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JOINT COMMITTEE ON TREATIES

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JOINT COMMITTEE ON TREATIES

Monday, 30 August 1999

Members: Mr Andrew Thomson *(Chair)*, Mr Adams, Mr Baird, Mr Bartlett, Mrs Crosio, Mrs Elson, Mr Laurie Ferguson, Mr Hardgrave and Mrs De-Anne Kelly and Senators Coonan, Cooney, Ludwig, Mason, Schacht and Tchen

Senators and members in attendance: Senators Coonan, Cooney, Mason and Ludwig and Mr Baird, Mrs Elson, Mrs Crosio, Mr Hardgrave, Mrs De-Anne Kelly, Mr Andrew Thomson and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 11 August 1999

WITNESSES

Committee met at 9.47 a.m.

CHAIR—On 11 August there were a number of proposed treaty actions tabled in both houses of parliament. Today, as part of the ongoing review of our treaty obligations, we are going to look at five of those proposed treaty actions. They are: firstly, Australia's proposed accession to the Food Aid Convention 1999; secondly, the proposed acceptance of the new or second revised text of the International Plant Protection Convention; thirdly, the proposed double taxation agreement between Australia and South Africa; fourthly, proposed amendments to the double taxation agreement between Australia and Malaysia; and, lastly, the Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles. We will now start with the review of the proposed Food Aid Convention.

Food Aid Convention

[9.48 a.m.]

GILLIES, Ms Ali, Branch Head, Africa and Humanitarian Relief Branch, Australian Agency for International Development

McCULLOCH, Mr Laury, Director, Pacific Contracts and Policy Section, Australian Agency for International Development

JONES, Mr Keith, Manager, Industrial Crops and International Section, Field Crops Branch, Department of Agriculture, Fisheries and Forestry

THOMPSON, Mr Ian, Assistant Secretary, Field Crops Branch, Agricultural Industries Division, Department of Agriculture, Fisheries and Forestry

MASON, Mr David, Executive Director, Treaties Secretariat, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

WATTS, Mr John, Executive Officer—Agricultural Policy, Agriculture Branch, Department of Foreign Affairs and Trade

CHAIR—Welcome. We are not going to require you to give evidence under oath this morning—that is not usually our practice—but I have to advise you that these hearings are legal proceedings of the parliament and they warrant the same respect as proceedings of the House or the Senate. Therefore, the giving of false or misleading evidence is a very serious matter and may be regarded as a contempt of parliament. Would one of your number please make some introductory remarks before we proceed to questions.

Mr Thompson—I will make some introductory remarks. Accession to the Food Aid Convention 1999 continues Australia's participation in each of the Food Aid Conventions that have operated continuously since 1968. For historical reasons, the conventions have been linked to a series of conventions relating to commercial trade in wheat and the coarse grains. The FAC—as it is known—in 1999 replaces a former 1995 Food Aid Convention as one of the constituent conventions of the International Grains Agreement. Australia is also a signatory to the International Grains Convention.

The 1999 convention effectively maintains the objective of delivering an assured amount of food aid to developing countries over the next three years, irrespective of fluctuations in world food supplies and prices. This convention incorporates a number of new features intended to improve the effectiveness and impact of food aid and to provide donors with greater flexibility in meeting their commitments under the convention. For example, the convention places greater emphasis on assessment of food aid needs, monitoring of aid provided and coordination between donors, recipients and others concerned.

Members of the convention may now commit in either value or tonnes, or a combination of both, and the range of eligible products has been widened beyond grains and the products

derived from them. The minimum volume of food aid guaranteed by the new convention has decreased from 5.35 million tonnes in the 1995 food convention to 4.895 million tonnes. However, a reduction in the EU's volume commitment by 435,000 tonnes is counterbalanced by an additional EU value pledge of 130 million euros. This equates, at current prices and exchange rates, to about 1.2 million tonnes of wheat. Australia's minimum annual commitment remains at 250,000 tonnes, the level applicable in the final year of the 1995 convention. There are no new or additional budgetary implications associated with Australia acceding to the 1999 convention.

The convention meets assurances on the continued availability of food aid to least developed and net food importing developing countries arising from ministerial decisions by members of the World Trade Organisation. It is therefore an important element in supporting the continuing engagement of developing countries in the forthcoming WTO negotiations. Accession to the convention is unlikely to have a significant impact on the composition of Australia's food aid program. Unless specifically requested, AusAID does not envisage providing significant quantities of eligible commodities other than wheat, flour and rice.

Australia's membership of the convention would not have any direct effect on the states or territories. Nevertheless, state and territory governments have been informed of the negotiations through the Commonwealth-State Standing Committee on Treaties process. Relevant agricultural industry bodies and non-government aid organisations have been regularly briefed by AFFA and AusAID respectively on the process and progress in the negotiations. No contentious issues have been raised in this process. Overall, the new convention represents a balanced outcome which will continue to provide a guaranteed volume of food aid to developing countries while allowing donors increased flexibility in the management of food aid programs. Thank you.

CHAIR—How recently has rice been included in the convention?

Mr Jones—Rice has been included in previous conventions and it is continuing to be included in the current convention.

CHAIR—Do you have any idea how much, in Australia's case, is actually used? How much rice do you source and distribute as part of food aid?

Mr McCulloch—On average, under the aid program, we would normally provide around 20,000 tonnes. That has been the case in the previous few years, mainly due to the crisis in Asia. Previous to that it had probably been averaging a bit less—around 10 to 10,000 tonnes.

CHAIR—There was a great fuss when Japan shifted some of the foreign rice straight into food aid rice. Where were they distributing that?

Mr McCulloch—I am not 100 per cent sure on that. I do believe that they possibly used some of the imported rice to then on-forward it through the aid program. I think they did use some of that for Indonesia recently, but I am not 100 per cent sure of that.

Mrs ELSON—Is the United Nations World Food Program the most effective avenue for delivering aid to those in need?

Ms Gillies—We work very closely with the World Food Program to ensure that their policies reflect Australia's concerns and priorities. We work very closely with them on their monitoring regimes. We believe that they provide a great deal of assurance to donors of effective delivery of food aid to the people who most need it.

Mrs ELSON—Do you have any non-government organisations that express concern about that distribution?

Ms Gillies—I think some non-government organisations can be concerned sometimes about some of the additional costs they might have to bear if they are invited by the World Food Program to distribute food on their behalf and I think there are some negotiations that non-government organisations go into with WFP on those sorts of conditions.

Mrs ELSON—Is it costly to the country that is getting the aid? When you said that there was a cost up front, is that what their concerns are?

Ms Gillies—No, there are overheads actually incurred by the delivery agencies on some occasions but not costs to the receiving country. The food is provided free to the receiving countries because they are developing countries and it is grant aid.

Mrs ELSON—Thank you.

Senator COONEY—Just following on from what Mrs Elson asked, I notice in article XVI(b), 'The decisions of the Committee shall be reached by consensus.' That is interesting. Is there ever any difficulty in getting that consensus? The reason I ask is that there are a number of countries that give aid and there are a number of countries eligible to receive it. I would have thought that there would be scope for some disagreement.

Mr Thompson—The signatories to the convention are the aid donors and my experience with the members has been that reaching a consensus on providing the assistance or any other matter under the agreement, while it does involve exchanges of views, usually can be achieved.

Senator COONEY—Is that because out of the eligible recipients the countries that need aid are fairly self-evident or is it for some other reason? Are there any guidelines that the committee uses to judge who will get how much of the aid?

Mr Thompson—AusAID may wish to comment in addition on this but the decisions under the convention as to which country aid is provided is a matter for that country. For instance, in Australia's case Australia decides which country, what form of aid, whether it is rice, wheat or something else and how it is delivered. It is a decision for Australia. Provided it meets the requirements of the convention it then can be counted against our commitment under that convention. Those requirements are that it is food, it is a staple of the country and those sorts of things. It is not a matter of an international body sitting down determining which country could get it. Provided Australia is giving eligible food products to any of the countries on that list of eligible receiving countries, it can contribute to meeting our commitments under the program.

Senator COONEY—What does the Food Aid Committee do under part III?

Mr Thompson—The primary role of the committee—and it really only has two significant meetings a year—is to monitor the provision of food aid by the members of the committee and report to the international community on the food aid provided.

Senator COONEY—I notice that set out in part II of article III are the various quantities of food that the various countries undertake to give. Is that set by anybody or is that what the countries themselves decide?

Mr Thompson—There are minimum requirements to be provided in terms of food aid to be a signatory to the convention but the minimum amounts there are amounts which those individual countries have agreed to provide.

Senator COONEY—Thank you very much.

Senator COONAN—My questions go to three areas and they obviously interrelate. One is eligibility; the second is needs or priorities; and the third is distribution. On eligibility I have noticed in annexure B that there is a reference to eligible recipients but what criteria are actually applied?

Mr Thompson—I think AusAID are better placed to answer that because the way the program works in Australia is that, while AFFA is the lead agency in signing the convention because of its role under the International Grains Convention, the actual administration of the aid is carried out by AusAID consistently with Australia's other aid programs.

Ms Gillies—Senator, if I could just lead off on that, the determination here is really set in a separate forum and that is the Development Assistance Committee of the OECD. That is the forum in which the incomes and the standards of living of all developing countries are basically ranked against each other and donors come to a consensus about which countries are eligible for what sorts of assistance in the most general terms. I think it is important that we understand that the Food Aid Convention simply provides the framework within which donor countries then make separate sets of decisions about what food aid they will provide where. Essentially, the FAC sets out the rules of quality of food aid, what is actually eligible and who is eligible, and countries agree to provide a particular minimum amount. In the case of Australia, we then go through a whole different set of processes deciding which countries will receive food aid, when they will receive it, what kind of food and through what channels. As has already been pointed out, a large amount of ours goes through the World Food Program.

Senator COONAN—How is it actually projected? With non-emergency aid, what role does Australia have in projecting what it is going to do or is this all done really outside Australia?

Ms Gillies—We have two sets of programs really which work very closely in collaboration. One, as you suggest, is emergency needs and the other is longer term use of food aid. We would use food aid. We would go through a process of consulting broadly within the development community and, of course, with our posts to establish the places

where food assistance might be the most useful. We then take that to the minister. If he agrees we then provide that during the year for the particular purposes.

