COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 12 and 13 May 1998

CANBERRA

Monday, 25 May 1998

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Ms Jeanes
Senator O'Chee	Mr McClelland
Senator Reynolds	Mr McGauran
	Mr Tony Smith

For inquiry into and report on:

Treaties tabled on 12 and 13 May 1998.

WITNESSES

JOINT STANDING COMMITTEE ON TREATIES

Treaties tabled on 12 and 13 May 1998

CANBERRA

Monday, 25 May 1998

Present

Mr Taylor (Chairman)

Senator Cooney	Mr Laurie Ferguson
Senator Murphy	Mr Hardgrave
	Ms Jeanes
	Mr McClelland
	Mr Tony Smith

The committee met at 9.06 a.m.

Mr Taylor took the chair.

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory

MUSOLINO, Ms Franca, Acting Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory

FAULKNER, Ms Andrea, Comprehensive Nuclear Test Ban Treaty Desk Officer, Arms Control and Disarmament Branch, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

HART, Mr Jeffrey Russell, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

MOORES, Ms Anne, Acting Assistant Secretary, Arms Control and Disarmament Branch, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

STOKES, Ms Deborah, First Assistant Secretary, International Security Division, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

JEPSEN, Dr David Carl, Senior Research Scientist, Nuclear Monitoring Section, Australian Geological Survey Organisation, cnr Jerrabomberra Ave and Hindmarsh Drive, Symonston, Australian Capital Territory 2609

CHAIRMAN—Welcome to the hearing this morning. We will be dealing with a number of treaties and we will attempt to get through them as quickly as we can. We will start with the Comprehensive Nuclear Test-Ban Treaty. Would you like to make a short opening statement?

Ms Stokes—Thank you. Adoption of the CTBT in September 1996 by the United Nations General Assembly marked the culmination of decades of international effort to arrive at a complete ban on nuclear testing. Australia, over many years and through successive governments, made a significant contribution to this achievement both diplomatically and technically.

It was also Australia which took the bold step of taking the CTBT direct to the United Nations General Assembly where it was adopted with overwhelming support. This took place after India had blocked consensus on the draft treaty in the conference on disarmament in Geneva. The active contribution of Australian governments in this field reflects the strong opposition to nuclear testing clearly expressed over the years by the

Australian community.

Australia's interest in taking final treaty action on the CTBT is first and foremost security based. The CTBT will act as a solid barrier to the proliferation of nuclear weapons. The CTBT is also a major impediment to the development of new nuclear weapons. It is an indispensable component of the international nuclear arms control regime. Over the past 30 years this regime has succeeded beyond all expectations in constraining the proliferation of nuclear weapons. One hundred and eighty six countries have signed the nuclear non-proliferation treaty. One hundred and forty nine have already signed the CTBT, including the five nuclear weapons states—China, France, Russia, the UK and the US. Israel has also signed separately.

The vast majority of the international community is committed to never acquiring nuclear weapons and never again engaging in the type of spiralling nuclear arms race which occurred during the years of the Cold War. This is a remarkable achievement given that before the NPT was concluded, predictions were that by now we would have more than 20 nuclear weapons states in the world.

Questions have been asked about the value of the CTBT, given that India has this month conducted its first nuclear test in 24 years. The government's view is unequivocal. The CTBT provides the firmest international basis on which to condemn India's action. The CTBT has made absolutely clear the intense international condemnation any nuclear testing country would attract, whether that country is a CTBT signatory or not. India is now feeling the weight of that approprium.

It is also worth considering where we would be if the CTBT did not exist and if the five nuclear weapon states had not signed onto the treaty. The fact is that the CTBT acts as an extremely high barrier to any commencement or recommencement of nuclear testing by any of its signatories.

The CTBT is now being implemented with the full and active support of signatory states through the provisional CTBT organisation in Vienna. Its most important task is to establish the global monitoring and data collection systems which comprise the main part of the treaty's verification regime. The verification regime, when complete, will provide a high degree of confidence to states' parties that the provisions of the CTBT are being applied.

Australia will play an important role in the verification regime. Our geographic size and location makes us host to the third largest number of monitoring stations after the US and Russia. Australia's ownership of these facilities, which are to be funded by the organisation in Vienna, will constitute an net gain for Australia's scientific technological and security resource base. The establishment upgrade and operation of these facilities will provide commercial opportunities for Australian industry.

In conclusion, we will not see an end to nuclear testing until all countries make a legal and verifiable commitment never to test again. The CTBT is the instrument for doing just that and deserves Australia's strongest support. Thank you, Mr Chairman.

CHAIRMAN—Thank you. I have some broad issues to start with. The two-year rule applies from September 1996 so that all states have until September 1998 and then the 180-day rule comes in. What is the overall—

Ms Faulkner—Are you asking about the entry into force provision?

CHAIRMAN—Yes.

Ms Faulkner—According to the text, the treaty can enter into force no sooner than two years after it was opened for signature, as you said, which makes it September 1998. But it cannot actually enter into force until all 44 countries in a particular list have both signed and ratified the treaty. The list is included in the text of the treaty.

CHAIRMAN—Okay. That list also includes India, Pakistan, Israel, et cetera. Bearing in mind what Deborah said in her opening comments about India, what is the confidence factor, firstly with India, now that it has, I suppose, unfortunately established itself as a real nuclear power in terms of testing and all the rest of it? Is there any indication that India may now be more relaxed about signing?

Ms Stokes—India has made a number of statements about the CTBT and NPT, but with caveats. I think it is fair to say we are not at all confident that India will be signing on at this stage. It is still early days and we are watching what India says very closely, and so are other states. It is unclear exactly what their game plan might be with respect to these conventions. I think it is fair to say that we are not very optimistic that they will sign on as the treaty exists.

CHAIRMAN—And Pakistan would depend very much on India, would it?

Ms Stokes—The Pakistan situation is possibly even more uncertain at this stage. We are having a very intense dialogue with Pakistan as, indeed, are other countries.

Mr McCLELLAND—Are there any provisions for sanctions of countries that conduct nuclear weapon tests? Are the international communities looking at an automatic measure that could be implemented or could occur whenever a country tests a nuclear weapon?

Ms Faulkner—In terms of the treaty itself, no, there is not specifically. There is recourse in the case of a non-compliance, or a breach of the treaty, which applies only to a state which has signed and is a party to the treaty. There is provision for the whole group of states' parties to discuss the non-compliance and the extent to which a state has

not complied, and there is recourse to the UN General Assembly after that point.

Mr McCLELLAND—Right. What is the prospect of the treaty coming into force? You outlined before that it requires ratification by all 44 states listed in the annex, including the five nuclear weapon states, so what is the prospect of it coming into force?

Ms Faulkner—Clearly, that is the objective. It would be realistic to say at this stage that it will not be in the short-term and the medium-term is still questionable. As Ms Stokes said, India has made a number of statements pertaining to the CTBT. We are, as Ms Stokes said, sceptical at the moment, but things can change and, as the Chairman pointed out, Pakistan will follow India. The objective is that it enter into force at some stage. It will not enter into force in the two years after the opening for signature, but we are looking at the medium-term at the moment.

Mr McCLELLAND—Nonetheless, does it have a purpose until it enters into force?

Ms Faulkner—Yes, certainly. Clearly, the way in which the international community has reacted to India, which is not a signatory and quite clearly has not breached any obligation by its testing, means that the CTBT is now the benchmark by which nuclear testing is regarded by the international community. It also has a practical edge to it in that the verification regime is currently being implemented globally. So there is a hard edge to data collection and data analysis, as well, which provides to signatories a very concrete benefit even before entry into force.

Mr McCLELLAND—Assuming the impossibility, if that occurs, of getting India and/or Pakistan on board, would the parties consider modifying a document to exclude those countries?

Ms Faulkner—Yes, certainly. There is a provision in the entry into force formula which refers to the holding of a conference of states that are signatories three years after the treaty was opened for signature, which starts in September 1999. Certainly, states that are signatories are now gathering in an informal contact group, which Australia is convening in Vienna at the moment, which is discussing a whole variety of things that can be done when a conference takes place from September 1999 and, thereafter, annually. One of those options is modification of the treaty to bring it into force.

Mr McCLELLAND—Thanks.

CHAIRMAN—What about the Russian Duma and, more importantly, I suppose, the US Senate? When I was in Washington in January/February I saw a rather pointed letter from Senator Helms to the White House saying that no way would they be entertaining ratification of CTBT until such time as there was a Kyoto protocol and that ABM was the first priority. Have we got any feedback yet from the United States?

Ms Stokes—From our point of view, I think it is a bit too early to tell what the impact is of the Indian tests on the US Congress. We are hopeful, of course.

CHAIRMAN—Yes, always—ever hopeful, particularly with the Congress.

Ms JEANES—Article 4 of the treaty refers to sensitive installations and the fact that they are not to be interfered with. What are sensitive installations and who determines what they are?

Ms Faulkner—I will just find article 4 to see exactly what the reference says. Sensitive installations were a great focus of concern for a number of states which were negotiating the treaty. I think that we can safely acknowledge that it was the nuclear weapon states in particular that were concerned about sensitive installations.

There are often military applications or facilities which hold very sensitive information, and there are also techniques, for example, concerning how nuclear weapons may be maintained, and all the details about nuclear weapons. In a situation where an on-site inspection is called under the treaty and a state has, as a member of the treaty, allowed an inspection team to come in, it may not wish the inspection team to see computers or other pieces of equipment which are not relevant to the case in hand. They can negotiate with the inspection team to shroud a piece of equipment with a cloth.

This is to be negotiated between the on-site inspection team and the country which is being inspected. The overriding prerogative of the inspection team is, in fact, to look at anything that they want, but it can be negotiated. If the inspection team deems, after discussion and consultation, that a particular facility does not need to be entered, or a particular photograph does not need to be taken, then they will withdraw that request. It is an ongoing consultation. The overriding obligation of the inspected state party is to allow whatever the inspection team wants to do, but it can be negotiated.

Mr LAURIE FERGUSON—Coming so soon after the formation of the BJP led government, were they really at this stage for quite a while or is this just a gradually accumulating situation with regard to their ability? Have they held back? Could they have done this long ago under previous regimes?

