Queensland Government

Premier of Queensland
and Minister for Trade

Please quote: 24645/DM11/Policy Systems

14 MAY 2003

Ms Julie Bishop MP
Chairperson
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Ms Bishop

Thank you for your letter of 5 March 2003 concerning the treaties being reviewed by the Joint Standing Committee on Treaties (JSCOT) that were tabled in Parliament on 4 March 2003.

While the Queensland Government supports binding action being taken on these treaties, a number of significant issues are raised for your consideration in relation to the *Singapore-Australia Free Trade Agreement* and the two International Maritime Organisation treaties. My Government's comments are provided in an attachment to this letter.

Thank you for providing an opportunity to consider, and comment on, the proposed treaty actions.

Yours sincerely

PETER BEATTIE MP
PREMIER AND MINISTER FOR TRADE

Executive Building
100 George Street Brisbane
PO Box 185 Brisbane Albert Street
Queensland 4002 Australia
Telephone +61 7 3224 4500
Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au
Website www.thepremier.qld.gov.au

QUEENSLAND GOVERNMENT SUBMISSION
TO
THE JOINT STANDING COMMITTEE ON TREATIES
regarding
TREATIES TABLED ON 4 MARCH 2003

Singapore- Australia Free Trade Agreement (SAFTA/the Agreement)

The Queensland Government supports SAFTA though this support is conditional on the satisfactory resolution of the final list of reservations of State measures for annexure to the Agreement. The Agreement is consistent with Queensland's trade strategy to create export opportunities in the services sector and knowledge-intensive industries.

The Agreement presents three key issues for Queensland – economic impact on Queensland businesses and industries, impact on current and future State regulatory measures, and management of the implementation of the Agreement.

Economic impacts

The Agreement presents trade opportunities rather than direct quantifiable impacts on Queensland. Therefore it will benefit those industries and individual businesses that are export-oriented in focus and capability. The Queensland Government considers the bulk of opportunities for Queensland companies will be in the professional services area. The most immediate and significant benefits are anticipated to be achieved through the lowering of barriers to allow Queensland law firms and higher education and training providers to undertake joint ventures with their Singaporean counterparts.

Harmonisation of quarantine conformity assessment and approvals procedures should be of particular benefit for Queensland food exporters. Queensland already supports a substantial food export facilitation program oriented towards the Singaporean market. As close to ninety percent of Singapore goods already enter Australia at zero tariff levels, the extent of increased Singapore competition with Queensland products as a result of SAFTA is likely to be marginal.

However, the Queensland Government is concerned that the limited and qualitative nature of the cost benefit analysis, tabled with the Agreement, does not provide a sound basis for State Governments to interpret costs and benefits for their jurisdictions. The earlier cost benefit analysis commissioned by the Federal Government and undertaken by Access Economics was prepared during the early stages of negotiation on the Agreement, as such it provides a limited basis for understanding the impacts of the final agreement. A detailed cost benefit analysis, which analyses regional and industry-specific impacts and is undertaken after all the provisions of the Agreement are settled, would be of greater value to the Queensland Government.

Regulatory impacts and issues

The Agreement provides for a "negative listing" (exclusions to liberalization) approach to commitments in the Agreement which will establish the extent to which Australia and Singapore will provide access for each others service providers and investors. This approach means that all activities will be considered completely open unless stated otherwise in a list of reservations, or unless covered by one of the exemptions. By definition, areas not listed have no market access restrictions and are fully open to Singaporean providers. While the Agreement will be binding on the three tiers of government in Australia, the disciplines of the chapters on services and investment will apply to States at the time of the first review of the Agreement (12 months after it comes into force).

The negative listing approach requires a detailed and accurate assessment of existing regulatory and administrative measures that depart from the market access and/or national treatment obligations of the Agreement but also identification of sectors and activities where new non-conforming measures may be required or where existing measures may need to be made more restrictive in the future. It is obviously difficult to know with any certainty what might happen in the future. While State and Territory Government representatives successfully advocated for a flexibility mechanism to be included which would allow changes and additions to be made to the list of reservations over time, the operation of this provision requires that where such changes are made concessions will be required elsewhere so that the overall balance of restrictions remains the same. Advice from the Federal Government indicates that the means by which the overall balance of restrictions for Australia would be maintained would be the responsibility of the Federal Government in consultation with State and Territory Governments.

The Queensland Government would not want to see any diminution of its ability to regulate areas under its responsibility. The extent to which the Queensland Government may wish to bind its current regulatory arrangements in respect to Singapore investors and service providers has not yet been considered.

