originally the descriptions are not agreed by the manufacturers, as I understand it; they are agreed by the World Customs Organisation. So it is simply a description given to a good. I do not think there has been any instance of a manufacturer objecting to a particular description for a good, but they would object to a tariff change. This exercise does not involve changes to the tariffs; it simply relates to changes to the description of a good.

Mr ADAMS—I understand.

Ms Gordon—I can appreciate that there might be an objection from a manufacturer about a change in tariff, but this is not about a change in tariff at all; it is about a change in the description.

Mr ADAMS—I accept that. I thought I read into this that, in future, if something changes and one product is not manufactured anymore then there is a new product. That product then goes into this process, is given a number and is treated the same. I am just interested in how we get that process and who actually makes those decisions.

Ms Gordon—In relation to the FTA, there is a two-part process. The World Customs Organisation is the first port of call in determining the new tariff number description or the new description for the good. In the FTA process it is decided between the FTA partners where that good would fit: under which category and which tariff rate would apply.

Mr ADAMS—But we are committed to that now, aren't we? Once we lock into this we have locked into that process. A manufacturer's product is then dealt with through the international customs organisation.

Ms Gordon—We are members of the World Customs Organisation, yes.

Mr ADAMS—So then the decision is not ours to make.

Ms Gordon—I might hand over to our Customs representative.

Mr Bannon—It is a decision that we agree to at the World Customs Organisation. My understanding is that it is quite a technical subcommittee that looks at tariff classification.

Mr ADAMS—I am sure it is.

Mr Bannon—That reports to a policy council and then it is agreed to at a plenary that this is the template from 2007 onwards. As signatories to the WCO we agree to it at that level.

Senator WORTLEY—Which organisations in Australian industry were consulted throughout the process?

Ms Gallagher—Those ones where the changes that were being made were considered relevant. Because these are technical changes and do not affect the outcomes of the agreements, it was really about looking at those areas. For example, with Singapore there are certain sectors which are exempt from the 30 per cent tariff ruling which applies under the SAFTA—the rules of origin ruling. One of the organisations we consulted was AEEMA, the Australian Electrical and Electronic Manufacturers Association. We also spoke with our TCF people and with our passenger motor vehicle people. There has been some consultation with the Australian Industry Group as well.

Senator WORTLEY—Was the chemical industry consulted?

Ms Gallagher—There was some discussion within the department as to the areas which were particularly relevant and that included the chemical area, yes.

Senator WORTLEY—Were there any significant comments from that particular industry?

Ms Gallagher—No. Where there have been changes in the chemical area, the items brought together under the harmonised system a number of the different product areas that were spread out previously. Also, they tended to merge items where there was very little or no trade internationally.

Senator WORTLEY—Was the industry generally in agreement with that? Were any concerns raised?

Ms Gallagher—We are actually talking about two processes. We are talking about the process whereby the exchanges would have been taking place as part of the World Customs Organisation's changes. Within the trade agreements themselves, the impact on the chemical area is absolutely minimal—nil.

CHAIR—Thank you very much, again, for coming this morning.

[11.35 am]

LEITH, Mr John Albert, Managing Director, Albright and Wilson (Australia) Ltd

THWAITES, Dr Richard, Manager Special Projects, Albright and Wilson (Australia) Ltd

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

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and 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 Leith—Yes, thank you. Our submission relates to the maintenance of the existing rules of origin concept based on regional value content for tariff classification 3402.20 organic surface-active agents, preparations put up for retail sale. Our request to the Joint Standing Committee on Treaties is that no binding treaty be entered into at least until a guarantee is in place that the RVC method be incorporated into the rules of origin for this particular tariff classification. We believe that moving to the proposals of origin for the tariff classification using change in tariff classification without continuing with the RVC method would not necessarily enable the government to achieve its intentions of enhancing transparency and reducing administrative and compliance costs. It would, however, have a negative impact on trans-Tasman trade, which we believe is the reverse of the government's intention with the ANZCERTA agreement. It would have a significant detrimental impact on the viability of our company's business.