Ms Stokes—I think the commentators have suggested that they could have done it before. The real issues are why they have chosen now and what are their future plans?

Mr LAURIE FERGUSON—You said that you thought it was unlikely that India would sign up.

Ms Stokes—We are sceptical. We will work very hard and pressure them very hard, together with other countries. But at this stage we notice that their intentions always have these caveats.

Mr LAURIE FERGUSON—That could possibly be more of a short-term thing where basically the BJP is standing up to the world and telling everyone to go jump. Have they not traditionally stated that this is essentially a treaty run by the major players to exclude others and particularly those from the underdeveloped world? Now that they have actually reached that situation themselves, isn't there a very strong possibility that they are going to sign up? When you say that it is unlikely or that you are unsure, is that possibly more of a holding operation to tell the world they are not going to be pushed around in the short-term and that they are likely to sign on now that they are there?

Ms Stokes—We would like to think that they have this game plan, but there is no confirmation that that is the case at the moment.

Mr HARDGRAVE—Are there any other Indias out there? Are there any other nation states that are either—to follow Mr Ferguson's suggestion—building up to something or have the capacity to do what India has done recently? In other words, are there any other holes in the mosaic of the CTBT?

Ms Stokes—There are several so-called threshold states; obviously India was one of those, Pakistan is another and there are a number of other countries. It is fair to say that the world will be watching very closely what India and other countries do in terms of perhaps benefiting from the Indian experience. There is concern that countries may think that they can do something like India has done and get away with it. There is no sign of that at the moment, except in the case of Pakistan. The Pakistan government has said that it obviously reserves the right to do a test and it is just a question of when they might do that. Other countries are obviously exerting whatever pressure they can on Pakistan to persuade them that it might not be in their long-term interests to do a test. The drama is still playing out, and what it means for other threshold states—

CHAIRMAN—Would it be fair to say that what happened in India in the last couple of weeks was more playing to the domestic political constituency than having an international ramification?

Ms Stokes—Commentators have said that. The Indian government's formal position is not that, obviously. They are claiming that their deteriorating security situation has demanded this.

Mr HARDGRAVE—How realistic is that quote?

Ms Stokes—From our point of view, we do not see that there has been any trigger for this event—quite the contrary. We think that India's steps have been quite provocative and have caused a very severe deterioration in the security environment in the region, but also more broadly than that.

Mr HARDGRAVE—Either way, it is my planet they are exploding these devices

on, whether it is domestic or international preoccupation with the decision. From the international reaction to it, how effective are the sanctions? Was it $1 billion in aid that the Clinton administration pulled out of it? I know this will probably get a wry grin, but Australia should probably refuse to play cricket with India. In other words, what sorts of sanctions and penalties should we now impose to get our message across to them that it is just not good enough?

Ms Stokes—A number of countries have taken very firm steps, including Australia. The American steps are probably the starkest because they have a legislation that immediately comes into effect when a country like India does what it has done. The Japanese sanctions are also very tough—Japan being a major aid donor to India—and there are other countries that have done similar things.

Australia has done what it can do in the context of our particular bilateral relationship with India. You would probably be aware of the government's steps to date. We recognise that our relationship with India and our leverage, if you like, is not enormous, and so we have been working very hard in multilateral fora to exert as much pressure as we can on India, and I think that, bit by bit, that is playing a role. I think it is too early to tell where all of these things will lead. It is certainly the case that Pakistan is looking very closely at what other countries are doing vis-a- vis India and weighing that in their deliberations.

Mr HARDGRAVE—Do you think the fact that other countries have acted so promptly might in fact take a bit of the sting out of Pakistan?

Ms Stokes—We are hoping that that is the case. The Pakistan government itself is claiming that the sanctions are not tough enough and so on. We know that they are looking at that aspect very closely.

CHAIRMAN—Let us move away from the strategic implications of this. Bearing in mind that the associated legislation is to be debated in the House this week, can we talk a little about the verification procedures and, in particular, the very important role that Australia is going to play as the third largest number of installations under the verification procedures. Perhaps, Deborah, you or Dr Jepsen might like to comment or give us a broad overview of what we have at the moment, how they will be enhanced and where they are geographically. I notice Antarctica features quite prominently in this as well. Can we have an overview and a verification?

Ms Stokes—Ms Faulkner, can give us that very comprehensive picture.

Ms Faulkner—As I think is mentioned in the NIA, we have 21 facilities on Australian territory, of which one is a radionuclide sampling analysis laboratory down at the Australian Radiation Laboratories in Melbourne. I do have a cute little map that I could—

CHAIRMAN—That would be helpful. That is something we do not have. When you are finished, perhaps the secretariat could take some quick photostats.

Ms Faulkner—That will be fine. There is a map and there is also a list of what exists and what does not exist, which may be helpful for you.

CHAIRMAN—Yes, that would be helpful.

Ms Faulkner—All of the seismic stations—of which we will contribute seven—already exist. All of them will need to be upgraded to some degree. Dr Jepsen is far more knowledgeable about seismic stations than I am.

We have four radionuclide stations in existence and a couple to install. Out of all the stations, the radionuclide stations are the easiest. There will have to be site surveys done, mostly with the Bureau of Meteorology facilities at airports. The one at Mawson will be a little more logistically problematic.

We will have one hydroacoustic station—a hydrophone—of which there will only be a handful worldwide. That needs to be installed, and that will be done off Cape Leeuwin in Western Australia. A site survey will be done in the next two weeks or so off Cape Leeuwin. I do not think it is mentioned in the NIA, but an Australian concern—the CSIRO—won the contract to conduct that site survey to the tune of about $US660,000. They only found out last month. A Perth firm and the University of Technology at Curtin University will be involved in that project in the next couple of weeks. The hydrophone is actually the biggest single capital investment as far as the IMS is concerned. We also have the Department of Defence and Navy consulting on that particular project. It is an important one.

Then we have infrasound stations. Infrasound is a very old technology. It went out of fashion in the 1970s but has come back for nuclear explosion detection in the atmosphere. It is really tailor-made for that sort of detection capability. We have one of the only, if not the only, infrasound station, which is at Tennant Creek in the Northern Territory. That already exists. It needs to be upgraded. We will have four more infrasound stations that need to be installed. That will be where the main work will be.

CHAIRMAN—With the CTBTO in Vienna and the Australian CTBTO, what is the relationship? Going to Vienna, is the ambassador a permanent member of the CTBTO? It is the ambassador who is the CTBTO liaison, is it?

Ms Faulkner—Yes.

CHAIRMAN—In Australia, what is going to be the set-up with the Australian office?

Ms Stokes—The Australian side of things is yet to be fully operational in the sense that the responsibilities underneath our legislation will be implemented by what is now the Australian Safeguards Office, which has a role in relation to nuclear conventions and also the chemical weapons treaty. It will also have a role in relation to the CTBT. It is just a matter of arranging the right staffing for that office.

CHAIRMAN—So that will be co-located within DFAT? Will it be within the safeguard area in DFAT?

Ms Stokes—That is right.

CHAIRMAN—What about the links with Dr Jepsen's organisation? Will there be somebody from your organisation within the Safeguards Office? How will this all work?

Dr Jepsen—That has not actually been addressed at this stage. AGSO will easily be able to do the seismic, hydroacoustic and infrasound operation and the transmission of data to the CTBT IDC, but in the future we will need to address our link with the Safeguards Office.

CHAIRMAN—The projected cost to the Australian budget is about $1½ million a year, is it?

Ms Faulkner—Projected. It really does depend on the rate of implementation of the verification regime and the amount of capital investment that is put in each year. At the moment, we are looking at about $1.5 million a year.

CHAIRMAN—When will this all come together? When will all the facilities be online?

Ms Faulkner—Again, that depends on what the state signatories decide to do about the rate of implementation because there is a lot of capital investment that needs to be made globally. At the moment, we are looking at about five years for the completion of the global verification regime.

Mr McCLELLAND—Ms Stokes, you mentioned that the United States have legislation whereby there are automatic sanctions imposed. Is that the only country that has such legislation?

Ms Stokes—As far as I am aware, yes.

Mr McCLELLAND—Is that something to work towards whereby each country that was a signatory had similar legislation so that any country that conducted a nuclear weapons test knew automatically that they were going to be the subject of sanctions?

Ms Stokes—Sanctions, as you are probably aware, is something that governments take a particular view upon, depending on their own circumstances. I think the Australian government's view is that we like to look at what is likely to be most effective in each circumstance. We are not thinking about that in Australia at the moment.

CHAIRMAN—In terms of our favourite subject of consultation—and specifically this one I suppose is an NGO; the mining industry is the big one, 300 tonnes TNT equivalent, within the protocol—what has happened there? Has this been done through the SCOT processes? How has it all been handled?

Ms Faulkner—All of the consultation buttons were pushed, of course, throughout the negotiations which began—

CHAIRMAN—But were they pushed well?

Ms Faulkner—Yes, brilliantly—great, positive results. You mentioned the SCOT process, which was used as a notification and up-to-dating sort of mechanism. The Prime Minister also got involved and has written personally to the state and territory leaders to inform them.

CHAIRMAN—So it has been handled at Treaties Council level as well? Has he done that as the Chairman of the Treaties Council, or has he done that just as PM to states and—

Ms Faulkner—As PM.

CHAIRMAN—As PM?

Ms Faulkner—Yes. We have also followed up on the PM's letter. The leaders have, in most part, written back to the Prime Minister. We have established a bureaucratic level contact with all the states and territories. On a security and technical level, we established the verification panel of experts even before the negotiations started; we had all of the relevant technical organisations involved, as well as the intelligence agencies, the Department of Defence.

The mining industry was a very important consultation process for a good part of the negotiations. It looked as though there would be mandatory requirements for mining explosion reporting. As it turned out, we worked very hard to make it on a voluntary basis. The mining industry professed itself to be very happy with that and has said that it will help us with a reporting system, where we can feed data into the organisation in Vienna. Then there was the NGO and academic consultation process through the National Consultative Committee on Peace and Disarmament, which the Minister for Foreign Affairs convenes.

