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JOINT STANDING COMMITTEE ON TREATIES

**Reference: Timor Sea treaties**

MONDAY, 14 OCTOBER 2002

CANBERRA

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## **JOINT COMMITTEE ON TREATIES**

**Monday, 14 October 2002**

**Members:** Ms Julie Bishop (*Chair*), Mr Wilkie (*Deputy Chair*), Senators Barnett, Bartlett, Kirk, Marshall, Mason, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Martyn Evans, Mr Hunt, Mr King and Mr Bruce Scott

**Senators and members in attendance:** Senators Barnett, Kirk, Marshall, Stephens and Tchen and Mr Adams, Ms Julie Bishop, Mr Ciobo, Mr Martyn Evans and Mr Wilkie

**Terms of reference for the inquiry:**

Timor Sea treaties

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**Committee met at 10.52 a.m.**

**CHAIR**—I declare open this public hearing of the Joint Standing Committee on Treaties. The Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea Between Australia and East Timor, and the proposed Timor Sea Treaty between the Government of Australia and the Government of East Timor, were tabled and thereby referred to the Joint Standing Committee on Treaties on 25 June this year for review.

Preliminary evidence on the treaties was taken from representatives of the relevant Commonwealth departments at public hearings in Canberra on 12 July. It was clear that the treaties would attract considerable public interest. The committee therefore called for submissions from interested parties by 31 July. To date, over 80 submissions have been received by the committee. A further hearing was held on 26 August in Canberra.

In properly reviewing the treaties, the committee considered it essential to take evidence in locations other than Canberra. In the last two weeks, the committee has taken evidence in Perth, Darwin, Melbourne and then back here in Canberra. The committee believes that it is important that a wide range of individuals and organisations have an opportunity to express their views on these treaties in the context of this review. We have heard from individuals, interest groups, industry and non-government organisations, and the hearing today will bring our schedule of public hearings to a close. In this final public hearing, we will hear evidence from representatives of Woodside, and then finally hear once more from departments of the Commonwealth government. We will begin proceedings by hearing evidence from representatives of Woodside.

[10.53 a.m.]

**MAXWELL, Mr David Peter, Director, Gas Business Unit, Woodside Energy Ltd**

**WILKS, Mr Adrian Paul, Commercial and JV Coordinator, Sunrise Project, Woodside Energy Ltd**

**CHAIR**—Thank you. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have a submission from Woodside Energy Ltd. Would you like to make some introductory remarks before we proceed to questions?

**Mr Maxwell**—Yes. In my capacity as the director of the Gas Business Unit within Woodside, I am responsible for the management and development of the Woodside gas projects other than the management to the operations of the North West Shelf. I am also responsible for the gas strategy of the company and, in the context of this committee, the Greater Sunrise gas project is managed from within my business unit.

My experience includes the negotiation of a wide range of gas and commercial contracts, leading the North West Shelf LNG in gas negotiations, and managing the commercial and business development activity leading to the commitment to expand the North West Shelf gas project for LNG supply to Japan, China and other countries. Before joining Woodside in 1996, I worked for Santos in Adelaide. Throughout my career I have learnt that large gas projects take a long time to develop. They require the alignment of many parties, and the project development phase very often takes longer than anyone expects.

Woodside is the operator of the Greater Sunrise project and, as you know, has a 33.4 per cent interest in the project. In addition, Woodside has a 40 per cent interest in the JPDA PSC 90-10, which includes the Jahal and Kuda Tasi oilfields. I appreciate the role of JSCOT in considering this matter and that you are doing this from the perspective of Australian interests. Woodside's written submission made in July noted that the Timor Sea Treaty, which was signed on 20 May 2002, was also accompanied by a memorandum of understanding in which Australia and East Timor undertook to work in good faith to conclude an international unitisation agreement for Sunrise, which I will refer to as the IUA. This was to be concluded by 31 December 2002. In the light of this, Woodside's July submission recommended the simultaneous ratification of the Timor Sea Treaty with the development and execution of the IUA and noted the importance of concluding new PSCs for that portion of Sunrise attributed to the JPDA.

It is our view that such an outcome is a very constructive result as it will then see the Timor Sea Treaty come into force and thereby provide a sound regulatory and fiscal framework for the JPDA. It will also, through the IUA, lay down the essential legal and fiscal framework for Greater Sunrise, which, due to its location straddling the JPDA border, is not adequately served by the ratification of the Timor Sea Treaty alone. It will also ensure that Australia's best interests are served by creating the basis upon which it is possible to continue to pursue the

development of the Greater Sunrise project. Greater Sunrise is the largest gas field within the JPDA. It will also create an environment that provides for the continued development of petroleum resources in the JPDA which, after all, is the purpose of the Timor Sea Treaty. We also see no reason why new PSCs cannot be issued in the same time frame.

Ratification of the Timor Sea Treaty should only occur in an environment in which Australia and East Timor are in agreement on the impact of each of the articles and annexures. We remain very concerned that Australia and East Timor take very different views on the language contained within the treaty and, by way of example, draw the committee's attention to annex E under article 9(b) of the treaty. Annex E attributes 79.9 per cent of the Greater Sunrise project to Australia. It is Australia's view that it should retain sovereignty over the area to the east of the JPDA and that this portion of the resource will be subject to its jurisdiction and taxation powers in accordance with the provisions attached to the relevant legislation and permits. This view is understandable, given the continuity of title that has been applied to this area of the Greater Sunrise resource since 1963—nearly 40 years.

It is interesting to note that since independence East Timor has expressed the view that it does not recognise Australia's jurisdiction in this area. In negotiations relevant to the Timor Sea Treaty and the IUA, East Timor has indicated an intention to seek to apply its own taxation powers and other powers over the area. In making this argument, East Timor cites its maritime zones act and article 9(b) of the Timor Sea Treaty concerning equitable sharing of the benefits arising from exploitation of any reservoir or petroleum that extends across the border of the JPDA. Clearly, these positions are at odds.

Woodside remains absolutely committed to working with both governments to create the environment in which Greater Sunrise can be commercialised. However, we believe that it would be imprudent and very unusual for a treaty to enter into force for the purposes of creating certainty when, from our position, the parties have different views on the meaning and effect of specific articles. Without adequate certainty and comfort on the title, regulatory and fiscal issues, Woodside cannot support the Greater Sunrise joint venture proceeding with any significant development expenditure. This expenditure is required for the ultimate development of a resource which has significant long-term revenue potential for both Australia and East Timor. In taking this position, Woodside would like to draw your attention to a number of facts. Firstly, the Timor Sea Treaty recognises the significance of the Greater Sunrise resource through annex E under article 9(b) and annex F under article 5(a). Secondly, the preamble to the Timor Sea Treaty notes:

... the desirability of Australia and East Timor entering into a Treaty providing for the continued development of the petroleum resources in an area of seabed between Australia and East Timor ...

Thirdly, the MOU signed on 20 May 2002 indicates the commitment of both governments to work in good faith to resolve the IUA by 31 December 2002. Fourthly, the Greater Sunrise field is a resource in which Australia's interests are substantially greater than its interests in the Bayu-Undan field. We are here dealing with the JPDA, the Joint Petroleum Development Area. It is a construct designed to give commercial certainty in an area where there is no current certainty on the geographic boundaries.