Albright and Wilson (Australia) Ltd was established in 1939. It has a turnover of about $100 million and operates two manufacturing sites—one in Sydney at Wetherill Park and one in Melbourne at Yarraville. It is a wholly owned subsidiary of a publicly listed company in Indonesia and it has had significant support from the parent company. It continues to provide substantial financial backing and strongly supports Australian manufacturing.

The key manufacture product at our Yarraville site is sodium tripolyphosphate, which is tariff classification 2835.31. A significant proportion of the company's output of this product, which accounts for about 20 per cent of the turnover from our Melbourne site, is exported to a major detergent producer in New Zealand. I will hand over to Dr Thwaites who will explain a bit more about the details of where the potential is.

Dr Thwaites—The proposed changes to the rules of origin under ANZCERTA will disadvantage Albright and Wilson (Australia) Ltd. Our major New Zealand customer currently purchases sodium tripolyphosphate from our company and this enables it to achieve sufficient regional value content to permit finished detergents to qualify for duty-free entry into Australia under the current rules of origin. Imports of detergents into Australia from New Zealand in the

last financial year were around $61 million and so, with the tariff normally being five per cent, this saves the New Zealand company $3 million a year.

Our customer has given notice that when the new rules of origin are introduced, which rely exclusively on the change of tariff classification for this particular tariff code, it will no longer purchase sodium tripolyphosphate from our company. Our customer has indicated that it will be able to use cheap sodium tripolyphosphate from China—duty free and potentially dumped if sold in Australia at the same price—while still retaining the ability to export detergents into Australia duty free. Loss of 20 per cent of the Yarraville factory turnover as a direct result of this change is likely to result in the factory no longer being economically viable, and its subsequent closure would lead to the loss of about 65 jobs.

To summarise: if the proposed amendment to ANZCERTA regarding the rules of origin for this tariff classification goes through, and Albright and Wilson loses its sales to New Zealand, the flow-on effect will be to reduce trade across the Tasman. We will no longer be exporting sodium tripolyphosphate—and this is valued at about $7 million a year at the moment. It will bring about the closure of our factory at Yarraville and the loss of 65 direct jobs, and of course the loss of further indirect jobs in maintenance, service contractors and so on. It will harm Albright and Wilson (Australia) Ltd's suppliers because they will no longer be supplying raw material to our company—and the larger suppliers include Penrice in South Australia. It would put Australian detergent manufacturers at an unfair disadvantage in comparison to the New Zealand competitor, which would have access to duty-free and unfairly priced raw materials from outside the region yet would still benefit, under the proposed rules of origin, from the duty-free access of its products to the Australian market.

We claim that currently the New Zealand manufacturer is not disadvantaged by the current rules of origin. Analyses of the ABS trade figures and *Retail World* market share data show that detergent exports from New Zealand to Australia increased quite substantially in the financial year 2006 over 2005—something like 13 per cent by value and 60 per cent by volume. The share of the Australian detergent market held by the New Zealand detergent producer has over the past five years varied between 26 per cent and 34 per cent. There are two other large producers of detergent in Australia, as well as a number of smaller producers, and this sort of market share I think underlines that they are not disadvantaged under the current rules of origin.

We basically seek the retention of the status quo. We acknowledge that a change in the rules of origin to one incorporating the CTC method may be necessary for consistency across the whole tariff classification, but we seek to have the current regional value content rules retained within the new rules of origin for packed detergents tariff classification 340220. We know that, in certain other chapters of the tariff, precedents have been established to use both the CTC method and the minimum regional value content. We believe that retaining the status quo would not disadvantage New Zealand detergent producers. On the other hand, we fear that, if the change to using exclusively the CTC method for determining rules of origin is implemented, the government's objective of enhancing trade will not be achieved. Instead, it will seriously injure our business and that of our suppliers, and it would cause hardship to our employees and their families if the company is forced to close down its factory as a result of this change.