Ms JEANES—I am just interested, having a look at your map, that there are no facilities at all in South Australia. Is there any scientific reason for that?

Ms Faulkner—No, no particular scientific reason. It is just the way that it fell out.

Dr Jepsen—I can clarify that. The network is set up such that it can deliver a capability down to a certain level and that it got the best use of the stations we had in Australia, combined with what other best location would actually deliver that capability. So that is a scientific layout of the actual stations in Australia. It is the best capability.

CHAIRMAN—Can I just come back to the strategic considerations and the ban on fissile material. Correct me if I am wrong but, as I understand it, within the CD, John Campbell, at the opening of the CD session, did two things. One was on antipersonnel landmines and the second was on the banning of fissile material. We have injected that into the CD processes. How is it going?

Ms Stokes—I think it is early days. It is a priority for the Australian government to work with other like-minded countries towards a convention to deal with fissile material and the cut-off treaty, as it is called. We are working with a number of countries to see what might be the best way forward—

CHAIRMAN—A Clinton speech to the CD reinforced that, didn't it? They are very much at one with us on that?

Ms Stokes—In broad terms, that is the case. We are still working through with the Americans on what might be the best way forward in terms of the negotiating process, and with other countries. The Indian position is interesting in the sense that they have indicated in their statement since the tests that they would be willing to be positive about the cut-off treaty. We are keen to explore that just to find out exactly how genuine they are about that, whether it is unconditional or not. So it is early days, but there is a lot of thinking going on in a lot of capitals about movement on the cut-off treaty and I think it is a question of tactics before moving it forward.

CHAIRMAN—If the thing does not get through within the three years and you have to have the conference, what you were saying was that you have already started work on the basis of an ongoing dialogue just in case that happens. My personal view is that I cannot see the United States, for example, ratifying—their track record in terms of treaties generally is very conservative. As you know, there is a lot of political pressure on the Hill vis-a-vis the Administration on this one—a lot of quid pro quo going on. Is that a fair summation? You are working at the moment in terms of a likely conference?

Ms Faulkner—Yes, we are. Better to be safe than sorry is the approach that we are taking. As far as the US is concerned, it is a very complicated issue and the ratification process was never going to be straightforward. One thing, however, that the Adminis-

tration has been doing for the last couple of months is using the imminence of this conference as an incentive for the US to ratify. The reason for that is that the treaty states that only ratified states can take part in decision making at that conference. That might egg on a few of the less enthusiastic players up on the Hill.

CHAIRMAN—Bill, do you have any final comment to make?

Mr Campbell—I have a couple of comments about things that were mentioned earlier. First, the question was raised about the benefits of the treaty pending its entry into force. It is mentioned in the NIA that article 18 of the Vienna Convention on the Law of Treaties requires signatories to comply with the objects and purposes of the treaty pending its entry into force. So I suppose it would be highly questionable as to whether a signatory to the treaty could conduct a nuclear test because that would be inconsistent with the objects and purposes of it—this is pending entry into force.

The second thing I wanted to mention was the question of compliance. It may have been mentioned—I might have missed it—that there is an article, article 5, that deals with compliance, albeit it leaves some measures to be decided in the future. But it does provide for the suspension of a state party from exercising rights and privileges under the convention in certain circumstances and for the conference to adopt collective measures in the event of non-compliance, albeit it does not say what those collective measures might be.

CHAIRMAN—That sounds like a good excuse for not signing the MAI at this stage—but that is getting into a different area. Are there any more questions?

Mr HARDGRAVE—It is just nice to see departmental officials with their act together—

CHAIRMAN—Absolutely.

Mr HARDGRAVE—It is really good. Thank you very much.

CHAIRMAN—We do not want to be too pointed about it, Gary—we leave that for next week! I thank the witnesses very much indeed.

[9.44 a.m.]

DUNN, Ms Jean Margaret, Assistant Secretary, Services and Intellectual Property Branch, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

MACINTOSH, Mr Ian Douglas, Desk Officer, Services and Intellectual Property Branch, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

MAHALINGAM, Mrs Helen, Executive Officer, Department of Foreign Affairs and Trade, Barton, Australian Capital Territory

SCHUERMANN, Mr Olaf Kirsten, Assistant Director, Banking and Finance Branch, Department of Treasury, Parkes Place, Parkes, Australian Capital Territory 2600

TILLEY, Mr Paul Anthony, Assistant Secretary, Banking and Finance Branch, Department of Treasury, Parkes Place, Parkes, Australian Capital Territory 2600

CHAIRMAN—Thank you very much. Did DFAT want to make a short opening statement?

Ms Dunn—I will just go over some of the very brief facts. The fifth protocol to the General Agreement on Trade in Services is open for acceptance until 29 January 1999. The protocol enters into force on 1 March 1999 provided it has been accepted by all members concerned. The protocol gives effect to the agreed improvements which are set out in the individual schedules of members' legally binding commitments.

The first round of WTO negotiations on financial services following the Uruguay Round was held in 1995, and while it was successful in securing important improvements in market access significant barriers remained. WTO members therefore agreed to further negotiations in 1997. These began in April last year and concluded on 12 December 1997. With 56 WTO members, that means 70 countries, if you count each of the European member states as one, including Australia agreeing to make new or improved commitments to liberalise the sector.

The principal benefits from the new commitments are the undertakings made by members to reduce barriers to trade and investment in financial services such as insurance, merchant and consumer banking, or legally bind the liberalisation that has already taken place.

The protocol will bring an enhanced level of predictability to trade in financial services because the commitments will be subject to legally binding WTO enforcement and dispute settlement processes. The protocol will bring considerable benefits to the

increasingly international oriented Australian financial services sector. In 1996, Australian financial services exports were valued at over $A1 billion, having doubled over the previous five years.

During the negotiations, all of the WTO members' economies of major interest to Australia—and they are principally ASEAN plus Hong Kong, India, Japan and Korea—made commitments of commercial importance to Australia.

Finally, on consultation, DFAT and Treasury had extensive consultations with all the relevant government agencies, including the Reserve Bank, the Australian Securities Commission, the Insurance and Superannuation Commission and the ACCC. We also held extensive consultations with the Australian financial services sector, including the Insurance Council of Australia, throughout the negotiations. We also consulted extensively with the states, directly and through the Standing Committee on Treaties. The negotiations required no changes to state policies. In terms of the domestic implications for Australia, no changes to domestic policy or legislation are required. The negotiations were part of Australia's international treaty obligations. I might leave it at that.

CHAIRMAN—Did Treasury have any opening comments?

Mr Tilley—No.

CHAIRMAN—Which department had the lead on this one? Was it DFAT or Treasury?

Ms Dunn—DFAT.

CHAIRMAN—I do not want to get into the detail of the MAI, but it seems from reading the NIA that there are implications, and on behalf of the committee I will be saying a little bit on the subject of the MAI next Monday. What are the implications? What is the chicken and what is the egg in terms of the MAI and this GATS protocol?

Ms Dunn—They are unrelated agreements. The WTO agreement on financial services was mandated out of the Uruguay Round out of unfinished business. So all of those countries that adhered to the Uruguay Round commitment—which is all the WTO members—agreed to these negotiations. So they all had treaty-bound obligations to commit themselves to these negotiations in agreeing to the Uruguay Round. It was unfinished business of the Uruguay round.

CHAIRMAN—So what you are saying is that WTO post Uruguay Round and OECD are two different animals?

Ms Dunn—Yes.

CHAIRMAN—That is, of course, assuming that the MAI stays within the OECD, but we do not want to get into that argument this morning. Did Treasury want to make a comment?

Mr Tilley—No. They are different sets of negotiations.

Ms JEANES—Looking at the new commitments made by Australia, one is the elimination of the prohibition on banks from holding shares in the Commonwealth Bank and other entities from holding more than five per cent of its issued share capital. Is this of concern, in that Australia could lose control of the Commonwealth Bank? Are there any provisions such as were considered in the A- and B-class Telstra shares? Is any consideration or protection given to the Commonwealth Bank?

Mr Tilley—The provisions that are contained in this schedule are simply reflecting what is the current domestic policy. It is not a new commitment that has been made in this agreement.

Ms JEANES—So there is no consideration?

Mr Tilley—There would have been consideration given to those issues when the policy was set down by the government but not in the context of this treaty, because this treaty is simply reflecting the previous policy position already established by the government.

Ms JEANES—Is that a positive thing for the Commonwealth Bank? Are we potentially going to see the Commonwealth Bank losing Australian control?

Mr Tilley—The Commonwealth Bank will be in the same position in time as the other banks, but in terms of potential foreign control there is no different treatment for the Commonwealth Bank from the other banks once we get through the transitional period.

Mr Schuermann—Obviously, like the other banks as well, there will always be the prudential requirements associated with the shareholdings, but that is consistent with foreign as well as domestic holders. So there will always be the 10 per cent or 15 per cent shareholding restrictions obviously to maintain a broad shareholding base of the Commonwealth Bank, as with any other bank, to ensure there is no one dominant controller for prudential reasons.

Mr HARDGRAVE—So this treaty, this matter, before us fits in with the domestic policy of attempting to keep pressure on the banks to keep interest rates lower through competition, allowing foreign acquisition of our banking sector, allowing foreign banks to take investments from Australians or to raise funds, if you like, in Australia so we can see more competition between the banking sector. Is that right?

Mr Tilley—If you are referring to the government's decision to remove the blanket prohibition on foreign ownership of banks, that was, as I understand it, part of the rationale for that decision, but that is not to say that there is an assumption that you will have greater foreign control of the particular institutions. It is simply removing the blanket prohibition. It is still subject to the foreign investment guidelines and the relevant legislation.

CHAIRMAN—The FIRB guidelines will still apply, won't they?

Mr Tilley—That is right. They are unchanged.

Mr HARDGRAVE—But there were, however, impediments in the way that even those Foreign Investment Review Board obligations were applying because there was a separate regime which said nobody can own a piece of the Commonwealth Bank. Is that right?

Mr Tilley—That is right. In some areas the government has chosen to put blanket prohibitions on foreign ownership of particular sectors. One of those was in regard to the four major Australian banks. That blanket prohibition was removed in April last year, leaving the normal FIRB guidelines and the relevant legislation to apply.

