

Report 93

Treaties tabled on 12 March and 14 May 2008

Amendments, agreed at The Hague, Netherlands, in June 2007, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973

International Tropical Timber Agreement (Geneva, 27 January 2006)

Protocol amending the Agreement between the Government of Australia and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 1 July 1999 (Pretoria, 31 March 2008)

Amendment, adopted at London in July 2007, to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)

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Membership of the Committee

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Deputy Chair	Senator the Hon Sandy Macdonald (until 30/6/08)	Senator Julian McGauran (appointed 1/7/08, elected Deputy Chair 2/9/08)
Members	Hon Kevin Andrews MP	Senator Andrew Bartlett (until 26/6/08)
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Inquiry Secretaries	Sonya Fladun
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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EPBC	Environment Protection and Biodiversity Conservation Act 1999
HSI	Humane Society International
ITTO	International Tropical Timber Organisation
IUCN	International Union for Conservation of Nature
MFN	Most Favoured Nation
NIA	National Interest Analysis
OECD	Organisation for Economic Co-operation and Development
STC	Secondary Tax on Companies
WHT	Withholding taxes



List of recommendations

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

Recommendation 1

The Committee recommends that the Australian Government monitor and assess the impact of trade in freshwater sawfish to determine whether the current listing, with annotation, on Appendix II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* provides sufficient protection for the species.

Recommendation 2

The Committee recommends that the Australian Government review its existing policies on the composition of delegations to CITES negotiations with a view to minimising conflicts of interest, whether real or perceived.

Further, the Committee recommends that the Australian Government review the policy of allowing the participation in delegations of parties with a commercial or other direct interest in negotiations.

Recommendation 3

The Committee recommends that the Australian Government undertake a consultative and publicly accessible process for the assessment of non-detriment findings and ambassador agreements, including providing the opportunity for public comment by interested stakeholders.

Recommendation 4

The Committee recommends that the Australian Government review its existing assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* for CITES listed species to provide for a

more formalised process of independent scientific verification of the claims made by proponents in non-detriment findings.

3 International Tropical Timber Agreement

Recommendation 5

The Committee recommends that the consultation process undertaken for any future agreement on sustainable trade in tropical timber specifically includes consultation with environmental groups.

Recommendation 6

The Committee supports the *International Tropical Timber Agreement 2006* and recommends that binding treaty action be taken.

4 Protocol Amending the Agreement between the Government of the Republic of South Africa for the Avoidance of Double Taxation

Recommendation 7

The Committee supports the Protocol Amending the Agreement between the Government of Australia and the Government of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 1999 (the Protocol) and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of four treaty actions tabled in Parliament on 12 March¹ and 14 May 2008.² These treaty actions are:

- *Amendments, agreed at The Hague, Netherlands, in June 2007, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973*
- *International Tropical Timber Agreement, 2006 (Geneva, 27 January 2006)*
- *Protocol Amending the Agreement between the Government of Australia and the Government of the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 1999 (Pretoria, 31 March 2008)*
- *Amendment, adopted at London in July 2007, to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC CODE)*

1 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 10, p. 153; Australia, Senate 2008, *Journal*, No. 5, pp. 197-198.

2 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 17, p. 242; Australia, Senate 2008, *Journal*, No. 12, p. 371.

- 1.2 The Report refers frequently to the National Interest Analysis (NIA) prepared for each proposed treaty action. This document is prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of each NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/12march2008/tor.htm and

www.aph.gov.au/house/committee/jsct/14may2008/tor.htm

- 1.3 Copies of each treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's Review

- 1.4 The reviews contained in this report were advertised in the national press and on the Committee's website.³ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Members of Parliament and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.5 The Committee also received evidence at public hearings on 8 May 2008, 16 June 2008 and 29 July 2008 in Canberra and Sydney. A list of witnesses who appeared before the public hearings is at Appendix B. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/12march2008/hearings.htm

and

www.aph.gov.au/house/committee/jsct/14may2008/hearings.htm

3 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 2 April 2008 and 28 May 2008. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

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

Background

- 2.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora¹ (CITES) regulates the international movement (export, re-export and import) of a defined list of fauna and flora species. It arose from recognition that international cooperation is essential to protect and conserve species from over-exploitation due to international trade. Australia has been a party to the Convention since 27 October 1976.²
- 2.2 CITES divides fauna and flora species into three appendices, with the international movement of the species on each appendix attracting a different level of regulation. Appendix I includes species threatened with extinction and international commercial trade is generally prohibited.³ This is the highest level of protection afforded under CITES.

1 Full Title: Amendments, agreed at The Hague, Netherlands, in June 2007, to Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 3 March 1973.

