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JOINT COMMITTEE ON TREATIES

Reference: Treaties tabled on 11 May 1999

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JOINT COMMITTEE ON TREATIES

Monday, 31 May 1999

Members: Mr Andrew Thomson (*Chair*), Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Laurie Ferguson, Mr Hardgrave, Mrs De-Anne Kelly and Senators Bourne, Brownhill, Coonan, Cooney, O'Chee, Reynolds and Schacht

Senators and members in attendance: Mr Adams, Mr Baird, Mr Bartlett, Senator Cooney, Mrs Crosio, Mrs Elson, Mr Laurie Ferguson and Mr Hardgrave

Terms of reference for the inquiry:

Treaties tabled on 11 May 1999

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Committee met at 10.00 a.m.

ACTING CHAIR (Senator Cooney)—I declare open this meeting of the Joint Treaties Committee. On 11 May 1999, a number of proposed treaties were tabled in both houses of parliament. Today, as part of the ongoing review of Australia's international treaty obligations, the committee will look at four of these proposed agreements. The first is the proposed Investment Promotion and Protection Agreement with Lithuania; the second is the proposed Investment Promotion and Protection Agreement with India; the third is the proposed Trade and Economic Relations Agreement with Fiji; and the fourth is the proposed amendments to the Constitution of the World Health Organisation. Next week at this time we will take evidence on the proposed MRA with Iceland, Liechtenstein and Norway—this was the final proposed treaty, tabled on 11 May 1999.

[10.01 a.m.]

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department

MUSOLINO, Ms Franca, Principal Legal Officer, International Trade and Environment Law Branch, Office of International Law, Attorney-General's Department

ROWE, Mr Richard, Legal Adviser, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs

MORRIS, Ms Rachel Louise Lloyd, Desk Officer, Europe Bilateral 2 Section, Europe Branch, Department of Foreign Affairs and Trade

WALTERS, Mr Robert John, Director, Europe Bilateral 2 Section, Europe Branch, Department of Foreign Affairs and Trade

ACTING CHAIR—Welcome. Although the committee does not require you to give evidence on oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. Do you wish to make some introductory remarks before we go to questions?

Mr Walters—I will take members of the committee through the national interest analysis which formed the basis for the agreement. First of all, could I state the reasons for Australia taking the proposed treaty action. Lithuania has been experiencing increasing investment since 1996—inward investment from overseas. The Lithuanian government's commitment to foreign investment promotion, the continuing improvement in Lithuania's economy and a number of strategic factors make Lithuania an attractive investment destination. Lithuania is drawing interest from Australian small and medium sized enterprises, which view Lithuania as a test market and a strategic location for expanding operations into Central Europe, the Commonwealth of Independent States and Russian markets. Lithuania is also one of the Central and Eastern European candidates for European Union membership.

This agreement is a logical means for the Australian government to stimulate the flow of investment between Australia and Lithuania. The agreement will put Australian investors in a better position to benefit from the investment opportunities becoming available in Lithuania by providing them with a range of guarantees relating to non-commercial risk. The Australian government recognises the importance of promoting the flow of capital for economic activity and its role in expanding economic relations and technical cooperation between countries. The agreement provides a clear statement of principles relating to the protection of investments, combined with rules designed to render more effective the application of these principles within the territory of the parties.

Turning to the obligations resulting from the agreement, the agreement closely follows the Australian model Investment Promotion and Protection Agreement, or IPPA. It establishes a clear set of obligations relating to the promotion and protection of investments in accordance with each party's laws, regulations and investment policies. Articles 1 and 2 concern the definitions and application of the agreement. Article 3 requires each party to

encourage and promote investments by investors, including citizens and permanent residents and companies of the other party. Article 4 ensures that such investments will receive most favoured nation treatment.

Article 5 allows investors and their employees to enter and remain in the territory of the other party to engage in investment activities, while article 6 requires parties to make readily accessible those laws which affect investments. Under article 7, the agreement prohibits the expropriation or nationalisation of investments unless it is for a public purpose under due process of law, non-discriminatory, and compensated promptly, adequately and effectively in freely convertible currency. It also provides that, where an investor suffers loss by war and other armed conflict, revolution, national emergency or other civil disturbance, any claims for compensation, restitution, indemnification or other settlement by an investor of a party should be accorded treatment which is no less favourable than that for investors of any third countries. That is detailed in article 8.

Article 9 provides that all funds related to investments can be freely transferred in accordance with the law of the party which has admitted the investment. Transfers shall be permitted in a freely convertible currency. Article 10 concerns indemnities and guarantees provided by a party. The parties undertake to consult on matters concerning the interpretation of the agreement and endeavour to resolve any disputes connected with it by prompt consultations and negotiations, as stated in articles 11 and 12.1. Formal procedures for the settlement of disputes concerning investments are established under articles 12 and 13. Article 14 requires investors to be provided with full access to competent judicial or administrative bodies regarding disputes with other investors and provides for the recognition and enforcement of any resulting judgments or awards.

On the matter of costs, compliance with the agreement has few foreseeable direct financial costs for Australia. Costs may be incurred in the event of a dispute between the contracting parties, should the dispute be submitted to an arbitral tribunal at the request of either party. Under these circumstances, each contracting party bears the cost of the arbitrator it has appointed and of its representation in arbitral proceedings. The cost of the chairman and the remaining costs of arbitration are borne in equal parts by the parties, unless otherwise decided by the tribunal.

As Australia and Lithuania are parties to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States, it is also possible that a Lithuanian investor may refer a dispute relating to an investment in Australia to the International Centre for Settlement of Investment Disputes, or the ICSID. In this case, the Australian government may be required to bear all or part of the cost of arbitration and any relevant ICSID fees, subject to the discretion of the tribunal. The government would also have to pay the cost of any award handed down in favour of the plaintiff. To date, however, no case has been referred to the ICSID in relation to Australia's existing IPPAs.

The text of the agreement with Lithuania has no explicit reference to the negotiation of future related legally binding instruments and the agreement complies with existing Australian legislation and will be implemented within the framework of each country's existing laws and policies relating to foreign investment.

Turning finally to consultation, state and territory governments were advised of the proposed agreement with Lithuania through the Commonwealth-state Standing Committee on Treaties process. A copy of the text of the agreement was sent to all state and territory governments, along with a letter seeking comments and feedback. The Australian-Lithuanian Chamber of Commerce has also been sent a copy of the agreement with a view to it seeking comments from its members. We have received no comments on the agreement from any of the above.

ACTING CHAIR—Thanks for that, Mr Walters. Do members or senators have any questions?

Mrs CROSIO—I have a number of questions, if you do not mind. In your submission, as well as in the papers we have received, you have stated that this differs from the Australian model. How much does it differ from the typical Australian model?

Mr Walters—I can perhaps make a few preliminary comments and then my colleague from the legal branch might want to add something to it. I do not think it differs in any substantive way. Some countries are of more importance than others. We saw it as desirable to put in place an agreement with Lithuania, provided it could be done—

Mrs CROSIO—I am not questioning the desirability; I am just questioning the fact that in your own statement in your submission you say the it does differ from the general Australian model. Is it just ‘these’ instead of ‘that’ or ‘when’ instead of ‘where’? How actually is it different? I do not have a model in front of me so that I can make a line by line comparison. It is a basic question.

Mr Campbell—My understanding is that there are very few differences between the Lithuanian agreement and the model agreement. The differences are more in the nature of what you have just stated, ‘these’ and ‘that’, and also issues that might be particular to Lithuania and Australia.

Mrs CROSIO—So basically you are assuming that at this stage. Could I actually have that on notice if you find that there is anything different.

Mr Campbell—I have consulted with a colleague of mine but we can take that on notice.