Mr HARDGRAVE—But, from Treasury's point of view, this fits nicely into that stated policy of greater competition, producing greater services at less cost and all those sorts of domestic pressures on banks, does it not?

Mr Tilley—That is right. The Treasurer announced the removal of that blanket prohibition when he released the report of the Wallis committee last year which was part of putting in place a regime for greater competition in the Australian financial sector.

Mr HARDGRAVE—So, without this treaty, the recommendations of the Wallis report may not in fact be possible. Is that another way of looking at it?

Mr Tilley—No, I do not think so. This treaty is doing nothing more than reflecting what were already policy decisions the government had taken. There are no new policy decisions in this treaty.

CHAIRMAN—Could I just take you to one element of the NIA, a short quote:

As Financial Services are an important infrastructure for the production and export of goods and services, the further liberalisation of trade in financial services as provided under the Protocol is also likely to benefit users and other exporters.

In other words, it will have an impact in terms of existing and potential exporters. Is there some evidence for that or is that just an assumption and an assessment of what might

happen in the future?

Ms Dunn—What we mean by that is that many of Australia's companies are as dependent on an efficient financial sector as they are on an efficient telecommunications sector to be competitive domestically and internationally. The more efficient and liberal overseas markets are in the financial services sector, the better it is for our export companies to operate.

CHAIRMAN—Australia has done well in lots of these areas, particularly in the WTO area. Some might say too well. Other nations have slowed down a bit and not moved as quickly as we have. You refer in your opening comment to ASEAN. Bearing in mind what is happening in Asia at the moment, is there substantive evidence to indicate that other countries are moving quickly along the same lines as we are or are we, once again, arguably going to be up-front to the detriment of what is happening domestically?

Ms Dunn—I think I might let Treasury follow up on this but the fact that many of these ASEAN countries, for example Thailand, despite their financial circumstances made binding commitments at the end of these negotiations is indicative of their view that liberalisation is the way to provide health to their financial sector. They did not step back; they moved forward.

CHAIRMAN—When did they do that? Did they do that after the crisis came to a head or were they doing that anyhow? How recently did Thailand do that?

Ms Dunn—The second half of last year after they received the IMF package or about that time. But they bound some of it in these negotiations which is indicative of their view that liberalisation is the way to go for their financial services.

Mr Tilley—It is certainly true that Australia has a particularly open and transparent regime in terms of restrictions in sectors such as the financial sector. I think an important part of this treaty is that all we have done is to lock in those decisions the government had already taken for its own domestic policy reasons. What we have managed to do as part of these negotiations is to gain access to some other markets that we might not have had previously.

CHAIRMAN—Are both DFAT and Treasury happy with the consultative arrangements in terms of this particular protocol? We have heard comments before from departments who say, 'Yes, we had full and frank consultation' and all the rest of it. When we get down to the substance of it we find that that is not so. Are we very confident in terms of this one that the appropriate consultation has taken place, particularly in the non-government sector?

Ms Dunn—We are very confident, basically because we have expended a great amount of our time over the last year talking to, especially, the companies and states. In

fact, from Geneva we would often be on the phone to some of the companies, when at the 12th hour we needed to know, 'Are you happy with what country X is offering? Is there a problem? What is your priority? What do you want us to do?' That was the level of our consultation right up to the last moment. Similarly, with the states in the last week we were dealing daily with two states in particular.

CHAIRMAN—It is sub judice at this stage so I do not want to get into that. We heard that in terms of the MAI. The facts are not consistent with some of the departmental assertions but we will not get into that today. Thank you for attending today.

BYRNE, Mr Martin, Senior Policy Officer, Hazardous Wastes Section, Chemicals and the Environment Branch, Environment Australia, Arts House, 40 Macquarie Street, Barton, Australian Capital Territory 2600

CURLL, Miss Tamara Michelle, Administrative Services Officer, Ozone Protection Section, Environment Australia, Tourism House, 40 Blackall Street, Barton, Australian Capital Territory 2600

HYMAN, Mr Mark Hyman, Assistant Secretary, Chemicals and the Environment Branch, Environment Australia, Arts House, 40 Macquarie Street, Barton, Australian Capital Territory 2600

ILETT, Ms Annie, Director, Ozone Protection Section, Environment Australia, Tourism House, 40 Blackall Street, Barton, Australian Capital Territory 2600

CHAIRMAN—Welcome. We will do the next two agreements together—that is, the Montreal Protocol on Substances Depleting the Ozone Layer and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Would you like to make some opening comments on the protocol and the convention?

Mr Hyman—Yes, I would like to make a brief opening statement in respect of the Basel convention.

Ms Ilett—I would also like to make some opening comments.

CHAIRMAN—All right, let us do one at a time. We will take the Montreal protocol first.

Ms Ilett—The treaty action that Environment Australia submits for your consideration is the ratification of the 1997 amendment to the Montreal protocol, as agreed by the parties to the protocol at their ninth meeting in Montreal in September 1997. Since it became a party in 1989, Australia has been a leading participant in the advancement of measures to phase out ozone depleting substances under the Montreal protocol. In fact, at the ninth meeting of parties last year Australia received international recognition for its contributions, being awarded a certificate of appreciation for exceptional support.

Australia's approach to implementing its obligations under the Montreal protocol has been based on a highly cooperative partnership between industry, the community and all levels of government. Representatives from these groups have been involved in the development of Australia's negotiating positions, particularly for the ninth meeting through the existing consultative mechanisms of the Ozone Protection Consultative Committee, the Methyl Bromide Consultative Committee and the Ozone Interdepartmental Committee, and subsequently supported Australia's ratification of the 1997 amendment.

These amendments to the Montreal protocol in 1997 contained three elements. All three elements were supported by the Australian delegation to the ninth meeting in accordance with the previous agreed negotiating positions. In addition, the element restricting the export by parties to the protocol who fail to comply with their Montreal protocol obligations of used, recycled or reclaimed substances was proposed by Australia.

It should be noted that the 1997 amendment imposes no additional obligations on Australia. All elements of the amendment are currently implemented through the existing provisions of the Ozone Protection Act 1989, which is administered by the Department of the Environment, and no state or territory action is required to take further action to implement the 1997 amendment.

CHAIRMAN—Thank you. Just on the methyl bromide—bearing in mind that there is a primary industry implication to this and coming back to our favourite subject of consultation—have the primary industries, and DPIE, in particular, been happy with what is happening as a result of this amendment?

Ms Ilett—Yes. From our consultations, they have been involved from the inception of any discussions on methyl bromide in this country through the Ozone Interdepartmental Committee. They have also been involved in all the discussions in the Methyl Bromide Consultative Committee. We have had various areas of DPIE represented on the Methyl Bromide Consultative Committee, particularly the Ag and Vet Chemicals Branch and the National Registration Authority.

CHAIRMAN—Have they, in turn, involved bodies such as the NFF? There is not going to be any major public hiccup as a result of this, is there?

Ms Ilett—The NFF also has representation on the Methyl Bromide Consultative Committee. It is a very broad ranging committee. I can give you some examples of who is involved, if you would like.

CHAIRMAN—What about the report that is due this month on the phasing out? Is not Environment Australia preparing a report on how to ensure compliance?

Ms Ilett—That is correct. Environment Australia has facilitated the development of an Australian approach to the phasing out of methyl bromide in consultation with the Methyl Bromide Consultative Committee. It is essentially a report of that committee.

CHAIRMAN—Is that report on target?

Ms Ilett—Yes.

Ms JEANES—What does methyl bromide kill? Is it used in the viticulture industry?

Ms Ilett—It is used as a general fumigant. In terms of the consultative groups that have been involved, we have not involved the viticulture industry as I believe it has not been used in that industry.

Ms JEANES—What does it destroy?

Ms Ilett—Everything and anything, as I understand it—nematodes, worms, the bacteria in soil. It is a total soil—

Ms JEANES—So it is a blanket one?

Ms Ilett—Yes.

Mr HARDGRAVE—This is a free kick. When you say there are no implications domestically, Australia led the charge in a lot of ways in this whole ozone depleting substance debate, did it not? Therefore, this is really a treaty about the world catching up, is it not?

Ms Ilett—Essentially, yes.

Mr HARDGRAVE—With respect to the disposal of ozone depleting substances such as methyl bromide, how do we get rid of it? Is it sitting out there in bottles and jars waiting to be used to get rid of worms and everything else?

Ms Ilett—Yes. It is imported here and then it is sprayed onto the soil. It is then emitted into the atmosphere and that is why we are trying to reduce its use and, in line with the protocol, phase it out. When we get to a global phasing out stage, if there is still any around, it can be destroyed. There are all types of high tension technologies that can do that.

Mr HARDGRAVE—For the person in the 'street', is there any fine structure or difficulty for them if they have a tin of methyl bromide sitting in the back of the tool shed and they get caught with it? I mean, arsenic is missed by every pest controller in Queensland because it is the only thing that kills white ants properly but it is not being used any more. I have heard of people turning in a tin of the old room deodorant that still has fluorocarbons in it. What difficulties could there be for those people?

Ms Ilett—The use of methyl bromide is not quite like the other substances where it has gone into the domestic area. Methyl bromide is used by people who are licensed through the state legislation system so it should only be in the hands of people who are contractors and who are able to go out and spray the fields.

Mr HARDGRAVE—So if it is out there, you can track it down and recall it?

Ms Ilett—We believe so, yes.

Mr LAURIE FERGUSON—Is there a viable alternative?

Ms Ilett—As is the rest of the world, Australia is working on alternatives. The problem is that methyl bromide has been this blanket cure-all, if you like. Finding a replacement that will be another blanket cure-all is very difficult. There is a lot of research going on now within Australia and around the rest of the world to find alternatives. However, we are finding that they may work for certain crops in certain soil types and in certain climatic conditions, and this is where we have a complexity because we are having to deal with growing seasons for trials to find suitable and viable alternatives. We are having to do it on a crop by crop basis, as opposed to CFCs where we could just have a blanket replacement of the gases that expel in aerosol cans, for example.

