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JOINT COMMITTEE ON TREATIES

Monday, 3 March 2003

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

Senators and members in attendance: Senators Kirk, Marshall, Mason, Santoro and Tchen and Mr Adams, Ms Julie Bishop, Mr Ciobo, Mr Evans and Mr Peter King

Terms of reference for the inquiry:

Treaties tabled in November and December 2002.

WITNESSES

Committee met at 10.11 a.m.

International Treaty on Plant Genetic Resources for Food and Agriculture

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade

WILD, Mr Russell Bradley, Executive Officer, Legal Branch, Department of Foreign Affairs and Trade

GILMOUR, Dr Ross Forrest, Program Manager (Winter Cereals Improvement), Program Operations, Grains Research and Development Corporation

LETTS, Mr Ewan, Consultant, Grains Research and Development Corporation

CHAIR—Good morning, ladies and gentlemen. I declare open this meeting of the Joint Standing Committee on Treaties. I also note for the record that we have a new member of the committee, Senator Santoro. The committee welcomes him and looks forward to his assistance in this very interesting committee.

Senator SANTORO—Thank you, Madam Chair.

CHAIR—As you will be aware, as part of the committee's ongoing review of Australia's international treaty obligations, a public hearing was held on 9 December 2002 on treaties tabled on 12 November and 3 December 2002. At that hearing, officials from the Department of Agriculture, Fisheries and Forestry, Australia gave evidence on the International Treaty on Plant Genetic Resources for Food and Agriculture, done in Rome on 3 November 2001. The committee received additional information and has decided to examine several issues further.

Submissions have been received from several interested parties, and were authorised for publication by the committee prior to the commencement of this hearing. Although the committee advertised the inquiry on its web site and in the *Australian* newspaper in December, this is the first opportunity that the committee has had to authorise submissions received. Copies are available from the secretariat.

The committee is pleased to invite witnesses from the Grains Research and Development Corporation, the Grains Council of Australia and the Seed Industry Association of Australia and will then hear further from representatives of the Department of Agriculture, Fisheries and Forestry, Australia.

I now call representatives from the Grains Research and Development Corporation. 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. Dr Gilmour or Mr Letts, would you wish to make some introductory remarks before we proceed to questions?

Dr Gilmour—Thank you for the opportunity to speak to the committee today. The Grains Research and Development Corporation invests approximately $40 million per annum in germplasm and varietal development, including genetic resource conservation and characterisation. This investment is made in 25 grain crops for which the corporation has a mandate and in certain pasture and forage species such as lucerne, clovers and medics, which are an integral part of sustainable grain and grazing farming systems. The GRDC's investment, together with co-funding by federal, state and private sector agencies, has contributed to maintaining productivity growth in the Australian grains industry at an average of 3.4 per cent per annum over the past decade, approximately half of which is likely to be attributable to investment in genetic resources and plant breeding.

The matter at hand is the ratification of the proposed International Treaty on Genetic Resources for Food and Agriculture. The committee will be aware of its long gestation in international and domestic fora. The GRDC committee has been an active participant in domestic consultations that have been led by the Department of Agriculture, Fisheries and Forestry because of the vital importance of access to, and development of, plant genetic resources for the ongoing prosperity of the Australian grains industry.

Looking at the status of GRDC investments and how the corporation operates in this area at the moment, the GRDC, through research providers such as the CSIRO with whom the corporation has research agreements, has successfully pursued key research agendas involving the curation and characterisation of plant genetic resources for the benefit of the Australian grains industry.

These transactions are an outcome of successfully negotiating bilateral agreements that deliver benefits to both owners of the genetic resources and to Australian agriculture. I wish to illustrate this with several examples. In 2001 the University of Tasmania, with sponsorship via a GRDC investment of $750,000 over four years, entered into a research agreement with six research institutions in China concerning a project to conserve and characterise barley germplasm for a range of abiotic stresses of relevance to Chinese and Australian agriculture. Germplasm that performs well in Chinese tests is introduced into Australia under material transfer agreements that define benefit-sharing arrangements with the Chinese collaborators in the event of commercialisation of the germplasm in Australia.

Also in 2001, the GRDC entered into a research agreement with the International Centre for Agricultural Research in Dry Areas, ICARDA, in Syria, appointing ICARDA as the corporation's agent to develop linkages to the Vavilov Institute in St Petersburg. The Vavilov Institute is arguably the world's greatest plant genetic resource collection. The corporation's investment is helping Russian scientists better characterise wheat germplasm for key abiotic stresses, particularly salinity tolerance, for subsequent transferral of the germplasm to Australia.