CHAIR—When did you become aware that your New Zealand customer would be looking for other sources?

Mr Leith—I had a meeting with my customer in approximately the last week in July, where they indicated to us that, under the terms of our current supply agreement, they would be terminating it, which meant they were giving us six months notice—so effectively from 1 February they would not be using our product. This was as a result of the change in rules of origin. They subsequently wrote to us on 31 July confirming that.

Mr WILKIE—Basically they had seen this proposed change coming through and thought, 'It's going to be implemented early next year,' and under their contract with you they have to give you six months notice, so that is what they did—in other words, disadvantaging your company.

Mr Leith—Correct.

CHAIR—Did you receive any information from your industry association about these amendments? What is your industry association?

Mr Leith—Our industry association is ACCORD, which represents the personal care market and to some extent is broadening out into cosmetics. In our discussions with them, they have preferred not to take a position on this because it would cause conflict between some of their members. Their preference is that they do not get involved in this particular problem. That being the case, we did have notification of it, but it was as part of a normal small communication that comes from them periodically.

CHAIR—Do you have any involvement with the Plastics and Chemicals Industry Association?

Mr Leith—No. We used to be members of Plastics and Chemicals but we are no longer subscribers to their services and their membership.

Mr WILKIE—You mentioned that there are other companies that might also be affected here—not just suppliers and other customers but other people in the same sort of situation. Are they as big a player in the detergent field as you? Can you put that into perspective?

Mr Leith—Do you mean our customers or our suppliers?

Mr WILKIE—Probably customers and suppliers—and you mentioned other companies that might also be affected, such as the company in South Australia.

Mr Leith—Our supplier in South Australia is approximately the same size as we are. The customers that we sell to are significantly larger than we are but we do deal with a lot of local people who help support us and supply services and products to us at factory level. So there are a range, from small through medium to large.

Mr WILKIE—Given that this exports around seven million, that is not insignificant. Was there any consultation on behalf of the department? Were you contacted at all by any government departments concerning the impact on your company?

Mr Leith—We instigated discussions with the Department of Foreign Affairs and Trade and the Department of Industry, Tourism and Resources when we became aware of the problem, to try to countenance some support and to see whether anything could be done at this late stage to try and get it corrected. They have been very helpful in that respect. We have no problems with the fact that they provided time and access.

Mr WILKIE—But they waited until they actually caused the problem before they told you there was one?

CHAIR—You do not have to answer that.

Mr WILKIE—It sounds like what you are saying is that you approached them after you found that there was a problem and then they have been quite helpful in the interim trying to sort things out, but unfortunately they did not tell you before it actually happened.

Mr Leith—I think we entered the process late, which makes it more difficult.

Mr ADAMS—Your customer in New Zealand is well aware of its advantage with this treaty—is that correct?

Mr Leith—Yes, they are.

Mr ADAMS—You were not aware until the end of July that you had a problem of some significance?

Mr Leith—We were aware of it before that. We started this process before we were given notice. We have not had discussions with the customer regarding this. They have kept their cards close to their chest, as you would, I suppose, in business. It was clear in the meeting with their purchasing people that the reason for the cancellation of the contract was because of the change in rules of origin.

Mr ADAMS—You were not told that there were going to be winners and losers—that never came through to you through your association or anything else?

Mr Leith—No, it did not.

CHAIR—Do you get the Austrade newsletter or updates? Was the US free trade agreement something that your company had any interest in? Did you get consultation through Austrade about that?

Dr Thwaites—Yes, we have had some dealings with Austrade through that sort of thing. But, as Mr Leith has said, we were not made specifically aware of the proposed changes to the rules of origin until we were alerted by our friends in New Zealand and then recognised what the implications would be on our company.

CHAIR—If there are no further questions, I thank you very much for coming this morning.