2 National Interest Analysis (NIA), para 8.

3 NIA, para 5.

- 2.3 Appendix II includes species which, although not threatened with extinction at this time, may become so unless trade is regulated. International commercial trade in these species is permitted, but only with an export permit. The exporting country must assess that trade will not be detrimental to the survival of the species in the wild before approving export.⁴
- 2.4 Appendix III includes species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation and as needing the cooperation of other parties in the control of trade.⁵
- 2.5 CITES is implemented within Australia via the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).⁶

The Amendments

- 2.6 Amendments to Appendices I and II of the Convention were adopted by the Conference of Parties in June 2007 and entered into force for Australia on 13 September 2007. These amendments alter Appendices I and II through:
- the removal of some plant species from Appendix I and II;⁷
 - the transfer of one species of alligator and one species of beargrass from Appendix I to Appendix II, and the transfer of the slow loris genus and one species of lizard from Appendix II to Appendix I;⁸
 - the addition of two species of gazelle and all but one species of the sawfish family Pristidae to Appendix I, and the addition of one species of freshwater sawfish, one species of European eel and one species of brazilwood to Appendix II;⁹ and

4 NIA, para 25.

5 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 36.

6 NIA, para 26.

7 *Agave arizonica* (Arizona agave) was deleted from Appendix I and all species of the genera *Pereskia*, *Peresklopsis* and *Quiabentia* (all types of cactus) and the species *Shortia galacifolia* (Oconee Bells) were deleted from Appendix II. NIA, para 12.

8 The species *Melanosuchus niger* (black caiman) and *Nolina interrata* (Dehesa beargrass) were transferred from Appendix I to Appendix II. All species of the genus *Nycticebus* (slow lorises) and the species *Heloderma horridum charlesbogerti* (a venomous lizard) were transferred from Appendix II to Appendix I. NIA, para 12.

9 The species *Gazella cuvieri* (Cuvier's gazelle) and *Gazella leptoceros* (rhinoceros gazelle) and all species in the family Pristidae (sawfish) (except the species *Pristis microdon*) were added to Appendix I. The species *Pristis microdon* (freshwater sawfish), *Anguilla anguilla*

- amendments to the annotations of some taxa already listed, including the African elephant and Orchidaceae genera.¹⁰
- 2.7 While the amendments change the list of species to which the export and import rules of CITES must be applied, they do not change the substantive obligations under CITES. Australia is still obliged to prohibit and monitor trade in listed species in accordance with the provisions of the Convention.¹¹

Implementation

- 2.8 Amendments to the appendices of the Convention automatically come into force for all Parties 90 days after the Conference of Parties at which they were adopted, in accordance with Article XV(1)(c), unless parties enter a reservation.¹²
- 2.9 As Australia did not lodge a reservation, the amendments have already entered into force and are implemented through Section 303CA of the EPBC Act. Section 303CA obliges the Minister to establish a list of CITES species that reflects the content of the three appendices. The list has been amended to reflect the most recent amendments.¹³

Implications for Australia

Freshwater sawfish

- 2.10 The most significant impact of the amendments for Australia arises from the listing on Appendix I and II of several species of sawfish.¹⁴
- 2.11 All species of sawfish with the exception of *Pristis microdon* (freshwater sawfish) were listed on Appendix I, affording them the

(European eel) and *Caesalpinia echinata* (brazilwood) were added to Appendix II. NIA para 12.

10 NIA, paras 16 to 20.

11 NIA, para 22.

12 NIA, para 2.

13 NIA para 26.

14 NIA, para 29.

highest level of protection provided under CITES. Freshwater sawfish was listed on Appendix II with the annotation:

for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable aquaria for primarily conservation purposes.¹⁵

- 2.12 Prior to adoption of these amendments, freshwater sawfish was already regulated as a vulnerable species under the EPBC Act, with controls imposed upon its export.¹⁶
- 2.13 In its submissions and in evidence to the Committee, the Humane Society International (HSI) expressed concern about the manner in which the listing of the sawfish species was managed by the Australian delegation to the Conference of Parties and the outcomes that were negotiated. These concerns included:
- The lack of support by the Australian delegation for listing the entire family of sawfish on Appendix I, despite it being considered 'critically endangered' by the International Union for Conservation of Nature (IUCN);
 - The nature of the alternative proposal presented by Australia for the listing of freshwater sawfish on Appendix II, including the language used for the annotation, which benefits a single Australian trader;
 - The negligible conservation outcome for the species from display in aquaria; and
 - Damage to Australia's reputation in international wildlife conservation.¹⁷

Listing of freshwater sawfish on Appendix II

- 2.14 HSI told the Committee that the listing of the entire family of sawfish on Appendix I had widespread international support. HSI considered the proposed listing was 'sabotaged by Australia for the sake of a single trader', damaging Australia's reputation as a leader in international conservation issues in the process.¹⁸

15 NIA, para 14.

16 NIA, para 15.

17 Humane Society International, Submission No. 2.

18 Humane Society International, Submission No. 2, p. 2.

- 2.15 HSI also noted that the language used for the annotation is language not previously incorporated in or defined by either CITES or Australian legislation. HSI considered that the annotation could create a damaging precedent for future proposals:

It is creating a loophole ... we could see proposals in the future to downgrade [species] with similar annotations.¹⁹

- 2.16 The Committee asked the Department of the Environment, Water, Heritage and the Arts (the Department) to comment on the listing. Representatives of the Department informed the Committee that a two thirds majority of parties present and voting at the Conference of the Parties was required to achieve the outcome and that:

I think it is fair to say that there was agreement to Australia's argument that our freshwater sawfish populations are more robust than those in other countries. I think that we would agree that other countries' populations have in many cases been decimated. Perhaps partly because our populations are in very wild and fairly inaccessible country, ours have been less subject to ravage. Therefore, the argument was that they were more robust and that small exports for the purposes of the annotation would not be detrimental to the survival of the species.²⁰