Senator COONAN—Is one of the matters that are taken into account the difficulties of distribution or is it just set as a priority and somebody else worries about how to get it through and how to get it to the people in need?

Ms Gillies—We work very hard on thinking about distribution. That is an integral part of making sure that the food actually reaches the people that it is intended for and does so in the most cost-effective way. Laury, do you want to add to that?

Mr McCulloch—All I can add to that is we work very closely with the World Food Program for a large part of our food aid. The World Food Program is a very highly thought of logistics organisation. We think in terms of the actual cost of delivery because that actually can be quite substantial, for example, in places like Sudan; nevertheless, we still contribute, although in a sense we do not probably get as big a return in many cases in terms of the amount of food aid because of the very high transport cost. Really the answer I think is that we work very closely with the World Food Program and contribute through their programs which are very highly organised and very effective in the delivery.

Senator COONAN—Thank you. I have no other questions but could someone prepare for me—I do not know whether anybody else would be interested—a flow chart of how all these decisions are made and by whom, because I certainly do not have a very clear picture just from our briefing as to how these decisions get made, how they are evaluated, what priorities are set, who sets the priorities and how it actually works. Thank you.

Mr Thompson—We can provide that.

Senator LUDWIG—In addition to that, could you then reflect the cost implications of each decision and the judgment that has been made about the cost or whether or not a judgment is made?

Senator MASON—Mr Thompson, you mentioned in your introductory remarks that article IV of the convention has broadened the list of eligible products from just simply designated grains and rice and so forth. Do you know to what extent Australian agriculture will be taking advantage of that extra extension?

Mr Thompson—Australian agriculture can take advantage of that to the extent that we will provide aid in terms of those products. As has been mentioned earlier, the majority of the assistance provided under this convention in the past has been for wheat, which has predominantly been Australian derived wheat. So Australian agriculture has benefited from that.

We have also provided rice which, again, has come from Australia. Other staples that Australia may provide from time to time are pulses or something of that sort. Again, Australia produces those. Some of the other commodities that can be used in smaller amounts are things like sugar and milk products, which I understand Australia has used from time to time, but they do not make up a major part of our aid program. AusAID may wish to

comment on how they see the future of the program. My understanding is that I would not envisage it moving far beyond the grains and rice that have made up the package in the past, and that is predominantly Australian.

Ms Gillies—I think AusAID would agree with our colleagues from AFFA that we do not see too much change in the future, but there is greater flexibility for donors. If it is the most appropriate assistance for those in need, we would consider it.

Senator MASON—Skim milk is always a big thing in relief funding, isn't it?

Ms Gillies—It has been in the past. There are quite a lot of issues involved in ensuring that skim milk actually does not create health problems when it is provided to people who are going through a lot of difficulties with their nutrition.

Senator LUDWIG—In respect of the $90 million, is there a table or a chart that shows how much goes to the on-costs or the transportation costs and how much actually funds the product that gets to the recipient? Also, I was looking at the decision making criteria that are relied on to judge whether it is more advantageous to provide cash. As I understand the obligation, you can provide cash for the purchase as against the product itself. So is there decision making criteria on which you would then say, 'On balance it is better to provide the grain because the on-costs are less expensive,' or, on the other hand, 'It is far easier to provide the cash,' if any is provided? I do not know whether any is provided, but perhaps you would also help me with that one as well. Who makes those decisions? Maybe I have missed where that might be made.

Ms Gillies—These decisions are made within the context of each allocation of food aid. So, on each instance, we think about the most effective way of providing the food aid. We can certainly provide you with a table which sets out the cost of all the transactions for food aid: the actual volumes and the value of the food aid provided. We can certainly provide that to you.

I think you also asked a question about the decision making process. We may be able to cover that in a similar sort of way to the response that we will provide to Senator Coonan on the flow chart, which shows how we make those decisions.

Senator LUDWIG—On top of that, have there been any cash equivalents made, or have they all been supply of grain or like products?

Ms Gillies—We do provide funds on occasion for local purchase in emergency assistance situations. On occasions there may be food available close by to an emergency situation, and that may be the most streamlined, cost-effective way of getting food quickly to a community which has undergone some kind of trauma or natural disaster. So we do on occasions provide cash for local purchase.

Mr McCulloch—Or regional products purchased within the region.

Senator LUDWIG—Perhaps in your response you can provide the break-up of the $90 million: how much comes down to those sorts of cash purchases, and the decisions on

whether or not it is far better to purchase overseas or to purchase internally from Australia and then ship it overseas—that is, as against costs and on-costs.

Ms Gillies—Sure.

Senator LUDWIG—It is 250,000 tonnes as against $90 million. It just seems an expensive wheat.

Mr Thompson—That $90 million includes the transport.

Senator LUDWIG—I understand that. There is no table that shows me that. It is still expensive wheat.

Senator MASON—As a supplementary to Senator Ludwig's question, it is an interesting question about the criteria used to establish whether in fact you should give aid and in what context. I remember working in Cambodia when all this rice came in and destroyed the local economy. How much you are bringing in and whether it is better—as you say, Senator—to give money in certain contexts has to be an issue, doesn't it?

Senator LUDWIG—I was asking the question. I was not saying it was better.

Ms Gillies—These are precisely the sorts of issues that we worry about and take into consideration when we are putting together a food aid package. The World Food Program, for instance, has a long history in providing food aid in the form of, say, food-for-work packages, so that the food becomes some kind of currency and it does not have as great a distorting effect on local production. They are very important questions. I think the management of food aid has evolved greatly over the last 10 years.

Mr BAIRD—Mr Chairman, I have a supplementary on the supplementary. It is related to the admin costs of the aid. Do we assess that and is the percentage of bags-for-your-bucks improving—the grain that actually gets to the location—as a percentage of the dollars that we actually spend?

Mr McCulloch—I could not provide you details on whether it is improving. My overall feeling is that it has been reasonably static over the past 10 years in terms of the on-costs. From memory I would think that, the actual way it breaks down in terms of the overall food aid program, the figures would be approximately 60 per cent to 65 per cent for the actual cost of the food and around 35 per cent to 40 per cent overall for on-costs for transport and other operational costs involved.

That is a very broad overview. In terms of individual operations, the figures can be all over the place. For example, in Sudan the costs could be of the order of 90 per cent for transport and delivery costs and 10 per cent for food because of the nature of the program. In other words, until recently, most of the food had to be delivered by air, which is obviously very expensive. As a broad thrust, the overall percentages are about 65 per cent for actual food and 35 per cent for transport and other operational costs.

Going back to the question on Cambodia, the convention does have provisions to take account that you are not damaging local markets. A program which we do have in Cambodia on food aid basically is local purchase, and it is quite a substantial program in terms of Cambodia.

Mr BAIRD—I am a great fan of AusAID, having seen their work in China and Tibet this year. I am convinced that most Australians completely underappreciate the very good work of AusAID. Nevertheless, I think a lot of people would be wondering, given what my two senatorial colleagues from Queensland asked, whether this is surplus food we are dealing with here or whether it is specifically grown for purchase by the government in the form of foreign aid to another nation.

Mr Thompson—It is not surplus wheat. The wheat tonnage is purchased by the government generally from AWB Ltd for delivery to these markets.

Mr HARDGRAVE—Is it purchased at the usual board price or whatever it is that is set?

Ms Gillies—We purchase in some volume, so we are able to come up with some slightly more reasonable prices. We are simply a part of the market and we purchase as a part of the market.

Mr HARDGRAVE—In the usual sort of market tendering ways, I guess.

Ms Gillies—The AWB is the sole provider, so we deal directly with them on wheat.

Mr HARDGRAVE—Yes, it is a happy little free market. What representations have you made to other nations where we provide aid, given that there are industries in the agricultural sector that have so much surplus in their production that we are seeing oranges—I think most recently rejected by McDonald's for some strange reason—and tomatoes and things like that literally being bulldozed into holes in the ground? I think people in my electorate would be a bit worried that people are still starving in parts of the world, yet we have not had negotiations to try to soak up some of that surplus and to perhaps offer it in a reconstituted form—dried or processed or whatever—as food aid. What work have you done on that?

Mr Thompson—The focus of this convention has been on wheat and grains. Australia has not tended to have trouble placing its wheat, so we do not have a surplus. Other countries which have produced surpluses have either placed them on the world market, resulting in a decrease in the price of wheat, which presumably assists AusAID—

Mr HARDGRAVE—Hang on, Mr Thompson. I did not ask about wheat. I acknowledged the wheat thing; we have dealt with that little mechanism. What I am wondering about are other areas of agricultural production, like oranges and tomatoes, for instance, which we hear—and I imagine it is true because it is on the media so it must be right—are bulldozed into the ground because they have been produced and the market does not have a place for them to go. I think Australians would rightly ask the question: what work is being done to make representations in international fora to make this food, either in

its 'off the tree' state or in a reconstituted or value added or processed state, available to starving people elsewhere in the world? What work have we done in that regard?

Mr Thompson—I am not familiar myself with any work, in international fora that Australia has been involved, for disposing of the food in that form. But I imagine some of the considerations are the ones you mentioned, for example, that it is expensive to ship some of those products around the world. In fact, it is expensive to even ship them within Australia, so I would envisage there are some significant cost barriers associated with those sorts of commodities.

Mr HARDGRAVE—Sure. Can I follow that through with one last question, conscious that I am at the end of the food chain, as far as time is concerned, on this particular issue. What I am concerned about is that we do wheat, we do rice, we do these bits and pieces that we are fairly comfortable in doing because we grow a lot of it and we have been doing it this way for a long time, but have we looked at renewing or revising what we can do as far as food aid is concerned? You are saying to me that no work has been done in that regard, or that there is no call for it. Is there no call for it? Nobody wants our sun-dried tomatoes, or oranges, or whatever?

Ms Gillies—The response from the aid perspective would be that there are certainly calls for the grains that we provide. In emergency situations you have to have the sort of food that is easily digested—and I mean, literally, digested—and the sort of thing that can be put in bulk storage, and all that kind of stuff. There has to be a system which does not require any sophistication by the receiving country—nothing in the way of frozen systems—and the bulk storage is often prone to great loss through pests et cetera, as well. So we have really got to put as little stress and strain on the recipient countries as possible. And in emergency situations it is very important that the sort of food is readily incorporated into the diet of people who are going through some kind of nutritional stress. You would not provide to somebody who was very hungry the sorts of foods that perhaps might be being hoed into the ground, such as oranges and tomatoes. It simply would not be appropriate and they would probably be ill as a result of receiving it.