[11.51 am]

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

GALLAGHER, Ms Ruth, Manager, Tariff and Trade Policy, Department of Industry, Tourism and Resources

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

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

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

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of parliament. At the conclusion of your evidence, would you please ensure that *Hansard* has had the opportunity to clarify any matters with you. Would you like to make some introductory remarks before we proceed to questions?

Mr Saxinger—You will recall that we appeared before the committee on 8 May. We made a lengthy introductory statement there, and I think we will let that stand at this stage. Another point I would like to make and that was raised by the company is that, yes, the Department of Foreign Affairs and Trade and the Department of Industry, Tourism and Resources have met with the company on a couple of occasions. We have also received correspondence from the company outlining its position, and we are currently looking at what might be possible in responding to the company's concerns regarding the proposed changes to the rules of origin for their particular product.

CHAIR—What would be involved in retaining a 50 per cent RVC for 340220?

Mr Saxinger—The short answer is that these new rules have been agreed between Australia and New Zealand. Obviously the first step would be that the Australian side would have to say, 'Yes, we are prepared to consider this particular proposal.' The second part of that then would be that we would need to get agreement from New Zealand.

CHAIR—But that is possible?

Mr Saxinger—It is an option, yes. Whether it is possible, I cannot talk for the New Zealand side.

Mr WILKIE—In a nutshell, why has this occurred? Why have we gotten to this stage where a company has had to bring to our attention problems about this trade agreement? We looked at this some time ago. In fact, we included a recommendation in a report that was to be tabled this week supporting this initiative on the basis that there were not any problems and that Australian industry would benefit. We are now sitting here today finding out that the company is not only going to be disadvantaged but could be losing 65 jobs and $7 million in income. I want to know why that has not been brought to the committee's attention before. What process has failed?

Mr Saxinger—I think the company itself has actually answered that in a number of ways. Certainly, from the government's side, we undertook extensive consultation with industry through the various industry associations. The company has mentioned their particular industry association. That was not one of the ones we consulted, but we did consult PACIA. We also consulted the Australian Industry Group, a much bigger organisation. We also placed advertisements about this new proposal in the newspapers in July 2005. Information was also available on the DFAT website for at least 18 months, if not two years.

So we have always known that individual companies may not be picked up and that it is almost impossible for the government to canvass every industry. We were really providing opportunities for individual companies and industry associations to draw our attention to any concerns they may have with these new proposals through those various mechanisms which we have used for a range of other FTAs. Unfortunately in this case the information has come at a late stage, when we were well into the process, as you said, for the JSCOT consideration.

Mr WILKIE—I cannot agree with the view that you cannot go individually to companies that trade in this area. I can imagine if you had a small company dealing with an occasional product and you were not talking very large sums of money that that would be the case. But here we are talking about a large company with $7 million in trade. I would have thought that they would have been consulted. Is there a process to look at the main players and go to them rather than just industry associations?

Mr Saxinger—There is a process but on this occasion, as I understand it, we used predominantly the industry associations and the mass media to encourage people to come forward and make any comments. Unfortunately, as I said, it is not possible to go to every company, large, small and medium sized, to seek their concerns, but certainly, if they raise them during the process, my experience with these FTAs et cetera is that the government will go and talk to the industry and take on board their concerns. But we have to then talk to the industry association. One company's interests may not be the industries' or the others' interests. These are things we have to balance up.

CHAIR—In your experience are there any problems with going back to New Zealand and saying that a problem has arisen and that this is one way of resolving the problem?

Mr Saxinger—That is certainly one option. As I said, we have agreed at the government-to-government level that we will adopt this new change of tariff classification process based on the schedule G, which the committee has. We would have to get New Zealand's agreement to change a particular product. That was not a very easy agreement to finally stitch up with the New Zealanders. They had some particularly sensitive areas that they wanted some more movement on. The downside, of course, is that asking them about a particular product provides them with

the opportunity to come back and say, 'Yes, we have some other issues ourselves.' Secondly, it could delay the whole process of implementing these new rules.