- 2.17 In addition, the Department considered that it had both the experience and sufficiently strict requirements for wildlife export to adequately interpret the terms used in the annotation:

...that kind of language – 'appropriate' and 'acceptable' – is what we are used to dealing with all the time.²¹

- 2.18 The Department also stated:

...the annotation is there for all countries to utilise if indeed they can. However, it was very much thought in discussions at the COP itself last year that only Australia would be able to do a non-detriment finding ... for other countries which have in fact decimated their populations, it was felt that that would be virtually an impossible task.²²

19 Ms Nicola Beynon, *Transcript of Evidence*, 8 May 2008, pp. 34-35.

20 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 37.

21 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, pp. 37-38.

22 Ms Kerry Smith, *Transcript of Evidence*, 29 July 2008, pp. 59-60.

- 2.19 In its evidence, the sole Australian company trading in freshwater sawfish, Cairns Marine, stated that it considered the annotation effectively increased protection of the species as for all other purposes other than aquaria display, the species would be treated as if listed on Appendix I. In addition, the exporter would be required to demonstrate that the specimen was being exported 'for primarily conservation purposes' putting the onus on the Australian Government to make this determination.²³
- 2.20 Cairns Marine pointed out that the animals could only go to public aquaria that met certain requirements through an ambassador agreement in terms of the education, signage and information they provide.²⁴ In addition:

Due to the excellent survivability of Sawfish in Public Aquaria, demand for them has always been limited. There are a limited number of Aquariums large enough and with the facilities to provide for, a species that attains great size in relatively short periods of time. In the year preceding the last CITES conference, there were no Sawfish of any species exported from Australia.²⁵

Export of freshwater sawfish

- 2.21 The Committee notes that six sawfish were exported in 2007, with the Department basing its decision to allow the export upon research by the CSIRO and advice from one of its scientists that it would be sustainable to take up to 10 sawfish annually from the wild.²⁶
- 2.22 HSI told the Committee:

There is very little information about the species, to be able to determine that trade can take place sustainably. It is naturally rare. It has been threatened by fishing, particularly net fishing. It is a species that lives up estuaries and river systems. It is vulnerable in terms of its biology. It is from the large shark family and typically this class of animals is slow to breed. They do not cope with hunting and pressure; they are slow to breed and cannot replenish their numbers. So we

23 Cairns Marine, Submission No. 9, pp 2, 6 -7; Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p.41.

24 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 40.

25 Cairns Marine, Submission No. 9, p. 20.

26 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 38, Submission No. 6, pp.1- 2.

agreed with everyone who said that this is an animal that is not appropriate for trade.²⁷

- 2.23 Research undertaken by the CSIRO and others has suggested that Australian populations are more robust than the global population.²⁸ Mr Lyle Squire of Cairns Marine told the Committee that, based upon his numerous field trips across around 25 major river systems in northern Queensland:

It is our belief, from what we have seen, that the number of sawfish per river system is measured in thousands rather than hundreds.²⁹

- 2.24 Further:

...the microdon have a large area in which they cannot be impacted upon by fishing. Given [their] life history parameters, the range that we are operating in and the fact that there are still good populations of them in the Gulf of Carpentaria, no, I do not believe that we are impacting upon them at all. I am absolutely confident that we are not.³⁰

- 2.25 The Department informed the Committee that trade that has occurred since Conference of Parties was implemented in line with CITES requirements, which included preparation of a non-detriment finding, even though the amendments had not yet come into force. In addition, public consultation was undertaken on both the non-detriment finding and the ambassador agreement that is required for the export of Australian listed species.³¹ Further:

The comments of HSI and others were taken into account and, indeed, the ambassador agreement was changed on the basis of that.³²

27 Ms Nicola Beynon, *Transcript of Evidence*, 8 May 2008, p. 32.

28 Stevens, J.D., R.D. Pillans and J. Salini, 2005, *Conservation Assessment of Glyphis sp. A (speartooth shark), Glyphis sp. C (northern river shark), Pristis microdon (freshwater sawfish) and Pristis Zijsron (green sawfish)*, Exhibit No. 5.

29 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 44.

30 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 45.

31 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 37. The Committee notes that the requirement for the Department, the exporter and importer of a CITES species to enter into an ambassador agreement about the treatment and disposal of the animal and any progeny goes above and beyond the requirements of CITES.

32 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 37.