Mrs CROSIO—In your submission to us you have mentioned cost. I am only new to the Joint Treaties Committee, but have we ever had an example where Australia has been obligated to bear the cost associated with whatever it was? Have you any examples in this agreement of saying that Australia may have to bear the cost? Has there ever been an example where Australia has had to be involved in any type of litigation or problems with this?

Mr Campbell—My understanding is that there has not been an arbitration taken under one of these types of agreements yet, so therefore Australia would not have had to bear the costs in relation to—

Mrs CROSIO—Was this clause put in because of our model or is it put in to cover both sides? Are we are looking to protect ourselves as well?

Mr Campbell—I think the clause regarding costs is a standard one in the agreement and it also flows from, I think, the ICSID convention which was mentioned earlier relating to the settlement of investment disputes between investors and state parties. It is a standard clause relating to costs. Many international agreements provide for arbitration clauses, and, in the case of some of those agreements, it will say that the costs are to be split between the parties unless the arbitral tribunal decides otherwise. In other cases it leaves it to the arbitral tribunal. But in all cases there is a potential cost to Australia in terms of financial cost in running an arbitration.

Mrs CROSIO—So is the answer to the question, ‘No, we have not had an example in the past or to this date where we have had to be involved in any type of costing that we could use as a criterion’?

Mr Campbell—My understanding is that there has not been, but can I take that on notice just to confirm that there has not been an example in the past.

Mr ADAMS—Who picks up the costs for agreements on world trade? They are agreements, are they not—they are treaties with the World Trade Organisation? Who is picking up the cost of the arbitration in those disputes?

Mr Campbell—If I can just clarify, I was talking about an arbitration taken under one of these types of bilateral agreements. Certainly there is world trade litigation under the world trade agreements, and Australia has participated in those. I am not quite sure where the issue of cost came in those but certainly we had to bear the cost of conducting our own case in that sort of litigation.

Mr ADAMS—But there is an arbitrator appointed now and that is what is happening here if there is a dispute. Is there not an arbitrator or something and the costs of the arbitrator is what we are talking about?

Mr Campbell—I am not certain how an arbitrator under the WTO agreement would be paid for. My understanding in relation to that is—and I might be—

Mr ADAMS—What about this treaty here?

Mr Campbell—What I am trying to say is that under this treaty here we would potentially have to bear some of the costs of the arbitration.

Mr ADAMS—Okay.

Mr Campbell—But until the arbitration is finalised we would not know the exact split-up of the costs.

Mrs CROSIO—Can I refer you to article 2 in your application of agreement. The first one says that this agreement shall apply to investments, whether they were made before or

after the date of entry into force of this agreement. Is it usual to have an agreement that is retrospective?

Mr Campbell—Could you excuse me; I will just take some advice.

Mrs CROSIO—I am glad I haven't got warmed up.

Mr Campbell—Perhaps my colleague could sit up at the table and answer some questions.

Ms Musolino—I think the question was whether it is usual for IPPAs to apply retrospectively.

ACTING CHAIR—If you have seen article 2.1, that is what has been asked about. It says that this agreement shall apply to investments, whether they were made before or after the date of entry into force of this agreement.

Ms Musolino—The Australian model text does provide that the agreement shall apply to investments whenever made, so in fact it is normal that it applies to investments that were made before the entry into force of the agreement.

Mrs CROSIO—You do go on to say:

... provided that such investments were made in accordance with the laws, regulations and policies in force in the host country.

I suppose we just say we give it a tick because we think it complies and therefore when this agreement is signed everything else before that automatically gets included. Is that what it is saying?

Mr Campbell—That qualification that you mentioned, the last qualification, would mean that if an investment were made illegally in the other country beforehand it would not be picked up by this agreement. I think that is the reason for the qualification.

Mrs CROSIO—But you would have to agree with me that sometimes many investments are made and it takes a long time before you find out whether they are legal or illegal, but they are accepted on the legal basis on which they are first made. There have been some concerns in the past with legal investments that probably turned out a little bit illegal. I am not trying to be nit-picky; I am just trying to make sure that we are covered.

Mr Campbell—I would agree that it does take time on occasions to find out whether an investment is illegal or legal, but when it is decided that something is illegal, it does seem to me that that qualification would prevent it from being picked up by this agreement.

Mrs CROSIO—But if it was not decided when this agreement was signed and everything that was there beforehand would now become included—as it says, 'made before or after the date of entry into force of this Agreement'—what happens if certain investments are automatically included and then later on down the track they are found to be illegal? Do

you have a clause here where you can say, 'I am sorry, we did take part of that agreement retrospectively but we are now going to exclude A, B and C because we have found that really they don't come within the ambit of this particular agreement'?

Mr ADAMS—That would be covered if they are outside the law.

ACTING CHAIR—Mr Campbell, you might want to say that it is not retrospective in the sense that it only applies to the future operations of the agreement rather than the past operation of the agreement. Would there be any merit in that?

Mr Campbell—I think that is right, but I would have thought that under that wording, if the investment is after entry into force of this agreement and an investment made beforehand is found to have been illegally made under the laws of that country, it would not be covered by this agreement.

Mrs CROSIO—I will come back, Mr Chairman. I have a few other things to do, but I will come back.

Mr BAIRD—I want to go to questions of the relevance of this agreement. Lithuania is not really on the top of the charts in terms of Australian trade relations. What is the size of the trade with Lithuania at the moment and the level of investment overall, so we have an idea of what we are doing here? Do you have an answer on that?

Mr Walters—Certainly, it is a fairly small commercial relationship at this stage.

Mr BAIRD—What is the amount?

Mr Walters—The exports in 1998 from Australia to Lithuania were \$9.6 million.

Mr BAIRD—And what was the level of investment?

Mr Walters—I think it is pretty small—

Mr BAIRD—You are right on top of things this morning!

Mr Walters—I have some figures that are a little bit dated but as of a couple of years ago it was not much more than in the order of \$US100,000 for Australian investment.

Mr BAIRD—For a \$100,000 level of investment to date, how much has this agreement cost to put into place? For example, were there visits to Lithuania to negotiate this?

Ms Musolino—Could I answer that question? We had two representatives from Lithuania come to Canberra for a one day meeting to discuss the IPPA. DFAT may correct me, because it actually had carriage of it, but I understand that subsequently everything else was done on the papers. Most of the issues were discussed in that meeting, which went for approximately half a day. I think there were Treasury representatives as well as representatives from the Department of Foreign Affairs and Trade and the Attorney-General's Department.

Mr BAIRD—Have you got an estimate of how much this agreement has cost to put into place overall—any costings—or has it all been internal? We have 14 public servants here this morning to deal with this issue alone—one gentleman arrived late. It just seems to me that this is a huge effort for an extremely small amount. I just wonder why we take up our time with this type of exercise rather than chasing some of the bigger and more important areas. This goes, of course, to some of the other agreements that are coming up—Iceland, I think, is on the agenda.

ACTING CHAIR—I think representatives for all the agreements are here, Bruce, but still—

Mr BAIRD—Could you say to us why you believe it is necessary to take up the time of this committee, 14 public servants, and lots of negotiations, for \$100,000 worth of investment—that is the last figure you have?

Mr Walters—I think to reiterate the point made earlier on, it does follow very closely the standard agreement. My legal colleagues can comment on the extent of negotiations, but I think in terms of the bilateral part of the department it has not involved undue resources. It is an issue that has taken a little time to put in place.

Mr BAIRD—But do you see what I am saying? From an output perspective, here are 14 people whose job is that.

ACTING CHAIR—Perhaps I could correct that. The 14 are here for all the four treaties.

Mr BAIRD—Okay, but even so, obviously there is involvement here.

Mr ADAMS—That is not bad, Bruce—three for one treaty.