Mr LAURIE FERGUSON—Obviously, we did not discover this problem yesterday afternoon. With regard to previous negotiations, what was the resistance and who was it from, with regard to the original issue? The knowledge was probably there, so what was the nature of the resistance and the background to that?

Ms Ilett—This issue was actually brought up and discussed at the Montreal protocol Meeting of Parties in 1992, and from that arose something called the Copenhagen amendment, which started to look at the phase-out of methyl bromide. It actually at that stage indicated a year 2010 cut-off. So it has been negotiated for quite a while. The resistance has been largely because methyl bromide is the blanket cure-all soil disinfestant at the moment. There was no research in the early days. Now that the research is beginning to show that there are viable alternatives for use on certain crops in certain conditions, things are being tightened up.

Mr LAURIE FERGUSON—As you just indicated, that is a very long lead time, from 1992—and maybe, in the case of the less developed world, it is up to 2015. Are there any other obvious examples that are still subject to similar debate and argument?

Ms Ilett—Within the Montreal protocol?

Mr LAURIE FERGUSON—Yes.

Ms Ilett—They are not actually within these amendments.

Mr LAURIE FERGUSON—No. Are there still outstanding issues of a similar sort, where basically there is resistance and they really should be on the agenda? Are we going to find others next year, in other words?

Ms Ilett—For the phase-out of all the ozone depleting substances listed within the Montreal protocol, there is now essentially some sort of program in train. We still have a

little work to do on the halons; and, again, Australia has been at the forefront of requiring decommissioning of non-essential halon equipment. Halon is used in firefighting equipment that Australia retains for essential use, such as in civil and military aircraft and also civil and military shipping.

Mr LAURIE FERGUSON—Do you know which countries are the leading producers?

Ms Ilett—Of methyl bromide? Yes, there are three companies in the world that are still producing: Great Lakes, in the United States of America; Dead Sea Bromide, in Israel; and a company in France is also involved.

Mr LAURIE FERGUSON—Finally, what is the main theory behind the extra extension for the developing world? As we just heard, they are not producers, and it is not too clear from what you have said that there is a natural alternative to be found very quickly, and so we are going to be no better off than they are in regard to this. Does that more reflect that they have become subject to pressures from companies that they basically have not got the structure to resist, in terms of their internal administrations? Or are you saying that it is because they are more agriculturally based? What is the reason for the further extension for them?

Ms Ilett—Could I clarify whom you mean by 'they' or 'them'?

Mr LAURIE FERGUSON—The developing world has apparently been given five years extra for the phase-out.

Ms Ilett—Yes, that is right; they have been. At this stage there are plans to readdress that in 2003, to try to bring them further forward. It is partly traditional with the Montreal protocol that developing countries do get a longer lead time: the argument is that they do not have access to some of the technology or the resources to develop the alternative technology.

Mr LAURIE FERGUSON—But in this case I thought you did not seem too confident that the alternative would be there very quickly.

Ms Ilett—The alternatives are there now, but again that is on a crop-by-crop basis: there is no wonder-cure drug which will sort this out, and that is the problem.

CHAIRMAN—The NIA indicates no legislative requirements as a result of this. Are our licensing arrangements controlled under the Ozone Protection Act, or under customs regulations? How are we controlling the licensing arrangements?

Ms Ilett—The licensing arrangements for the import, export and manufacture of any ozone-depleting substance listed in the Montreal protocol come under the Ozone

Protection Act 1989. I would add that, with the Customs Act, we have just put in place some memoranda of understanding with the Customs department so that they can actually stop at the customs barrier any imports or exports that are outside of the Ozone Protection Act.

CHAIRMAN—I think we have finished with ozone depleting substances, so let us move on to the Basel convention. Would you like to make a short opening statement?

Mr Hyman—The Basel convention regulates the international movement of hazardous wastes between parties, through a process of requirements for notification of, and consent from, importing countries, and it requires the exporting country to ensure that waste will be managed in an environmentally sound manner before approving its export. The convention is implemented in Australia through the Hazardous Waste (Regulation of Exports and Imports) Act 1989. Australia has been a party to the Basel convention since its entry into force in 1992.

The scope of the convention is determined by a list of broad waste categories outlined in annex I of the convention. Wastes identified in annex I are considered hazardous, and so are subject to the convention and to regulation by domestic legislation, unless they do not exhibit any of the hazard characteristics identified in annex III. The waste categories in annex I are very broad and general. They do not provide precise guidance on which wastes are, or are not, covered by the convention. The parties agreed that more precision and clarity was needed, and the technical working group of the convention has developed more detailed lists to clarify the application of annexes I and III.

At the fourth meeting of the Conference of the Parties in Kuching, Malaysia, in February of this year the parties adopted these detailed lists as new annexes to the convention, through amendment of the existing annex I. Australia supported these amendments when they were proposed, because of the greater clarity the new annexes VIII and IX will provide, both for the Commonwealth government and for Australian industry.

Previously, where there was a lack of clarity about the application of the annexes, we had to offer advice from Environment Australia or consult our expert Australian technical group for guidance on this point. While that will in some of the more complex examples still be necessary, the convention in its amended form now provides far more immediate and internationally recognised guidance on what wastes are subject to the convention. In the majority of cases, industry, the community and the Commonwealth will be able to identify much more quickly and easily which wastes are either subject to the convention or outside it. These amendments have been welcomed by all parties in consultation processes, both on the industry side and in environment and community groups.

CHAIRMAN—Thank you very much. We will go to questions.

Mr HARDGRAVE—I once wanted to be a geologist, and I find this area always interesting. Mine is not a trained eye by any stretch of the imagination, I must now say; but, when you look down list A and list B you find things like beryllium, cadmium, lead, selenium and tellurium, with their compounds and wastes and so forth, on both lists. What is the difference in handling? What are the requirements? Why are they on both lists?

Mr Hyman—It is recognised that it depends very much on the form in which the waste occurs as to whether it is going to be hazardous in practice, and so there is a distinction between those metals that are transported in dispersible form or as particular kinds of compounds and those that are in solid metallic form. Where there is a solid metallic form of a metal, very often it is considered that it is possible to trade in that material without considering it hazardous; whereas, if it is in a dispersed form or some particular kind of compound, it is not possible.

Mr HARDGRAVE—And that would be well understood by metallurgists and so forth?

Mr Hyman—Indeed it would, and Australian industry has of course been heavily involved in offering advice to us in the context of the technical working group meetings which have drawn up these lists.

Mr HARDGRAVE—Would any great changes in normal practice amongst Australian industry have to take place as a result of this?

Mr Hyman—Not from these lists themselves, because these lists really clarify what was already done. Instead of, for example, referring to us a particular waste and asking whether or not they need a permit, very often now they will be able to consult these lists and get the answers to that question from the lists, without seeking specific guidance. All these lists do is clarify the existing waste categories that were already there.

Mr HARDGRAVE—Where do all these wastes go? I understand the need for the restriction or reduction or total stopping of transboundary movements of hazardous waste, but where do we put them?

Mr Hyman—The answer to that question is different for different countries, depending on their industrial structure and what they generate.

Mr HARDGRAVE—In Australia where do we put them?

Mr Hyman—Let me talk a little about the waste that is typical of Australian industry. Because we have very large metal extraction and metal refining industries here, we generate quite a lot of wastes containing various base metals. So we have wastes that are rich in zinc, lead, copper, cadmium and in related materials, sometimes arsenic, et cetera.

In the past, very often those wastes, we believe, were shipped to countries like India and to some other countries in our region, for example, China and Hong Kong, countries of that kind. We amended the hazardous waste act in 1996 to bring the act much more closely into alignment with the basic convention. Whether for that reason or another—but I think for that reason—we saw no further applications to export hazardous wastes to those developing countries. We do, however, see applications to export those types of waste to countries in Europe, particularly, and occasionally to Japan or the US. But particularly we see applications to export to European countries, for example, Germany or Belgium and places like that where the metal contaminants are recovered from the waste.

Mr HARDGRAVE—Any idea of how much of it is still hanging out there? I mean, there is not a person of my age or older who has never come into contact with asbestos sheeting. And mica was always that filament between the elements in toasters when I was a child, for instance.

Mr Hyman—The waste of the kind you speak of would mostly be wastes for final disposal, that is, for putting in a landfill or something of that kind. Since the act was amended in 1996 we have certainly had no application to export any wastes of that kind. In fact, those wastes would have been covered by the act even before its amendment in 1996 and we very rarely have seen any applications to export those materials since about 1992. So those wastes are being disposed of in Australia.

The normal practice for asbestos waste, to take the example you put forward, would be for it to be wrapped in very heavy duty plastic and buried under at least two metres of soil. That would be the standard means. That is a reasonably good means of disposal of asbestos, provided that site is not dug up again.

The wastes for which we do see applications for export are mostly processing wastes. They are wastes that are generated during metal refining processes. They are by-streams, residues of various kinds. They have elevated levels of metals and they are sufficiently valuable so that it is worth sending them off to a specialised facility for recovery of the metals.

CHAIRMAN—As there are no further questions, we might let you off lightly. Thank you very much.

Mr Hyman—Thank you.

[10.23 a.m.]

HUTCHINSON, Mr Peter, Acting Director, International Programs Branch, Department of Social Security, Athllon Drive, Greenway, Australian Capital Territory

CHAIRMAN—Welcome. We are dealing now with the amendment to the agreement between the government of Australia and the government of New Zealand on social security. Mr Hutchinson, would you like to make a short opening statement?

Mr Hutchinson—Thank you. Essentially, this proposed treaty action is dealing with an amendment to the agreement with New Zealand that Australia has which would delete the article in the agreement that provides that New Zealand citizens serve a six-month waiting period on entry to Australia for unemployment benefits.

Essentially, the reason for that is, as most members of the committee would be aware, that the government announced a two-year waiting period for all newly arrived residents two years ago on it first being elected, and a two-year waiting period was implemented for migrants in March 1997. To the extent that this social security agreement with New Zealand is inconsistent with that legislation, this proposed treaty action would bring it into line.