2.26 HSI stated however that:

...the advice that came from CSIRO was not sufficiently backed up by some genuine attempt to determine if the trade would be sustainable.³³

2.27 HSI considered that there should be a more independent process for the preparation of non-detriment findings with wider verification among researchers about claims that are made.³⁴

Conservation benefits

2.28 The Department and HSI expressed differing views to the Committee about the conservation benefits to be derived from the display of the sawfish in aquaria. HSI argued that the benefit back to Australia is 'negligible and intangible'.³⁵

2.29 However, the Department considered:

...that education is a legitimate and, in fact, very important aspect of conservation.³⁶

2.30 Similarly, Cairns Marine submitted that the public display of animals from managed collections and accompanied by appropriate educational material generates interest and conservation will that is then carried forward into research and management of interaction with the species.³⁷

2.31 Mr Lyle Squire argued that not only has a great proportion of the information about the biological aspects of the animals come from captive animals in public aquaria but it is overseas aquariums that have the sufficient size and resources to implement breeding programs. In the United States, for example, aquariums enjoy enormous rates of visitation and their research programs are not reliant upon government funding.³⁸

2.32 This view was supported by Dr Jamie Seymour of James Cook University who stated that:

33 Ms Nicola Beynon, *Transcript of Evidence*, 29 July 2008, p. 53.

34 Ms Nicola Beynon, *Transcript of Evidence*, 29 July 2008, p. 53 and 54.

35 Ms Nicola Beynon, *Transcript of Evidence*, 8 May 2008, p. 33.

36 Ms Kerry Smith, *Transcript of Evidence*, 8 May 2008, p. 38.

37 Cairns Marine, Submission No. 9, pp. 12-17; Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, pp. 40-41.

38 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 41; Cairns Marine, Submission No. 9, p. 15.

My main concern with restricting the collection of these animals for the aquarium trade is that, with no live specimens present for people to see, this group of animals will drop off the radar into obscurity. Presently the chances of anyone seeing these animals in the wild is extreme at best. If they can not be captured to display in public aquaria, where will the general public see them?³⁹

- 2.33 A number of submitters told the Committee that without the ability for Cairns Marine to export a small number of sawfish, a number of research projects would be adversely affected.⁴⁰ Cairns Marine stated:

Without our self-funded involvement with the species, this research simply would not occur.⁴¹

Conclusions and recommendations

- 2.34 The most recent amendments to the CITES appendices raised a number of issues, specifically in relation to the conservation of freshwater sawfish.
- 2.35 The Committee has in-principle concerns about the CITES listing process that has permitted a species considered critically endangered internationally to be traded, irrespective of any argument that the Australian populations are more robust. While this may be the case, it is also clear that population numbers of the species are uncertain. It also considers the listing may potentially undermine CITES by creating a precedent for other CITES listed species and introducing an unwarranted complexity to the CITES listing process. Further, while the Committee notes that it was considered at the Conference of Parties that other countries would be unable to demonstrate a non-detriment to their wild populations by allowing export, the Committee is concerned about the effect this listing might have in other countries where populations are at much greater threat.

39 Dr Jamie Seymour, Submission No. 12, p. 2.

40 Cairns Marine, Submission No. 9, p. 9; Professor Shaun Collin, Submission No. 10, pp. 1-3; Dr Stirling Peverell, Submission No. 14, p. 2; Dr Jamie Seymour, Submission No. 12, p. 2.

41 Mr Lyle Squire, *Transcript of Evidence*, 29 July 2008, p. 39.

- 2.36 While the listing in its current form appears unlikely to adversely affect Australian populations of sawfish and may provide long term benefits in terms of research into the species, the Committee considers that the Department of the Environment, Water, Heritage and the Arts should continue to monitor and assess the effect of both the listing and the annotation upon freshwater sawfish populations.
- 2.37 The Committee is concerned about the inclusion of parties with an obvious commercial interest in the outcome of negotiations on an Australian delegation. The Committee notes that both the HSI and Cairns Marine were members of the Australian delegation to the most recent meeting. It also notes that the Australian Government position was developed at a whole-of-government level and documented in the Australian delegation brief prior to the meeting. The Committee acknowledges that all delegates agree to abide by the Australian Government brief whether they agree with it or not, and that the inclusion of external stakeholders on delegations is common for all developed countries.⁴²
- 2.38 However, the Committee considers that the inclusion in a delegation of parties with a commercial or other direct interest in the meeting outcomes presents a conflict of interest and that the Government should review its policy on this issue.
- 2.39 The Committee was unconvinced by the evidence it received as to the scientific basis for the decision to allow the export of six specimens in 2007. Given the uncertainty surrounding population numbers and its critically endangered status internationally, the Committee considers a more rigorous assessment should have been undertaken to determine what level of trade, if any, would be sustainable. The Committee considers that the Government should implement a more formalised process of independent scientific verification in its assessment of non-detriment findings. This includes making non-detriment findings and ambassador agreements for CITES listed species automatically subject to public consultation.
- 2.40 Notwithstanding its concerns, the Committee notes that the listing of the entire family of sawfish on either Appendix I or II of the Convention provides a much higher level of international protection to sawfish species than was previously the case. The Committee therefore supports the Amendments to Appendices I and II of the

42 Ms Kerry Smith, *Transcript of Evidence*, 29 July 2008, p. 56.

Convention on International Trade in Endangered Species of Wild Fauna and Flora, subject to the recommendations below.

Recommendation 1

The Committee recommends that the Australian Government monitor and assess the impact of trade in freshwater sawfish to determine whether the current listing, with annotation, on Appendix II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* provides sufficient protection for the species.

Recommendation 2

The Committee recommends that the Australian Government review its existing policies on the composition of delegations to CITES negotiations with a view to minimising conflicts of interest, whether real or perceived.

Further, the Committee recommends that the Australian Government review the policy of allowing the participation in delegations of parties with a commercial or other direct interest in negotiations.