CHAIR—For example, in the area of gentlemen's apparel, you were aware of a specific concern and you were able to keep a certain RVC there. Similarly, with the automotive industry, they initially opposed it and then were happy to keep a 40 per cent RVC.

Mr Saxinger—That is correct.

CHAIR—When you are aware of problems you are able to incorporate them your negotiations.

Mr Saxinger—That is right, following some lengthy and difficult negotiations at times.

Senator WORTLEY—You said that going back to New Zealand with this particular issue was one of the options. What are the other options?

Mr Saxinger—Another option is to do nothing. Or we can come up with some other mechanism to address this, perhaps through a different change of tariff classification. We have not really investigated all of those but, as I said, one option certainly is to write to New Zealand and seek their agreement.

Senator WORTLEY—You said you have not investigated it. What is the time frame that we are looking at?

Mr Saxinger—We are still looking at this particular case and the various ways forward. Probably the most straightforward way is to seek New Zealand's agreement to continue with the old rule of origin for the five-year grandfathering period, which I think the company is interested in.

Mr ADAMS—You have been asked a question about time lines, and I think it is quite reasonable to ask you that. There is an issue here of 65 jobs and $7 million in trade figures for this country. I do not think treating it with the flippancy that you just did is acceptable to this committee. There must be a time line for you to look at this problem. I would like you to give us a time line.

Mr Saxinger—That is correct—we are giving it as a close an examination as we can. We are still getting information from the company, most recently last week, and we are considering the best way forward, consulting with the company. As I said, we have met with the company. They have met with ITR. They have met with various ministers to provide additional information. The information that they may well have lost their contract has only just come to light so, again, we are looking at this as quickly as we can. We recognise that there are 65 jobs potentially to be lost here and we are very sympathetic to the company.

Senator WORTLEY—When do you expect to come to some sort of conclusion?

Mr Saxinger—As soon as possible.

Senator WORTLEY—Are we talking about weeks or months?

Mr Saxinger—I think we are talking about weeks. But it will depend on New Zealand's response.

Mr WILKIE—I would be very loath to even recommend that we go down the path of agreeing with this convention if we cannot get a guarantee that we are going to sort this problem out. What is the department doing to find out if there are any other companies in a similar situation to Albright and Wilson? They have obviously brought this to your attention so it is something that is being dealt with, but it is not an isolated case. You have had the textile men's apparel people come before you and say, 'We've got problems.' They were looked after. We have Albright and Wilson, who hopefully will be looked after. What is the department doing to find out whether there are other cases of this type? I find it unacceptable for you to say, 'We are waiting for industry to tell us about the problems,' because we employ experts in the department to tell us if agreements that have been in place internationally will cause problems for Australian industry. It should not just be up to them. What is happening to find out if anyone else is affected?

Mr Saxinger—It is something we are still considering as well—about whether there are other industries. We have also been taking the approach that overall this new change of tariff classification will bring benefits for both trans-Tasman trade and individual companies on both sides of the Tasman. That was confirmed by a Productivity Commission report in 2004. Ministers have decided that the overall benefits of this move to change of tariff classification will be consistent with what we are trying to do with closer economic relations and will also establish a single economic market. But we are still considering whether we need to do more work on this particular issue.

Mr WILKIE—I bet the ministers did not know at the time—as we did not know when we agreed to this previously—that there were companies that were going to lose millions of dollars and potentially hundreds of jobs. It is fair enough to say that the ministers make the decisions, but the decisions have to be based on accurate information being provided by the departments. In this case, it would appear that the information provided is not accurate.

Senator WORTLEY—In relation to this particular instance, there have obviously been some issues raised by industry. Some have been addressed and some hopefully will be addressed. What is the department putting in place so that we do not end up with this situation again with regard to industry having concerns basically after the horse has bolted?