There is no pressure, as far as I am aware, from other donor countries to extend the range of food aid to incorporate those sorts of products. But you will have noted that this Food Aid Convention does, in fact, extend the range of eligible food products beyond that which pertained in the 1995 convention, so there has been a bit of extra room to move.

Mr HARDGRAVE—Thank you. I think you have helped me to explain to my constituents why that is the case.

Mr Thompson—I should just add one thing to that. While the range has been extended here, this convention does nothing to stop a country providing other food products, should they be suitable in the circumstance and if they have that product available.

Ms Gillies—It simply would not be counted within the Food Aid Convention, but it is possible to do it.

CHAIR—Thank you kindly. If members have any further queries, perhaps they might ask the witnesses and their departments, through the secretariat, in the next few days before we have to consider this treaty.

New (second) revised text of the International Plant Protection Convention

[10.20 a.m.]

IKIN, Dr Robert, Acting Assistant Director, Plant Quarantine Policy Branch, Australian Quarantine and Inspection Service

TRUSHELL, Mr Paul Anthony, Policy Officer, Multilateral Team, Plant Quarantine Policy Branch, Australian Quarantine and Inspection Service

ROBERTS, Dr William Philip, Chief Plant Protection Officer, Department of Agriculture, Fisheries and Forestry

MASON, Mr David, Executive Director, Treaties Secretariat, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

CHAIR—Welcome. We will not require you to give evidence on oath but I have to remind you that these are legal proceedings of the parliament, as if they were taking place in either the House or the Senate, and therefore warrant the same respect as such proceedings. The giving of false or misleading evidence is therefore potentially a very serious matter and may be regarded as a contempt. Could one of you please make some introductory remarks and then we will proceed to questions.

Dr Roberts—Thank you. The International Plant Protection Convention operates under the United Nations Food and Agriculture Organisation. It first came into force in 1952, and Australia was a signatory from that time. The treaty action being considered today is the new second revised text of the International Plant Protection Convention. This replaces the first revised text of November 1979 and it incorporates amendments approved by the 29th session of the FAO conference. It is proposed that Australia's instrument of acceptance be lodged with the director-general of the FAO as soon as practical after 27 September 1999.

The purpose of the convention is to promote common and effective action to prevent the spread of pests of plant and plant products, to promote measures for their control and to oblige contracting parties to adopt the legislative, technical and administrative measures specified in the International Plant Protection Convention and supplementary regional agreements.

In 1995, contracting parties agreed on the need to amend the previous text of the IPPC. The amendment was required to: one, bring the previous text into line with the 1994 World Trade Organisation's Agreement on the Application of Sanitary and Phytosanitary Measures—the SPS agreement—which establishes the International Plant Protection Convention as the reference point for standards when implementing phytosanitary measures; and, two, to formalise mechanisms and processes for the development and implementation of international standards for phytosanitary measures.

Australia was one of the countries that initiated the process to ensure the revision of the IPPC was clearly aligned to the SPS agreement. Australia took a lead in developing the

proposed amendments to the 1997 IPPC to ensure that the process did not lessen contracting parties' ability to restrict, on scientifically justified grounds aligned to the relevant international standards, the entry of plants and plant products—imports. Another objective was to ensure the amendments protect the export of plants and plant products from unjustified phytosanitary trade barriers that are not based on international standards developed under the convention.

On advice from the FAO committee on constitutional and legal matters, the FAO conference in November 1997 adopted the resolution stating that approval of the 1997 IPPC does not impose new financial and legal obligations on contracting parties. The FAO conference agreed that proposed amendments are a clarification of existing obligations and activities under the previous text and a formalisation of the linkages it has with cross-linked international agreements. Together with many other contracting parties, Australia already acts consistently with the obligations that are clarified in this revision. This is because developments in international phytosanitary practices have occurred in advance of the revision and as a result of complementary obligations under the SPS agreement.

AQIS, that is the Australian Quarantine and Inspection Service, is already fulfilling obligations that are not formally set out in the previous text but are clarified in this revision, such as the requirement to conduct transparent and science based pest risk analyses for plant and plant product imports. As well, Australia has always provided officer training and other capacity building assistance to developing countries to ensure that Australia maintains its reputation as an international leader in the area of the development of phytosanitary policy and operations. Thank you.

CHAIR—What are the biggest couple of threats at the moment to Australian plants in terms of quarantine at our borders?

Dr Roberts—The biggest threats?

CHAIR—Yes.

Dr Roberts—It is really difficult to say that in a simple answer. The reality is Australia has bioclimatic areas running from the tropics through to cool temperate and, as a consequence, we grow almost every possible crop plant there is grown in the world. The result of that of course is that we are effectively open to—or under threat from—almost every pest and disease there is in the world.

If you look at some of the big ticket items like cereals, wheat production, one fairly significant disease we are certainly concerned about is karnal bunt of wheat. Karnal bunt of wheat is a fungus disease. It actually does not much effect on real plant production but it has very significant impact in world trade. Essentially there are a lot of countries, including Australia, that are concerned about getting karnal bunt and therefore take fairly significant action on imports of products that may carry this disease. If karnal bunt, for example, came into Australia, it could have a very significant impact on our wheat export industries. I might add that this agreement allows us to do a pest risk analysis on the risks of entry of diseases such as karnal bunt and to take appropriate action, which we are already doing.

CHAIR—Good. That is a good straight to the point answer you get from a scientist.

Mr HARDGRAVE—I just have a question with regard to trading partners. Are we getting cooperation from other countries that trade with us? Are those countries nipping the disease or the problem in the bud before it even gets here, or is that just not a reliable course to follow?

Dr Ikin—In relation to our negotiations with trading partners, the current IPPC will help us to at least set ground rules for us to begin negotiations. This is the basis of us setting standards. Since the SPS agreement we have been able to at least begin to set ground rules which we all understand. In particular, it has been recognised that to negotiate access on both sides each country is required to do a pest risk analysis. This again has been formalised in a standard so that basically, if two countries are looking at an access into Australia and similarly outside of Australia, we understand the process that is going on. We provide information which they use to do the risk analysis on the particular commodity. They look at the particular lists of pests and diseases and analyse them in a standard mechanism so that we can know what they want us to do and they know what we want to know as well.

Mr HARDGRAVE—What about the ships that are predominantly involved in the transportation of things that come in to Australia? They cannot get the mechanics right on a lot of these international cargo freighters—with front ends of boats falling off and hunks of oil dropping into harbours and so forth. Could we be certain that they are getting matters such as the things they are carrying, the diseases and problems they are carrying right? What do you do to make sure they have?

Dr Ikin—When commodities come into Australia, if the ship itself has the potential for bringing pests in, we would require that the ship be cleared and cleaned before the commodity is loaded onto the ship. We require that it be done in a certain manner, to a certain standard, and it would have to be certified by the national plant protection organisation of the country where the produce is loaded so we know that the ship itself is clear before the commodity is put into the ship. It is a problem, particularly with storage pests, on tramp steamers that go from one country to another. Generally we would require that they be cleaned before the commodity is loaded, so that you get a clearance from the commodity and a clearance from the conveyance.

Mr HARDGRAVE—Thank you very much.

Mrs CROSIO—Just following through, Mr Chairman: why would you only generally require it? Why wouldn't it be mandatory?

Dr Ikin—It depends on the type of commodity. In general, what you are concerned about with ships is storage pests but, if you were bringing in, say, oranges, you would not be concerned about oranges because you are not looking at storage pests for oranges. Generally we would require it but if the commodity does not create the pathway for those particular pests to come in then we would not require it. It would be clean because a particular pathway would not be there. But in general if we are bringing in commodities in ships we require the ships to be cleaned.

Dr Roberts—Could I just clarify slightly too: the backup we have at this end is that they are inspected on arrival. If problems are found, then action is taken. For example, I remember a couple of years ago now that a shipment of steel came in bulk loaded in a hold, and it turned out there was quite a lot of contaminating grain that was associated with that steel, so action was taken to make certain that that was cleaned up and the grain was appropriately disposed of.

Mrs CROSIO—That was going to be my question. It is all very well to say that a certain product is coming in, but another product that does not require inspection at all might come in. That seems to be the way in Australia. We seem to be getting all these pests and diseases in: are they not from the obvious sources but from the areas where we are not normally looking?

Dr Roberts—In fact the evidence is that, with the exotic pest and disease outbreaks of plants that we have had, it is very rare that we believe they are associated with commercial trade. Most of the things that have come in are sometimes a combination of natural entry. For example, we get fruit fly species that blow or fly from PNG across into Torres Strait Islands and sometimes down onto the tip of Cape York. We have had sugarcane smut which we believe is blown on the wind from Indonesia into the Kununurra area, the Ord scheme. And we certainly believe we have had illegal entry of, say, mangoes leading to the outbreak of papaya fruit fly around Cairns. It is very rare, we believe, that entry of plant pest and disease is actually associated with mainstream commercial trade.

Mrs CROSIO—In the NIA that we have been provided on this particular treaty you have listed what Western Australia, South Australia and Queensland do. Coming from New South Wales, the most populated state in Australia, I ask: how come New South Wales has not commented?

Mr Trushell—We consulted all states and territories. New South Wales responded and fully supported the NIA and the proposed treaty action.

Mrs CROSIO—Following up from that then, how will the current states MOU on animal and plant quarantine be affected then by this agreement?

Dr Roberts—What the MOU does is require the states to make their procedures consistent with this agreement. In fact, that is a commitment from the states to be consistent with our international obligations to this treaty.

Mrs CROSIO—When we update or change agreements like this and it requires the states to take action, do they do it by regulation or do they have to do it by legislation?

Dr Roberts—They have a number of mechanisms. They control their own interstate quarantine issues, their own borders in regard to trade. How they would go about that really is up to them in a sense, as long as they meet the requirements, similar requirements that we meet internationally. The requirements are not so much the detail but the principle: that their risk analysis and their action be based on science; that their decision making processes are transparent; that they are non-discriminatory and so on. There are a whole lot of principles that are followed internationally.