Mr BAIRD—But, instead of spending our resources on this type of deal, maybe we would be better to put money into so else other than resources for people in these types of esoteric agreements. From my point of view it would be much better put into Austrade to get out there and hustle for a few export dollars in terms of these types of esoteric agreements, but I will pass to you, Mr Acting Chairman. I just think that this is a waste of time.

ACTING CHAIR—Could you just pursue what Mr Baird is saying. I suppose it relates not only to this treaty but to treaties in general. Is a cost-benefit analysis carried out? I think that is all that is being said. Do you take in as well Estonia and Latvia? Why are we pursuing this treaty if there is only \$100,000 worth of trade in it?

Mrs CROSIO—Then again, maybe it is a political decision.

Mr Walters—I was going to say that for a number of these countries from the former Soviet sphere, with the dramatic changes that were taking place in the early part of this decade it is something a number of these countries themselves wanted, including those in Central Europe—some of the more important countries like Poland and Hungary and the Czech Republic, or Czechoslovakia as it was at that time. They wanted to have in place a framework of agreements. As a general proposition, I think Australia was disposed for some

of these agreements—investment promotion and protection perhaps more importantly than one or two others. Trade and economic cooperation agreements at the start of this decade were of some value themselves, to the extent that a lot of these countries were not then members of the World Trade Organisation with all the obligations that go with that membership.

Mr BAIRD—So you are saying basically, in short, that it is for foreign relations reasons that we have established it?

Mr Walters—Yes.

Mr BAIRD—We understand that.

Mr Walters—I might just add that there is a reasonably large domestic population of people of Lithuanian descent. I do not want to overstate it, but with its prospective membership in due course of the European Union and privatisation and economic reforms and so on, there are some potentials even in some of these smaller countries.

Mr BAIRD—Thank you.

Mr LAURIE FERGUSON—I think there is a significant number of central Ukrainians who are interested in sponsoring these ties and who take a very different slant from Mr Baird. I wonder if you can give us a broad overview of our representation in the Baltic States and the level of effort we are making in regards to trade in the three countries involved.

Mr Walters—On the foreign affairs side, we have an embassy in Stockholm which has accreditations to each of the three Baltic States. If I am not mistaken, we also have an honorary consul in each of the three of these Baltic States. Austrade has its representation from Warsaw for the Baltic States. I guess that covers it in terms of the actual representation.

Mrs CROSIO—So basically that is the diplomatic representation?

Mr Walters—And Austrade is from Warsaw.

Mr ADAMS—There is from the trade side this position of getting ourselves involved with some of these countries that will probably come into the European Union in the future, and that is an access issue so that we may have trade with them and it gives us access for the future. I understand that that is one of the things that Mr Baird—who does not know much about trade—would not understand, but we have been doing this for some time with other countries to help us with our trade situation by getting in early. Some of these new countries, or countries that have come out of the old Soviet Union, are giving us that opportunity. Would that be a correct assessment?

Mr Walters—Yes, I think on the trade side in the WTO negotiations and the new round and accession negotiations for each of the Baltic countries, Lithuania has not reached the point of accession yet and there are some points of difference where we are looking for a

better market access deal from Lithuania. Your initial point is correct—if we can lock in some access at this juncture then that will be of benefit at any later point on accession to the EU.

Mr ADAMS—I think this has come up before. When these documents are written up, could we bring into the analysis the potential for trade—what trade and what investment in the future the departments are looking at? It may be of great help to us.

ACTING CHAIR—I did not take the questioning by Mr Baird to be hostile at all. He was simply trying to ascertain the basis upon which the agreement was undertaken. As has been pointed out, the 14 people here are for all the treaties. In that context, the national interest analyses seem to have been done very much in terms of the economics of it all and would seem to lead to the sort of questioning that Mr Baird was doing. Is there any move to broaden the national interest analyses? We talked about the investment between the two countries but, as other people have pointed out, there are a lot of Australians with backgrounds in the Baltic States, for example, that we might be thinking about when we make such treaties and the opportunities to go elsewhere into Europe. Is there any thought of putting that into the national interest analysis?

Mr Rowe—Perhaps I could respond to that question. However, first of all if you would allow me, I would like to add to what has been said in relation to the question posted by Mr Baird. Obviously these agreements are intended, as is stated in the national interest analysis, to encourage and facilitate bilateral investments by citizens of the countries concerned. Clearly, the scale of investment does vary considerably across the spectrum of countries with which we already have agreements or those with which we are negotiating. That is the fundamental intent of this agreement—to provide certain guarantees to facilitate investment as part of the government's policy.

I would just like to mention in relation to resources that what we try to do from the government's approach is to conduct the negotiations on the basis of a model text which we have developed. That is usually sent to the countries concerned. Every effort is made to try and finalise the agreement through diplomatic channels to minimise the costs of actual face to face negotiations. However, what inevitably happens is that there are some points that need clarification and usually there is at least one meeting between representatives of the governments to actually conclude the agreement. We are very conscious of the resource intensity of negotiating these agreements and we have tried to minimise that through the model agreement.

In relation to your question, I think we are very much in the hands of the committee here. If the committee would find it useful and helpful as part of its consideration of the particular agreements, or any treaty process, to have the national interest analysis expanded or developed in some way so that that information that we are now discussing is provided up front, then I think that would be a very positive response.

Mr BAIRD—I have to say, I would support that. From our point of view, it is the people who in the end have some interest in how the national spend is meted out, so I think it is appropriate to ask questions if there is insufficient information to let us make judgments. Then we will suggest that we are not using our money effectively in this area and there are

more productive areas that we could use it in. But, as you know, as part of this the national interest obviously has to include, as Mrs Crosio has said, the question of our foreign relations with those countries and the benefits that we can get from such a relationship. We understand that, but if it is done on a purely economic model, as it seemed to be at first, then one would question the return on investment.

Mr HARDGRAVE—I am just wondering if I could pull a couple of these elements together to formalise the construct of what you might want to do for national interest analyses in the future. There is a hierarchy of trade investment agreements and it is a suspicion—and I am sure it is a fact—that trade and investment and economic involvement in a country leads to diplomatic relations as much as the exact opposite is the case. I am just wondering if it may be possible to plug in where these various agreements, such as this one with Lithuania, perhaps fit into that hierarchy of agreements.

Would it be possible to explain that to the committee and then give us some relevance as to what this potentially could then lead to? Is this a beachhead agreement which then leads to something else which could lead to something else? Is there a plan in place to perhaps make those something else become a reality, without giving away all of our ins and outs of diplomacy and trade possibilities? Would you care to comment on that at all?

Mr Rowe—The agreement itself obviously is considered important. Actually where it fits on the scale, I would have to take that on notice just to ascertain the extent of the financial benefits that would possibly accrue from other IPPAs. I do not have that information available. In relation to what this could lead to, that is something that I think we could comment on in the NIAs—and what potential exists through this agreement for increasing investment opportunities and actual investments. But as for the scale, as we have mentioned, obviously the one with Lithuania is not as significant as some others—that is certain—but, nonetheless, given the objective of these IPPAs, it is considered to be useful to have such an agreement in place to provide the guarantees for Australians and Lithuanians.

Mr HARDGRAVE—Because at the end of the day what this should produce is a return for Australia. We should make some money out of our investment in Lithuania, be it \$100,000 now, a million next year or it might be \$10 million the following year. None of us has any idea what the possibilities may be or if there is a hierarchy of trade and investment agreements that this thing plugs into.

Mr Rowe—In relation to the hierarchical question, there is not a category or a listing that we have of which are of more importance than others. There has been more of a holistic approach taken. Where there is an opportunity and an interest in response to our own interest in developing these agreements for the interests of promoting trade and investment, then we have pursued those. But, as I say, clearly there is an assessment of potential for investment that can be given, I suppose at this stage when they do come before JSCT. But as to what they might lead to in specific terms, obviously it is very hard to quantify that. Of course, the intent and the hope is that these agreements will facilitate and increase investment, because investors will know that they have such an agreement in place. They are intended not only to provide to those guarantees, obviously, but to stimulate investment, particularly in Australia's interests.