Additionally, while the Commonwealth has consistently emphasised that SAFTA is consistent with World Trade Organisation (WTO) obligations, the national interest analysis states that some SAFTA commitments go beyond Australia's existing World Trade Organisation commitments. However the national interest analysis does not specify or explain which SAFTA obligations fall into this category.

Being mindful of the number of free trade agreement negotiations in which the Federal Government is currently engaged, SAFTA highlights a longer term concern about managing compliance with varying obligations under different free trade agreements in addition to WTO commitments. Free trade agreements are likely to have different time frames for implementation, different product coverage and different regulatory obligations making domestic implementation and adherence to obligations from the different agreements onerous. This is particularly relevant for a federal system like Australia, where sub-national levels of government have statutory responsibilities for matters covered by an agreement. Where rules of origin, which underpin and determine the extent of tariff reduction for a particular Party under an

agreement, differ between free trade agreements, significant additional complexities accrue for trade-oriented businesses.

Management of treaty implementation

SAFTA is the forerunner to the negotiation of other, more complex and difficult, free trade agreements. It is important that lessons learned from this experience are captured and applied in future negotiations. A mechanism for ongoing consultation with State Governments during the life of the Agreement needs to be formalised. Such a mechanism could address – issues arising from the biennial reviews; measures to achieve an overall balance of restrictions under the Agreement where amendments are required to a non-conforming State or Territory measure; and any concerns in relation to the operation of investor-Party dispute settlement mechanism. The Treaties Council, comprising Commonwealth, State and Territory Heads of Government, provides an appropriate forum.

The nature and extent of consultation with States and Territories was identified as a key issue during the negotiations on SAFTA. While extensive consultation was undertaken at officer level between Federal and State Government agencies, the Queensland Government considers greater engagement at the ministerial level was required to endorse the negotiating strategy on matters likely to significantly affect State responsibilities, such as the negative listing approach.

As local governments will also be captured by the obligations imposed by the services and investment provisions it is imperative that local government is fully engaged in consultations on the impact of these commitments. There appears to have been a lack of engagement with local government bodies during the negotiations. For example, the Australian Local Government Association is not listed as one of the key organisations consulted by the Federal Government. Neither the national interest analysis nor the regulatory impact statement provides an assessment of the impact of SAFTA on local government.

Finally, the Queensland Government wishes to alert JSCOT to the imposition of an obligation in the SAFTA to ratify, or accede to, two World Intellectual Property Organisation treaties (Copyright, Performances and Phonograms) and to comply with provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (Chapter 13 Article 2). Proposals to take binding action on these treaties have yet to be considered by the Commonwealth Parliament. This obligation appears to presume the outcome of Australia's agreed treaty making process. Consultation with States about the impact of these treaties is required under the Council of Australian Governments' *Principles and Procedures for Commonwealth-State Consultation on Treaties*, before binding action is taken by the Commonwealth. It is not clear why such an obligation has been included in SAFTA.

Convention on the Control of Harmful Anti-Fouling Systems on Ships (the Convention)

The Convention provides for the prohibition and/or restriction of the use of organotin compounds used on ships hulls to prevent the growth of algae, barnacles and other marine organisms. Organotin compounds pose a substantial risk to toxicity and other

chronic impacts to ecologically and economically important marine organisms as well as a risk to human health from the consumption of affected seafood.

Inappropriate disposal of abrasive blasting-waste containing organotin compounds during ship repair and maintenance has resulted in serious environmental harm in Queensland. These compounds have also resulted in harm to the Great Barrier Reef as a result of a collision which exposed the compound on a vessel's hull to the surrounding waters. By banning the use of such compounds on large ships, the Convention will reduce the potential for harm to Queensland's fish habitats and fisheries fauna. It is also likely to have positive flow-on benefits for marine-based tourism and commercial fishing industries.

While the Convention encourages signatories to support the development of effective, environmentally-friendly alternatives to organotin compounds as anti-fouling systems, the Queensland Government considers this factor should receive equal importance to the phase out of organotin compounds. The currently available alternatives to organotin compounds provide a less effective anti-fouling system, thus increasing the risk of translocation of exotic pest species. Incursions of some exotic species into Australian waters have had significant impacts on the values of the coastal environment and the fisheries that depend on these areas.

The Convention is likely to have only a marginal impact on the Queensland maritime industry as the great majority of Queensland's commercial, fishing and recreational fleet are in a size range that falls outside the scope of the Convention.