As I said earlier, fiscal, regulatory and title certainty is required before Woodside can support the Sunrise joint venture committing the significant funds required to move to the next stage. This is a potential commitment of about \$A200 million to progress to what we refer to as the basis of design phase for a project which has an estimated capital investment of \$A6 billion. This is not to say that the resolution of the Timor Sea Treaty and the IUA are the only items to be concluded. We must also conclude negotiations with the customers, the technical and economic activities and the commercial arrangements to support a project of this size. For Woodside the ratification of the Timor Sea Treaty and the IUA together is an important element of the certainty framework required. The need for the timely development and agreement of an IUA has been recognised and recommended to the committee in a number of other submissions.

In the context of the Greater Sunrise field, it is apparent that the interests of Australia, East Timor and the Greater Sunrise joint venturers are best served by all parties supporting every effort aimed at securing the optimal outcome which, in our view, is the ratification of both the Timor Sea Treaty and the IUA together. Woodside suggests that the 20 May MOU is clear evidence of a commitment to conclude the IUA in a meaningful time frame, and this should remain the objective. However, an agreement to agree does not provide adequate certainty or comfort, in our view. For our part, it seems that the matter of the ratification of the IUA has become linked to the ratification of the Timor Sea Treaty for a number of reasons. Firstly, it is apparent that East Timor and Australia are not yet agreed on the meaning of certain critical terms of the Timor Sea Treaty and in this environment it would seem imprudent for it to enter into force. Secondly, the IUA provides a mechanism by which the governments articulate their agreement on and understanding of the key terms of the treaty and the manner in which Greater Sunrise should be developed and exploited for the benefit of both Australia and East Timor. Thirdly, from a Woodside perspective it would not be appropriate for the Greater Sunrise joint venture to consider any further significant commitment of resources to the project until there is adequate certainty. The entry into force of the Timor Sea Treaty, the IUA, the granting of new PSCs and the conclusion of a number of other government agreements are all inextricably linked in this respect.

To summarise, it is Woodside's view that the best interests of Australia are most likely to be met if the Timor Sea Treaty is ratified when the respective governments are in agreement on the integration of a number of the treaty's key terms, in particular the IUA covering Greater Sunrise. Also, the best interests of Australia will be compromised if the significant benefits associated with the commercialisation of Greater Sunrise remain at risk as a consequence of the ratification of the Timor Sea Treaty. Let me be clear: Woodside will support the ratification of the Timor Sea Treaty, but only when the governments demonstrate a common understanding of all the key provisions of the treaty. In our view, the IUA is the obvious vehicle through which this can be achieved for the development of Greater Sunrise. It will also provide a basis on which title, fiscal and regulatory certainty and stability are maintained in circumstances where, following a final delimitation of borders, the Timor Sea Treaty ceases to have effect.

**CHAIR**—Thank you for your evidence. The committee also thanks you for making the time available to be here today. We appreciate that you had to rearrange a number of matters. Could I start the discussion by asking if you could comment on why a project such as Bayu-Undan can apparently proceed on the basis of a ratified treaty, which we understand from the operators of Bayu-Undan will provide sufficient legal and fiscal security—notwithstanding that the treaty is



without prejudice to future seabed delimitations—yet the Greater Sunrise project requires an IUA in addition to a treaty.

**Mr Maxwell**—The core reason for the difference, in my view, is that the Sunrise field straddles the JPDA and the Australian side of the border, and that requires a unitisation agreement. Bayu-Undan sits totally within the JPDA. To the extent that the treaty provides certainty on the terms and conditions within the JPDA, that is provided by ratification of the treaty alone for the benefit of Bayu-Undan. We do not have the same comfort for the Sunrise development, because our certainty will come from the ratification of an international unitisation agreement.

**CHAIR**—If there were future negotiations over the ultimate question of seabed delimitation, and the boundaries of the current JPDA were to be moved, would that not also potentially impact on Bayu-Undan?

**Mr Maxwell**—It could do. The assumption that we are making here is that, if there is a future movement of the boundaries, it is likely to be further east and further west, not towards the centre.

**CHAIR**—I think that is a fair assumption.

**Mr Maxwell**—That is why, in a project of this size—in our case, \$6 billion—we are going to need the certainty. If we did enter into an international unitisation agreement, we would seek the support of both the East Timor side and the Australian side for that agreement to then stay in force for the life of the field. That reflects the importance of having that certainty up front.

**CHAIR**—You have noted, quite rightly, that the treaty anticipated concluding an IUA by the end of December this year. Are you aware of the stage of negotiations? How close are they to concluding an IUA, or how far apart?

**Mr Maxwell**—I can only go on the basis of the information that has been provided to me and my staff. As I understand it, there have been a number of meetings, the most recent meeting occurring last week. My understanding is that there is still some way to go. Woodside has been speaking with both the East Timor side and the Australian side. Based on the information that I received, the negotiations have some way to go. They can move very quickly, if the hearts and minds are willing. That is not to say that it could not be done by 31 December, but there needs to be significant movement on both sides before that is possible. That would be my assessment at the moment.

**CHAIR**—Mr Maxwell, what confronts this committee is not only the position that you and others have put to us but also the impact of simultaneous ratification of the Bayu-Undan project. Phillips and others have given evidence before this committee that if ratification is delayed to allow for a simultaneous ratification or any other reason then that project will be put at risk. There is, we are told, a construction window or an opportunity there. They have contractual commitments kicking in in January 2006. If they are to wait for negotiations on an IUA which has no relevance to their development, it puts at risk Bayu-Undan, a project that is further advanced and likely to bring benefits in a more timely way to East Timor. Do you have a response to that?

**Mr Maxwell**—If I were in the Bayu-Undan position I would probably be arguing exactly the same thing as they are arguing. Early ratification of the treaty is in their commercial best interests. Early ratification of the treaty, together with the IUA, is in the commercial best interests of the Sunrise project. If the Bayu-Undan field were straddling the border between the JDPA and Australia, I am certain they would also want the certainty of the unitisation agreement before proceeding to the next phase of their project.

**CHAIR**—You have had a deal of experience in these sorts of matters. What time flexibility is there in a construction project of this type?

**Mr Maxwell**—It depends very much on the individual projects, but the best one I can cite is the North West Shelf itself. Probably four or five years ago people were talking about the expansion of the North West Shelf coming very soon. We were at the vagaries of the market, and it was three years before we were able to sort out the LNG contracts with our Japanese customers to then allow us to go ahead and commit the project. Throughout that period we continually worked with the contractors and our own staff, and we continually kept our eye on making sure we had the balance right between minimising costs now whilst preserving the flexibility to go as quickly as all the right commercial instruments were in place.

As I said at the outset, large projects very often are delayed—sometimes due to regulatory arrangements, sometimes due to commercial arrangements between the parties and sometimes due to the sales arrangements with the project's customers. I guess it is a characteristic of projects that they continue to try to get the balance right between minimising costs and making sure that they have maximum certainty at the time they invest. So my suggestion would be, in the case of the Bayu project, that they are probably exposed to the normal commercial pressures of significant projects of that size.

**Mr WILKIE**—The chair has actually asked most of the questions that I was going to ask. We are like-minded in the questions. For the purpose of making recommendations at a later time I need to understand why ratification and unitisation have to occur at the same time on Woodside's part. Why can the treaty not be ratified and the unitisation agreed to at a later point in time? It is a very important consideration for the committee.