Mrs ELSON—When you sought comments from states and territories, did you get comments back from any territories or states?

Mr Walters—We did not receive comments back in this instance from the state governments or from the Chamber of Commerce or the consulate.

Mrs ELSON—I do not know if we got an answer for the question before about the costings of the agreement. Is the department going to come back to the committee with the costings?

Mr Rowe—I answered in relation to the resources that are committed and the way we try to do it most efficiently. As to an actual breakdown of costs involved, I think we need some clarification as to what would be required. Is it the number of people in each department, the amount of time taken—

Mr ADAMS—How do you comply with your audit? Are you now under an audit?

Mr BAIRD—It seems reasonably simple to work out how many officers were involved, how many days they spent on it, what the average salary level of these people is, administrative costs that were in addition to that, if anything has been contracted out, and any visits involved because of it. I think that might be useful. I understand that quite a lot of them are fixed costs because you have already got the public servants in place, but perhaps if you are looking at overall resources you might question it on some other basis. It is not really meant to be provocative; it is really meant to have some type of discipline in evaluating the worth of entering into this type of deal.

Mr Walters—Perhaps it might be worth noting the fact that in concluding agreements like this one we are often not aware at the outset how smooth the sailing will be. This one, I think, has quite a long history. It has dated back some years and different officers have been involved, but that is not to suggest that it has involved a large application of resources on a continuing basis. It has just come to my attention for a very short period of time.

Mr BAIRD—I understand.

Mr Walters—We can look into it.

Mr BAIRD—A law firm would certainly be able to give you a price of how much it has all been worth and I cannot see any reason why we should not do the same.

Mr ADAMS—Exactly.

ACTING CHAIR—As Mr Baird said, we are not trying to put you under attack or be hostile, but as a committee of parliamentarians with responsibility to the electorate we have to try to assess it. I do not know whether we have a treaty with every country around the world—clearly we do not have diplomatic posts everywhere—so the department and the government itself make assessments as to where resources should be put and what level of representation we have and what level of agreements we might make. What we have to try to do is to see whether that is a reasonable priority, and clearly priorities are set. What we

are looking for is enough information so that when writing reports we can say which we think it is a good thing or a bad thing.

Mr BAIRD—Who initiates this? Where does the request come from? Does this come from Australian companies who want security of investment if they are going into Lithuania, for example, or do you go down the list of places we do not have agreements with and say, ‘Here is L for Lithuania, we should do something at some stage’? How does it work? Are you responding to a genuine need or is this a nice completion of the missing countries exercise?

Mr ADAMS—And can we have that in the initial analysis—why we are starting off an agreement and who initiated it?

Mr Rowe—Usually the agreement is initiated by bilateral discussions on strengthening and developing bilateral relations. The question of an agreement comes up in talks about the relationship and the investment that is going on.

Mr BAIRD—So it is a Foreign Affairs driven activity or agreement, rather than the private sector coming to you and saying, ‘We’d like to invest in Lithuania but there’s no agreement and we’re very nervous about it.’ Has there been any evidence of requests coming in from the private sector saying, ‘This is what we need to invest in Lithuania’?

Mr Campbell—I am not quite sure about the agreement in relation to Lithuania but I do recall at the stage that an agreement was being negotiated with Indonesia that the—

Mr BAIRD—Indonesia is entirely different; that is a red herring. Australia’s trade relations with Indonesia are right up there in category one. What I am questioning is the extent of resources that have been allocated to something that I do not believe is being requested at all by the private sector and where resources are being tied up in doing this for questionable reasons. As the bottom line, we have \$100,000 tied up at the moment and at risk. It is not exactly huge.

Mr Campbell—I was not trying to introduce a red herring. What I was trying to make was the general point that companies who are investing overseas do prefer to do so under circumstances where there is one of these agreements. Leaving aside the level of the investment there, they would prefer that there be one of these agreements there to do it. That was the only point I was making.

Mr BAIRD—Yes, but you are extrapolating out in terms of an agreement you have with Indonesia, where there is quite significant Australian investment, to then spending resources where there is basically none in a very different environment. That is what we are questioning. I am sure none of us would—

Mr Campbell—The only point I was seeking to make was that if somebody in Australia were investing in Lithuania then I would have thought that from the point of view of that company it would be better to have one of these agreements than not. That is the only point I am trying to make.

Mr BAIRD—But that is kind of like saying, ‘We’d run a terrific hospital system if it wasn’t for the patients.’ In all evidence there has been nobody saying to you, from what has been brought forward, that they want to invest in Lithuania. So, here we are, we have tied up a whole lot of resources backwards and forwards in something that nobody is really requesting. That is all I am saying.

Mr Campbell—I suppose the only other point I would make is that the aim is to promote investment as well.

Mr BAIRD—We will watch with interest how investment balloons in Lithuania.

ACTING CHAIR—I suppose the other question you might ask in that context is: have we done the same with Estonia and Latvia or have we got this sort of agreement only with Lithuania? I think what has been asked the whole time is, ‘What is the process of prioritising?’ Mr Campbell has addressed that largely, but what the committee is doing is trying to get a sense of how this agreement got under way. Do we have an agreement with Greenland in the same sort of fashion, or Iceland, or, as I say, Estonia or Latvia?

Mr Walters—Perhaps I can just make a very brief comment on that. Certainly, as was alluded to earlier on, with its fairly long history this stems from a political dimension more than from a trade dimension, and I must admit that is not reflected in the national interest analysis so hence this discussion has gone the way it has. There was a heavy political background to this and to some of these ones in that part of the world. If I can just make one comment on—

Mr BAIRD—If you say, ‘This is the primary reason,’ then we will understand that.

Mr Walters—Perhaps I can make one final comment on it. To take a country of a similar sort of importance to Australia, Slovenia, they have approached us to conclude an Investment Promotion and Protection Agreement—I am fairly sure it is that one, rather than a double taxation agreement. We have said that if they will take our model agreement then we can move ahead but otherwise we would have more important priorities. So that sense of resources comes in.

Mr BAIRD—But is that not something where you should have discussions with the Australian Chamber of Commerce and Industry, ACCI, or the Business Council and say, ‘Where do you see the priorities being in terms of where we should be working on these types of agreements?’ It seems to be just an internal one that you are doing, rather than the one that is being driven. Even though you might say it is for political reasons, and we understand that, if it is for investment then surely there should be some interaction with the business sector, but there does not seem to be.

ACTING CHAIR—I think we have an embassy in Malta for example. I do not know whether we have a tonne of trade with Malta but we have a lot of Australians with Maltese backgrounds. You can understand that. I think what we are trying to get a sense of is why choose Lithuania. You have said that a political issue is at the heart of the matter. Is that right? That is the impression I have anyhow.

Mr Walters—In the case of Lithuania, certainly it was a very significant factor in the decision in the first place.

Mr ADAMS—I want to ask about the immigration points of Lithuanians living in Australia. Could we have that in, along with the trade situation. We could put that in. I do not think the analysis is serving us as a committee in the way that it is written. I think we need a broader thing setting out what initiates these matters in the beginning, where they are going as far as trade or whatever are concerned and if there is an opportunity of moving into the European Union in the future—that sort of thing.

Mr BAIRD—I think it is also wanting to put on notice that this committee is going to be looking at the relevance of activities of agreements that are brought before us. We would like to think that they are more than just bureaucratic exercises.

ACTING CHAIR—Do we have any more questions?