Recommendation 3

The Committee recommends that the Australian Government undertake a consultative and publicly accessible process for the assessment of non-detriment findings and ambassador agreements, including providing the opportunity for public comment by interested stakeholders.

Recommendation 4

The Committee recommends that the Australian Government review its existing assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* for CITES listed species to provide for a more formalised process of independent scientific verification of the claims made by proponents in non-detriment findings.

International Tropical Timber Agreement

Background

- 3.1 The International Tropical Timber Agreement 2006 succeeds and is largely based upon earlier agreements concluded in 1983 and 1994. The Agreement will govern the work of the International Tropical Timber Organisation (ITTO), a United Nations based organisation that promotes conservation and sustainable management in the use and trade of tropical timber resources.¹
- 3.2 Sixty countries are members of the ITTO, representing about 80 percent of the world's tropical forests and 90 percent of the global timber trade.² Australia has been a member since 1988.
- 3.3 The objectives of the 2006 agreement are:
- To promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests; and
 - To promote the sustainable management of tropical timber³ producing forests.⁴

1 National Interest Analysis (NIA), para 1; Mr Allen Grant, *Transcript of Evidence*, 16 June 2008, p. 17.

2 NIA, para 4.

3 The agreement defines tropical timber as: tropical wood for industrial uses, which grows or is produced in the countries situated between the Tropic of Cancer and the Tropic of Capricorn. The term covers logs, sawnwood, veneer sheets and plywood (Article 2(1)).

- 3.4 A party to the agreement may be either a 'producer member' (an exporter of tropical timber) or 'consumer member' (an importer of tropical timber).⁵ Australia is a consumer member.

Obligations

- 3.5 The Agreement imposes relatively few direct obligations on parties:
- Article 19 sets out financial obligations upon members, including contributions to the Administrative Account and core operational costs. These costs will be shared among members in the proportion of 20 percent for producers and 80 percent for consumers.
 - Article 27.3 imposes obligations to provide statistics and information on timber, its trade and activities aimed at achieving sustainable management of timber producing forests to the International Tropical Timber Council.
 - Members are obliged by Article 29 to use their best endeavours and cooperate to promote the objectives of the agreement and avoid any action contrary thereto.⁶

Reasons for Australia to take treaty action

- 3.6 Ongoing membership of the ITTO is consistent with Australia's sustainable forest management and overseas aid objectives, including the reduction of illegal logging, mitigation of and adaptation to climate change and assisting developing countries to reduce poverty and achieve sustainable development.⁷ As a party to this agreement, Australia would continue to assist regional countries to improve the economic and environmental sustainability of their forest industries.⁸
- 3.7 The Committee was informed that Australia's capacity to pursue issues of critical importance to Australia's forest industries is enhanced in the latest agreement by the introduction of thematic

4 NIA, para 3.

5 Articles 2(4) and 2(5).

6 NIA, paras 12 to 15.

7 NIA, para 6.

8 NIA, para 5.

funding programs. This will enable greater collaboration on issues such as forest law enforcement and governance, and climate change.⁹ It will also enable Australia to get a better direct return on its funds by targeting projects more effectively.¹⁰

- 3.8 Australia is able to use its support for projects to leverage support from other donor countries. Mr Allen Grant of the Department of Agriculture, Fisheries and Forestry (the Department) told the Committee:

Australia gets significant benefits through its membership of the International Tropical Timber Organisation, particularly our ability to leverage additional funding from other countries around the world to direct to particular projects in developing countries, particularly Papua New Guinea and Indonesia, to address the sustainable management of tropical timber.¹¹

...

Australia has put in about \$1 million over the life of the project and we have generated about \$15 million from that funding. By our contributing to projects we were able to generate about \$15 million worth of funding from other donors such as the US, Japan and the European nations.¹²

- 3.9 Australia's commitment to the ITTO is also consistent with its active involvement in other forest policy fora, including the United Nations Forum on Forests, Convention on Biological Diversity, Convention on International Trade in Endangered Species of Wild Fauna and Flora, and Framework Convention on Climate Change. The role of the ITTO is also closely aligned to the activities of the United Nations Food and Agriculture Organization, of which Australia is an active member.¹³

Illegal logging

- 3.10 Noting that the aim of the ITTO is to directly impact on sustainable forest management and, hence, on the reduction of the illegal harvesting of timber, the Committee sought the Department's views

9 NIA, para 8.

10 Mr Allen Grant, *Transcript of Evidence*, 16 June 2008, p. 19.

11 Mr Allen Grant, *Transcript of Evidence*, 16 June 2008, p. 17.

12 Mr Allen Grant, *Transcript of Evidence*, 16 June 2008, p. 20.

13 NIA, para 10.

on the apparent failure of international efforts to control illegal logging. Mr Grant told the Committee:

Certainly, the management of illegal logging, particularly in Asian and African countries as well as in South American countries, has been difficult and challenging. There is no doubt about that. That does not mean, though, that we should just ignore international organisations that can play a role in that. We think we can make a mark as part of the capacity building education and training networks that we have been developing through our involvement in ITTO, and in the future try to influence and get better governance arrangements around the treatment of illegal logging and illegal harvesting. It is not the only answer but it is part of a broader strategic answer.¹⁴