**Mr Maxwell**—From an Australian point of view, the Sunrise project is significantly larger in terms of value and interest to Australia than the Bayu-Undan project. The Sunrise project would not proceed without the certainty of the unitisation agreement. At the moment the way the treaty is worded, if the treaty were to be ratified without the unitisation agreement being sorted out and ratified at the same time, in essence we would have what I referred to in my opening statement as an agreement to agree. It is likely in those circumstances that, until the international unitisation agreement is sorted out, further progress on the development of the Sunrise project will stall because we do not have a basis of comfort that can allow us to go forward and spend the significant licks of money required for the next step. The work to date has been what we would consider assessment work, scoping work, concept work and screening work to try to understand what is the best way to go forward and develop this field. In November of this year that work comes to a conclusion and we go to the next phase where we target the selection of what we call a development concept for the Greater Sunrise field. We will not go into that phase and spend the design moneys without the comfort about the regulatory title and fiscal issues surrounding the Sunrise project.

**Mr WILKIE**—I understand the importance of the IUA, but is it Woodside's belief that if the treaty were ratified the unitisation agreement is not going to be agreed to quickly? Is that the problem? Clearly there would be ongoing negotiations to actually bring that into force.

**Mr Maxwell**—It is difficult for me to speculate. I think that, from an Australian point of view, while the opportunity is there we should be taking that opportunity to sort out the unitisation agreement as quickly as possible.

**Mr WILKIE**—That is true, but—

**Mr Maxwell**—We cannot speculate on how long the negotiations will take.

**Mr WILKIE**—But what is the significance of having the two dealt with together in terms of negotiations? Is it important because not ratifying the treaty until unitisation occurs places some emphasis on having it ratified more readily by any of the parties?

**Mr Maxwell**—I think it focuses the minds to get the unitisation agreement sorted out quickly.

**Mr WILKIE**—If it was not dealt with at the same time, what sort of time frame do you envisage for unitisation?

**Mr Maxwell**—It is very difficult for us to answer that question. Our current timetable has us committing to the basis of design work at the end of the first quarter of 2003. We would not go into that phase without comfort around the unitisation agreement.

**Mr WILKIE**—Is it possible that early ratification of the treaty would provide the East Timorese government with more significant bargaining power when they are negotiating the terms of the IUA?

**Mr Maxwell**—It could well do.

**Mr WILKIE**—Is that the belief of Woodside?

**Mr Maxwell**—That is a consideration of ours.

**Mr ADAMS**—Is \$6 billion the Sunrise development cost?

**Mr Maxwell**—On a 100-per cent project basis, it is circa \$6 billion for the wells, platforms and processing facilities.

**Mr ADAMS**—It is a substantial amount of money.

**Mr Maxwell**—It is. It would be the second largest oil and gas development from Australia after the North West Shelf in terms of capital commitment.

**Senator BARNETT**—I want to pursue those questions that we have had already. Do you think that there is actually an incentive not to agree on the IUA on the part of any of the parties involved?

**Mr Maxwell**—It is very hard for me to speculate on that.

**Senator BARNETT**—Put it this way: if it drags on timewise, is it to the commercial advantage of one party or the other?

**Mr Maxwell**—The East Timor side may see benefit in allowing it to drag as it becomes more important to Australia because Australia under the current structure enjoys more of the returns from the Greater Sunrise project. Allowing it to drag may be a negotiating tactic on the part of the East Timorese to extract more value out of the unitisation agreement.

**Senator BARNETT**—In economic terms, if it was solved and out of the way upfront and quickly, would you say that it is an advantage to both sides or to the Australian side in particular because of the economic significance?

**Mr Maxwell**—In my view, it is an advantage to both sides because if there is no project then there is no benefit to anybody, whether it is East Timor, Australia or the joint venture partners. So putting in place the instruments to enable the project is first and foremost, in our view. Without a project there are no benefits. Therefore, the quicker we can put the instruments in place, the quicker the parties—the different countries and the joint venture partners—can enjoy the benefits.

**Senator BARNETT**—You have placed on the record that the significant expenditure that you want to pursue in terms of the development will not proceed—it will be stalled or on hold until there is certainty with regard to the regulatory and administrative environment.

**Mr Maxwell**—The words that we use are that we need adequate comfort and certainty on the regulations, the title and the fiscal situation. We are used to an environment where these things happen in a stepwise fashion.

**Senator BARNETT**—Can you advise us that the best case scenario is doing it simultaneously with the signing?

**Mr Maxwell**—Yes.

**Senator BARNETT**—Is there a worst case scenario? How long could it drag on for? You talked about the first quarter of next year. Could it go past that time?

**Mr Maxwell**—That is within the power of the negotiating parties on the unitisation agreement. We are not a party to the agreement; we are affected by the agreement. I see it as a good likelihood that the unitisation agreement could drag well into next year and well beyond that.

**Senator BARNETT**—With very serious implications.

**Mr Maxwell**—Yes; and at that point you stall the Greater Sunrise project significantly.

**Mr WILKIE**—Is that without ratification?

**Mr Maxwell**—That is without ratification.

**Senator BARNETT**—Thanks for that. Can you identify the sticking points that you are aware of in regard to the IUA? You have mentioned in your submission the risks associated, but are there any particular sticking points that you are aware of?

**Mr Maxwell**—From our perspective?

**Senator BARNETT**—Yes.

**Mr Maxwell**—Certainty on the fiscal arrangements and a lot of the tax regimes that we are dealing with; certainty on title and whether we will have title for the duration of the depletion of the reservoirs, which in this case is typically 20 to 25 years; and certainty on the regulations that will be used to govern the administration of the field, and that goes to what are our operating costs to run the field. Each of those three feeds into the economics for the project and, in our words, the ‘bankability’ of the project.

**Senator BARNETT**—I have one last question. Are you saying the agreement to agree is simply inadequate, open-ended and means nothing of significance?

**Mr Maxwell**—Very early on in my career I learnt that an agreement to agree does not amount to very much.

**Senator BARNETT**—Thank you.

**Mr MARTYN EVANS**—For the general information of the committee, could you briefly characterise this in terms of the North West Shelf—half or two-thirds?

**Mr Maxwell**—In terms of capital, it is about half.

**Mr MARTYN EVANS**—And for gas?

**Mr Maxwell**—In terms of gas, we are talking here about 8 tcf, which is again almost half the volume of gas at the time the North West Shelf was—

**Mr MARTYN EVANS**—But it is still very substantial?

**Mr Maxwell**—It is very substantial. In terms of sales revenue, we are talking in excess of \$1 billion a year. Our assessment under the current expectations of the tax structures are that revenues to Australia will be circa \$400 million a year, depending on oil price.

**Mr MARTYN EVANS**—I know it is very early days, but where do you see the client base?

**Mr Maxwell**—We are in active negotiations right now with customers for LNG based on the US west coast and we are also talking with one company in Asia.

**Mr MARTYN EVANS**—Speculating in a much broader, post-Kyoto context, we are talking about East Timor, which is clearly a developing country, and we are talking about Australia. Without wishing to characterise us in this context, because there are differing views about this, let us put ourselves in the other category for speculation at the moment. How does one divide a field that straddles this context in those kinds of international agreements? Have you given any thought to a field that sits between these two camps in the context of greenhouse? How does one argue that kind of debate? I am curious about that.

**Mr Maxwell**—It is one of the issues we have given thought to. The unitisation agreement would then have attached to it the regulations by which the depletion of the reservoir would be governed. Those regulations would have in them a set of environmental standards, as the legislation does for depleting some of the reservoirs in Australian waters.