Mrs ELSON—Did we determine what makes up the bulk of trade with Lithuania?

Mr Walters—It is essentially raw materials, commodity trade. On the investor front, it is assessed that areas of potential interest would not just be agriculture but also transport and communications for example.

Mr BAIRD—What are the trade items?

Mr Walters—Are you asking what are the main components in our exports?

Mr BAIRD—Yes.

Mr Walters—I am just trying to find a reference to that.

Mr BAIRD—Can I just say, Mr Acting Chairman, that I do not know whether it is because it is Monday, and you probably already think I have been terribly provocative, but this particular committee seems to not be as well prepared as I have seen them on other occasions. I am surprised that if we are doing an agreement with Lithuania that on some key factors, such as when you were asked what the difference was between this agreement and other agreements, there was a difficulty in answering it. Also, on the question of what was the level of trade or what are the items of trade, I would have thought the answer would be right there. So if I can just say as a casual observer that, respecting your own skills and abilities, I would like to see future committees a little better briefed than this one.

Mr ADAMS—Mr Acting Chair, with due respect to everybody here, I have to agree. It has not been a really good performance from our point of view in getting the answers to questions that we have asked, and answers that I would have thought would have been there in front of everyone of why we have the agreement.

Mrs ELSON—Have I had the answer yet to what we trade? I just wanted to know what we traded.

Mr Walters—Raw hides and skins are the main exports.

Mrs ELSON—And what do we buy from them?

Mr Walters—Less than \$1 million worth in 1997—mainly furniture, textile articles, chemicals and manufactured goods.

ACTING CHAIR—With Estonia and Latvia, do you know whether the goods go up to Lithuania and then out to Australia? What we are trying to get is some concept of whether Lithuania is a centre where the Baltic States might trade through, like in South Africa where a lot of trade from southern Africa as a whole comes through South Africa and a lot of the stuff we send to South Africa goes on to southern Africa. Is that what happens with Lithuania, do you know?

Mr Walters—Certainly the data are not always an accurate guide of our trade because the final destination can be different from the intermediate destination.

ACTING CHAIR—Okay. Well perhaps—

Mr ADAMS—The other thing is that, given that you said that you were aware that with Lithuania there are political issues involved, I would have thought you could have given the committee a little bit of information on how they are going on a political level. That might have been interesting. It might have been nice to have a page or two on that. I understand there are some internal issues within that country.

ACTING CHAIR—Do we get any migration, for example, from that area now? Do any of the Russians who were there come out to Australia?

Mr ADAMS—They are copping a few issues, I think. The Russians still living there are copping a bit of flak at the moment, but there is nothing of that in the analysis.

Mr BAIRD—I think there is nothing of any harm in terms of this agreement and we would not stand in the way of the process. By all means, put the agreement in place, but we would just like in future a bit better briefing.

ACTING CHAIR—Thanks very much, Mr Rowe, Mr Walters, Ms Morris and Mr Campbell. I believe you are going to stay for discussion on the next treaty.

[10.56 a.m.]

GAUCI, Ms Glenda Hiroko, Assistant Secretary, Mainland South-East Asia and South Asia Branch, Department of Foreign Affairs and Trade

HACKETT, Mr Brett Anthony, Executive Officer, India and South Asia Section, Department of Foreign Affairs and Trade

ACTING CHAIR—Welcome. We will now deal with promotion and protection of investments in India. Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal hearings—and this is where the secretary of the committee and I disagree. Mr Campbell, I ask your opinion on this: are the hearings legal proceedings? I do not think they are legal proceedings; they are proceedings of the parliament. Nevertheless, they warrant the same respect as proceedings of the House and of the Senate. Do you wish to make some introductory remarks before we proceed to questions?

Ms Gauci—The Investment Promotion and Protection Agreement with India forms an integral part of a burgeoning commercial relationship that we have with India. Trade with India continues to show strong growth and increasing diversification. Our merchandise exports to India in 1998 were worth \$A2.15 billion, making India our 11th largest export market. While trade largely comprises traditional commodity exports, including coal, wheat and wool, India has increasingly become the focus of efforts to export automotive components and services, including in the education and health sectors. There has also been increasing interest among Australian companies in investing in India over recent years, and this was one of the reasons why we entered into negotiations for the IPPA.

Australia is the ninth largest investor in India, with foreign direct investment amounting to in excess of \$700 million. Over a hundred Australian companies have representation there and, when fully realised, Australian investments are likely to be worth over \$2 billion. Just picking up a question that was raised in the previous session by the committee on emerging investment opportunities, at the moment Australian investment in India covers mainly the banking and financial sectors, manufacturing, hotels, mineral processing, food processing and the oil, gas and automotive sectors. Major opportunities for investment in the future by Australian companies are likely to emerge from the massive development needs of India in the mining and minerals processing sectors, energy, information technology, telecommunications and infrastructure sectors.

The Indian economy has made considerable advances in recent years and is now far more liberalised than at any other time in its history. Successive Indian governments have worked hard to reduce tariff barriers and to open the economy to foreign investment. That said, there remains much to be done to transform the Indian economy into a truly open and internationalised market for trade and investment. While Indian governments have stayed the course in pursuit of economic reform, there remains a degree of nostalgia in certain quarters for the days of nationalised industry and protectionism.

For this reason, the IPPA forms an important cornerstone in the economic relationship between our two countries. It will provide certainty and protection for Australian companies seeking to invest in India in terms of an Indian commitment not to take action to

discriminate against them, as well as setting out a clear means of resolving disputes should they arise. Australia's model text for IPPAs provided the basis for negotiation of the Australia-India agreement. In the interests of time I will not go through the IPPA provision by provision, but it is included in the National Interest Analysis which I think committee members have already received.

The final text does differ in certain respects from Australia's model text in terms of some obligations and commitments. These differences, again, are explained in the National Interest Analysis. It is important to point out that these differences, while departures from the standard text, do not represent any abrogation of Australian interests but are the result of negotiation to marry our preferred text with a preferred text that the Indian government had. The resultant final document protects Australia's national interest, honours the intent behind the provisions of our pro forma IPPA and conforms to Australian standards of investment protection.

The timing of this Investment Promotion and Protection Agreement is also in itself significant. The joint standing committee is no doubt aware of the recent strains in the political relationship between Australia and India brought about by the Indian government's decision to proceed with a program of nuclear tests in May 1998. At the time of those nuclear tests, we, along with others in the international community, expressed our strong opposition to the tests and a range of measures were imposed against India which were designed to demonstrate clearly to India the depth and the strength of our concern.

These measures consisted of a suspension of ministerial and senior officials' contact, the suspension of non-humanitarian aid, and the suspension of defence relations. These measures were significant not only in what they purported to do, but equally in what they did not attempt to address. Australian government policy ruled out taking any measures that impacted negatively on the bilateral economic and commercial relationship. To have taken such measures would have unfairly and disproportionately injured, or potentially injured, Australian companies.

In reality, since the imposition of those measures there has been some encouraging movement on the part of both India and Pakistan to comply with certain of the elements of the UN Security Council resolution that affect the nuclear testing issue. As a result, the government has relaxed the suspension on ministerial and senior officials' visits. In fact, it was during the visit to India by the Deputy Prime Minister and Minister for Trade, Mr Fischer, in February this year that the IPPA was signed. We continue to urge India and Pakistan to move more quickly and substantively to adhere to international norms of behaviour on disarmament and nuclear proliferation issues, including by their early signature of the Comprehensive Test Ban Treaty, and will continue to do this. But at the same time, the government believes we should be vigilant to ensure that other aspects of the bilateral relationship continue to flourish to the extent possible—and this, of course, includes the commercial relationship.

Ratification and implementation of the IPPA between our two countries will provide a stable, certain and consistent base for us to move forward in the conduct of our international business relations with them.