Mrs CROSIO—In the event that one of the states was a little bit recalcitrant and did not move, what power do we have, as a Commonwealth, to direct or administer any slap over the wrist type of thing?

Dr Roberts—There is a committee called the Interstate Plant Health Regulatory Working Group—it is colloquially referred to as the alphabet committee because it has got almost every letter of the alphabet in the acronym—which actually consists of all of the states. The Commonwealth is represented on it as well. Its purpose is to harmonise and discuss these sorts of matters and to work on issues where some states consider that other states are not being reasonable.

Mrs CROSIO—So it is all done by consultation and dialogue?

Dr Roberts—Yes, it is done by consultation.

Mrs CROSIO—And you have been happy with the results of that?

Dr Roberts—On the whole, yes. I would say that the states, maybe over the last five to 10 years, are moving to implement the same sorts of principles we are following internationally, that is, science based analysis, transparency in decision making, non-discriminatory, et cetera.

Mrs CROSIO—Again in the NIA, on 'The relationship with the SPS Agreement,' we have here:

As a Member of the WTO, Australia is obliged to comply with the SPS Agreement.

Are all countries that are members of the WTO obliged to comply with it? If not, what countries would not be part of this treaty?

Dr Roberts—My understanding is that all countries that are members of the WTO have signed on to the SPS.

Mr Trushell—Yes.

Dr Roberts—So they are obliged.

Mrs CROSIO—Not all countries that make up our great world are members of the WTO—

Dr Roberts—That's correct.

Mrs CROSIO—yet we trade with those countries that are outside of that area.

Dr Ikin—The problem is that the membership of the IPPC is not the same as the membership of the WTO. That is where the difference evolved. There were some countries that were not IPPC members but were WTO members, some were members of both, and

some were not members of WTO but were IPPC members. So the reason that we asked for them to be aligned was to catch both lots. This is a problem with the current situation.

With the interim arrangement of the old IPPC, which does not involve the areas that the WTO identified in the SPS agreement, the membership of FAO, the membership of IPPC and the membership of WTO are not the same. So, at the moment there is an ad hoc arrangement. It is the membership of FAO that is setting the standards, and they do not necessarily incorporate all the people who are members of the IPPC. So, the interim arrangement is such that when people sign on to the IPPC it will be the members, the contracting parties to the IPPC, that will be setting the standards. At the moment it is the FAO members, and not all those are signatories to the IPPC at the moment. So there is a disparity between membership of WTO, IPPC and FAO.

Dr Roberts—Just to clarify what may be the thrust of your question, there is no problem with Australia trading with countries that are not members of any of these conventions, but we negotiate those conditions bilaterally. We would seek to apply exactly the same principles that we are talking about in this convention when we are trading bilaterally with those countries. It is our right to pursue that in terms of trade.

Mrs ELSON—Could I ask what your current guidelines would be for the import of second-hand farming goods? There was a situation a few years ago where there was a group of farmers who had imported some equipment and there was a lot of vegetation in the blades and so forth. When I checked that situation at that time I was told that they only did random checks on the containers bringing that equipment in. Has that tightened up since? Do we trade with countries on second-hand imports that do not have an agreement with the world trade body?

Dr Roberts—I am not certain about what time you are referring to, but certainly about—

Mrs ELSON—Three years ago.

Dr Roberts—It was tightened up in the light of the karnal bunt outbreak in the United States because there was quite a lot of second-hand farm machinery coming out of the United States. The principle that is followed by the AQIS operation side is that if they can fully inspect a machine and it can be cleaned easily, then it inspected, and if it is clean it is allowed. However, if it cannot be fully inspected or fully cleaned—and some of the more complex grain harvesting machinery, for example, have belts and chains and all sorts of cutters that go right back inside the machine—then it is not allowed in.

Mrs ELSON—So every piece of second-hand farming equipment does now get inspected before it is—

Dr Roberts—I believe so, yes. Well, it depends on its declaration, whether it is declared as a farm machine and it is a particular type. If it is a straight tine plough or something that is easy to clean, and it is coming from certain areas of the world, it may not be inspected. However, if it is a complex piece of machinery that is likely to have belts and internal mechanisms where plant material could be caught up, then it is inspected.

Mrs ELSON—Do we trade with countries in second-hand farming equipment if they are not in the WTO?

Dr Roberts—In principle we probably do. Again, that would be on an inspection clearance basis, but I cannot give you any detail whether we actually do. There would be no in principle problem with that as long as the quarantine service was satisfied about the origin of the machine and the cleanliness of the machine before it is released.

Mrs ELSON—So it is still left a lot to trust, isn't it?

Dr Roberts—A lot of inspection goes on at this end before they are released. That is done by Australian Quarantine and Inspection Service officers.

Mrs ELSON—And it is not random?

Dr Roberts—No.

Mrs ELSON—Thanks.

Senator COONEY—Could I ask a question about 'Proposed Article XIII—Settlement of Disputes,' and the very sensible approach taken there? There is a provision for the contracting parties to undertake initial consultations to resolve disputes, but if that does not occur then you go back to the appointment of a committee of experts. As a signatory to the agreement, have we got any say in the experts? I am not sure whether you would know this. What happens with the experts? Who are appointed as experts to settle these matters?

Dr Ikin—This is a little bit difficult because no-one has yet used this mechanism. Even though the convention was signed in 1952 there has been no recourse to this particular article. The reason why this has been changed is that this article can be used before you get taken to the WTO as a first step because, as we found out, that is very expensive to do. At the moment there is no experience of this in the settlement of disputes.

Dr Roberts—There were a couple of cases some years ago where I was invited, tentatively, to be on one of these panels. My understanding of the process is that the FAO secretariat involved with the convention gets together a list of suitable names and they are passed by the two countries involved in the dispute. If they are acceptable then that becomes the panel involved in this process. As Dr Ikin said, this provision has been very little used. It certainly started in its preliminary stages a couple of times that I am aware of, but the issues were then settled bilaterally between the countries before it reached a formal full process.

Senator COONEY—Does Australia have a say in the experts who will be used, if they are to be used?

Dr Roberts—If it was a dispute between us and another country, we would have a say on the panel's constitution.

Senator COONEY—Thanks.

Senator MASON—Dr Roberts, just to pick up where Ms Crosio left off, you are arguing then that these unjustified phytosanitary standards constitute a non-tariff trade barrier, in effect, or they can. Are there any recent examples of that?

Dr Roberts—I do not know whether we really want to get into the territory of accusing countries of having unjustified trade barriers, but there have been cases. For example, Japan imposed an approach on entry of fruit from the USA. The approach they used was that every new variety of fruit had to be tested to remove insects, and fairly extensively tested, variety by variety.

The case was that the USA had already cleared red delicious into Japan. They had gone through all the scientific testing, the disinfestation treatment, to remove the insects. Then they wanted to bring another variety in and Japan said, 'No, you have to go through all the same testing for that second variety.' The USA said that that was unreasonable and that, if it works on red delicious, it is going to work on another variety of apple that is essentially the same except for the variety. It is the same pests, same treatment conditions. The USA took Japan to the dispute settlement procedures—not the IPPC process but the WTO based process—and won their case. That is an example where, because of the outcome of that dispute settlement, you would have to say that the approach was an unjustified trade barrier.

Senator MASON—I do not think there is anyone on this committee who would be shocked that Japan has indulged in non-tariff trade barriers.

Dr Roberts—I will not make any comment on that.

CHAIR—You only have to look at some of our media policy. It could be described in the same way.

Senator LUDWIG—In respect of your NIA, you say that acceptance of the 1997 IPPC will benefit Australia and other contracting parties by ensuring greater consistency, and you then go on to talk about restrictions and the prohibitions. Does that mean that we have standards which are inconsistent with overseas experiences and that it will cause either a raising of our standards or, conversely, a lowering of our standards to match? You then go on to say that it will facilitate trade between countries and improve the prospects for access. Can you explain how that will eventuate? You make that bold statement, but I was curious to have a live example perhaps of how that will come about.

Dr Roberts—There are a number of examples that we believe have already come about because of the general thrust of science based risk analysis, transparency, et cetera, which are being enshrined in this revised agreement. For example—we are back with Japan—Australia trades with Japan on tomatoes and other solanaceous fruit out of Tasmania. There is a tobacco blue mould problem, which is a disease that occasionally can affect those plants, that is believed to have been present in Australia. Tasmania was able to argue—and it is not necessarily a simple task—on scientific and technical arguments that Tasmania was free of tobacco blue mould and that they had the capacity to maintain the island free because of their geographic isolation and also the action they took at border control. They argued with Japan on this and they got Japan to accept it. As a consequence of that, solanaceous hosts are being traded from Tasmania into Japan.

One of the principles that science based risk analysis puts forward is the ideal concept of regionalisation. Tasmania can show that it is free of the disease and can reasonably show that it will stay free of the disease, or they will have arrangements to detect the disease and take appropriate action. Those sorts of principles are the sorts of principles being enshrined in these standards that are under way already and will continue to be developed.

There are a few other examples along those lines. We believe it is already providing some dividends to Australia. A very significant proportion of Australia's agricultural products are exported, and therefore we believe we have a lot to gain by establishing a very sound basis for trade that deals with the quarantine issues.

The other issue was the consistency issue. I do not think Australia believes that its internal standards or practices are inconsistent with the convention or the SPS agreement. We have been doing science based risk analysis for quite a long time—in fact, we are one of the leading countries in that area—and we believe that the decisions we make coming from that are SPS and IPPC consistent and have been for many years. The consistency issue we are interested in pushing is getting other countries consistent with that approach. It is pretty clear that a lot of countries are a long way behind, particularly some of the developing countries, and we are providing assistance wherever we can to bring them up to speed. But Japan imposed this disinfestation research process on every single variety. We believe that, once we have a revised convention and an operating phytosanitary commission, we will have much more powerful tools and a much more powerful influence in ensuring that people consistently abide by the standards.

Senator LUDWIG—You spoke about the argument that Tasmania has put forward in respect of the blue mould. Have you identified any areas where the converse might occur—that is, that there might be overseas access to Australian markets?