Mr Saxinger—I cannot really answer what the department is doing. This is only one instance that has come to the attention of the particular area and we are looking at it sympathetically to see what we can do.

Senator WORTLEY—Could this sort of thing happen again in the future? Is it being addressed?

Mr Saxinger—I cannot really answer that. As Albright and Wilson themselves have said, they came to the process late et cetera. But we try, by going through the industry associations, by going through the media and by putting things on the website, to give this as wide a coverage as

possible. Unfortunately, on this occasion one company has realised that there is an issue and we are looking at that sympathetically.

Mr WILKIE—I disagree that it is one company. It is one company in this instance, but there were other companies that also expressed concern and had their concerns addressed. How long will you need to fix this up? We need to make a recommendation as to whether we go with this particular treaty. If we defer making a decision, how long are we talking about—weeks, months? Should we defer making a decision on this treaty, say, for one month or three months, to enable you to try and resolve this problem? How long do you think it will take to fix this?

Mr Saxinger—I do not think I can put an exact time frame on it. It will be subject to ministers deciding what the next course of action is. I should say, though, that even if this change to the treaties is approved—and hopefully the committee will recommend that it is approved—that does not prevent us from going back to New Zealand, either in this case or a future one, and asking: 'Do you think we should amend the particular rule applying to that product even before the next review or the grandfathering period?' So that is not precluded from the fact that this change may be adopted.

CHAIR—Just one question from Mr Adams and then we will move on.

Mr ADAMS—Mr Chair, I will ask as many questions as I need to satisfy my needs. That is what I have the responsibility of doing on behalf of my constituents in being elected to this parliament. With regard to the issue of a company missing out and being affected in this way, doesn't this show us as a country that we need to be a little bit more expansive in trying to let our industries know that we are in negotiations in freeing up trade and that this would have an effect on them? Do you see a need here to be a little bit more outgoing in what we do in explaining to industry associations and to industry generally? Do you see that coming out of this experience? Do you see that there is a need to do that?

Mr Saxinger—I can only speak from the ANZCERTA perspective and I would not like to speak on the other processes that have taken place. In reality, you cannot pick up 100 per cent of industry in these sorts of processes so you do what is best in terms of industry associations, public, media et cetera. On this occasion, with ANZCERTA, as you mentioned, we did address a number of issues that were raised by various industry sectors, including the auto and TCF industries, and some other sectors as well that included, I think, some of the beverage and agricultural sectors. So on balance, for ANZCERTA, we covered as widely as we thought was absolutely possible for us. Unfortunately, this company has come to the process late, but we are looking at that sympathetically to see whether we can do something for them. It is not precluded from the changes to the treaty that will go forward; we can do it outside the overall changes.

Mr WILKIE—I acknowledge that the company has come to the process late but I want to ensure that the department takes up its share of the responsibility as to why the company has come to the process late. I think that the department has an obligation here to seek out those companies that may be either advantaged or disadvantaged by these agreements and not just go through industry associations. They obviously often weigh up the pros and cons on all their members and therefore you end up getting a distorted picture. I want to ensure that the department recognises that part of the reason that Albright and Wilson are here now is because of the department's failure to consult more widely.

CHAIR—Thank you very much for coming.

[12.08 pm]

HALBERT, Ms Cath, First Assistant Secretary, Office of Health Protection, Department of Health and Ageing

THOMPSON, Ms Tracy, Acting Director, Legislation Section, Surveillance Branch, Office of Health Protection, Department of Health and Ageing

International Health Regulations (2005)(Geneva, 23 May 2005)

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that this hearing is a legal proceedings 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 Halbert—I will make some brief introductory remarks, thank you. At a time when severe infectious diseases such as avian influenza pose a serious threat to regional and global health security, it is in Australia's interest to adopt the International Health Regulations 2005. Unless contained, disease outbreaks can turn into pandemics and have a substantial negative economic impact as well as significant political and social disruption.