Mr ADAMS—I find it very interesting that Pakistan and India are still playing cricket against each other in the World Cup.

Ms Gauci—Some things are sacred.

Mr ADAMS—I suppose that is a good sign in one sense. Just on that situation, we broke off some relationships with Pakistan; have we resumed those or do we still have some sort of broken commitments that we normally would have with Pakistan—for example, ministerial visits et cetera?

Ms Gauci—The measures that the Australian government took against India in relation to their tests were the same measures that the Australian government took against Pakistan. They were threefold: firstly, the suspension of defence relations, including the return of our defence attache; secondly, the suspension of non-humanitarian aid; and, thirdly, the suspension of ministerial level and senior official level contacts. As I mentioned, in December, with the positive movement made by both India and Pakistan, the government relaxed the measures against suspension of ministerial level and official level contact. That applies to both India and Pakistan. The other two strands of the measures taken—the defence relations suspension and the non-humanitarian aid suspension—remain in place, although they remain under review in terms of further positive movement by India and Pakistan.

Mrs ELSON—Apart from Pakistan, what other IPPAs or trade economic relations agreement does Australia have with other countries in South Asia? Why was it necessary to depart from the model in the negotiations on the agreement with India?

Ms Gauci—I might defer to my colleague on the first question. In respect to the second question, the fact of the matter was that the Indian government itself also had a standard form IPPA text and so the course of the negotiation was to try to marry the two texts in a way which was going to be consistent with both our national interest and India's national interest. There are three sets of key differences between the two IPPAs. They are elaborated on in the National Interest Analysis. Firstly, they relate to coverage of indirect investments, particularly relating to companies incorporated in third countries.

The second departure from the Australian model relates to the guarantee of non-discrimination between domestic and foreign investors. The third difference relates to disputes between the contracting party and an investor of other contracting parties to the International Centre for Settlement of Investment Disputes. That change was made because India is not a party to that International Centre for Settlement of Investment Disputes. My colleagues from Attorney-General's legal area may wish to add to those comments.

Mr Rowe—In responding to your question, we have the agreements with Pakistan and India, and Sri Lanka has approached us regarding the negotiation of such an agreement.

Mr ADAMS—On the ICSID—the Convention on the Settlement of International Disputes between States and Nationals of Other States—India is not in agreement to this. Is this a convention that we have signed?

Ms Musolino—It is implemented by legislation in Australia in the International Arbitration Act 1974.

Mr ADAMS—I would be interested in that. How many countries are involved in it?

Ms Musolino—I do have a list but it is not at the table. I think there are about 130 countries that are a party to it but I could check that for you.

Mr ADAMS—And that is for the settlement of disputes, is it?

Ms Musolino—Basically it sets up a regime for settlement of investment disputes between investors and state parties to the convention.

Mr ADAMS—Did you say 1994?

Ms Musolino—Our legislation is at 1974—

Mr Campbell—It is the International Arbitration Act.

Mr ADAMS—The International Arbitration Act, and that is the basis for this convention, is it?

Ms Musolino—We adopted the convention—

Mr ADAMS—It came from that convention?

Ms Musolino—Yes, and we implemented the provision.

Mr ADAMS—How much arbitration from that goes on?

Ms Musolino—To date, as my colleague said earlier in respect of the Lithuanian IPPA, there has been no case brought against Australia under ICSID and Australia has not been involved in any ICSID arbitrations.

Mr ADAMS—Do you know if there has been between other states?

Ms Musolino—I think it is about 20 or 30 arbitrations to date.

Mr ADAMS—Is there any analysis of whether it is proven—

Ms Musolino—There has been a lot of analysis. There are a number of articles written by arbitrators that look at why ICSID was set up in the first place. One of the main reasons was that it was felt that arbitration provided a depoliticised forum for resolving disputes which involved state parties, investors and foreign investors.

Mr ADAMS—It is very relevant in today's world.

ACTING CHAIR—Who gets the job of the arbitrator? Are they ex-judges?

Mr ADAMS—Senators with a law degree!

Ms Musolino—There is a panel of arbitrators. Each country can nominate three or four to that list, which is maintained by the centre. Each time there is a dispute, the parties effectively can choose arbitrators that suit them both.

Mr ADAMS—So the World Trade Organisation has similar dispute settling, does it not?

Ms Musolino—Obviously the World Trade Organisation deals with disputes between state parties, rather than private investors. That is one major difference.

Mr ADAMS—Yes, it is beyond the states.

Mr BAIRD—Firstly, I wanted to congratulate you on your presentation. I did think it provided us with more information than we had previously—maybe you had the advantage of having sat there and heard the previous comments. Nevertheless, it was more comprehensive in its review of the trade relations between the two countries, and I think there can be no questions about allocating resources to such a significant market as India. One would question why it has not been done before, given the importance of India. I agree we should be doing it straightaway and it does have a lot of potential.

I saw that you had no mention of tourism at all in terms of your view of the relationship. It disappoints me that such a significant segment is not mentioned, the same as when the Australian High Commissioner briefed the foreign affairs committee and did not mention tourism at all, as if it does not exist. We have Qantas flights which did not exist two years ago and now they are on a daily basis. I think that is surprising. Secondly, in terms of following up the comments before, what contact have you had with business groups to determine what they wanted in terms of the agreement, or is it only internal?

Ms Gauci—To take your second question first, there has been consultation with the business sector right through the whole process. Negotiations for this agreement commenced in 1994 and the Australia-India Business Council was consulted, both in the decision to initiate the negotiations and through the process. In fact, the Business Council was present and had a meeting in February in New Delhi at the time Mr Fischer signed the IPPA. So they have been behind and fully supportive of the initiative—

Mr BAIRD—Which is good to see, and that is what we were wanting to see last time—that it was a response to a need, rather than just developing it—so that is important. In terms of these agreements, what about the other groups, the ones who have the clear recognition by the business community of Australia, such as the Business Council or ACCI, and having discussions with them in terms of the format of such an agreement? Has that been considered at all?

Ms Gauci—In terms of the actual text of the agreement?

Mr BAIRD—Yes, how you set up the agreement and what the key parameters are that they would like to see.

Ms Gauci—I might ask my colleague from legal to comment on that. As a general point, what Australian business tells us is that they want greater certainty, greater consistency, greater transparency in their business dealings in India, and they want some protection and a reliable dispute settlement—

Mr BAIRD—Can I just say that, for example, in terms of the GST deliberations, there were huge multiple hours that went on week after week with the business coalition, as it was called, in terms of what they would like to see in relation to tax. When you are developing treaties, is this not also one in which you should go to the peak body, whether it is ACCI or BCA—they are clearly recognised leaders—and say, ‘Do you want to have an input in this as well?’ so that you know that you are responding to the real needs of business? It is a terrific thing that you have been talking to them, but it is not only the people who are there, but the people who may wish to invest.

Ms Gauci—On the specifics, I will defer to Mr Rowe, but in the generic sense they were the types of things they wanted and they were not particular in terms of actual wordings and so on, so long as the provisions provided those types of guarantees.

Mr BAIRD—I understand that.

Mr Rowe—I am not sure that I can add anything to that because that is the negotiation process. The contact would not be made by the legal area and so I am unable to say explicitly if that occurred. I take the point that it is a valuable input into the forming of these agreements—

Mr BAIRD—They may not want to, but I think it is useful so that at least you can say, ‘We have consulted with the business sector. This is what they would like to see in the agreements. This is where they would like to see us put our priority in terms of it as well.’