The corporation's investment in the project will be $377,000 over three and one half years. This investment is being used to engage Russian scientists to characterise material and to transfer from Australia innovative technologies for characterising and cataloguing the genetic resources. Key outcomes from the corporation's investment include underpinning the conservation of at least part of the unique Vavilov collection and the introduction to Australia of novel germplasm of direct relevance to Australia's wheat breeding programs.

Further significant genetic resource programs are currently under development. This includes collaboration with China on wheat and barley and a program to conserve and characterise eastern European wheat varieties which are being displaced from commercial production but are very interesting for their novel grain-quality characteristics.

The GRDC is transacting major R&D programs for the benefit of Australian grains industry through appropriate bilateral agreements. These transactions are not being hindered by the absence of a binding international treaty on plant genetic resources. The programs sponsored by the corporation have invariably benefited the owners of the plant genetic resources and Australia.

The GRDC is concerned about a range of matters in this treaty which are detailed in the corporation's submission to this committee. These matters relate to uncertainty about the impact the treaty will have on Australian research and plant breeding programs. In short, obligations that arise under the treaty's material transfer agreement are not known and will not be known until that instrument has been drafted. More broadly, the treaty proposes a relatively prescriptive model for transactions in plant genetic resources through a multilateral arrangement. By contrast, the GRDC's experience has been that productive solutions arise bilaterally, generally in ways that maximise the mutual benefits to both participants. The principles and intent of the treaty are in many ways commendable and desirable for progressing the international agenda concerning plant genetic resources.

It is very important that international and domestic agendas continue move forward on this matter. However, on balance, the corporation's analysis cannot identify a strong case for early ratification of this treaty, especially in the absence of the MTA and pending working definitions of certain matters that the corporation regards as vague and, therefore, of uncertain impact on Australia. The corporation recommends ongoing participation by Australia through the treaty's working parties to clarify certain outstanding matters and detailed analysis of domestic impacts before considering ratification. Thank you.

CHAIR—Thank you, Dr Gilmour. The purpose of this further hearing is to elicit further evidence in relation to this treaty, because a number of concerns had been raised previously, particularly in relation to the efficacy of the treaty given that the majority of the plant genetic resources are held in collections administered by the states. We also had some concerns about the intellectual property rights and the exchange of information. You have raised an issue about the absence of working definitions, which obviously goes to the heart of the treaty. Can you give me some examples of the concerns that the Grains Research and Development Corporation have in that regard?

Dr Gilmour—We particularly point to the arrangements for benefit sharing. There is no clarity in the agreement as to how that will occur. There is reference to 'benefit sharing as is appropriate'. There is insufficient certainty for the Australian plant breeding and seed sector in that proposal to indicate the impact on Australia's plant breeding effort. The only guidance is 'in line with commercial practice', and it is unlikely that that is sufficiently defining for Australian plant breeding entities to commit to this treaty.

CHAIR—How would you see this manifesting itself for the Australian industry, if we were to ratify the treaty? How would this vagueness of terms and working definitions—the lack of clarity in phrases such as 'benefit sharing'—impact the Australian industry?

Dr Gilmour—We would particularly point to the fact that, as drafted, only agencies that come under Commonwealth jurisdiction would immediately be impacted. So that would point to programs run by CSIRO. State-run programs would have to enact legislation that is consistent with the federal obligations created through entering into this treaty.

If we specifically look at CSIRO, most of the grain crop breeding is, in fact, not done inside CSIRO; it is done through state based agencies, such as departments of agriculture in consortia arrangements with universities. It is really not clear, because there will need to be flow-on arrangements through state legislation to harmonise what the states are doing through their plant breeding vehicles to enact the obligations that come out of the international treaty.

CHAIR—So where do you see potential disadvantage occurring, if the treaty is ratified, for parties that hold, say, significant collections?

Dr Gilmour—I do not see significant disadvantages. The overall intent is desirable; it is just that the uncertainty does not warrant proceeding at the current time.

CHAIR—How do you see that uncertainty being clarified?

Dr Gilmour—Resolved? Drafting of the MTA, testing some of its principles, running some scenarios about the situations Australia may encounter and transacting business in the new international environment under that MTA.

CHAIR—Would Australia still be able to have a role in the drafting of the MTA?

Dr Gilmour—Yes, Australia can still participate in the working parties that are responsible for drafting the MTA.