CHAIRMAN—One thing that the amendment does not do is to quantify the issue. Surely Social Security staff have a feel for how many New Zealand nationals claim unemployment benefits in this country and New Zealand authorities must have some sort of feel for what happens there. What numbers are we dealing with?

Mr Hutchinson—The flow is definitely greater into Australia, of course. This proposal estimates that there will be approximately 1,200 people affected in the first full year.

CHAIRMAN—Of New Zealanders in Australia?

Mr Hutchinson—Yes.

CHAIRMAN—How many Australians in New Zealand will be affected?

Mr Hutchinson—I do not have that figure with me, I am sorry. It would be much less.

CHAIRMAN—Bearing in mind that there is an inconsistency between the two, I think that figure is important. Could we ask that Social Security provide that information. You can take it on notice and provide it to us later.

Mr Hutchinson—Yes.

CHAIRMAN—It is important in terms of our report to the parliament.

Mr HARDGRAVE—About nine months ago I had a constituent who, for family reasons, moved to New Zealand. She was in a situation where the Department of Veterans' Affairs here provided her with a walking frame under its obligations to her as a war widow. However, when she arrived at Brisbane airport she was going to lose the walking frame as the New Zealand authorities did not offer any reciprocal assistance to war widows from this country.

Has there ever been, or is there likely to be, some sort of negotiations between Australia and New Zealand on an agreement which would ensure that people such at this woman would not be put in a position where, literally, Australian authorities had to take her Veterans' Affairs provided walking frame from her as she was leaving the country?

I must add that the intervention of the minister resulted in her taking her walking frame with her to New Zealand and that she is using that frame in New Zealand now. But essentially the rules are the rules, and there is no reciprocal arrangement in New Zealand. Any comment on that?

Mr Hutchinson—I understand the question but to the extent that that involved a war widow, that would be the responsibility of the Minister for Veterans' Affairs.

Mr HARDGRAVE—I accept that but, every time there is a Veterans' Affairs legislation amendment bill introduced into the parliament, a social security legislation amendment bill accompanies it.

Mr Hutchinson—Yes, agreed.

Mr HARDGRAVE—So there tends to be departmental negotiations, I would have thought.

Mr Hutchinson—There generally is, although Veterans' Affairs has a number of separate agreements with other countries as far as I know so I could not answer that.

Mr HARDGRAVE—So you are not aware of any sort of social security based agreement between Australia and New Zealand that would ensure that somebody who was a disabled benefit recipient in Australia who went to live in New Zealand, for instance, would be able to be assured of assistance from the New Zealand authorities?

Mr Hutchinson—The current social security agreement with New Zealand does cover age pension and disability pensions and those sorts of things. People from either country get early access to those payments.

Mr HARDGRAVE—It was worth a try. Thank you very much.

CHAIRMAN—In terms of New Zealanders coming here, under this amendment it would be that 104 weeks apply. With Australians going to New Zealand, my understanding is that it is only one year. Has that inconsistency been the subject of some international discussion? Are the New Zealanders now going to apply the two-year rule in New Zealand for our nationals? What is going to happen?

Mr Hutchinson—Negotiations on changing the agreement have been under way for quite a while. New Zealand has agreed to this change to the agreement. I understand that in the last month they have announced a two-year stand-down period, as they call it, to apply to all new migrants to New Zealand from 1 July this year. But that will not apply to Australians because of the terms of the agreement.

CHAIRMAN—But those who are already there would not be affected?

Mr Hutchinson—No.

CHAIRMAN—So it is a prospective—

Mr Hutchinson—I cannot be definite on that from New Zealand's point of view but from Australia's point of view it will be prospective.

Mr TONY SMITH—That answers one of my questions. People who are already here have the current limitation period operating, but if you arrive when this situation is finalised, it is a new situation, is it?

Mr Hutchinson—Yes.

Mr TONY SMITH—Just a couple of things. Maybe it sounds like a silly question, but what is the rationale for the change? Is it simply to bring it into line or is there something else?

Mr Hutchinson—No, essentially the only reason is to bring it into line to the extent that New Zealanders are treated the same as all other newly arrived residents.

Mr TONY SMITH—So we could not legislate for it because it would be inconsistent with the treaty?

Mr Hutchinson—That is correct. This still requires amendments to the Social Security Act. Once we have exchanged notes with New Zealand, we still have to bring forward amendments to the Social Security Act and pass them through both houses, of course.

Mr TONY SMITH—Because in the original legislation New Zealanders were exempted, is that right?

Mr Campbell—It is my understanding that there is a general two-year waiting period under the Social Security Act. But the agreements that are made with other countries are scheduled to the act and relevant provisions of the agreement are given the force of the law in the act. So, if the agreement says that there is a six-month waiting period for New Zealanders, that overrides the provision in the act which says that there is a two-month waiting period.

What this would do essentially is change the agreement in the schedule to the act to take out the provision about the six-month waiting period, and that would mean that the general provision concerning two years would operate.

CHAIRMAN—Does that mean that, unless Australia amended the social security legislation, the CER provisions may in some way be a complicating factor?

Mr Campbell—I do not think the CER provisions are a complicating factor here.

CHAIRMAN—They are not?

Mr Campbell—No. Just as with double taxation agreements which are in the International Tax Agreements Act, there is a need to amend the social security agreement with New Zealand as reflected in the actual Social Security Act so as to change the provision which is given the force of law which overrides the other provisions in the act.

Mr TONY SMITH—What was the recent case that got around the two-year period? Wasn't there something that got around it recently?

Mr Hutchinson—I am not sure which case you are referring to. There was a case of some Russian immigrants on *60 Minutes* or something like that.

Mr McCLELLAND—That was related to a special benefit where they were able to show some exceptional circumstances.

Mr Hutchinson—That is right. The fact that they had a substantial change in circumstances was the gist of it.

Mr TONY SMITH—It was not a drafting issue; it was an exemption because of circumstances.

Mr Hutchinson—That is right, and to that extent, New Zealanders already serve a two-year waiting period for special benefits, and have access to special benefits subject to the same rules as all other newly arrived residents.

Mr TONY SMITH—I am not sure that you answered the Chairman's first question. It concerned the difference between the number of people claiming here and the

number of people claiming there. Did you answer that?

Mr Hutchinson—I could not give you the exact numbers of Australians going to New Zealand, but there is a much greater inflow to Australia, of course. We have estimated that this initiative would affect 1,200 New Zealanders in the first full year.

Mr TONY SMITH—There is a greater call on our revenue, in other words?

Mr Hutchinson—That is correct.

Mr TONY SMITH—The discrepancy with the one and two years may have the effect of a balancing feature to it, perhaps.

Mr Hutchinson—At the moment people from each country serve a six-month waiting period under the agreement. Except for the agreement, New Zealand has a 12-month waiting period at the moment, but it will go to two years from 1 July anyway.

CHAIRMAN—Thank you very much.

[10.35 a.m.]

MORRIS, Ms Megan Philomena, Assistant Secretary, Film Branch, Film, Public Broadcasting and Intellectual Property Division, Department of Communications and the Arts, GPO Box 2154, Canberra, Australian Capital Territory

VERGE, Ms Caroline Alix, Legal Manager, Film Development, Australian Film Commission, 150 William Street, Woolloomooloo, Sydney, New South Wales 2001

CHAIRMAN—Welcome. I now invite you to make a short opening statement.

Ms Verge—Australia has six film co-production agreements, starting with the treaty with the UK in 1986 to the treaty with Israel which came into effect in 1997. On 4 February 1998 the Minister for Foreign Affairs and the Irish Minister for the Arts, Heritage, Gaeltacht and the Islands, signed an agreement between Australia and the Republic of Ireland.

These treaties can be considered frameworks to enable film producers of both countries to create film productions where otherwise none might exist. They do this in particular by providing that any eligible film is considered a national film of each of the co-producing countries and, therefore, eligible for the benefits that each country awards national productions.

In the case of Australia, these benefits are principally access to film finance via the Australian Film Finance Corporation and eligibility to be counted as Australian quota content on television. These films may be strongly identified as Australian productions, but can still introduce overseas elements which assist in their finance and marketing.

Since the first films produced under these treaties, the total budgeted cost of co-productions has been $261.8 million, of which the Australian financial investment has been $115.5 million, or 44 per cent. The total expenditure on Australian elements has been $130.3 million, or 50 per cent of the total figure, implying a net benefit to Australia and its productions. There have been 35 official co-productions to date.

It is hoped that this agreement with Ireland will facilitate productions between producers of both countries, but the agreement itself does not initiate production; it is a framework that becomes active when called on. It is a standard form agreement with minor variations and industry bodies have been consulted and have no objection to the agreement.

CHAIRMAN—I think you commented then on Israel. We dealt with that in late 1996 or early 1997. You did not mention Italy and I thought there was an Italian one as well?

Ms Verge—There is an Italian one. There is UK, Canada, Italy, Israel and a memoranda of understanding with France and New Zealand.

CHAIRMAN—I think this committee has dealt with Israel and Italy since we have been in place.

Ms Verge—Probably.

CHAIRMAN—This is fairly standard but with amendments around the edge. Is that what you are saying?

Ms Verge—That is right, yes.

Senator MURPHY—I would be interested to know about the Blue Sky High Court decision and the claim by the Kiwis that they use parts of the CER agreement. As a result of this agreement with Ireland—and I assume similarly with Israel and similarly with Italy—what does that mean in terms of that High Court decision, if anything?

Ms Verge—The High Court decision was specific to a different relationship between Australia and New Zealand, which means that, in fact, there is no need for a memorandum of understanding, a treaty or anything; if it is New Zealand, it is Australian. It is not the same between Australia and Ireland. There needs to be a mechanism which accords a film which is not in the majority Australian made, the same benefits as though it were Australian majority made.

That is what the treaty does. It says that, even though it can be up to 80 per cent Irish, in Australia it can still get the benefits of an Australian production. Similarly, in Ireland, it can be up to 80 per cent Australian produced and it will still be treated as a national film of Ireland.

Senator MURPHY—There is a call for the government to do something with regard to the Blue Sky High Court decision, that is, provide some form of legislative mechanism to override that High Court decision. Do these agreements that we have with other countries impact on the capacity of the government to do that?