Dr Roberts—For example, we take citrus from the USA, or from California, and that is based on principles that show that California maintains a certain pest and disease status. They can demonstrate, on an ongoing basis, that they are maintaining that status. Within Australia, for example, there are certain products that can come into the east coast states of Australia but not Western Australia, because Western Australia may have a better pest and disease status than east coast Australia, and they apply their own interstate measures on those same products grown within Australia. There are quite a number of examples where we are abiding by those same principles.

Senator LUDWIG—As a consequence, there is likely to be a consistent standard applied, which will then allow, as I understand what you are saying, overseas access to WA. Perhaps we will not use that as a good example, but is that what you are saying?

Dr Roberts—No, not necessarily. The standards apply to the analysis and the action you take, not the result. What I am trying to say is that, because, say, one country establishes conditions for trade in a particular product, it does not automatically mean that another country has to accept those standards or that another area of another country has to accept those standards. What the standards do are to address how you go about risk analysis and what things you should take into account. At the end of the day, each country has the right to make its decision as long as it has followed the process correctly to the standard. That is

not to say that we will see a lowest common denominator standard, for example, that says, 'Just because these two countries trade in apples, Australia has to accept exactly those same provisions.' Australia has to look at the proposal to trade in apples from that country, it has to go through a proper risk analysis, it has to take into account all the science and it has to make a judgment based on Australia's conditions about what conditions are suitable for trade.

Senator LUDWIG—Perhaps we can keep it simple for the next question, which will be the last I have. You make the bold statement that there are no disadvantages associated with this treaty action. To put it in appropriate terms for my simple mind, are they talking about costs? What specific disadvantages are you referring to? Is there some concrete reason why you are saying that there are no disadvantages? What were the ones you were looking at—which are not there, I guess?

Dr Roberts—I suppose the things we would have considered in reaching that conclusion are, for example: does it take away our existing rights and does it impose obligations or costs that we would not have normally thought we would have to bear? I think the answer to those is that we do not believe so.

Senator LUDWIG—Was that different from what you are saying in your NIA? You say that there are no disadvantages. Are you changing that to, 'As far as we are aware, there aren't; as far as I can think?'

Dr Roberts—I think that, if we are not aware of the disadvantages, all we can say is that we are not aware or that there are no disadvantages. I suppose we probably should have stated, 'We are not aware of any disadvantages.' Certainly, if we are not aware of them, we cannot deliberate on them.

CHAIR—We will take what you have said as genuine. Thank you kindly for your evidence this morning.

Double Taxation Agreement between Australia and the Republic of South Africa, and the Protocol to amend the Double Taxation Agreement between Australia and Malaysia and an Exchange of Letters to extend the Application of Certain Provisions of Article 23 of the Double Taxation Agreement

[10.55 a.m.]

ALLEN, Mr Kenneth Thomas, Assistant Commissioner, International Tax Division, Australian Taxation Office

JANZ, Ms Carolyn, Senior Adviser, Treaties Unit, International Tax Division, Australian Taxation Office

LENNARD, Mr Michael Andrew, Manager, Treaties, International Tax Division, Australian Taxation Office

NUGENT, Mr Michael Benedict, Senior Adviser, Treaties Unit, International Tax Division, Australian Taxation Office

TEH, Ms Li Li, Adviser, Treaties Unit, International Tax Division, Australian Taxation Office

CHAIR—Welcome. You may have heard me give the same warnings to the other witnesses this morning. These are not proceedings whereby you have to take an oath to give evidence, but they are legal proceedings of the parliament as if they were taking place in either the House of Representatives or the Senate so they warrant the same respect as such proceedings. Hence any false or misleading evidence can be regarded as a contempt of parliament. Could one of your number begin with some introductory remarks and then we will proceed to questions?

Mr Allen—I will begin with a brief overview of double taxation agreements generally and then follow with an overview of each of the treaties which are the subject of this hearing.

Double tax agreements generally, of course, is a misnomer. They are really agreements for the avoidance of double taxation, but their objectives are essentially to promote closer economic cooperation between Australia and other countries by eliminating possible barriers to trade and investment. We do this by reducing or eliminating double taxation of income flows between the treaty partner countries. They thus establish greater legal and fiscal certainty within which cross-border trade and investment can be carried on and promoted. Another purpose is to create a framework for exchange of information and cooperation between the respective tax administrations as a means of combating international tax avoidance and evasion.

The taxes covered by the bilateral tax treaties are generally only the federal income taxes. Some treaties also cover capital taxes such as net wealth taxes where the other country has such a tax and Australia's treaty with New Zealand also applies to fringe benefits taxes. Australia's tax treaties do not affect any state taxes.

The method by which they relieve double taxation is a standard which appears in double taxation agreements internationally. One way is to allocate taxing rights between the country of residence of the person receiving the income and the company in which the income is sourced. The business profits article, for example, provides that one country will not tax business profits derived by residents of the other country unless the business profits are attributable to a permanent establishment situated in the first country. A permanent establishment is primarily defined as a fixed place of business.

Some articles of a tax treaty specifically allocate taxing rights exclusively to one country and other articles may provide for both countries to tax, subject to a limit on the taxing right of the source country. In that case the country of residence undertakes to relieve double taxation usually by undertaking an obligation to provide foreign tax credit relief.

There are generally about 28 to 30 articles and they cover different categories of income. For example, income from real property is one article. Business profits I have mentioned. There are articles for shipping and aircraft profits and separate articles for dividends, interest, royalties, income from alienation of property and various other categories. They also assist in the cross-border movement of personnel by specifying taxing rights on visiting professional people and other employees. With respect to the governments, they have important impacts on the respective governments because they assist the bilateral relationship by adding to the existing commercial relations between the two countries and they also promote greater cooperation between the taxation authorities.

As to costs and benefits, a tax treaty does not normally result in increased compliance costs for taxpayers. As to the costs or benefits for Australia or for the government out of the tax treaty, that is very difficult to quantify. The costs and benefits are largely dependent on the future effects of the treaty over the balance of income flows between the two countries. As I mentioned, they are designed to promote further trade and investment and it is difficult to estimate what change the treaty will have on the trade and investment flows. Also they operate prospectively, usually for 15 or more years. It is difficult to obtain adequate data as to their effect. The domestic tax rules already provide relief for foreign taxes, so the effects of the treaty by comparison with those domestic rules are difficult to identify also.

I might mention that to our knowledge no country has been able to quantify the costs and benefits of tax treaties. There was some work done by the OECD in 1994 as to the effects for Mexico when it commenced its treaty network but that examination was inconclusive.

As to Australia's negotiating policies and practices, I might say there is remarkable uniformity in tax treaties of all countries. This is because most countries, including Australia, generally follow the international standard established by the OECD model tax convention, although some countries, including Australia, modify the OECD convention and have entered reservations accordingly to incorporate some aspects of the United Nations model tax treaty. But against those international standards, tax treaties of many countries contain variations reflecting their particular tax rules, economic interests and legal circumstances. Because Australia is a net capital importer, the Australian model treaty, which is the basis for our bilateral negotiations, is generally more biased towards source country taxing rights whereas the OECD model has a residence country taxing right bias.

But, against all that, each tax treaty is a result of a separate bilateral negotiation which often ends in a compromise or bargaining situation. While Australia generally endeavours to maintain its Australian model standards and principles, Australian governments have been prepared to approve variations from those usual practices and policies in particular cases in the interest of concluding an otherwise satisfactory agreement. This accounts for there being some variations between different Australian tax treaties.

The treaty making process is quite a protracted process requiring ministerial approvals at various stages. The government selects the countries with which we negotiate treaties, and it is usually left to the Assistant Treasurer, the Minister for Foreign Affairs and Trade and occasionally the Prime Minister to decide on the countries and on any variations to our policies that might need to be made in order to conclude a treaty. There are usually two rounds of negotiations with a week for each negotiation, and they are often six months to 12 months apart.

CHAIR—Pardon me, Mr Allen. These things are not particularly relevant to South Africa or Malaysia, and we do not have a lot of time. Can you focus the remarks on what is relevant to these double tax treaties, or we will go to questions straightaway.

Mr Allen—Yes, I was giving that for the context.

CHAIR—I appreciate your background, but we do not have much time, that is all.

Mr Allen—We have 36 concluded treaties at the moment. The treaty with South Africa will be the 37th treaty. The reason why the treaty with South Africa was negotiated is that it is Australia's 21st largest trading partner and the 18th largest source of investment income. Following the political changes in South Africa earlier in this decade, the government decided we should negotiate a treaty with South Africa. In general, the treaty is basically similar to Australia's other modern double tax agreements. There are some differences, mainly due to South Africa's territorial system of tax whereby, subject to some exceptions, their income tax applies only in relation to income that is sourced in South Africa. That compares to Australia and most other countries where they tax their residents on a worldwide system.

The significant departures from our recent treaties lie in respect of outgoing dividends. In the past, Australia has generally negotiated a tax rate limiting dividend withholding tax to 15 per cent. In some recent treaties, that has been negotiated down to nil or five per cent in the case of outgoing franked dividends for each country. In the case of South Africa, it was negotiated to a nil rate. South Africa's secondary tax on companies was also a reason to have a special provision in this treaty. That secondary tax applies where a South African company pays a dividend. The company is then required to pay an extra tax on payment of a dividend. It does not have a dividend withholding tax, and that secondary tax more or less takes the place of a dividend withholding tax.

The purpose of that secondary tax in the case of South Africa is to encourage foreign companies to reinvest their profits in South Africa rather than remit them overseas. Prior to the agreement, there was an issue about whether an Australian company which derived a dividend could claim a foreign tax credit for that secondary tax. The treaty clarifies the

position that it will qualify as an underlying tax credit in the same way as company tax qualifies on the profits out of which a dividend is paid.

There are some changes to pensions. Australia's usual policy and practice are to require all pensioners to be subject to tax only by the country of residence of the recipient. That will cause a problem in the case of South Africa because it does not tax its residents on foreign income, including foreign pensions. There is a modification there that the country of residence taxing right remains, provided it is exercised by that country. Where it does not, the source country has a taxing right. There is also a special provision on certain annuities which relates to South Africa's domestic policies. They are the main features of that agreement. Would you like me to go on to the Malaysian one?

CHAIR—If there is anything special or noteworthy about it, please. If not, we will go to questions.