Mr Rowe—From my understanding—and, as I mentioned earlier, a lot of these agreements have been concluded—there is quite a process of consultation, of seeking the views of relevant bodies or groups in the formulation of specific approaches to the content of the agreement. There is the model agreement, which of course goes out, but then in each individual negotiation there will be different input and points that are considered by us and by, of course, the other side. There are other government departments involved—for example, it is not just Foreign Affairs and Trade, but also Treasury; Treasury has its own context. From my own knowledge I would say that there is certainly an attempt to take account very widely of the concerns of interested groups. I cannot be more specific than that.

Mr BAIRD—May I suggest that an offer be made, because then you can be sure that you are looking after the requirements of business.

ACTING CHAIR—I thought there was a history of where Australia was putting a lot of its effort into developing trade with China and that there was a group of business people who saw India as being an opportunity.

Mr BAIRD—That is probably these ones, the Australia-India Business Council.

ACTING CHAIR—Following on from what Mr Baird said, I was wondering whether you know anything about the change from where India was regarded very much in a category below the trade that we have expected from China, to where it has now risen up from that position a little. Do you know anything of that history?

Ms Gauci—Just as a very general comment: there are two categories of business people with an interest in India. Firstly, there are those that have always had an interest in India and have always believed in the potential for increased trade and investment in India and have worked over the years to promote trade and investment there. The second group is a group which traded predominantly in East Asia, but as a result of the East Asian economic crisis have decided to divert their attention further west for a short while. We are picking up a lot of business interests from that category of business people at the moment. Just to pick up on the tourism question that Mr Baird raised before he left—

Mr BAIRD—I will wait. I know what the figures are. You do not have to answer it. It just seems that Foreign Affairs and Trade people always think in those terms and they never include tourism. It is obviously to do with the split of departments, but I want to see people include it because it is big, it is growing.

Ms Gauci—Could I send you a copy of our draft MOU on tourism? We have regarded tourism as a high priority for India-Australia, especially, as you mentioned, with the daily flights by Qantas now. For the last several months we have been in the process of trying to conclude a memorandum of understanding on tourism between our two countries. The text is currently with the Indian government and when completed it will facilitate greater and easier tourism between our two countries. So it is something that we are looking at.

Mr BAIRD—Okay, thank you.

Mr BARTLETT—The level of Australian investment in India is \$700 million. What about Indian investment in Australia? Is there any of that?

Ms Gauci—There is, and I will let my colleague give you the exact figures, but two very recent big projects in relation to Indian investment in Australia are the Mount Lyell Copper Mine in Tasmania, which Indian interests purchased a few months ago for, I think, about \$A20 million; and the second project was a \$500 million Indian investment in a urea fertiliser plant in Western Australia.

Mr BARTLETT—\$500 million?

Ms Gauci—Yes—potential.

Mr BARTLETT—With the Australian investment in India, have you any idea of what type of dividend returns that is yielding for Australia?

Ms Gauci—I cannot answer that question off the top of my head. Could we take that one on notice?

Mr BARTLETT—Sure, I would be interested in that. Is the tax treatment by both countries the same in terms of treatment of each other's multi-national investment in each other's country?

Ms Gauci—We have a double taxation agreement with India so, yes, I think so.

Mr BARTLETT—You mentioned a possible investment level of \$2 billion when fully realised. How did you derive the figure of \$2 billion?

Ms Gauci—I think it was on the basis of calculating what the actual investment was and extrapolating on what sort of dividends would be forthcoming over a period of time. I do not have the actual breakdown of the calculation in front of me here.

Mr Hackett—It is also a result of the estimates that the Indian government has placed on private actualised foreign investment.

Mr BARTLETT—Do you see the IPPA agreement as facilitating that increase in investment? Do you see it as critical to it or perhaps an added extra? How much impact do you think it will have?

Ms Gauci—I think it will be very helpful, for a couple of reasons. Firstly, the Indian government is still in the process of undertaking trade and investment liberalisation but, as I mentioned before, there are forces within India that are more protectionist, so the agreement will provide a level of certainty and protection for Australian businesses that do want to invest in India. Secondly, there is a certain degree of political uncertainty still in India and an agreement that is signed by the two governments will provide greater guarantees for our business people wanting to trade and invest there.

Mr BARTLETT—What was the response within India to the proposed MAI?

Ms Gauci—They are not an OECD member so they were not a party to the negotiation.

Mr BARTLETT—So it did not apply to them anyway.

Ms Gauci—Yes.

Mr BARTLETT—Just one other question on a different tangent. It has been put to me by a number of people that there is a large untapped resource in India for Australian education exports. Are we actively pursuing that with India?

Ms Gauci—Yes, we are, very much.

Mr Hackett—Very much—there is almost limitless potential. Unfortunately, there is currently a case before the Indian courts about recognition of overseas qualifications which probably is going to need to be resolved before our educational institutions dive into the market unreservedly.

Mr BARTLETT—Is that a de facto protective measure?

Mr Hackett—No, I think it is more of a function of the Indians coming to terms with more of an internationalised economy, including the question of educational qualifications.

Mr BARTLETT—We are energetically pursuing that?

Mr Hackett—Very much so.

Ms Gauci—We also have a person in the High Commission in New Delhi who works on these issues exclusively.

Mr ADAMS—What level of education are we talking about? Is it vocational?

Mr Hackett—Tertiary, mainly post-graduate.

Mr ADAMS—That is where the potential is?

Mr Hackett—Certainly secondary and tertiary as well.

Mr ADAMS—There are more PhDs in India than the rest of the world.

ACTING CHAIR—Thank you very much. We now move to the Trade and Economic Relations Agreement with Fiji.

[11.25 a.m.]

HILL, Mr Colin Douglas, Acting Assistant Secretary, Pacific Islands Branch, Department of Foreign Affairs and Trade

HILL, Mr Stephen John, Executive Officer, South Pacific, Africa and Middle East Division, Department of Foreign Affairs and Trade

MILNER, Mr Colin Charles, Executive Officer, Pacific Bilateral Section, Pacific Islands Branch, Department of Foreign Affairs and Trade

STORTZ, Mr Pat, Manager, South Pacific, Austrade

YOURN, Mr Frank, Executive Director, Australia-Fiji Business Council

ACTING CHAIR—Welcome. Do you have anything to add to the capacity in which you are appearing?

Mr S. Hill—I was Desk Officer—Fiji until two weeks ago.

ACTING CHAIR—Though the committee does not require you to give evidence on oath, I advise you that the hearings have the same force as hearings before the parliament. Does anybody wish to start with a description of the treaty?

Mr C. Hill—I understand that you will have seen the national interest analysis prepared for the agreement between the governments of Australia and Fiji on trade and economic relations. It was signed on 11 March by the then Fiji Minister for Foreign Affairs and External Trade, Mr Berenado Vunibobo, and by our Minister for Foreign Affairs, Mr Downer. I would make the point that the Australia-Fiji Business Council was consulted in the development of what we call AFTERA, and has warmly supported its promulgation as a mechanism to broaden the agenda for progressing the bilateral economic relationship between Australia and Fiji. The committee might like to note that we have with us today, sitting behind me, Mr Frank Yourn, who is the Executive Director of the Australia-Fiji Business Council. I think that reflects in strong measure the support we have from the business community in relation to this agreement.

ACTING CHAIR—The committee welcomes him here. Thank you for coming.

Mr C. Hill—The states and territories have been advised of the proposed agreement through the normal Commonwealth-State Standing Committee on Treaties Schedule of Treaty Actions. We have received no comments from the states and territories via that mechanism. I would mention that article 12 of the agreement provides that it shall enter into force on the date on which the two parties have informed each other that their internal legal procedures for bringing this agreement into force have been completed.

The purpose of this agreement, AFTERA, is to strengthen and diversify the comprehensive trade, investment and economic relationship Australia presently has with Fiji. Bilateral trade in goods and services reached \$A1.1 billion in 1998, which puts that

relationship approximately in the top 20 of our international trading relationships. Two-way trade in goods in 1998 amounted to some \$A870 million and two-way trade in services was the balance, which was approximately \$240 million. That, of course, includes a significant proportion for tourism trade.