Ms Verge—No. They do not come into conflict with the CER agreement, if that is what you are asking.

Senator MURPHY—I am not sure that I am asking whether they come into conflict with the CER agreement. I do not know whether film already comes under the WTO or is likely to come under the WTO if investment is ultimately to be covered there. I am wondering about a government which has agreements that provide benefits in some countries. I think you said if the film is 80 per cent produced in Ireland it can still be counted as an Australian production. I would be interested to know if we are intending to

provide some legislative protection against the High Court decision—

Ms Morris—That is not something that I can answer at present, Senator, but what the High Court decision referred to was the Australian Content Standard. Currently, co-productions qualify as Australian content under the Australian Content Standard. What the agreement brings to a co-production is money from both countries. You are basically entitled to the perks you can get in either country, and thereby produce a higher budget film than can a local producer doing it on their own. The Australian Content Standard is a different issue. What happens with that will be the subject of a review undertaken by the Australian Broadcasting Authority.

Mr Campbell—In fact, the Australian Content Standard says that co-production films or films made under an agreement with another country are Australian content for the purposes of the standard. In the case of Blue Sky, the High Court was looking principally at what was regarded as a potential conflict between the two provisions of the Broadcasting Services Act.

Section 122 says that an Australian Content Standard will be set and section 160 says that, in carrying out its functions, the Australian Broadcasting Authority is to act in accordance with Australia's international obligations. The argument in that case was which provision prevailed, section 122 or section 161. The High Court found that the provision which says that the ABA is to comply with its international obligations in carrying out its functions applies to section 122 as much as any other section of the act. And, of course, the CER said that New Zealand films are to be given national treatment in Australia. That is what the High Court latched on to.

CHAIRMAN—Blue Sky, as I understand it, is still subject to appeal and therefore what Senator Murphy is referring to is a legislative solution that the government has, but is it not subject to—

Mr Campbell—My understanding is the government is still looking at the options in relation to Blue Sky. There is no further avenue of appeal because it was dealt with by the full court of the High Court. Four judges in one judgment and former Chief Justice Brennan in another judgment, on a slightly different basis, all said that the existing broadcasting standard was inconsistent with Australia's international obligations and therefore that fed into what could be done in setting the standard under section 122.

Ms Morris—The standard has not been declared illegal; it was declared unlawful. It is there and still operating but a New Zealand producer could challenge and orders could be issued by the High Court. The New Zealand industry has agreed to sit back and see what is done within the standard or within the legislation. That will be the situation for a time.

Mr Campbell—I would just like to say one thing which I think came out of the

committee's hearing on the MAI. It is not a case of the High Court making or developing common law as in, say, the Teoh case or something like that. This is a case in which the Broadcasting Services Act itself said that in carrying out its functions, the Australian Broadcasting Authority is to comply with Australia's international obligations. It was something expressly stated in an act of parliament.

Mr HARDGRAVE—All of this is an interesting fine line, of course, but you mentioned a figure of 80 per cent: is that a working figure, or was that just an example that you gave us before when you referred to 80 per cent being produced in Ireland and 20 per cent here in Australia? Is that the maximum cut-off point before—

Ms Verge—Yes that is the maximum cut-off point. In fact, under the Australian guidelines there would not be a production which was less than 40 per cent Australian.

Mr HARDGRAVE—Right, but 80 per cent could be tolerated if a case was put: is that what you are saying?

Ms Verge—The treaty provides that there has to be at least 20 per cent participation from each country.

Mr HARDGRAVE—Okay. Does participation mean the dollars that come in, personnel involved—

Ms Verge—And dollars out—

Mr HARDGRAVE—And dollars out.

Ms Verge—That is exactly right.

Mr HARDGRAVE—So we have got to see at least 20 per cent: one person in five involved in the film's production; one person in five appearing in the film; we have to see one dollar in five from Australia—and does one scene in five have to be shot in Australia? I am not trying to be funny; I am really trying to get to the bottom line of where the 80 per cent cuts in and cuts out here.

Ms Verge—The Australian Film Commission has developed guidelines in consultation with the industry which set the particular framework within which all these treaties will be interpreted. They say that a minimum of a certain percentage—some cases 20 per cent, some cases 30 per cent—of finance must be sourced by the Australian producer. Then there is a range of key creative roles which are awarded certain points according to their relative importance in developing a film, and that involves director, producer, script writer, production designer, editor, the four lead cast members and, composer.

Mr HARDGRAVE—So you could not end up with Australians forming the lackey role and the rest of it dominated by the Irish then, for instance?

Ms Verge—No. And then the expenditure has to follow in roughly the same proportions. Obviously, there can be a bit of leeway.

Mr HARDGRAVE—You have talked in your consultation section of your NIA about the AFC's industry panel. People such as the SPAA, the Writers' Guild, the Media, Entertainment and Arts Alliance, the Screen Directors' Association have all been to see me in my separate role as secretary of the government's communications and arts backbench committee, jumping up and down about this whole Blue Sky business that Senator Murphy raised before I had a chance to. I raised it at the MAI hearings.

Possibly, Mr Campbell was referring to my assertion in my cross-examination of Treasury officials about matters in relation to that. It just now strikes me, based on what you have said today, that the industry panel are being bit precious. If 20 per cent is a bottom line allowable minimum that they have agreed to as a result of this particular co-production agreement, 20 per cent is better than zero per cent, I submit, but if it is happening in the case of Italy, Israel, the UK and now Ireland and a couple of others that you have mentioned, I think their whole argument against New Zealand has started to be watered down.

Ms Verge—Well, in fact it is not quite as simple as that. As I said, in consultation with the industry bodies the AFC has developed guidelines which require that there be a minimum of 40 per cent Australian key creative participation. The effect of that is that as I said before, the films have a strong Australian look and feel about them, unlike the New Zealand situation where it can be a complete New Zealand production interpreted as New Zealand under their own guidelines, which are looser than our guidelines, and then it can come to Australia and receive exactly the same airplay and, in fact, displace an Australian film on television.

Mr HARDGRAVE—I was hoping you would say something like that but I just wanted to challenge you on it. The one other thing I was just wondering is: is this more about Australian film development or is there, in the short term, a sunset clause associated with this, or do we review this or do we stay with this forever, amen?

Ms Verge—No, it is reviewable in three years. Six months before that, if either side wants to terminate the agreement—and this is a standard term in all of the treaties—they give notice and it can be terminated. Another mechanism is that over a period of time there has to be a balance of Australian and Irish elements and, if the balance is not working, that possibly could be another reason why the treaty might come to—

Mr HARDGRAVE—Is there more in it for Ireland than there is for Australia?

Ms Verge—No. In fact, so far two projects are in the process of being made with Ireland. One of them is majority Australian, one of them is majority Irish. So there seems to be, so far, a very good balance between the two countries, and a lot of interest.

Mr HARDGRAVE—We just had one screened, did we not? *Kings in Grass Castles,* on the Seven Network, rated extremely well, I think.

Ms Verge—Yes. Extremely well. That was majority Australian.

Mr HARDGRAVE—From what you are saying, as a result of this treaty, films of up to 80 per cent or more likely 60 per cent produced in Ireland would attract funding, provided they came up with a suitable script. That is really what we are looking at here for three years. Is the three-year period standard, compared to other countries? What were they again? Italy, Israel, UK—

Ms Verge—Canada, France and New Zealand.

Mr HARDGRAVE—France and New Zealand, I thought, had an MOU.

Ms Verge—They do have an MOU but the terms are the same.

Mr HARDGRAVE—Okay. That is interesting. So all those countries count as Australian content, if they are co-produced with Australia.

Ms Verge—Yes. Let me clarify that if the Australian Film Finance Corporation puts funding into a co-production between, say, Australia and Ireland, or Australia and any country, it will fund only the Australian elements of that production.

Mr HARDGRAVE—Okay.

CHAIRMAN—Thank you very much.

[10.51 a.m.]

LADE, Mr Graeme Freear, Director, South Asia and Regional Issues Section, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

SCULLY, Mr James Mark, Desk Officer, Legal Branch, Department of Foreign Affairs and Trade, RG Casey Building, Barton, Australian Capital Territory

CHAIRMAN—Welcome back, gentlemen. We are not going to take too much of your time. Sorry to keep you waiting there for a little while. This is a standard agreement. Did you want to make a short opening comment, bearing in mind we have already dealt with Peru and Chile?

Mr Lade—Very briefly, in recognition of the growing trade and economic relationship with Pakistan—and, as you have noted, this is a standard agreement—we felt that it was a timely and worthwhile agreement to conclude with Pakistan as it provides encouragement and facilitation for investment in Pakistan. There is growing Australian interest, particularly in the mining, oil and gas sectors in Pakistan. While I cannot, for commercial-in-confidence reasons, go into the details, we know that there is very extensive interest by some of Australia's major companies in those sectors.

CHAIRMAN—Who drove this, Australia or Pakistan? Which country was the lead in developing this?

Mr Lade—The text of the agreement is basically the Australian model. There was one minor change to that text. In fact, I only recently arrived back in Canberra to this position, so I was not directly involved in the negotiations themselves. But my understanding was that they were concluded very rapidly and readily.

CHAIRMAN—The double tax agreement with Pakistan: is there one in force?

Mr Lade—That is still under negotiation.

CHAIRMAN—So that is one that is still coming along?

Mr Lade—Yes.

CHAIRMAN—Pakistan is not a member of the OECD, is it?

Mr Lade—No.

CHAIRMAN—No, so they are not involved in the MAI as an observer? No. You probably were not here when we were discussing CTBT et cetera in India and Pakistan:

Are we going to use this as a bit of a lever in terms of the finalisation of this, dependant on what happens in the Indian sub-continent?

Mr Lade—In terms of Pakistani response to the unfortunate nuclear tests in India, we are taking all steps that we consider feasible in encouraging Pakistan not to go ahead with a test of its own. I do not think at this stage, therefore, it is appropriate to discuss what measures we may take against Pakistan should they go ahead with a test, other than to note that we would regard this as an extremely regrettable and serious development and would respond accordingly against Pakistan. I might note though that in the case of India the commercial relationship is something where Australia's interests stood to be affected more, and at this stage that relationship has not been affected by the measures we have taken.