Mr Allen—The Malaysian protocol amends the Malaysian treaty which was negotiated in 1980. The reason it was negotiated is that each country wished to change the existing treaty. In the case of Australia, there had been a problem in relation to service fees provided by Australian residents, including consultancy fees, to Malaysian firms. Malaysia has a withholding tax on any payment made by a Malaysian firm in respect of the supply of such services from overseas. Australia had argued that the existing treaty should have operated so that Malaysia would have a taxing right only where the Australian provider had a permanent establishment pursuant to the business profits article. Malaysia argued that their withholding tax was outside the scope of the treaty. The protocol clarifies that those fees will from 1993 be treated by each country under the business profits article. It will resolve a double taxation situation that had arisen in respect of such fees.

On the Malaysian side, the existing treaty contains some tax sparing provisions. Tax sparing refers to the situation where a country such as Malaysia provides tax holidays to encourage foreign investment. Under the 1980 treaty, Australia had agreed to treat the Malaysian tax forgone under certain tax holidays as though it had been paid for tax credit purposes. That was designed so that Australian tax would not negate Malaysia's tax holiday provisions and the incentive they provide for increased investment in Malaysia. The tax bearing provisions of the 1980 agreement expired at the end of the 1983-84 income year. Malaysia sought an extension. Part of the bargain for the protocol was that Australia agreed to extend the tax sparing provisions for a further three years up to the 1987 income year under an exchange of letters. The protocol extends those tax sparing provisions for a further five years until the 1992 income year.

There are some other modifications to the existing treaty, the main one being a provision to ensure that the alienation of property article operates so that, where an item of real property in Australia is disposed of by the sale of shares in the company which owns the property or through a chain of companies, that taxing right would be preserved. That was to overcome a court decision in the Lamesa Holdings case.

CHAIR—Thank you. Are there any questions?

Mr HARDGRAVE—I have two. It is 15 years since the tax sparing arrangements matured, then it was renegotiated through to 1987 and the protocol extends it now to 1992. Why are we doing this now? Why is it 16 years? This has been so long in coming about that I do not understand how any Australian company operating in Malaysia would have any sense of certainty.

Mr Allen—That is true. The first round of negotiations for the protocol were held in 1989, which is some years after the existing tax sparing provisions expired. They were difficult negotiations because for Australia to extend tax sparing is a concession to the other country. The main bargaining chip for Australia was to get Malaysia to agree to the fees for services provision, that that would be covered by business profits. There were difficulties in getting Malaysia's agreement to that. There were other difficulties in Malaysia with changes in the various departments and in ministers. And we had another round in 1995. So all we could tell Australian companies there was that there were negotiations under way and, until we finalise the treaty, they could not anticipate that those tax sparing provisions would apply.

Mr HARDGRAVE—It sounds awfully like a life's work for somebody. What I am particularly concerned about, though, is the level of consultation that has taken place here. Apparently the Australian Taxation Office has an advisory panel of private sector representatives and tax practitioners which review treaty action. The panel consists of representatives from various organisations, but I do not see any evidence that you have spoken to either the Australia-South Africa Business Council or the Australia-Malaysia Business Council about these taxation agreements. Why haven't you?

CHAIR—Isn't there a letter in here from the Australia-Malaysia Business Council?

Mr HARDGRAVE—Mr Chairman, I see a letter from the Australia-Malaysia Business Council, but I gather that it actually came directly to us under separate cover and not from the ATO, if I recall correctly.

Mr Allen—That treaties advisory panel came into existence in 1997. With respect to South Africa, the main Australian business interest at the time when we commenced negotiations with South Africa was from the mining companies, and the mining council is represented on the treaties advisory panel. With respect to Malaysia, as I have indicated, the negotiations were largely held before the treaties advisory panel was established.

Mr HARDGRAVE—Mr Allen, with the greatest respect, it is terrific that the ATO have got an advisory panel of private sector representatives and tax practitioners together; that is terrific. However, I do not see any quantification of exactly what was done. I do not think any of us who have come from the real world would doubt for a moment that you could put it as an agenda item for business at a meeting at which perhaps the Minerals Council of Australia—who, I suspect, you are talking about with regards to the mining industry—did not even attend.

I am saying that you can have an incestuous little arrangement where you pull your representatives together, sit down and have a discussion, but I do not see any quantification that the discussions have actually gone to any depth, that there has been any explanation

offered to organisations and that there were questions asked and views sought at all. Whilst we have got a letter under separate cover that has come directly to the secretariat of the standing committee on treaties from the Australia-Malaysia Business Council giving the treaty or this extension and amendment of the protocol a tick in their mind, I just do not see evidence that again the ATO have in fact sought the views and the clarification from as broad a cross-section as is possible.

As a statement it seems all right, but I do not think the advisory panel—unless you quantify exactly what was done and how many representatives from various organisations were actually in attendance when discussions took place and what those representatives themselves actually sought as far as information is concerned—is really sufficient to meet the criteria of understanding that everybody is happy with this. We have had this discussion before with the ATO. I simply say it is a pattern.

Mr Allen—Could I mention, in response, that the treaties advisory panel is consulted in relation to which countries it should be recommended to government that we have treaties with, and the purpose for that is to get the business and industry input as to which they consider the most important countries. They are also consulted prior to negotiations commencing. They are also consulted if at the first round there are difficulties that have to go back to government. They are consulted about the proposals to modify our approach to reach an agreement. Once the agreement is negotiated at officials level, they are also consulted prior to recommending to government that they go ahead with signature.

There is a confidentiality difficulty here in that it is a convention amongst countries negotiating tax treaties that the negotiations should remain confidential, otherwise if Australia conveys to our treaties advisory panel—which consists of industry representatives—what, say, South Africa's position is on certain aspects, that may compromise South Africa's position in other treaty negotiations. We have overcome that with the treaties panel by getting an undertaking by each of the members of that panel to keep the contents confidential. The format is that we forward to each of the members of the panel the draft agreement or whatever we wish to discuss at the next meeting so that they have an opportunity before the meeting to identify which areas they wish to pursue. Then we have a meeting, usually a day at a time, in which we may discuss two or three proposed treaty actions.

Mr HARDGRAVE—Mr Allen, just to labour this point further, I am sorry but I do not accept that commercial-in-confidence stamps across government dealings is good enough. Nothing can be advanced by keeping it secret. You can advance propositions further by opening them up for disclosure. The reason this treaty committee exists is in fact to discover the processes by which government—read 'the permanent Public Service', not the political arm of government, although the political arm comes under questioning as well—undertake certain tasks on behalf of the people of Australia.

If you are going to have, and I will use the word again, incestuous or cosy arrangements with eight people or eight organisations—we do not even know the people who are on this particular advisory panel; we do not understand the processes you have undertaken to have a discussion with them; we do not know when you met, how regularly you met, who attended and what depth of discovery those particular people undertook in their own organisations in

advising you—it makes it very difficult, in fact impossible for me anyway, to fully appreciate whether or not this is anything else other than a piece of carpet to put over the top of a pile of dust. It is a well-intentioned process, I am sure, and on paper at first glance you think, 'This is good; the ATO has an advisory panel', but when you actually pull the carpet back you cannot dissect the dust.

Mr Allen, I will end my monologue here by saying that this again leaves me feeling very cold about the ATO's intentions towards this committee on what should be two non-controversial matters by the process that you have disclosed and the lack of disclosure in general in the NIA. I am just left wondering why I should agree to these particular non-controversial items going through until you have another go or, at the very least, explain to us, and in writing, just what it is this advisory panel does, who is involved, when they meet, what work they have to do and what processes overall are undertaken.

Mr Allen—We would be happy to do that, Mr Chairman.

CHAIR—We have to get moving. Questions?

Mrs DE-ANNE KELLY—Mr Allen, I am more interested in the balance. What tax does Australia currently extract that in future it will not? Do you have any figures on whether we will suffer a detriment in our tax collection, whether we will be left fairly even, or in fact whether we will be able to collect more tax?

My second question goes to tax avoidance, price transfer and so on internationally, which is obviously of great concern to the ATO. I know that your international division has instigated a number of measures to try and stem the tide of tax avoidance. How are these treaties going to assist in preventing that drain of tax through avoidance measures such as transfer pricing?

Mr Allen—In respect of the first question, as I mentioned, it is very difficult to estimate the cost and tax benefit of a treaty, or tax costs of a treaty. It could be done broadly on the basis of existing tax collections in relation to South African investment in Australia, but the point I was trying to make earlier was that the tax treaties are designed to alter that balance of the investment flows. While we may be able to estimate, 'To conclude this treaty it may cost so much, X amount of dollars, in existing taxes,' it is difficult to say whether that would operate for the future, because, even if we were giving up existing taxes under the existing investment flows, the treaty should have the effect of encouraging further investment between the countries. Whether we are compensated by the extra tax on those investment flows is very difficult to estimate.

As to the anti-avoidance aspect, there are two articles: there is a mutual agreement article and an exchange of information article. The mutual agreement article formalises and facilitates exchanges between the tax authorities as does the exchange of information article. The exchange of information article provides for each country to exchange information with each other for the purpose of giving effect to the treaty or their domestic laws. In fact, with a number of treaty partners we have, through the exchange of information article, established standard exchanges of information, such as, for example, the names and addresses of people

resident in the treaty partner countries who derive interest income or dividend income from Australia.

The point I was getting at, I think, comes from the exchange of information article. It does facilitate much closer cooperation between respective countries, and when you have a network of treaties with similar provisions it does enable our office to obtain information in relation to foreign dealings of Australian residents much more readily than we could under our domestic law.

Mr WILKIE—On page 2 of the NIA you talk about people receiving pensions and annuities from the other country. Does this affect many people living in Australia?

Mr Allen—Not a great deal, no.

Mr Nugent—We have consulted with the Department of Family and Community Services about the pension flows between Australia and South Africa, and I believe the number is under 1,000. So there are not many, but there could be a lot more in the future as the people who have migrated to Australia, for example, start to retire.

Senator COONEY—Did you say it is difficult to ascertain the balance of gains? Can we come at it from the point of view of impressions that the tax office might have as to what the extent of the gains might be? Clearly, you cannot be tied down to specifics in terms of sums. Have you got any impressions, though, as to the worth of the agreements?