**Mr MARTYN EVANS**—So you have taken into account that international framework and context?

**Mr Maxwell**—Yes.

**Mr MARTYN EVANS**—Very good. Thank you.

**Mr WILKIE**—If you went online with Sunrise, when would you be likely to be in a position to sell the gas?

**Mr Maxwell**—If it is LNG, we are targeting the first gas for October 2008.

**Mr ADAMS**—Regarding the 50 per cent job agreement and the East Timorese, the East Timorese will probably not be in a position to take them up because of skills and things. We will probably help with aid programs, but would it not have been in our interest to have signed an agreement for the Australian work force and also for permanent residents of Australia?

**Mr Maxwell**—I feel like I am on dangerous ground.

**Mr ADAMS**—Please do not feel that way.

**Mr Maxwell**—The treaty provides for the education and training of East Timorese. Certainly—I can only speak from a Woodside perspective here and Woodside is the operator—one of our core values is working with the societies with whom we work closely. I can assure you that, based on past experience in other projects, we would seek to work with both the Australia side and the East Timor side to maximise opportunities for both. Overarching that, from our perspective, is the need to make sure that costs are reasonable and accepted and that the integrity, quality and reliability are maintained. Provided that people have suitable capacity and capabilities, yes, we would support training and development both on the Australia side and the East Timor side.

**CHAIR**—Mr Maxwell, you have mentioned the production-sharing contracts. Woodside, I take it, is urging that they also be addressed simultaneously with the ratification of the Timor Sea Treaty and the IUA. Can you tell us a little more about Woodside's view of the function of production-sharing contracts and the role of government in concluding such instruments?

**Mr Maxwell**—In essence, the production-sharing contract is the means by which we take the title to the oil and gas. It sets out the arrangements between us and the administrator of the area and is really the guidebook for the operations.

**CHAIR**—And the role of government?

**Mr Maxwell**—Are you talking about on the Australia side or generally?

**CHAIR**—The Australia side, and then if there is anything you need to say more generally please do.

**Mr Maxwell**—In Australia, the resource is the people's resource, so we have a licence to mine the resource, and it becomes ours at the time it is extracted. I think the responsibility of the government is to ensure that—there are a range of responsibilities—that resource is depleted in a responsible fashion, that it is safe, that the community gets its fair return from that resource and that the environment and society that may be affected by that resource are enhanced and not in any way damaged as a result of the activities of the companies mining the resource.

**CHAIR**—On another topic—and perhaps we can conclude on this—we have had some evidence about a Federal Court claim by Petrotimor relating to the area in the JPDA. Is Woodside a party in those proceedings?

**Mr Maxwell**—No, we are not. In the context of the Greater Sunrise field, the bulk of that sits outside the JPDA and we have not started depletion of that field. So at this point my advice is that we are not a party to that claim.

**CHAIR**—Thank you. Are there any other questions?

**Mr CIOBO**—You do not have to answer this if you would rather not, but have you had discussions with the East Timorese government about Sunrise?

**Mr Maxwell**—Yes, we have.

**Mr CIOBO**—Were they about the area outside the JPDA?

**Mr Maxwell**—We have discussed that with them in the context of what their position is. We have not negotiated with them.

**Mr CIOBO**—From your perspective, what is their position?

**Mr Maxwell**—At the moment, they seem to be preserving their view. But I think their ambition would be to see the boundary moved to the east.

**Mr CIOBO**—In accordance with the Lowe opinion?

**CHAIR**—That is the Petrotimor view, if you like.

**Mr Maxwell**—Not entirely.

**Mr CIOBO**—So you would not say they are tied to that?

**Mr Maxwell**—No. We have done a lot of work researching what is the proper boundary for the JPDA, having regard to history and ownership. We feel very comfortable with the boundaries that are there at the moment.

**Mr CIOBO**—So you would say that the boundaries that currently exist are concurrent with your view of the correct legal status of the area?

**Mr Maxwell**—From our perspective, yes.

**Mr CIOBO**—With respect to your concerns about the need to ratify the Timor Sea Treaty and the IUA together, I presume you communicated that to the East Timorese government?

**Mr Maxwell**—We have told the East Timorese representatives that we need adequate comfort and certainty on the regulations to fiscal structure and title. And how that is achieved, we are quite open. We see the ratification of the unitisation agreement and the Timor Sea Treaty as the very obvious means of making a significant step in that direction. That is the way we have communicated it to the East Timorese.

**Mr CIOBO**—What was their reaction to that?

**Mr Maxwell**—They understood our position. They did not necessarily agree with it.

**CHAIR**—Given that 20 per cent or thereabouts of Greater Sunrise is within the JPDA—I am not sure if you have told us this before—what is the estimated revenue from that 20 per cent that would then, presumably under the treaty, be split 90-10.

**Mr Maxwell**—I do not have that precise figure to hand; the figure I do have is the estimate of the revenue to East Timor from—

**CHAIR**—If you take Greater Sunrise as a whole and then assume that 20 per cent is within the JPDA and, of that 20 per cent, 90 per cent will be attributed to East Timor and 10 per cent to Australia, I am just trying to get a handle on what that would be worth.

**Mr Maxwell**—Are you talking about the fiscal revenue?

**CHAIR**—Yes. I am asking about the JPDA side. Is there any difference in the revenue that would come from one side or the other? Geographically, is there any—



**Mr Maxwell**—The indicative East Timorese tax take is in the order of \$A50 million or \$A60 million per year.

**CHAIR**—Does that equate to 90 per cent of the 20 per cent of Greater Sunrise that is within the JDPA?

**Mr Maxwell**—Yes, and assuming the East Timor tax fiscal structure, which is different to the Australian fiscal structure.

**CHAIR**—Are you aware of the taxation arrangements that Bayu-Undan have agreed with East Timor?

**Mr Maxwell**—We are not aware of the details of those arrangements. We are aware that Phillips have negotiated something with the East Timor government.

**CHAIR**—But Woodside, likewise, would be seeking to negotiate favourable tax treatment with the East Timorese?

**Mr Maxwell**—Yes, we would.

**CHAIR**—It might come back before this committee—like a double tax agreement. Mr Maxwell and Mr Wilkins, thank you very much for appearing before the committee in Canberra today and for your submission.

[11.37 a.m.]

**ATWELL, Ms Julie-Anne, Senior Legal Officer, Office of International Law, Attorney-General's Department**

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

**BUCKLEY, Mr Michael Thomas, Manager, Resources and Environment Tax Unit, Business Income Division, Department of the Treasury**

**FREE, Mr Anthony John, Manager, Excise Unit, Indirect Tax Division, Department of the Treasury**

**PICKERING, Mrs Ariane, Special Adviser—Treaties, Department of the Treasury**

**FRENCH, Dr Gregory Alan, Director, Sea Law, Environmental Law and Antarctic Policy Section, Department of Foreign Affairs and Trade**

**RABY, Dr Geoffrey William, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade**

**WALKER, Mr Ian James, Manager, Timor Sea Team, Resources Division, Department of Industry, Tourism and Resources**

**CHAIR**—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament.

Mr Campbell and Dr Raby, perhaps I can focus on you for the moment. During the public hearing last week, we canvassed at length the Commonwealth's views on the delimitation issue and, at the conclusion, the Commonwealth undertook to provide us with further details on—this is my list; you may have other matters—the linking of the IUA with ratification of the Timor Sea Treaty in terms of Australia's national interest, the question of the taxation regime that will be applying in the JPDA, the levels of Australian aid to East Timor and the flag of convenience concerns in the JPDA, such as environmental safety and the like. There may well have been some other matters, but perhaps you could deal with them to start off. Would somebody like to deal with those issues?