CHAIRMAN—Good.

Senator MURPHY—With regard to the question of the MAI and its progress, I assume these agreements that we are currently entering into do contain similar types of articles or requirements or criteria to those we expect the MAI to contain?

Mr Scully—I only do a marginal amount of work on the MAI, so I am not really the one to answer that question. My understanding is that the MAI text is something over 150 pages long right now—that is what I have been informed—

CHAIRMAN—And changing.

Mr Scully—and changing the whole time. Many of the things that are being negotiated are constantly in flux or unclear. So in a sense the basic guarantees in this investment agreement you can say are similar to the MAI, but it just depends on your definition of similar.

Senator MURPHY—Perhaps I can endeavour to ask the question more clearly. With the MAI, as I understand it, the explanation that we have been given about it is that, in relation to investment by Australians and/or all the countries that become signatories to it, it is designed to enhance the opportunity for investment and to provide, in essence, protection of the investments being made. I assume, at least according to the documentation, that that is what we are trying to do here. I would assume that in the articles of the agreement we are seeking to get in place protection measures along the same lines.

Mr Scully—That is exactly right—they are similar to that extent. They are trying to provide guarantees for investments.

Senator MURPHY—With regard to those agreements, in the case of disputes does the dispute process work fairly well?

Mr Scully—As far as I know there has never been a dispute brought under any of our bilateral IPPAs, but Attorney-General's are the people who advise on the dispute settlement procedures in the IPPAs.

CHAIRMAN—Before Bill Campbell makes a comment—and we do not want to get into too much detail on the MAI today—there is one big difference. That is, under the MAI, as drafted, there is the potential for company X to sue government Y, whereas under IPPA that is not the case—it is a government-to-government thing.

Mr Campbell—Well—

CHAIRMAN—Is that not right?

Ms Musolino—Under our IPPAs there are three different types of dispute settlement mechanisms. The first is for disputes between contracting parties; the second is for disputes between investors of one contracting party and another contracting party; and the third is between investors of each contracting party. Where it is between investors of contracting parties there are not actually dispute settlement provisions, there are just minimum guarantees—for example, that an award that is made in the dispute between the investors will be enforced in both contracting parties. But there are not dispute settlement provisions in the same way that there are in respect of the other two types of mechanisms for investor-state or state-state disputes.

Mr Campbell—Could I just add to that. One of the issues for Australia is the application of dispute settlement provisions between the investor and the state in relation to what is called the pre-investment stage—that is to whether you are going to allow the investment into the country. My understanding is that the IPPAs do not cover that, though there is a potential for the MAI to cover that, with consequences for the Foreign Investment Review Board and second-guessing of their decisions. That is the sort of real sticking point in relation to the MAI.

The other thing to notice about IPPAs is a point that you mentioned before, that they have in the past largely been made with countries who are not parties, who are not in the OECD negotiating mandate. They are very much a measure there to protect our investments overseas. Those are the points I wanted to make.

Mr Scully—I want to support Mr Campbell's view. Essentially, when we have bilateral IPPAs it is with former communist countries or developing countries where there are real fears about the security of Australian investments. It is not the situation where you expect there is going to be that much investment from, say, China into Australia or from Pakistan into Australia. I am aware of an opinion that with the MAI it is a different situation because you have lots of developed countries with probably very open investment regimes. It is just a different kind of scenario compared to these sorts of situations where we are just trying to protect Australian investors.

CHAIRMAN—Yes, it is very different. You have three or four observer countries, in terms of MAI, in just the sort of category you mentioned.

Senator MURPHY—The reason I asked this question is because we are proceeding with our inquiries on the MAI and because we were told that the MAI was to provide security for Australian investors overseas, albeit we were also told that in the main we have never had any difficulty from an investment point of view with the countries that are party to the process of bringing forward an MAI to finalisation, and that the problems we have experienced are, as Mr Scully outlined, with those countries that are either developing or are communist or ex-communist countries where there is a need to have some sort of security for investment.

With regard to the IPPAs that we develop and proceed to seek agreement on in a bilateral way, I was wondering whether they contain all of the securities, the protection mechanisms, that we would find in an MAI. For my benefit also, because I am having difficulty understanding it at this time, I would like to know what an MAI is actually going to deliver to Australia. These may not be questions that we should ask of you. If they are not, I would like to know who we should ask. I do not want to go and ask, say, Attorney-General's if Attorney-General's are going to say, 'We don't know.'

Mr Scully—Putting it into the context of the bilateral IPPAs, I am aware of an opinion that, because the MAI is really between developed countries, to that extent it is not that particularly important. That is not my view or the department's view, but I am aware of that view existing.

Senator MURPHY—But that is not true, though, because it is not just between developing countries.

Mr Scully—Countries like Korea.

Senator MURPHY—Yes, they are one of the 29 countries that are the developed countries, if you like. Then there are another eight countries, as I understand at the moment, that are observers to the process that, for all intents and purposes, are probably not developed countries. That is something which we will iron out as the inquiry goes on about the MAI.

We are seeking to put in place bilateral agreements on investment protection and security and, from Australia's point of view, from Australia's position on an MAI, I want to know whether it is essentially what we are pursuing via IPPAs bilaterally. I want somebody to be able to tell me whether that is what we are doing or whether we are pursuing one thing on the one hand and something else on the other, given that they are supposed to provide the same thing?

CHAIRMAN—I think what Senator Murphy is raising is really for another forum.

However, I think it is a fair question in terms of the IPPA with Pakistan as to whether it is covering the same ground or slightly different ground.

Mr Campbell—I think the question of intent would probably be best answered by Treasury. If I make a comparison of the provisions of the two agreements as they are at the moment, obviously I think there is much more in the draft MAI in terms of what it actually seeks to cover than is in the investment protection agreements. But, as was pointed out earlier, there is a lot of text in the MAI which has not been agreed and I think, as the negotiations go on, you tend to lose something.

Senator MURPHY—I understand that your text is not agreed. From this country's point of view, and from the point of view of a department that is putting in place bilateral agreements with countries that are not likely to be part of an MAI process in the foreseeable short-term future, are we going down the road of having to negotiate a different MAI agreement from what we are currently seeking bilaterally?

CHAIRMAN—My understanding is that the IPPA investment terminology is far narrower than what is arguably a question in terms of the MAI. There is a big question mark in the MAI as to what you mean by investment. That is one of the issues that we will have to address in this committee, in a separate forum. To cover your question, Shayne—bearing in mind we have already endorsed two of these before—it has a relatively narrow investment meaning and, at the very least, we should make mention of the MAI in terms of our report to the parliament on this IPPA.

Senator MURPHY—I am just trying to understand because we are involved in another process.

CHAIRMAN—I do not think we want to, this morning, get too bogged down once again on the MAI because there is a lot of text there, as everyone has indicated, that is not agreed by anybody yet. It is a moving picture and let us wait and see what we table in the parliament next Monday at lunchtime.

Mr Hart—By way of a comment, I also agree with Mr Campbell that it is for others to talk about intent because others ultimately have the responsibility. Conceptually, there is a difference between a multilateral arrangement which is an attempt to establish an international standard and bilateral arrangements. I do not think you can say that the two things are equal. In the OECD, there has been a philosophy of trying to establish international best practice arrangements between the members of the OECD and applying those standards beyond. There was a previous example of that in the area of money laundering where the states of the OECD established money laundering arrangements amongst themselves. Their objective is to take those standards and encourage the rest of the world to apply them. I think you could make the same sort of case out for the philosophical approach in the multilateral agreement on investment. But whether that same arrangement can be met in a particular country's case by bilateral arrangements I think it is for others

to conclude.

CHAIRMAN—But you can understand the point that Senator Murphy raises.

Mr Hart—Sure.

CHAIRMAN—It is question of consistency—whether it is bilateral or more multilateral in terms of the 29 nations involved in the OECD and a few observer countries. At the very least, if the committee agrees, it is something that we will make mention of in the report as being yet another question mark in terms of the MAI. By that stage, by next Monday, we will have tabled our first report—albeit our interim report—and that, I suspect, might generate a little discussion amongst departments without getting into the detail.

Senator COONEY—Just on a matter of linguistics, it is not terribly important, but if you look at article 3, paragraph 1, it says:

> Each Party shall encourage and promote investments in its territory by investors of the other Party and shall, in accordance with its laws and investment policies applicable from time to time, admit investments.

If you look at the definition of investments in article 1 and then put the two together, you would say that each party shall encourage and promote intellectual and industrial property rights and trademarks and goodwill. It just seems a bit tortured. What you really want to promote is the flow of capital from one country to another to purchase those things or to promote those things, isn't it? Does it fit well together?

Mr Scully—The actual chapeau for that entire investment definition is in article 1, paragraph 1(a). It says that investment means every kind of asset and that is the essential—

Senator COONEY—But it then goes on. If you look at 1(a)(iv) or 1(a)(iii) it says that each party shall encourage and promote a loan or other claim to money, that it shall promote a claim to performance having economic value. It just seems a bit strange to be promoting those sorts of things. You might promote investment. You might promote money purchasing those sorts of things—the act of investing or the act of raising them. But would you promote a claim to money? Why would you promote a claim to money or an industrial property right or a trade secret?

Mr Scully—I suppose there is a certain infelicity of expression but, essentially, those are just listings of all the things that fall within the definition of an asset of every kind, so it is beyond doubt what you are talking about.

Senator COONEY—I can follow that, but when you try to read it with 1, it seems

to be a bit tortuous. Who writes the agreements? It is not very important because everybody really knows what you are talking about but it just looks a bit tortuous when you try to put the two together.

CHAIRMAN—Bill, did you want to make a comment about tortuous legal drafting?

Mr Campbell—No, Mr Chairman.

CHAIRMAN—Are there any more questions, Barney?

Senator COONEY—No.

CHAIRMAN—Thank you and thank you, *Hansard*.

Resolved (on motion by **Senator Murphy**):

That the committee authorise the publication of evidence given before it today.

Committee adjourned at 11.12 a.m.