FOREIGN
AFFAIRS AND
TRADE

9 March 2000

Question on Notice: 25 November 1999

Please find enclosed an answer to a Question on Notice which was asked on 25 November 1999 at the House of Representatives Standing Committee on Industry Science and Resources Inquiry into Increasing Value-adding to Australia's Raw Materials.

The answer, which has been approved by Mr Vaile, was prepared by DFAT in cooperation with DISR.

If you have any queries or concerns, I can be contacted on 62613203.

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HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON INDUSTRY, SCIENCE AND RESOURCES

INQUIRY INTO INCREASING VALUE-ADDING TO AUSTRALIA'S RAW MATERIALS: HEARING ON 25 NOVEMBER 1999

QUESTION TAKEN ON NOTICE

(Hansard pages ISR 210-211)

MR ALLAN MORRIS

I wish to place on notice a question that goes back to intellectual property. It goes to the matter of international corporations establishing intellectual property in Australia in processing technology or whatever and then using it in other countries and, in some cases, against Australia.

The example I can quote you is CRA with Hismelt. Hismelt was a $150 million project. I think $150 million worth of public funding went into Hismelt with tax and R & D write-offs and so on. It is not being used and it may end up going to Korea, but CRA owned that property. So the question about TRIPS - the relationship between TRIPS, sovereign intellectual property rights and international organisation's property rights - does not necessarily sit comfortably with some of us. I would be interested if the Department could indicate what policies would be needed to ensure that intellectual property development in Australia with Australian funding and so on is actually used in our national interest rather than against our national interest, which it can be currently.

Response:

1. Regarding the CRA-Hismelt issue to which you referred, the Department of Industry, Science and Resources has advised as follows.

In an increasingly globalised market, the maximisation of national benefit may occasionally best be served by commercialising the results of the project overseas. These returns usually provide "spillover" benefits to the Australian economy, such as access to market knowledge and linkages with international research and business partners. It is often the case that these linkages can lead to more growth and jobs than where manufacture occurs in Australia.

The Industry Research and Development (IR&D) Board has recently endorsed a new decision framework for assessing national benefit in relation to innovation/industry programs. The framework has been principally developed for the purposes of harmonising assessments under the R&D *Start* program with approaches taken with respect to the I1F Program. The *Industry Research and Development Act 1986 (IR&D Act 1986)* places different legislative requirements on the assessment of "exploitation to the benefit of the Australian economy" for the purposes of the R&D Tax Concession. However it is anticipated that the IR&D Board will apply the new framework to the R&D Tax Concession to the extent permissible by the *IR&D Act 1986.*

This framework has been developed to better reflect the realities of competing in a global marketplace and to ensure that Australia receives the maximum benefit from its public investment in R&D. The framework represents a change in the way in which the IR&D Board assesses the amount of national benefit. The new framework means that the IR&D Board will assess identifiable features of the project, which in the opinion of the IR&D Board capture any benefits which exist within a project.

Where commercialisation is to occur overseas, the commercialisation plan should include on-going commitment to retain Australia as a home base for R&D activities. Companies are required to provide information regarding the commercial reasons for the offshore exploitation.

Where the IR&D Board is not satisfied that the project will be exploited in a manner that will be for the benefit of the Australian economy, it is a condition of the grant that the Commonwealth may require the company to repay any or all of the grant together with interest at the 10 year long-term bond rate.

In relation to the Tax Concession, the Board may issue a certificate to the Commissioner of Taxation, where it is of the opinion that the results of an R&D activity claimed under the concession are being exploited in a manner which is not to the benefit of the Australian economy or on normal commercial terms. As a result of a certificate being issued, any deductions in respect of expenditure incurred by the company on the activity which is the subject of the certificate is not allowable and is deemed never to have been allowable for the concession.

In relation to the CRA-Hismelt matter itself, information provided to the Government by applicant companies is protected under the confidentiality provisions in the Industry Research and Development Act 1986.

2. Regarding intellectual property protection generally, the Department of Foreign Affairs and Trade's response is that:

Australia's intellectual property system was already mostly consistent with the TRIPS standards when TRIPS was concluded in 1994, although some adjustments were needed (for example, extending the standard term of patent protection to 20 years). For many developing countries, implementing TRIPS has meant ma or reforms of their law and administration. As a result, although the deadline for TRIPS implementation for developing countries was 1 January 2000, many developing countries are not yet TRIPS compliant. Least developed countries are not due to implement TRIPS until 2006.

The World Trade Organization has established a Working Group tasked to examine the interaction of competition issues with multilateral trade. The Group's mandate includes tackling this task in a TRIPS context. TRIPS already recognises the scope for national governments to take steps against anti-competitive behaviour within the framework of intellectual property protection, and to establish compulsory licences under certain circumstances in response to anti-competitive abuse of patents. TRIPS also gives effect to the obligations of the Paris Convention for the Protection of Industrial Property to suppress unfair competition.

In Australia, the Intellectual Property and Competition Review Committee (www.ipcr.gov.au), which was established under the Competition Principles Agreement, is inquiring into and reporting on the effects of competition of Australia's intellectual property laws. The Committee will examine whether Australia's IP legislation is meeting the needs of business and consumers and whether it is securing the greatest benefits of domestic and global competition. In accordance with the Competition Principles Agreement, the guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that the benefits to the community outweigh the costs, and that the objectives of the legislation cannot be achieved by less restrictive means.

The Committee expects to release a draft report in April 2000 and a final report will be presented to the Minister for Industry, Science and Resources and the Attorney-General by 30 June 2000.