It is the responsibility of the Commonwealth to monitor, survey and certify international ships entering Australian waters and Australian registered ships engaged in coastal trade. The Australian Maritime Safety Authority (AMSA) will have the primary responsibility for the administration and implementation of this Convention. The Queensland Government's only potential responsibility would be to ensure the Convention's obligations were met in relation to ships engaged in intra-state voyages. This responsibility should be delegated to AMSA as currently occurs with Australia's port State control responsibilities.

Queensland currently controls the use of tributyltin (organotin compound used as anti-fouling) on vessels less than 25 metres in length through the labelling provisions of the *Chemical Usage (Agricultural & Veterinary) Control Act 1988* which adopts labelling requirements of the National Registration Authority. Controls on the application and removal of tributyltin are implemented indirectly through licensing requirements for premises where the substance is used. Drafting of an amendment to the *Environmental Protection Act 1994* to give force to the Australian and New Zealand Environment and Conservation Council's *Code of Practice for Antifouling and In-water hull Cleaning and Maintenance 1997* is currently underway. The proposed amendments to the *Environmental Protection Act* and the deregistration of tributyltin by the National Registration Authority will enable Queensland to meet the requirements of the new Convention.

The Commonwealth proposes to introduce national legislation, Commonwealth Protection of the Sea (Harmful Anti-fouling Systems) Act to apply to all jurisdictions but incorporating provision for preserving any future State legislation. In view of Queensland's existing and proposed legislation that impacts on the control of anti-fouling systems, it is imperative that the Queensland Government has an opportunity to consider the Commonwealth's proposed legislation prior to its introduction to ensure effective complementarity between the Commonwealth and State legislative regimes. To date, the Queensland Government has not been consulted on the Commonwealth's draft legislation.

Convention for the Prevention of Pollution from Ships (MARPOL) – *Annex IV: Regulations for the Prevention of Pollution by Sewerage from Ships*

The MARPOL treaty covers matters that relate to both State and Commonwealth responsibilities. Both the Commonwealth and Queensland Governments have enacted MARPOL into domestic legislation. In Queensland's case it is given legislative force under the *Transport Operations (Marine Pollution) Act 1995* (TOMPA).

The proposed ratification of Annex IV of MARPOL will provide for the control of sewerage discharge from ships, which are above 400 gross tonnes or certified to carry more than 15 persons and engaged in an international voyage, while in Australian waters. Ship-sourced discharge of sewerage into Queensland waters has been an issue of concern to the Queensland Government for some time. Ratification of Annex IV is supported as it will provide positive environmental outcomes and benefit the fishing and marine-related tourism industries.

The coverage of the treaty is limited. As Annex IV only applies to ships that engage in international voyages it will not impact on fishing and smaller commercial vessels operating in Queensland waters, nor will it apply to vessels over 400 gross tonnes on intrastate voyages. Queensland legislation (TOMPA) applies to all vessels operating in Queensland coastal waters. The Queensland Government is undertaking a review of the ship-sourced sewerage provisions to TOMPA and has recently released for public consultation a regulatory impact statement on proposed amendments to regulations made under the Act. The requirements of Annex IV of MARPOL have been considered in the development of these proposed amendments. This exercise has highlighted the need to ensure consistency between Queensland legislation and the proposed Commonwealth legislation, Commonwealth Protection of the Sea Legislation Amendment Bill 2003, which is intended to give force to the Annex IV obligations. Consequently, it is imperative that the Queensland Government has an opportunity to consider the Commonwealth's proposed legislation prior to its introduction to ensure effective complementarity between the Commonwealth and State legislative regimes. To date Queensland has not been consulted on the Commonwealth's draft Bill.

Amendments to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Two species listed in the amendments to the CITES appendices have relevance for Queensland – Hippocampus spp. (seahorse species) and Rhincodon typus (whale sharks). Seahorse species are taken in low numbers as an incidental bycatch of Queensland's prawn and scallop trawling operations. These trawling operations are regulated under the Fisheries (East Coast Trawl) Management Plan 1999. This legislation is consistent with the obligations imposed through the listing of the species in the appendices to CITES as it does not permit the retention or sale of Hippocampus spp. Therefore, adding seahorses to Appendix II of CITES is unlikely to have an adverse impact on the management arrangements of the East Coast net fishery.

Although whale sharks are known to inhabit Queensland waters, it is unlikely that their flesh would be traded because of the health implications from mercury levels found in this species. Management arrangements are currently being developed and an ecological assessment is being compiled for the East Coast Inshore Finfish Fishery. The status of this shark species under CITES will be taken into account during this process.