**Dr Raby**—I will take the first one and then invite colleagues from Treasury to respond to the next one on taxation. I can also respond to aid. If you like, I can do the first and third together if you wish.

**CHAIR**—That would be fine. What about flag of convenience?

**Mr Campbell**—We will deal with flags of convenience.

**CHAIR**—Thank you. Please proceed, Dr Raby.

**Dr Raby**—On the first question of the relationship between the IUA and the treaty, the question, as I recall it, was: what was in Australia's national interests? As I said last time, from the government's point of view Australia's national interest will be maximised and preserved if the treaty, the IUA and all other instruments, including the PSCs, come into effect simultaneously. On the question of levels of—

**CHAIR**—Perhaps we could just explore that for a moment. I think there was a meeting in Adelaide or somewhere last week, which you alluded to on the last occasion, to progress—

**Dr Raby**—Perth.

**CHAIR**—How could I forget! There was a meeting in Perth to progress these issues. Could you perhaps give us an idea of how close to reality the aspiration would be to conclude all these agreements at once?

**Dr Raby**—Again, as I mentioned last time, these things can happen quite quickly if the conditions are right. We were encouraged that the lead negotiator on the East Timorese side was still asserting that it was their intention to have the IUA concluded with us by 31 December, according to the MOU that was signed in Dili on 20 May. But it is a difficult negotiation. It is very hard sitting here today to say clearly whether or not it can be done by then. There are a number of threshold issues that still confront us after the meeting last week. So they are still some important differences that we need to work through.

**CHAIR**—What difference would it make, if any, to the negotiations if this committee were to recommend ratification of the treaty as soon as possible?

**Dr Raby**—It would probably diminish the incentives on behalf of the negotiators to move quickly through the IUA.

**CHAIR**—However, recommendation by this committee does not immediately translate into ratification by the government.

**Dr Raby**—No, that is right. The government would still have to make its decision, which would be, obviously, the significant event.

**CHAIR**—Yes.

**Mr WILKIE**—Why would it diminish the incentives on behalf of the negotiators?

**Dr Raby**—If they formed a judgment that the government might adopt the recommendation from the committee, they may feel that there is much less of a sense of urgency on the Australian side.

**Mr WILKIE**—For the IUA?

**Dr Raby**—For the IUA.

**Mr WILKIE**—What are the incentives on their side?

**Dr Raby**—For?

**Mr WILKIE**—The IUA. Why would they not want it to be proceeded with as quickly as possible?

**Dr Raby**—They are committed to the terms of the MOU, as we are. As I said, they indicated in Perth that they still want to see this done by 31 December. We have to take that on face value.

**Mr WILKIE**—Then why does ratification and IUA need to occur at the same time if you believe that they would be trying to work towards a December resolution?

**Dr Raby**—We are still confronting some significant differences on approaches to the IUA and we have not got yet an understanding between the parties on how to move forward on those differences.

**Mr WILKIE**—But that is different to saying that they would not be still acting in good faith to work towards December. Do you believe that there would be an incentive for them not to work towards December if the treaty was ratified?

**Dr Raby**—No, I just said it would diminish the incentives—the sense of urgency may be less. This is a hypothetical question you are putting.

**Mr WILKIE**—But why would it be less?

**Dr Raby**—It may look, if the government were to adopt that recommendation, that it was of less urgency for us as well. That may be how it would be perceived on the other side.

**Mr WILKIE**—That is not how it is written up in the treaty at the moment, is it? At the moment, the treaty says that the IUA is really only an annexure of the treaty. The treaty can be ratified and IUA negotiations can continue—that is the current position. Why would it infer that there would be any less of a reason to proceed with that quickly?

**Dr Raby**—Only that you have the MOU, which is a non-binding understanding, and that has been the target which we have agreed mutually to work towards, but time is moving on.

**Mr WILKIE**—Would it be more or less beneficial for East Timor to have ratification prior to or at the same time as unitisation?

**Dr Raby**—I think both sides would benefit from ratification and unitisation being agreed at the same time.

**Mr WILKIE**—Equally?

**Dr Raby**—No. As I said last time, our interest in this package is different. The big Australian interest is with Sunrise and, as we have just heard from one of the commercial partners, we need a unitisation agreement to realise that interest.

**Mr WILKIE**—You made the statement that Australia's interests are maximised and preserved if treated simultaneously. What I want are reasons as to why you have made that statement. Why is that the case?

**Dr Raby**—I think that gives us the comfort, if you like, that we have both elements together. The East Timorese element and interest is with the early development of Bayu-Undan. We have some interest in Bayu-Undan, but Australia's bigger interest is demonstrably with the development of Greater Sunrise. To do the treaty without having concluded an IUA for Sunrise would leave us possibly in a situation of less confidence and less certainty than at present.

**Mr WILKIE**—Why would that be?

**Dr Raby**—Because we do not have, other than the memorandum of understanding, an agreement to conclude an IUA by date certain. We have an MOU to do it by 31 December, but we do not have a treaty agreement that it will be done by date certain.

**Mr WILKIE**—If Australia's interests are maximised—and I imagine an analysis would have been done of the figures on what is to be gained or to be put at risk by going down one path or the other; and I do not know if anybody has prepared that and that was what I was trying to get at last week—what sort of dollar terms are we dealing with in how much we are potentially going to lose from ratification without the IUA?

**Dr Raby**—I think you can infer that from the evidence from the commercial partner preceding this evidence. I recall a figure of around \$A400 million as revenue for Australia from the Greater Sunrise fields. If there were no IUA concluded or a delay, then that is the sort of loss that presumably we would incur.

**Mr WILKIE**—How does that compare with Phillips, who are saying that if they do not have ratification as quickly as possible then the \$1.5 billion in investments in the field that they have already put in place would be at risk and the overall project would be at risk? Has a comparison been done between losing Phillips as opposed to losing Sunrise or as opposed to having both? What was the risk assessment?

**Dr Raby**—What we are looking at is not losing any element of this but having the lot go forward. That is why the approach has been to try to ensure that both sets of interests in this negotiation are fully reflected in the final documentation.

**Mr WILKIE**—That is what we would prefer. However, on the one hand, both Phillips and Woodside have said that their projects may not proceed unless one gets ratification as quickly as possible without waiting for unitisation and, on the other hand, the other is saying, 'We may not proceed unless we have ratification and unitisation.' So we must have done a national interest

analysis or a study to determine (1) who is likely to be right, if I can put it that way, and (2) what the opportunities and negatives are of either to Australia's national interest.

**Dr Raby**—I should just say on the Phillips side that the liquids phase of the project—it is liquids and gas—is going ahead. I can only answer this in terms of the interest of the Australian government, and there I think I have answered as best I can on the revenue that could be forgone if we are unable to secure an IUA and have the Greater Sunrise Fields proceed.

**Mr WILKIE**—What dollar figure are we likely to put at risk if we lose Bayu-Undan?

**Dr Raby**—I do not have a figure for the Australian revenue share of Bayu-Undan. It is significantly smaller, though, than the revenue that we would anticipate from Greater Sunrise.