Australia is Fiji's major market for manufactured goods and Fiji is a very important market for value-added products for Australia and, significantly, for small to medium enterprises. Many are new to the export market and this is an opportunity for them. The agreement has its genesis in the acknowledgment that concessional access benefits which Australia provided under SPARTECA for products manufactured in Fiji will soon cease to be meaningful. Bilateral trade and economic relations need to look beyond SPARTECA for their further development. AFTERA therefore provides a forward looking framework with a much broader focus than the existing concessional access provisions of SPARTECA. I should note that neither government proposes any change to SPARTECA. It will remain in place and its benefits can continue to be accessed as appropriate.

The agreement requires that the parties, subject to their laws, regulations and investment policies, take all appropriate measures to strengthen and diversify their trade, economic relations and investment with each other, including the facilitation of investment, the negotiation of commercial contracts, the development of industrial and technical cooperation, the interchange of commercial and technical representative matters and the holding of trade fairs and other promotional activities which advance trade.

Under article 4, each party shall, subject to their rights and obligations under international law, accord most favoured nation treatment with respect to the import and export of goods and to services and service suppliers of the other party. As for costs, there are no additional costs expected to arise from the agreement entering into force. The costs for meetings, referred to in article 8 of the agreement, are expected to be met from existing budgets. Mr Acting Chair, I welcome the opportunity, either on my own behalf or on behalf of my colleagues, to answer any questions from the committee.

ACTING CHAIR—Does anybody have any questions?

Mr BARTLETT—I have a quick question. On the national interest analysis it says that the latest available statistic indicated \$577 million of Australian investment in Fiji, but DFAT estimated the value as twice that amount. I am just wondering why there would be such a great discrepancy in the figures?

Mr C. Hill—I wonder if I could ask my colleague, Mr Stephen Hill—we are all Hills today—to respond to that one.

Mr S. Hill—I think it really reflects the nature of our own somewhat deregulated economy and the long traditional investment infrastructure, going right back to the late 19th century, that Australia has had in Fiji. When you go to Fiji you will see a very strong Australian presence and a lot of that has not been recorded. It is when you travel around Fiji and discuss with banks and business people that you can get a bit of a feel for the substance of the investment relationship, but that is not something that can be readily measured.

Mr BARTLETT—Should the two not be brought more into alignment somehow? Quoting two totally disparate sets of figures can be somewhat misleading, can it not?

Mr S. Hill—We should rely on what the statistics provide, but my understanding of the statistics, particularly in our economy, is that companies do not have to report their currency transfers and that we are only picking up what has been reported. We understand a lot of other activity is occurring, and when you visit Fiji you can perhaps see the outcome of this, but it is really quite difficult to measure. What it does do is give confidence that the Australian presence in Fiji is very strong indeed and something to be built upon.

Mrs ELSON—I have a quick question. In the light of the recent developments in Fiji, are there any problems with this agreement with what is going on over there?

Mr C. Hill—It is a little bit early to respond one way or another on that one. The new government is just finding its feet, so to speak, and at this stage we have not had the opportunity of substantive discussions with the new ministerial team, and particularly the new Deputy Prime Minister and Minister for Foreign Affairs, Mr Baba. That will come in due course. Later this year we have ministerial consultations with the Fijian government—that is a regular process—and I would fully expect before then, but certainly at that opportunity, we will be able to test the understanding and sympathies of the new government for this kind of arrangement. Frankly, we do not expect any problems.

ACTING CHAIR—Thank you very much, Mr Hill, Mr Hill, Mr Milner and Mr Stortz. Mr Yourn, there is no pressure on you but as executive director of the Australia-Fiji Business Council would you like to say something?

Mr Yourn—We already have put a short submission to your committee but I welcome the opportunity that you provide for me to simply endorse this agreement as another step in developing what is already a very long and very substantial commercial and economic relationship between Australia and Fiji. The Business Council has supported the government's role in pursuing this agreement with the Fijian government. We see the agreement as providing opportunities for further development of that relationship and for further protection of Australian interests in Fiji. Australian interests in Fiji very much rely on Fiji having a strong and healthy economy and I think this relationship has sufficient bilateral elements in it to support those sorts of developments in the future.

ACTING CHAIR—Thank you very much. Does anyone have any questions for Mr Yourn? Thank you very much and can you pass our thanks back to your organisation for its submission and for you coming, Mr Yourn. We will now move to the amendments to the Constitution of the World Health Organisation.

[11.36 p.m.]

ECKHARDT, Mr Bob, Director, International Organisations Section, Policy and International Branch, Department of Health and Aged Care

ACTING CHAIR—Welcome.

Mr Eckhardt—Can I pass on the apologies of my colleague, Joanna Davidson, who is unable to attend this morning because of illness. All of our medicos are already here for Senate estimates so she could not get any help.

ACTING CHAIR—What is it, a cold?

Mr Eckhardt—The flu, I think.

ACTING CHAIR—A terrible business. You have heard us say before, these are proceedings equivalent to proceedings of parliament with all their consequences. Having said that, do you have anything to say about this treaty?

Mr Eckhardt—I have a few introductory remarks. The proposed treaty action relates to amendments to the constitution of the World Health Organisation. The amendments will have the effect of increasing the number of seats on the organisation's executive board. The executive board functions as WHO's executive arm. Its responsibilities include executing the assembly's decisions and policies, submitting work programs and preparing the agenda for assembly meetings and advising on questions referred to it by the assembly. The board may also take emergency measures within the functions and finances of the WHO to combat epidemics, provide health relief in crisis situations and undertake urgent research or study.

The proposed amendment will increase the membership of the executive board from 32 to 34 members. Articles 24 and 25 of the constitution have been amended a number of times in the past, increasing the size of the executive board from an original 18 members to the present 32. All such previous amendments, the last being in 1986, were accepted by Australia. Since the allocations were last amended in 1986, there has been an increase in the number of member states in both the European region and the Western Pacific region, of which Australia is a member. The proposed amendments seek to redress the imbalance by increasing the board seats allocated to each of these regions by one. The European allocation will increase from seven to eight and the Western Pacific's allocation will grow from four to five.

The various regions of the World Health Assembly elect member states that are entitled to select a suitably qualified person to serve on the executive board. Board members represent their country for a period of three years. Australia was last represented on the executive board by Dr Neal Blewett whose term expired in 1996. The Western Pacific region is currently represented by China, the Laos Democratic People's Republic, Kiribati and the Cook Islands. The proposed amendments would increase the Western Pacific region's influence on the executive board of the organisation and this in turn indirectly increases Australia's influence in the administration of the World Health Organisation. These amendments will not add to Australia's obligations, financial or otherwise, in relation to the

WHO, nor will they require any change to the Commonwealth's World Health Organisation Act 1947 which governs our membership of that body.

ACTING CHAIR—Thank you very much, Mr Eckhardt. Does anybody have any questions?

Mrs ELSON—I would like to know how Australia's contributions are calculated. Apart from a general statement in the NIA, what are the benefits of membership of WHO for Australia?

Mr Eckhardt—The contributions are calculated basically on a population base consideration—the bigger economies pay more, the smaller economies pay less. The benefits to Australia are the World Health Organisation's normative health functions. They set the standards for environmental health, for chemical safety, for nomenclature in health terms, for common data definition of health procedures. In subscribing to those we get the benefits of international currency in these things.

Mrs ELSON—Thank you.

ACTING CHAIR—As there are no further questions, I thank all the witnesses who have again come to sustain the slings and arrows of committee work.

Resolved (on motion by **Mrs Elson**):

That the committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 11.42 a.m.