Mr Allen—I think that comes down to the government decision to negotiate a treaty, as to what is going to be the overall benefit for Australian firms in trade and investment with that particular country and also encourage residents of that country to invest here. So perceptions, I suppose, come into that aspect. The practice to negotiate treaties is also part of being in the international community and as members of the OECD. All the 36 treaties we have, now 37 with the one with South Africa, are with most of our trading partners, and some of the treaties, such as with South Africa and Malaysia, are also to assist those countries in their development.

Senator COONEY—I suppose that, irrespective of whether we can judge to the last cent what the balance of gains might be, it is a situation where something has to be done, as you say, by the very nature of the international community.

Senator LUDWIG—You say in the NIA that there are 36 comprehensive income tax treaties and, further down, that South Africa is the 21st largest trading partner. If you do not have this information, perhaps you could provide it: do we have comprehensive income tax treaties for the 20 above that?

Mr Allen—I am sorry, the 20?

Senator LUDWIG—If South Africa is the 21st largest trading partner, are there income tax treaties for the ones above that line? If there are not, which countries are excluded and why?

Mr Nugent—We would have to check on the trade statistics, because they do change from year to year, but we do have treaties with most of our major trading partners. As we note in the NIA, this is the first one with an African country and on Friday we signed our first agreement with a South American country. Some of the trading partners that may be missing are those new, emerging markets. We can certainly provide you with the information on that.

Senator LUDWIG—But, in essence, the majority of our larger trading partners would have agreements?

Mr Nugent—Yes. South Africa is, in fact, a notable exception, mainly for political reasons in the past.

Senator LUDWIG—How do you go about promulgating these treaties so that people are aware of them and of the advantages that they can obtain from them when you then list the reasons for the agreement?

Mr Nugent—The normal procedure is for a press release to be issued upon signature. Then there are the other documents. There is the NIA, which is now on the ATO's web site and the DFAT web site as well, including a copy of the text of the agreement. Both treaties require legislation so we will be shortly preparing a bill to be introduced to the parliament. Following that there are the normal parliamentary processes and, following the 15 sitting day rule, the binding treaty—

Senator LUDWIG—I understand all that. What I am getting to is do you contact business groups who might be in the trading business and say, 'Look, this has been put in place; this is what we have got. You should be aware of this'?

Mr Nugent—I understand in the case of Argentina that Minister Vaile has written to all those businesses that have contact with Argentina to alert them to the fact. It is normally picked up in the financial press and so forth. Most of the people on the treaties advisory panel are notified, and they have as their clients some of the major businesses operating in those countries. So the information disseminates fairly quickly.

Senator LUDWIG—Does Australia instigate them or are they generally instigated from overseas?

Mr Nugent—In the past Australia has taken requests from other countries. In the case of South Africa we made an approach to them, and South Africa was very keen to take up the offer. So it can come from either side.

Senator LUDWIG—The usual experience has been that it has been from overseas instigation—is that generally correct?

Mr Nugent—It has been in the past, but we have been proactive in more recent times. Our agreements with Indonesia and Vietnam, for example, were both Australian initiatives. We also have to work in cooperation with the Department of Foreign Affairs and Trade.

Senator LUDWIG—And the reason for that?

Mr Nugent—It can be pressure from the business community, it can be for political reasons, for bilateral reasons. There can be a number of factors which impinge on the reasons for having a treaty with a particular country. Also, it could be not so much the existing trading relationship—which with South Africa is quite large—but, with a smaller country, to further future developments on the bilateral front.

CHAIR—What do you do with Internet web sites? Where do you regard a web site as domiciled—where the server is or where the person is who is uploading the information? Say someone is in Malaysia or Australia selling things to their counterpart in the other country from a web site that is on a server in California, and perhaps any credit card transactions are being hosted by a bank in Hong Kong. How do you tax that?

Mr Allen—A very good question. That issue is currently under examination in the OECD because, as I have indicated, the principle of the business profits article, which would normally be the relevant article, is that the country from which the payment is made would normally only be able to tax profits of a foreign enterprise if they were derived through a permanent establishment. There is an issue of whether a web site is a permanent establishment or could be regarded as a fixed place of business. As I mentioned, the ATO, the OECD and other countries are considering that issue at the moment. The difficulty with that approach is, as you have indicated, that the web site could be established in a tax haven outside the country, so that is probably not a good measure. It is a difficult issue.

CHAIR—Can you use the trigger provision of deriving income? For example, if the merchant was Malaysian or Australian and the income was being put into a bank in another jurisdiction, but when that person—individual or legal—finally derived the income by, say, repatriating operating profit or whatever it is from that bank they then declared that as part of their assessable income here, do you have to go beyond that?

Mr Allen—That is one option. The difficulty is that the treaties do override domestic law. While under domestic law we may be able to argue that that income is derived by the supply of goods to an Australian resident and therefore derived in Australia, if there is a tax treaty and it says that Australia cannot tax their business profits unless there is a permanent establishment, that would override that domestic law rule. That is one aspect the OECD is looking at, as to whether there should be special provisions in relation to Internet transactions outside the business profits article.

Senator LUDWIG—Treaties do not override domestic laws, do they?

Mr Allen—These treaties do.

Senator LUDWIG—In that specific context: if legislation is passed in the domestic country based on the treaty. If I heard you correctly, you made the bold statement that treaties override domestic law. I just did not want that to go unchallenged. One of the roles of this committee is to ensure that these sorts of things do not get away on us, that enacting treaties override domestic law. I do not think that that is quite correct.

Mr Allen—There is a section in the International Tax Agreements Act which specifically provides that, in the case of any inconsistency between a treaty and the domestic law, the treaty would prevail. It is section 4 of the International Tax Agreements Act.

Mr Lennard—Just to supplement that, Senator, we are saying, and I think you are saying, that it is not the treaties as treaties which override the domestic law, it is the fact that they are implemented as schedules to the International Tax Agreements Act, which gives the terms of the treaties overriding force.

Senator LUDWIG—Yes, thank you.

CHAIR—Many thanks.

Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, and the Conditions for Reciprocal Recognition of Approvals Granted on the basis of these Prescriptions

[11.41 a.m.]

JONAS, Mr Allan William, Executive Level 2, Vehicle Safety Standards Branch, Department of Transport and Regional Services

McLUCAS, Mr John, Assistant Secretary, Vehicle Safety Standards Branch, Department of Transport and Regional Services

MASON, Mr David, Executive Director, Treaties Secretariat, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

CHAIR—Welcome. We will not require you to give evidence on oath this morning but these are legal proceedings of the parliament, so they warrant the same respect as if they were taking place in either chamber and, hence, any false or misleading evidence might be regarded as a contempt of parliament. Could you make some introductory remarks and then we will get on to the questions.

Mr McLucas—This agreement provides for the development of road vehicle technical regulations mostly relating to safety and emission standards and the mutual recognition by the parties to the agreement of approvals issued under the agreement.

The agreement originated in Europe after the Second World War in the forum of the United Nations Economic Commission for Europe. It was designed to enhance uniformity in road vehicle technical regulations in European countries. In 1995, the working party managing the agreement—the agreement goes under the acronym WP.29—had become the de facto forum for international harmonisation of vehicle technical standards, and greater involvement of non-European countries was seen to be desirable. The agreement was amended in 1995 to encourage participation by non-European countries.

In further recognition of its worldwide role, the working party will soon be known as the 'International Forum for the Harmonisation of Vehicle Standards'. Thirty-three countries, including most European countries, Russia and its former states, Japan, and the European Community and its member countries are party to the agreement. The Republic of Korea has announced its intention to accede in the near future. The accession will provide benefits in three ways: firstly, it will provide better access to the international regulation development process; secondly, it will allow Australia to issue approvals to the regulations which will be recognised by our trading partners; and, thirdly, Australia's acceptance of approvals issued overseas will provide consumers with benefits of potentially lower prices and faster delivery of products to the market.

There is a strong case for harmonised international vehicle standards. Australia was one of the first countries to develop a comprehensive set of road vehicle technical standards, but it is costly for industry to meet differing standards in the various countries to which it

exports due to redesign, retooling and recertification costs. There is no benefit to Australia now in retaining unique standards when there are international standards which provide the same level of safety and environmental protection. Australia is well respected in the vehicle standards area and accession to the agreement will increase its influence there. However, the principal value of accession to the agreement lies in its capacity to assist Australian automotive exports, which were worth some $2.6 billion in 1998.

Currently automotive products for export must be tested at manufacturer expense against the safety and emissions rules in the destination country. At present this must be done overseas, usually in the country of destination, or by overseas certification agents visiting Australia. This is a costly business.

The agreement provides for the mutual recognition of approvals issued by the parties to the agreement. Thus manufacturers wishing to export to a country which is a party to the agreement, or which unilaterally accepts ECE regulations, will normally be able to gain the necessary approvals in Australia, which will be less expensive for them and thereby improve their competitiveness.

Japan, Korea and ASEAN countries are some of Australia's biggest markets for automotive products. Japan is already a party to the agreement and Korea is expected to accede shortly. A number of ASEAN countries are moving in the direction of accession or at least acceptance of the ECE standards as their vehicle standards. Exporters to these countries will benefit directly from accession because of less expensive certification requirements. Consumers should also benefit as harmonisation should reduce costs of redesign to meet unique standards and encourage innovative vehicles into the Australian market earlier.

Australia is currently reviewing all its Australian design rules and our motor vehicle technical standards with a view to aligning them wherever possible with ECE standards. It is proposed to adopt the relevant ECE regulations whenever an Australian design rule is fully aligned with an ECE regulation. All states and territories have been consulted and support accession, as does the automotive industry.

CHAIR—Does this have anything to do with the recognition in Australia of certain types of vehicles, for example, three-wheeled motor tricycles? I understand that, unlike in the United States and the European Union countries, in Australia three-wheeled motor tricycles with engine capacity over 1500 cc are regarded not as cars, whereas they are regarded as cars and treated as such in the United States and the EC, hence you can drive them with a car licence. Australia stands outside that for no apparent reason. Does this touch on that?

Mr McLucas—Chairman, it does not because the standards we are talking about are essentially the technical standards, the safety or emission standards. Licensing requirements are matters for the state jurisdictions. The technical standards the vehicle meets say nothing about the qualifications which might be needed for a person to operate that vehicle. They are matters for the state jurisdictions.

CHAIR—All right. We have a national office of road safety, don't we?