**Mr WILKIE**—Would that include the infrastructure and job potential for the Northern Territory, because the Bayu-Undan gas would be piped to Darwin?

**Dr Raby**—I do not have a figure or an answer for you on the downstream aspects of that. But there would also be, one would presume, significant downstream aspects connected with servicing the much larger field of Sunrise.

**Mr WILKIE**—Sunrise is proposed to be on a barge and taken directly to market, whereas Phillips are looking at doing theirs onshore.

**Dr Raby**—Yes, but I mean in terms of the size of the capital development of the project, and I believe Sunrise is a significantly bigger capital exercise.

**Mr WILKIE**—Does the government have a view about the Phillips claim that they will not be able to proceed unless the treaty is ratified in November? It is unlikely that that is going to occur. Has the government considered that as a possibility and assessed the risk?

**Dr Raby**—We have heard the Phillips view on this, obviously. We note it, and we are very mindful of the Phillips position. We do note, though, that the liquids phase is continuing. We are looking at the development of the whole field, not just Bayu-Undan but the whole Timor Sea area.

**Mr WILKIE**—I know, but Phillips have put the income revenue to Australia in terms of taxation at roughly \$A2 billion

**CHAIR**—Over the life of the project.

**Mr WILKIE**—Yes, over the life of the project. Is it worth putting that project at risk to hold out for unitisation and ratification at the same time? They have clearly stated on more than one occasion before this committee that, if we do not get ratification through by November, that project is at risk.

**Dr Raby**—All I can say on that is that the government's position is that Australia's national interest is maximised through the development of all the fields and particularly by the development of Greater Sunrise.

**Mr WILKIE**—So it is the government's view that the risk is worth taking?

**Dr Raby**—Yes. The bigger field is of great national interest to us.

**Mr WILKIE**—What I am trying to get clear here is that it is in the national interest—and it is the government's position—that, even though we may be risking the \$A2 billion that we are likely to earn from Phillips over the life of their project at Bayu-Undan, we should still hold out for ratification and unitisation at the same time to maximise the potential of all the fields across the JPDA?

**Dr Raby**—Yes. On Bayu-Undan, I would make the point also that it can be a question of timing—it may not be done this year; it could be done at some other stage—when you are taking a broad national interest view of this. The resource does not disappear simply because a particular arrangement does not proceed in a certain narrow time frame. I think it is quite instructive to note the comments made by the commercial partner previously that these major natural resource projects are characterised by significant slippage when they are being brought on stream.

**Senator BARNETT**—I want to follow up on that point. In relation to the Phillips argument that the agreement must be ratified by November this year for the development to proceed, do you think that is perhaps not entirely accurate, that the resource will remain there and that the development could proceed at a later time? Is that what you are saying?

**Dr Raby**—Certainly the resource will remain there. We note what Phillips say and we accept what they say on face value. They are the people who are doing it. We are saying that there is a balance of interests here. The conclusion is that national interests are served most by ensuring that our disproportionately bigger interest in Greater Sunrise is protected.

**Senator BARNETT**—Can you express the level of confidence you feel that the IUA would be finalised swiftly if the agreement were ratified, subject to the IUA actually being ratified? In the best-case scenario, how quickly would it take for the IUA be finalised?

**Dr Raby**—On the first question, from a negotiator's point of view, anything that increases leverage around the negotiations would be helpful. If that leverage around the negotiations were increased, I still cannot say how quickly we could do the IUA. In our most recent contact with East Timor, their lead negotiator has said that they are still looking at 31 December. We just have to see how we go in the context of the negotiations.

**Senator BARNETT**—Is it not beyond the realm of possibility that you could do it by the end of November, subject to the will of both parties? You can take advice if you need to.

**Dr Raby**—Could you please repeat the question?

**Senator BARNETT**—Subject to the will of both parties, could it be finalised by the end of November? And then, effectively, everybody is satisfied.

**Dr Raby**—If the will is there, we could do it very quickly. If you recall the negotiation we had over the Timor Sea Treaty, it did not move very quickly for a long time, and then when the political engagement occurred we were able to conclude that negotiation very quickly.

**Senator BARNETT**—That is what I am really asking: are there any impediments, other than political will, that you are aware of that would stop both the agreement being ratified and the IUA being finalised swiftly? Are there any impediments that you are aware of that could drag it out?

**Dr Raby**—Not of a technical nature that I am aware of. I would be guided by my colleagues on that, but nothing of a technical nature.

**Senator BARNETT**—So it is feasible, possible, probable that it could be finalised swiftly if such a view was taken by the federal government?

**Dr Raby**—Yes, if there is a will for both parties to do it, it could be done.

**Senator BARNETT**—Witnesses this morning put the view that the development that they are involved with would be put on hold, and they estimated that it is a \$6 billion development. Is that consistent with your understanding of the nature and extent of such a development?

**Dr Raby**—Yes.

**Senator BARNETT**—You can understand their views of the need for a certain and stable regulatory environment?

**Dr Raby**—Yes.

**CHAIR**—Can we just move on to the level of Australian aid to East Timor. Do you recall the questions about that last week?

**Dr Raby**—Yes. The question was: was it true that we were cutting our aid? I am advised by AusAID that the aid program is a four-year program, and that at the inception of the program it was envisaged that the volume of aid would reduce in years 3 and 4.

**CHAIR**—So what are we up to?

**Dr Raby**—Year 2. In accordance with the program, there will be a fall in the aid delivery in years 3 and 4.

**CHAIR**—That was announced at the outset of the introduction of that program?

**Dr Raby**—That is my understanding. That was how the program was structured. Again, it is quite normal for programs to have a phase-out or reduction element in them, back-ended.



**CHAIR**—Sure.

**Mr ADAMS**—How many gas workers have you got now in East Timor?

**Dr Raby**—Sorry?

**Mr ADAMS**—How many gas workers can work on these projects?

**Dr Raby**—I do not know.

**CHAIR**—Mr Walker, while you are finding that answer, could I ask Dr Raby a question. Would you be able to direct us to Treasury's web site, or somebody's web site, so that we can find the information about when that program was announced and the details of the aid program? It is just that an allegation, if you like, was made by the Uniting Church. We would like to be able to consider it and have a look at when that was announced and the basis upon which the amount of aid was to change.

**Dr Raby**—We might have it here. We can leave you the papers that set it out, but it was in the May 2000 budget that the program was set down and outlined. So you can see all that from these documents.

**CHAIR**—Thank you. Mr Walker, have you got an answer on the question of gas workers in East Timor?

**Mr Walker**—Yes and no; it is not a straightforward thing. I have figures for the work force by nationality in the Joint Petroleum Development Area as at 13 July 2002. In looking at those, we have to take account of the fact that this was a period when there was a very high level of short-term construction activity going on in the area, with the jack legs being installed and so on. As of that date, there were 26 East Timorese in the area. These were spread through several things that were happening. Quite a number of them were on the drill barge, which is still there—the one that is putting in the production holes for Bayu-Undan. There were some on a number of other installations and equipment as well. In terms of these jobs that they are involved in translating to permanent employment later on, these are really construction jobs—and they are people involved with construction activities—rather than a lot of the very highly-skilled jobs that are involved on the production side. In terms of East Timorese employment more generally, it is worth noting that Phillips is involved in a major training program. It has a number of trainees on its staff, as does the current joint authority operating the governance of the area.