- 3.11 Australia does not have a formal process of import controls or mandatory reporting by importers, wholesalers or retailers to identify illegally harvested timber entering Australia. The Committee was interested to note however that the Government has announced its intention to implement a process to reduce the amount of illegally harvested timber entering Australia and that it is currently working with industry, importers and distributors, as well as countries such as China, New Zealand and Indonesia on this mechanism.¹⁵

Implementation

- 3.12 Legislation is not required to give effect to Australia's obligations, which can be met through administrative action.¹⁶ The Agreement shall remain in force for ten years unless the Council decides to extend, renegotiate or terminate it in accordance with Article 44. The Council can extend the agreement for an initial period of five years and then for a second period of three years.¹⁷

14 Mr Allen Grant, *Transcript of Evidence*, 16 June 2008, p. 18.

15 Mr Allen Grant, *Transcript of Evidence*, 16 June 2008, p. 18.

16 NIA, para 2.

17 NIA, para 20.

Costs

- 3.13 Australia will be required to pay annual contributions to the Administrative Account, estimated at approximately US\$50,000. This contribution is based on the number of votes held by Australia in a biennial period, which is proportional to the average volume of Australia's net imports of tropical timber during the five-year period commencing six calendar years prior to the distribution of votes.¹⁸

Consultation

- 3.14 The Department consulted with the States and Territories through the Forestry and Forestry Products Committee, which comprises the heads of the Commonwealth, State, Territory and New Zealand forestry agencies, and the Standing Committee on Treaties.
- 3.15 The Department consulted with and received support for the proposed treaty action from Australian industry groups in February 2007 and April 2008.¹⁹ Relevant Commonwealth Ministers and agencies have also supported the agreement.
- 3.16 The Committee notes that there was no consultation with environmental groups, primarily because the treaty is a trade based treaty.²⁰ The Department informed the Committee that conservation aspects are dealt with through other United Nations fora.²¹ The Committee considers, however, that as the objective of this agreement is sustainable trade, consultation with industry groups alone is insufficient and should be extended for any future agreement to include environmental groups.

18 NIA, para 17.

19 These groups included the National Association of Forest Industries, Australian Plantation Products and Paper Industry Council, Timber and Building Materials Association, Australian Timber Importers Federation, Timber Communities Australia, Australian Forest Growers, and Treefarm Investment Managers Australia.

20 Mr Mick George, *Transcript of Evidence*, 16 June 2008, pp. 18-19.

21 Mr Mick George, *Transcript of Evidence*, 16 June 2008, pp. 18, 20-21.

Conclusion and recommendation

- 3.17 While the Committee has some concerns about how far this Agreement will actually contribute to reducing the devastating deforestation occurring in some countries, the Committee recognises the importance of international cooperation to promote sustainable management of tropical forests and address illegal logging and therefore supports this agreement.

Recommendation 5

The Committee recommends that the consultation process undertaken for any future agreement on sustainable trade in tropical timber specifically includes consultation with environmental groups.

Recommendation 6

The Committee supports the *International Tropical Timber Agreement 2006* and recommends that binding treaty action be taken.

Protocol Amending the Agreement with the Government of the Republic of South Africa for the Avoidance of Double Taxation

Background

- 4.1 The proposed treaty action is to bring into force the Protocol Amending the Agreement between the Government of Australia and the Government of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 1999¹ (the Protocol).
- 4.2 The Protocol will amend the existing Agreement between Australia and South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1999] ATS 34 (the Agreement), signed on 1 July 1999.²
- 4.3 South Africa is Australia's largest market in Africa, our 21st largest trading partner and our 16th most significant merchandise export market.³

1 Full Title: Protocol Amending the Agreement between the Government of Australia and the Government of the Republic of South Africa for the Avoidance of the Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of Income of 1999, done at Pretoria on 31 March 2008.

2 NIA, para. 1.

3 DFAT Brief on South Africa: In 2007 two-way merchandise trade was valued at \$3.88 billion. Two-way investment flows between Australia and South Africa have expanded since the end of Apartheid. South Africa dominates African investment in Australia. At the end of 2006 (latest figures), investment from South Africa amounted to \$1.1 billion. Although Australian investment in South Africa's mining sector is steadily increasing. Apart from the mining sector, agriculture, infrastructure and services are other sectors attracting Australian investment.

Obligations

4.4 The key obligations under the Protocol are:

- Articles 1 to 13 of the Protocol make minor alterations to the type of property which Parties may tax and the rate imposable.⁴

4.5 In addition new provisions to the agreement as outlined in the NIA include:

- Article 9 inserts a new Article 23A into the Agreement on non-discrimination (Article 9, i), requiring each Party, in levying taxes, to treat nationals of the other Party no less favourably than it treats its own nationals in similar circumstances. The article contains several express exceptions; for example, discriminatory taxation laws are permitted to prevent tax evasion and to provide tax deductions for expenditure on research and development. The Parties may also agree on further exemptions through an Exchange of Notes.
- Article 10 amends Article 25 of the Agreement extending obligations for the exchange of information (Article 10) between the two Parties, including a specific obligation to gather and provide information upon request. Consistent with the current Article 25 in the Agreement, the Protocol imposes a correlative obligation on the Party receiving any such information to treat it in the same manner as information obtained under its domestic laws. It allows either Party to decline to provide requested information on limited grounds, including where to do so would be contrary to law or public policy.
- Article 11, inserts Article 25A into the Agreement which contains a new provision that obliges each Party to take certain action in its own territory to assist the collection of taxes owed to the other Party.⁵