Australia has played a lead role in the revision of the International Health Regulations, which were adopted by the World Health Assembly in May 2005. By adopting the International Health Regulations Australia will be a leader in our region in meeting international standards for the prevention and control of the international spread of disease and will be well placed to respond to a global pandemic. Implementation of the International Health Regulations will require a joint response from the Australian government and the states and territories and a collaborative approach to surveillance, reporting and responding to public health emergencies of international concern.

Australia has until 2012 to acquire full operational capacity. Our legislative framework and existing administrative practices only need minor amendment to meet the requirements of the International Health Regulations. Consultations are already under way with states and territories to address any legislative and administrative reform necessary to implement the International Health Regulations. In addition, the states and territories have been briefed through the Standing Committee on Treaties forum. Thank you.

CHAIR—Thank you. What sort of health information will be exchanged between the states and territories, the Commonwealth and the WHO?

Ms Halbert—Much along the same lines as the kind of information we exchange with the states and territories now about the outbreaks of communicable disease. We do need to do a little legislative reform to make that easier and more uniform between the states and territories and between the states and territories and the Commonwealth. There are some instances where we

might have to provide individual information to the WHO, but it will generally be data on an outbreak of communicable disease and what we are doing about it.

CHAIR—Have there been any updates in the definitions of communicable diseases—for example, when was avian flu introduced as a communicable disease?

Ms Halbert—This was considered by the World Health Assembly in 2004. As an annex to the International Health Regulations there is an algorithm for deciding whether a situation is a health concern of international significance. That includes, I believe—I am just having a look—avian influenza. Yes, 'human influenza caused by new subtype'. So that would account for any new influenza pandemic.

CHAIR—What are the new ones? Are SARS and avian flu the two newest ones?

Ms Halbert—They are both included, that is right, and they are new ones.

CHAIR—Are there other new ones? Ebola has been around for a while—there were outbreaks in the seventies.

Ms Halbert—Yes, Ebola is still there. Rift Valley fever might be a new one as well, but I would have to check that.

Ms Thompson—The International Health Regulations 1969—the previous International Health Regulations—had only three notifiable diseases: smallpox, yellow fever and cholera. The list has been enlarged and includes the list that is highlighted in annex 2 of the International Health Regulations.

CHAIR—Thank you.

Mr ADAMS—Could you give us a little bit of detail about the new procedures for international border crossings that are being agreed to?

Ms Thompson—Under the International Health Regulations there are requirements for surveillance at borders. There are a number of requirements that are set out in the International Health Regulations. Australia has a very strong history of surveillance of quarantinable diseases, both of animals and plants and of humans at borders, so Australia is well placed. Australia will be using infrastructure and processes that are currently available and there will be some update of that. One of the possible areas where administrative procedures will need to be slightly reformed is in the area of exit screening of people. People who are suspected of having some contact with serious communicable diseases will possibly need to be screened, and we are working on putting in administrative processes to ensure that. The second area is—

Mr ADAMS—So somebody who comes back who has been in a region that has got some nasty disease will be subject to a screening process?

Ms Halbert—Current procedures allow, when there is a disease outbreak of concern, for us to increase our border security measures; and that includes health declaration cards. In a high-level alert situation it also includes border nurses and other measures at airports to screen passengers

coming into Australia. Those things are already in place or being put in place ahead of the International Health Regulations implementation.

Mr ADAMS—In relation to trade, you say that you do not try to interfere with trade if there is an outbreak and we are dealing with an epidemic situation. What procedures do we have in place to do that? How do we try not to interfere with trade?

Ms Halbert—There are probably a couple of elements to that. One would be, and this is partly what the International Health Regulations set out, the decision-making process for raising the alert level and increasing border security measures so that we are not jumping the gun, so to speak. The other thing is that, particularly through the pandemic planning process, we have been considering ways in which the physical import of goods et cetera can continue without endangering the health of the Australian public. We believe that trade can continue—because of the minimal number of people involved in that you do not need to have a major exchange of people to keep trade going in most circumstances.