**Mr ADAMS**—With that in mind, when we negotiated the agreement, the Australian government did not put a preference clause in for Australians or permanent residents of Australia, did it?

**Mr Walker**—No; that is correct.

**Mr ADAMS**—Why wouldn't we have done that in the public interest?

**Mr Walker**—The clause in the treaty is about how Australia and East Timor share the employment opportunities. In the previous Timor Gap Treaty with Indonesia, we had a clause that set a sharing arrangement aimed at 50-50. In fact, even with Indonesia and even with the relatively small employment that is in the Joint Petroleum Development Area, that 50-50 was never attained. Australia was always over 50 per cent and Indonesia significantly short of that effect. Putting in a 50-50 type figure into the Timor Sea Treaty would only have raised a number of issues, simply because it is very far into the future before East Timor can ever get to its 50 per cent—so far off that as a target it is almost meaningless to put it in there. The view was that, if one did that, it would be likely to be overlooked for a long period, because it is unrealistic. Hence, it was felt that it would give a lot more force to providing development opportunities for East Timorese to do it through a simple training and employment opportunity clause.

**Mr ADAMS**—I appreciate and understand that, but if we go into a situation where some of that work is contracted to other parts of the world, Australia then would not get any skill base. Its work force would not take any skills from a resource that belongs in part to us and, by agreement and treaty, to the East Timorese.

**Mr Walker**—Again this is about how we share the employment opportunities between Australia and East Timor. This should not be interpreted, because it does not say anything about Australia, to imply anything to the effect that Australia is not one of the two parties. In a situation like this there will always be a significant number of third country nationals involved. I think over the life of the previous treaty it was something like 15 per cent over the period 1992 to 1999.

**Mr ADAMS**—I guess that is what I am trying to achieve for the future as well, that when we sign these agreements and treaties that we endeavour to look after our nationals in employment.

**Mr Walker**—Yes. This does not in any way cede Australian employment rights after giving preference to East Timor.

**Mr WILKIE**—To follow on from that, I do not actually hear anyone proposing a 50-50 arrangement or even an arrangement in terms of employment that specifies numbers. I think the concern that has been raised is that the current clause does not talk about sharing or partnership arrangements; it just has a preference for the employment of East Timorese nationals. What is being put to the committee is this: wouldn't it be fair if the clause stated something like, 'It will give preference to the employment of East Timorese and Australian nationals'? You do not need to specify a quantum, a figure; you just need to specify that it would be the intent that those people would have preference in employment.

**CHAIR**—And then in practical terms the skill level would fall between the two. Whether unskilled or skilled labour, it would fall between Australians and East Timorese. I do not think we are talking about Australians and East Timorese competing so much as ensuring that the nationals of the two countries are given preference.

**Mr ADAMS**—And the national interest might be given some preference.

**Mr Walker**—Because this is a treaty between Australia and East Timor, it goes without saying really that we are talking East Timorese and Australian employees. This is in no way giving rights to third party countries.

**Mr WILKIE**—But then the previous treaty was only a treaty between Australia and Indonesia, and it had both.

**Mr Campbell**—I take that particular point, that this is a bilateral agreement between Australia and East Timor, and it is implicit that the concern would be there for East Timorese workers and Australian workers arising out of that. I think at one point in the evidence there was a suggestion that we should put in a 90-10 figure in terms of employment.

**Mr Walker**—That is why I mentioned that.

**CHAIR**—I think that was a Territorian. The other way around, though, but that is what they meant.

**Mr Campbell**—To be honest, I think that could be even worse. That was certainly not even; it is worse than putting nothing at all.

**CHAIR**—You do not have to convince me about equations. I am not into them.

**Mr Campbell**—That is all I wanted to say.

**CHAIR**—At the end of the day, is this not just an aspirational clause? It does not bind the companies, does it?

**Mr Campbell**—No. It only binds the governments, and the governments do not employ the employees.

**CHAIR**—So it is a statement of intent.

**Mr Campbell**—Yes.

**CHAIR**—But in practical terms, if it ever pans out that way, if the companies wanted to employ all unskilled workers from the Philippines—

**Mr ADAMS**—It is only when you start to negotiate for taxation and other purposes you might then want to cover it from a government perspective so that the work force of Australia is not benefiting from those resources. There are other ways.

**Mr WILKIE**—They may in fact choose to feed their workers non-Tasmanian salmon, which would be terrible.

**CHAIR**—Could we move on to the taxation regime.

**Mr Buckley**—At the last meeting of the committee on Tuesday, Mr Bartley fielded some questions on that. He was invited to look at the submission from BP. We have now reviewed the BP submission. It covers two areas—the application of GST to the Joint Petroleum Development Area and the operation of excise within the Joint Petroleum Development Area. I will ask my two colleagues to discuss those areas. Ms Pickering, would you like to talk on the application of the GST?

**Ms Pickering**—Certainly. I believe that Mr Bartley said last week that the GST would not apply in the JPDA. If I can just reiterate that, that is the case. Under the tax code, the GST is a covered tax and article 18 does give us the right to impose GST. But the exercise of that right depends on domestic law. Under our current domestic law, we do not impose GST in this area. So it would require legislative change, as Mr Bartley said, to actually impose GST.

**CHAIR**—Given what might be at stake then, you are not saying it is not possible. It would just take an amendment to legislation to include the JPDA as part of the Australian jurisdiction.

**Ms Pickering**—Within the scope of the GST, yes.

**Mr WILKIE**—Why would it fall outside that area at the moment, Ms Pickering?

**Ms Pickering**—I am not an expert on GST. I could certainly get you a detailed description of the mechanics of it. My understanding of it is that the scope of the GST, where it is outside mainland Australia, depends on the Customs Act. Because it is treated as ‘outside Australia’ for Customs purposes, it will also be treated as ‘outside Australia’ for GST purposes. That is only my understanding of it. If you would like a definitive answer, I would prefer to get that—

**Mr WILKIE**—No, I am happy with that.

**CHAIR**—I assume Treasury has looked at it. As we understood it, BP has been given a response by Treasury as to why GST does not apply. So I am assuming that somebody has turned their mind to it.

**Ms Pickering**—Yes.

**Mr WILKIE**—I am satisfied with that. The only reason I am curious is that Australia’s maritime boundaries are under dispute here. I would have thought we would be arguing that it would be inside our waters and, therefore, should come under domestic law.

**Mr MARTYN EVANS**—It is somewhat in a state of flux in terms of what is inside and outside our boundary.

**Mr ADAMS**—Duty free.

**CHAIR**—I am just saying that it does not make it so. Was Mr Free going to address the next point?

**Mr Free**—Yes. With your indulgence, I have a few brief words about the excise and customs system. I think we can sometimes get into some confusion about excise and customs duty unless we know exactly what we are defining. Excise, under current Australian law, applies only to goods manufactured in Australia, whereas customs duty applies to goods imported into Australia at the border under customs legislation. Quite often, excisable goods will normally have a customs duty rate, which has embedded into it a tax identical to the excise rate. To give an example, which I think is probably relevant to this case, let us consider diesel which, if manufactured in Australia, has an excise rate of 38.143c per litre. If you import diesel, you will also pay 38.143c per litre but it is payable as a customs duty.