Reasons for Australia to take treaty action

4.6 According to the NIA the key objectives of the Protocol are to: (i) meet Australia's most favoured nation (MFN) obligations with South Africa under the existing Agreement; (ii) promote closer economic cooperation between Australia and South Africa; and (iii) upgrade the framework

4 NIA, para. 14.

5 NIA, para. 17.

through which the tax administrations of Australia and South Africa can prevent international fiscal evasion. The protocol...

is expected to reduce barriers to bilateral trade and investment, as lowered withholding tax rates on interest and royalties is expected to reduce costs for Australian businesses. I can provide the committee members with more details of any of these if they like. We therefore recommend that members of the committee support the treaty action as proposed.⁶

4.7 The Department of the Treasury stated that the entry into force in 2003 of the Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains:

... triggered a total of eight clauses in other treaties, and we were aware of that when we entered into it.⁷

4.8 The Agreement requires Australia to enter into negotiations with South Africa with a view to establishing rules to protect nationals and businesses of one country from tax discrimination in the other country. Australia's MFN obligations will be met when the Protocol enters into force.⁸

4.9 The Protocol aligns withholding tax (WHT) rates on dividends, interest and royalties and capital gains tax treatment more closely with broad practice among Organisation for Economic Co-operation and Development (OECD) members and improves integrity measures within the Agreement. In particular, by extending the scope of information exchange provisions and introducing provisions for cross-border collection of tax debts.⁹

4.10 The Protocol is expected to reduce barriers to bilateral trade and investment caused by overlapping taxing jurisdictions. Reduced WHT rates on interest and royalty payments will make it cheaper for Australian businesses to obtain business loans and intellectual property from South Africa.¹⁰

4.11 The existing Agreement provides for a dividend WHT rate of zero for non-portfolio inter-corporate dividends that are paid out of profits that

6 Mr Rawstron, *Transcript of evidence*, 16 July 2008, p. 22.

7 Ms Redman, *Transcript of evidence*, 16 July 2008, p. 23.

8 NIA, para. 6.

9 NIA, para. 4.

10 NIA, para. 7.

have borne the normal rate of company tax and a rate of 15 per cent for all other dividends.¹¹ Significantly, the secondary tax on companies (STC), as a tax borne by resident South African companies, has not been subject to treaty limitations.¹²

4.12 The South African Government announced in its 2007/08 Budget that the STC will be phased out and replaced by a dividend tax on shareholders, which will be subject to treaty limitations. This is subject to the renegotiation of several tax treaties, including its tax treaty with Australia. To facilitate South Africa's domestic law changes the Protocol provides for dividend WHT at a rate of 5 per cent for non-portfolio inter-corporate dividends and 15 per cent for all other dividends, consistent with the OECD Model Tax Convention.¹³

4.13 South Africa's proposed domestic law changes, combined with limitations on dividend WHT in the new Protocol, should benefit Australian investors. According to the NIA, in the case of non-portfolio inter-corporate dividends, Australian shareholder companies should benefit from a reduction in total South African tax on the corporate profit since the South African dividend WHT is limited to 5 per cent under the Protocol. In the case of all other dividends, the overall South African tax rate would be the same, however, Australian investors would benefit from being able to claim a foreign tax credit in Australia for the dividend WHT. This will reduce their overall tax burden.¹⁴

4.14 The Protocol enhances the existing framework of the Agreement by updating the exchange of information rules to match the 2005 OECD standard and inserting assistance in collection provisions to help in the recovery of tax debts from those Australian taxpayers who move to South Africa.¹⁵ On being questioned about whether there were any problems with the implementation of the agreement, the Department of the Treasury stated:

No. The revised protocol has updated our exchange of information arrangements and in that regard it provides a wider range of taxes that allows us to exchange information. It also requires that bank

11 These existing rates reflect the fact that South Africa currently levies no dividend WHT. Instead, South African corporate profits are subject to tax in two parts: a primary company tax; and an additional secondary tax on companies (STC) (currently 12.5 per cent, reducing to 10 per cent from 1 October 2007). The STC is imposed on the company for net dividends distributed (that is, dividends distributed less dividends earned).

12 NIA, para. 9.

13 NIA, para. 10.

14 NIA, para. 11.

15 NIA, para.9.

secrecy is not a blocker to providing information. The new protocol also contains an assistance in collection provision that allows Australia to collect tax debts on behalf of South Africa and vice-versa.¹⁶

Entry into force and withdrawal

- 4.15 As the Protocol affects Commonwealth income tax legislation, enabling legislation must be enacted by the Commonwealth to give the proposed Protocol the force of law in Australia. There is no change to the existing roles of the Commonwealth, or the States and Territories, in tax matters as a consequence of implementing the Convention.¹⁷
- 4.16 The Protocol itself does not contain an express provision dealing with withdrawal or denunciation as it merely amends the more comprehensive Agreement. Article 28 of the Agreement provides for termination by either Party on or before 30 June in any calendar year beginning after the expiration of 5 years from the date of its entry into force.¹⁸