Mr ADAMS—I have one last question in relation to 'an event'. A public health event is defined as a manifestation of a disease or an occurrence. Can you give me some examples of 'an event'? I think the word 'event' is used as a trigger, is it not?

Ms Halbert—That could be a pandemic. I believe it could be some kind of biological, accidental or otherwise, health disaster that involves mass casualties or the possibility of mass casualties to which we would need to respond. Of course there are other kinds of health disasters that it could be, but it has to be something significant.

Mr ADAMS—So that is a terrorism type event?

Ms Halbert—It could be.

Mr ADAMS—So we are talking about bioterrorism or a bacterial thing?

Ms Halbert—Yes.

Senator WORTLEY—You said that Australia would assume key obligations under the IHRs to develop within five years of entry into force core capacities relating to surveillance, monitoring, reporting, notification, verification and response including various routine inspection and control measures. I am just wondering whether 'within five years' is a realistic time frame? Or is there some urgency to this?

Ms Halbert—In terms of our capacity to respond to communicable diseases, Australia is considered—and this is not a mathematical formula—about 85 per cent of the way to implementing the IHRs already. So our systems are very strong. We have good border security and we have good public health measures in place. So, yes, on that side of things it is realistic for us to meet our obligations under the IHRs. We are working through an interdepartmental committee to ensure that agencies have assessed their readiness to meet the IHRs and are taking whatever action they need to. There is another requirement, that any legislation required to implement the IHRs be passed by July 2007. We do not have a need for much legislation and we are working to that time frame.

Senator WORTLEY—When you say that Australia is at about 85 per cent of the way, where is the 15 per cent that we have to make up?

Ms Halbert—I think I mentioned earlier some requirements in relation to the exchange of data, the timeliness and the uniformity of data that could be improved. We are working with the states and territories on that. We also have to possibly implement additional measures to ensure that we can screen outgoing containers. That is one of the requirements in the International Health Regulations, and we have not done that previously.

Senator WORTLEY—What you mean by outgoing containers?

Ms Halbert—Export containers. I am talking about the actual containers that are being exported with goods in them. It is a requirement in some circumstances that we check for contamination.

Senator WORTLEY—Is there something in place that is going to address that?

Ms Halbert—Yes, through this interdepartmental committee we are assessing the need for legislation in that regard. We may not need legislation to implement that, but we are having a look at that.

Senator WORTLEY—Do we have the technology to do it?

Ms Halbert—Yes, I believe so. I would have to turn to the Australian Quarantine and Inspection Service for a technical answer on that but, yes, I understand that we can do it.

Senator WORTLEY—If you could do that, that would be good.

Ms Halbert—Yes.

CHAIR—Issues that came up about SARS included underreporting, late reporting and so on in 2003. There have been reports that the avian flu in China was underreported as well. Under this convention, is compliance with the specific capacity requirements going to be achievable for all countries, especially developing countries? Will any assistance be provided to countries to help them achieve compliance with the IHRs?

Ms Halbert—That has certainly been an issue, but the IHRs seek to make it as easy as possible for countries to provide information in a timely fashion. The WHO and countries such as Australia will provide assistance to countries experiencing problems in order to help them provide accurate and timely information.

CHAIR—Does the WHO provide oversight and/or monitoring of public health risks and public health events when a country does not have the full capacity to monitor?

Ms Halbert—To help countries understand what is going on, when required, they will send in expert teams to assess, do surveillance and so on. As a general proposition, the WHO provide oversight of the capacity of a country to deal with public health events and so on.

CHAIR—When does it enter into force?

Ms Halbert—It enters fully into force in 2012, but all countries are meant to have legislation in place by mid next year.

CHAIR—Thank you very much for coming.

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

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

Committee adjourned at 12.21 pm