Mr McLucas—The Federal Office of Road Safety.

CHAIR—What role does that have on this issue of licensing and so forth?

Mr McLucas—It does not have a role in the issue of licensing. That is a matter for the state jurisdictions.

CHAIR—Does it make recommendations to the states?

Mr McLucas—I am not aware of it making recommendations in that regard.

CHAIR—There is a ministerial council. Bruce is a former minister for transport. Bruce, did you attend such things?

Mr BAIRD—They do their individual safety reviews and make statements, but it is up to each state to implement those. Usually there is a ministerial council meeting that puts the items on the agenda.

CHAIR—Thanks. You make that distinction clearly. Any there any other questions?

Mr BAIRD—Yes. I am concerned on three levels. Firstly, I have a concern about the standards that seem to move at such glacial speed. An example was our bus safety standards, which used to be the worst in the world and are now the best, from a lot of pressure. In terms of moving in uniformity with the world, I would like to ask how we can speed it up because there is such disparity now. We sit as observers.

Secondly, I have been brought two disturbing reports about your organisation, and I want to know how these impact. The first one relates to helmet design. The only Australian manufacturer was producing helmets according to specifications produced by you. All of a sudden, the road safety people did a test, which had never been applied before, and decided that they failed the test on the side piercing of the helmets. The ACCC then took it to court, despite the fact that they were producing according to the standards and were the only Australian manufacturer. The court upheld the decision and they had to recall all of the helmets they had produced, despite the Standards Association of Australia. What has happened? The company has now gone into liquidation as a result of that decision on standards produced by your organisation.

The other question brought up in terms of this reciprocal arrangement seems to be a movable feast. I had extensive discussions with a man in a company that is adapting cars to European standards. He had been involved in this process for four years. He lost a lot of money and has been kept alive only because of his investments in another area, because you guys have kept on changing the goalposts. Firstly, it was going to be one way. He adapted to and manufactured to that. He kept on putting these very expensive cars for testing into the wall and wrote off the cars. Then they decided to have another standard, so they went through all the operations again. They say, 'We will give you a licence if you can conform,' and then they give such a short licence it cannot be met in time.

Within a very short space of time, we have had two examples which indicate to me that there are serious problems in the standards association in the way in which standards are applied. On the first basis, our comparison with international standards do not keep up. On

the second basis, despite there being standards, you shift the goalposts. Somebody who produces products goes out of business because you decide that suddenly it is not quite right when they are producing according to your guidelines. Thirdly, when somebody is trying to develop a business based on this whole process, they are not able to do it. It seems to me that there is an interesting impact by the primary manufacturers in this market. That may not all be true, but I would be interested in your comments, as we have a treaty that goes right to it here.

Mr McLucas—As far as speeding up the standards is concerned, the only contribution I can make there is that accession to the treaty will give us a slightly louder voice in the forum. That does not mean that the process is not rather slow. I believe it is a fairly slow process. In part that is because it requires the research work to be done and the discussion with manufacturers and so on about feasibility and standards. At an international level that does take some time. I would say that accession to the treaty does not preclude us from having unique Australian standards if there are areas in which we think that the standards should be quicker or higher or whatever. That is the point there. The question of the helmet design is not a standard of ours. I think it must be the Standards Australia standard.

Mr BAIRD—What standards?

Mr McLucas—Australian design rules just for wheeled vehicles. The standards for helmets are not ours. There is an Australian standard from Standards Australia. I am not aware of the details of that case.

Mr BAIRD—I understand.

Mr McLucas—On the second point about changing the rules, I am not aware of the details of the particular case, but perhaps I can anticipate what they may be. Over the last couple of years we have introduced new standards for vehicle occupant safety. One is an ADR to do with side impact and the other one is an ADR to do with offset frontal impact. The side impact standard came in for new vehicles at the start of this year and offset frontal impact will come in at the start of next year.

This was done after a very extensive consultation process with the industry, with state and territory governments and so on. The lead time that we have for these things is generally two years, so there is two years notice from the time that the change is actually gazetted, recognising that the lead time up to that is often a couple of years anyway before it gets to that stage. There is two years lead time before any new vehicle has to comply. For existing models, that lead time is generally around four years—an extra two years on top of that. So, as far as changing the standards, they do not change overnight and, as I say—

Mr BAIRD—This manufacturer said that he was given six months in order to be able to change.

Mr McLucas—I do not know the circumstances, but I cannot understand why that would be the case because I do not think we have introduced any changes in recent times to ADRs that have not had much longer lead times than that. As I say, two years is the norm.

Mr BAIRD—You do not think this whole process manages the major manufacturers and does not give the opportunity to some Australian companies to get in there?

Mr McLucas—I suppose that is true if you regard safety standards as, if you like, a barrier to trade, or barrier to whatever.

Mr BAIRD—No. Are there special advantages given to the manufacturers to be involved in this?

Mr McLucas—No, no special advantages. The rules are there, and transparently there, for anyone who wants to supply vehicles to the Australian market.

Mrs DE-ANNE KELLY—In North Queensland we have large manufactured Defence vehicles and also vehicles for use in underground mines. Does the definition of motor vehicle apply to those vehicles?

Mr McLucas—The definition, yes, applies to vehicles that are designed for use on roads. That does not have to be the primary purpose. It does apply in the particular case, generally, of defence vehicles. For vehicles for use in mines, I think it will depend on what sort of vehicle it is. Perhaps you can expand on that.

Mr Jonas—In the case of vehicles that are used in mines, they tend to be fairly unique, special sorts of vehicles and usually it is left up to the states and territories. In other words, the manufacturer approaches the states and territories and says, 'Here's a vehicle. It is fairly unique. It is not going to be able to meet the design rules.'

Mrs DE-ANNE KELLY—It is unlikely these would travel on a public road. The Defence vehicles are rough terrain vehicles. Are they going to fit into this? It does concern me that there could be some changes to—

Mr Jonas—With Defence vehicles, again, you are right, they do travel on the roads, but they may not be able to meet the design rules at the fringes. In cases like that, they seek to comply as far as they can but then negotiate with either our office or the state offices on the areas that they cannot comply. Usually they are just small areas of non-compliance.

Mr McLucas—In terms of the supply of vehicles to the Australian market, the Motor Vehicle Standards Act, the Commonwealth act, controls that. The regulations are that Australian design rules are determined by the minister under that act. That act provides for the minister or his delegate to actually allow non-standard vehicles to be supplied to the market if they are in particular circumstances, and that is the case with defence vehicles or whatever. So you can have a vehicle that does not comply with all the rules if they have particular things about them that preclude them from doing so.

Mr WILKIE—What I am concerned about is that currently Australia has some very good standards of vehicle manufacture, such as the one you mentioned about side intrusion. Is signing this agreement going to see a reduction in the standards overall for vehicles that come into Australia? Are our standards higher than those of other countries? What is the impact on the future safety of vehicles coming in?

Mr McLucas—Just to give you an example of the side impact one, we actually accept that the standard we set is the ECE standard. So that has no effect in that situation. I think the most important thing is that, by acceding to the agreement, we are not proposing that we automatically accept all the regulations under the agreement. In the NIA, we tried to make clear that the processes we actually have in place now for reviewing and revising our Australian design rules—that is, the consultative process, publishing information for public comment, consulting the states, getting sign off from state ministers and so on—will stay in place.

It is only at the end of that process that, if we find that the standard we have come to is the same as the ECE standard, will we adopt that particular regulation. It is not a case of automatically accepting a whole raft of regulations. It is a process which we are undergoing at the moment—a two-year review of our design rules—and, as I say, if at the end of that the consensus and the view of ministers is that, yes, this is the appropriate standard for Australia, and it is aligned with the ECE standard, we will adopt the ECE standard. Of course, ultimately that determination is a disallowable instrument in the federal parliament so I guess that is the ultimate control if at that stage there was a concern.

CHAIR—We have reached noon. Are there any other questions?

Senator COONEY—There was a point that was brought up in another context this morning by Mr Hardgrave regarding the number of people you consult. You have set out the non-government organisations that have been consulted. I wonder whether you have thought of consulting a series of other people. I would have thought the insurance industry, for example, would be interested—people like the RACV and comparable organisations elsewhere—or unions such as the ambulance union or the Vehicle Builders Union, in whatever form they are in now, and the Australian Medical Association. Has any thought been given to seeing those people about this?

Mr McLucas—As far as the RACV is concerned, we have consulted with the AAA, which is the peak body of the motorists organisations, so in that sense we saw that as being the appropriate way to go. As far as the other bodies are concerned, we did not consult with them. We thought the list we had probably covered the field for the particular treaty we are talking about. I would say, though, in the development of the individual Australian design rules, and in that process of reviewing them and so on, we do consult a wider range of people concerning the evidence for change or whatever, and I would see that as being the appropriate time for perhaps the AMA consultation.

Senator COONEY—And the group of unions? You had not thought of consulting them at all at this point?

Mr McLucas—We had not consulted them, no.

Senator COONEY—Not now because we are late, but do you have any guidelines as to what people you are going to consult when you look at treaties like this?

Mr McLucas—I should say this is the only treaty we have looked at.

Senator COONEY—All right.

Mr McLucas—Could I say in our process of developing or reviewing ADRs we actually have a public consultation phase of a document which we put on the Internet. We try and approach those people we think are interested directly to alert them to that, but we also have it up there publicly for anyone to access and provide comments to us on.

CHAIR—Good. It is your first one. In future cast the net widely, please.

Senator LUDWIG—In terms of impact on Australia, it would really come down to when the regulations are individually examined and determined as to what they will change. Is that what you are putting forward?

Mr McLucas—That is correct.

Senator LUDWIG—This will facilitate that regulation—

Mr McLucas—This puts the framework in place and, as the regulations are reviewed and aligned, then they would be adopted under the treaty.

Senator LUDWIG—During that process I am sure you will cast your net very wide for those parties that may wish to have input into it through a consultative process.

Mr McLucas—That is right. That is the ADR review process.

Senator LUDWIG—Things like the overhang of a single axle trailer will be dealt with.

Mr McLucas—Yes.

Senator LUDWIG—I am just trying to understand those sorts of things. Thank you.

CHAIR—Thank you kindly.

Resolved (on a motion by **Mr Baird**):

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

Committee adjourned at 12.04 p.m.