Costs

- 4.17 Australian revenue would be reduced to the extent that Australian WHT is decreased and additional foreign tax credits in respect of South African dividend withholding tax (when introduced) exceed the reductions in foreign tax credits for South African withholding tax on interest and royalties. However, the cost to revenue arising from the Protocol is expected to be negligible. The closer alignment with international treaty practice would generally be expected to reduce compliance costs.¹⁹

16 Mr Jacobs, *Transcript of Evidence*, 16 June 2008, p. 23.

17 NIA, para. 18.

18 NIA, para. 25

19 NIA, paras. 19-21.

Consultation

- 4.18 Comments were sought from the business community regarding the issues that might be raised during negotiations with South Africa through the Tax Treaties Advisory Panel. The panel includes: Business Council of Australia; CPA Australia; Corporate Tax Association; Institute of Chartered Accountants; International Fiscal Association; Investment and Financial Services Association; Law Council of Australia; Minerals Council of Australia; and Taxation Institute of Australia. The State and Territory Governments were consulted via the Standing Committee on Treaties.²⁰

Conclusion and recommendations

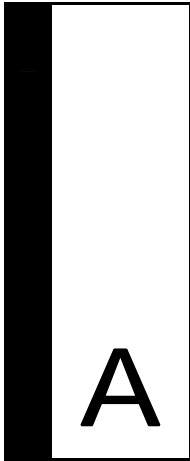
- 4.19 In the light of the information provided to the Committee, the Committee considers that the Protocol will be in Australia's national interest and supports binding treaty action being taken.

Recommendation 7

The Committee supports the Protocol Amending the Agreement between the Government of Australia and the Government of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 1999 (the Protocol) and recommends that binding treaty action be taken.

Kelvin Thomson MP
Chair
2 September 2008

²⁰ NIA, Consultation, Attachment A, paras 1-2.



Appendix A – Submissions

Treaties tabled 12 March 2008

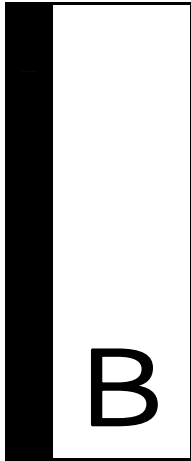
Amendments to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

- 2 Humane Society International
- 2.1 Humane Society International
- 6 Department of the Environment, Water, Heritage and the Arts
- 6.2 Department of the Environment, Water, Heritage and the Arts
- 9 Cairns Marine
- 9.1 Cairns Marine
- 10 Professor Shaun Collin, University of Queensland
- 11 Australasian Natural History Unit
- 12 Dr Jamie Seymour, James Cook University
- 13 Association of Zoos and Aquariums
- 14 Queensland Department of Primary Industries and Fisheries

Treaties tabled 14 May 2008

Protocol amending the Agreement with the Government of the Republic of South Africa for the Avoidance of Double Taxation

1.1 Australian Patriot Movement



Appendix B - Witnesses

Thursday, 8 May 2008 – Canberra

Department of the Environment, Water, Heritage and the Arts

Ms Jane O'Sullivan, Acting Director, International Wildlife Trade
Section

Ms Kerry Smith, Assistant Secretary, Wildlife Branch

Humane Society International

Ms Nicola Beynon, Wildlife and Habitats Program Manager

Monday, 16 June 2008 – Canberra

Attorney-General's Department

Mr Stephen Bouwhuis, Principal Legal Officer, International Trade
Law & General Advising Branch, Office of International Law

Department of Agriculture, Fisheries and Forestry

Mr Mick George, A/g Manager, International Forest Policy

Mr Allen Grant, Executive Manager, Fisheries and Forestry Division

Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International
Legal Branch

Ms Katy Lin, Desk Officer, International Law Section, International Legal Branch

The Treasury

Ms Lynette Redman, Senior Adviser, Tax Treaties Unit

Mr Martin Jacobs, Manager, Tax Treaties Unit, International Tax and Treaties Division

Mr Michael Rawstron, General Manager, International Tax and Treaties Division

Miss Amy Kim, Policy Analyst

Monday, 29 July 2008 – Sydney

Cairns Marine

Mrs Deanne Squire, Legal Advisor

Mr Lyle Squire Jnr., Director

Department of the Environment, Water, Heritage and the Arts

Ms Kerry Smith, Assistant Secretary, Wildlife Branch

Humane Society International

Ms Danielle Annese, Program Manager

Ms Nicola Beynon, Wildlife and Habitats Program Manager



Appendix C – Category 3 Treaty Action

Category 3 treaty actions are identifiably minor treaty actions (mainly minor/technical amendments to existing treaties) which do not impact significantly on the national interest. Category 3 treaty actions are tabled with a one-page explanatory statement. The Treaties Committee has the discretion to formally inquire into Category 3 treaty actions or indicate its acceptance of them without a formal inquiry and report.

The following Category 3 treaty action has been considered by the Treaties Committee on the date indicated. The Committee determined not to hold a formal inquiry and agreed that binding treaty action may be taken.

Treaties tabled on 14 May 2008

Considered by the Committee on 25 August 2008

- Amendment, Adopted at London in July 2007, to the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code)