Returning to excise, the general principle is that licensed manufacturers of excisable goods do not pay excise on goods that they export because, to use the words of the act, they are not entered into home consumption. If BP itself directly exported goods to the JPDA territory, the issue is, is that area outside Australia for the purposes of excise law? The answer is that it is outside Australia, because you go over the customs barrier. If BP directly exported diesel, excise would not apply within Australia to that diesel. Similarly, if a third party—such as, I think in the evidence that talked about Phillips Petroleum—exported, say, diesel to the JPDA, they would be entitled to a refund or drawback of any excise duty that was incorporated that had already been paid on those goods.

The next question that arises is: when the goods enter the JPDA, do they pay customs duty at the rate that I mentioned, which is equivalent to an Australian excise rate? Looking at article 15(e), provided they meet the tests for purposes related to petroleum activities—which is elsewhere defined at article 1(k) in the document—they would not pay customs duty on that at the excise equivalent rate. In summary, the answers to BP's questions are that excise duty does not apply to goods because it is an Australian internal tax, and customs duty on goods entering the JPDA, provided they meet the test of being for purposes related to petroleum activities, do not apply either.

**CHAIR**—So BP should be quite content with that arrangement?

**Mr Free**—I think so.

**CHAIR**—This answers their concerns.

**Mr Free**—Yes. For the purpose of the excise legislation, given that it is an export to an area external to Australia, it is no different from an export to any other place external to Australia.

**Mr ADAMS**—When you say the customs barrier, do you mean the barrier of leaving Australia? What is that term?

**Mr Free**—It is a term that Customs uses in a broad sense to mean the external border of Australia for the Customs legislation.

**Mr ADAMS**—So is that the three-mile limit?

**Mr Free**—It is normally for the purpose of the Excise Act. Exporters are taken for delivery of excisable goods to an area licensed in Customs legislation, which will normally be a wharf, a

depot, an airport or the like, depending on the mode of export; specific places around the border of Australia licensed under the Customs legislation. I am sure, for example, there will be such a place in Darwin, which is the point at which Customs assesses exports and imports and any duty payable on goods coming into Australia.

**Mr CIOBO**—BP raised the issue about whether it would be applied on a 90-10 regime split. We did not think that was the case; I assume it is not.

**Mr Buckley**—That is on the application of the GST. At this point, there is no GST applicable.

**Mr CIOBO**—If it did, what would be the case?

**Mr Buckley**—We would have to cross that bridge when we came to it.

**Mr CIOBO**—Let us hope we do not come to it.

**CHAIR**—The final issue was the flags of convenience in the JPDA, environmental safety and the like. Mr Campbell, was that your area?

**Mr Campbell**—Chair, with your indulgence, can I address one issue that was just raised.

**CHAIR**—Sure.

**Mr Campbell**—The suggestion that the non-application of an Australian law in a particular area might indicate that we are not serious about a boundary or something in the area concerned me a little. All I wanted to point out is that the areas we are talking about are offshore areas, exclusive economic zone and continental shelf. They are areas in which we exercise only certain rights—that is, basically to explore and exploit the resources there. No country normally applies the total body of its law out there. The fact that we do not apply a particular law in that area should not be taken to infer that somehow we are not serious about our claim to that area.

**CHAIR**—I understand.

**Mr WILKIE**—I was not suggesting that. I was suggesting that different boundaries are used for different determinations. The maritime border boundary is often based on the seabed. Sometimes we have an EEZ that is based on something else and another border that is based on something else. I think Mr Free answered the question when he was talking about excise being based around the borders for Customs purposes, which sort of explains the question about why tax does not apply: it is on the other side of what would be a Customs border as opposed to a maritime border or another boundary. The point was that there are different borders for different purposes, basically.

**CHAIR**—I take the point. On the flags of convenience?

**Mr Campbell**—The question we had related to the safety and operating standards, the crewing of petroleum industry vessels, the issue of flags of convenience—

**CHAIR**—It emanated from evidence from the Maritime Officers Union.

**Mr Campbell**—and the fact that some vessels did not actually go into port before they went to the equivalent of the JPDA. I will ask my colleague Ms Atwell to address that issue.

**Ms Atwell**—The question related specifically to article 17 of the Timor Sea Treaty, which relates to the safety and operating standards of petroleum industry vessels in the area. Firstly, when a ship calls into an Australian port the Australian Maritime Safety Authority undertakes port state control procedures. Any ship that calls into an Australian port prior to entering the actual area would also be subject to such procedures. However, there is the possibility of ships entering the area without first entering an Australian port. For example, we believe some of the ships currently undertaking work in the construction of platforms in the Bayu-Undan area come directly from Singapore into that area.

Currently the procedure under the Timor Gap Treaty for ships seeking to enter the area for the purpose of stopping at a fixed platform is that the contract operator is required to ensure that the ship complies with international safety and operating standards, in that the vessel possesses the required certificates. This is similar to the procedure conducted by AMSA when a ship enters an Australian port. The contract operator undertakes to do this prior to the ship entering the area. If the ship does not comply with those standards, the ship is not able to enter the area. The contract operator is required to this under the regulations issued by the joint authority under the petroleum mining code.

It is envisaged that when the Timor Sea Treaty enters into force the provision concerning petroleum industry vessels under article 17, which is also similar to article 26 of the Timor Gap Treaty, will enable the designated authority to issue regulations in the same way that the joint authority has done under the petroleum mining code. Ships that might pass through the area without stopping at a fixed platform or for the purpose of undertaking petroleum activities in the area would enjoy freedom of navigation as they do in other areas of Australian territorial waters without being subject to port state control measures.

**Mr Campbell**—I think the short answer is that there are regulations in place by the joint authority which cover those vessels and require the relevant certificates, and it is anticipated that that will continue to be the case under the new TST.

**CHAIR**—So the designated authority would have the power to enforce those requirements?

**Mr Campbell**—Yes.

**Ms Atwell**—It is envisaged that the designated authority would require the contract operator to ensure that the ships have the relevant certificates in the same way that it currently does. If that is not complied with, the ship would be unable to enter the area.

**Mr WILKIE**—One of the concerns is that there does not appear to be any way of enforcing that. While it was stated—and it is a bit of a motherhood statement in some respects—how do you go about ensuring that they comply?

**Ms Atwell**—That is an issue which applies to ships more generally. When ships enter an Australian port, AMSA undertakes port state control procedures. In relation to compliance with international standards, AMSA would rely on the reports of classification societies which undertake the inspections to determine whether the ship actually complies. Compliance is reflected in the certificates that the ship holds. Determining that ships hold those certificates would be the means by which the contract operator would determine compliance with the regulations issued by the designated authority.

**Mr ADAMS**—The world does not always work that simply. We will see how it works out.

**Mr WILKIE**—Dr Raby, you have probably already answered this in many ways. In your professional opinion, do you think that the unitisation agreement will be decided on by the end of December based on meetings that have already taken place?

**Dr Raby**—I have answered it—

**Mr WILKIE**—I know you have said that there are no technical impediments, and there is really a lot of horse trading going on around the table. Do you think that it is likely to happen?

**Dr Raby**—I am not sure whether or not it is likely. That is the best answer I can give you at this stage. I am not sure.

**Mr WILKIE**—It is unclear.

**Dr Raby**—Yes.

**CHAIR**—We thank all representatives of the relevant Commonwealth departments who have appeared before us on various occasions in relation to this inquiry. The information we have received has been very comprehensive. We thank you for your submissions and for your willingness to appear on a number of occasions.

Resolved (on motion by **Mr Adams**, seconded by **Mr Wilkie**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.