Mr ADAMS—What are our obligations under the treaty?

Dr Gilmour—The obligations that arise under the treaty relate particularly to a commitment to conserve plant germplasm and to undertake benefit-sharing arrangements. That means that, if Australian plant breeding programs that fall under a Commonwealth jurisdiction use material donated by Ethiopia or some other developing country, there will be a benefit-sharing arrangement where income derived from the material that is commercialised in Australia will go to a trust fund for distribution back to the donors of the original plant germplasm. I would emphasise that that is not the way GRDC have worked. We have entered into bilateral arrangements where the benefits can directly go back to the organisations with whom we are working. The treaty requires that the benefits go back to the governing body for distribution as it sees appropriate.

Mr MARTYN EVANS—When the matter was last before the committee, I went into some detail in relation to the terminology, which is scattered throughout the treaty and which I believed was very vague in its description of the obligations and rights of the various parties characterised in the treaty. I do not want to go through all of that again, but as a general matter would you characterise the rights and obligations discussed in the treaty as being well defined or as being particularly vague and hard to characterise?

Dr Gilmour—The language is consistent with the way these matters are discussed by scientists and policy makers in this area. I believe the difficulty comes through the objective of a multilateral agreement; it is a consensus arrangement where one model fits all. Again, I would emphasise the contrast: one model fits all is not the GRDC's approach that has led to very good outcomes for Australian agriculture.

Mr MARTYN EVANS—And I suppose which has also led to good outcomes for those for whom you share your scientific and commercial work.

Dr Gilmour—It must be a win-win, otherwise you are not going to get the international collaboration to undertake these projects.

Mr MARTYN EVANS—Within the limits of the science involved, you can also determine what you expect to get from the outcomes for yourselves, the farmers you are working with and the party at other end—in many cases, the developing country with whom you are working to access this unique genetic or biological material that you are expecting to get from them—so that they know the benefits that they can get from it as well. However, the treaty approach being discussed here is that funding will go presumably to the governing body, which may then choose to allocate it in some entirely unexpected way with respect to that country. For example, they may choose to allocate it to some entirely different project in an entirely different region to that developing country.

Dr Gilmour—I would certainly concur with your analysis about the need for a targeted germplasm exchange. An arrangement that GRDC participates in with China, for example, relates to sprout intolerance with disease resistance. The Chinese collaborators benefit from the investment that GRDC makes in characterising that germplasm, and so it adds value to the collections that they hold. They understand their collections better and Australia gets access to that material. Similarly, the St Petersburg Vavilov collection, are very cash-strapped, so the income that they get from the GRDC research agreement is absolutely critical for conserving and better characterising that unique collection.

Mr MARTYN EVANS—In your submission, there is a long list of countries that have not ratified, which includes some very substantial countries and a long list of developing countries. Is that list simply a list of people who have not yet had the opportunity to ratify or is it the anticipation that they are not going to ratify? How do you characterise that list?

Dr Gilmour—I think they are having the same doubts as perhaps I would have expressed. There is uncertainty about the mechanisms of how it will work and also some doubts about the impact.

Mr KING—I have a general question, which I suspect may best be directed to Mr Wild or Mr Fewster. Then I want to ask a specific question about article 9. As I understand it, to date, there has been a cooperative arrangement in these matters with international agreement. What was the necessity behind entering into a compulsory arrangement?

Mr Wild—I think it would probably be better for the people from AFFA to answer that question rather than us.

Mr Fewster—Mr King, I think the question you are asking goes more to policy in terms of the issues that my colleagues have just been talking about. I can advise you about the process and Mr Wild can perhaps advise you on the legal issues. With respect, I think your question goes more to a policy issue relating to the substance of the treaty—which, as my colleague suggested, is something that AFFA may be best placed to answer.

Mr KING—All right.

CHAIR—We will be hearing from AFFA later in the hearing.

Mr KING—I was interested in the issue of farmers' rights. It is a little bit unclear to me what those rights actually are. The treaty seems to identify the right of farming groups—presumably, people like yourselves; I do not know—to identify special characteristics or traditions that relate to material or product in a particular country. I am not quite sure that I can think of any off the top of my head that relate to Australia. Presumably, that is to protect the special growing techniques that give one country an advantage over another. Is that right?

Dr Gilmour—I will answer that specific question in just a moment. Broadly, the questions you are asking have been summarised in a scholarly paper by Professor Blakeney from the University of London. I would be happy to pass this paper to the committee, because it does summarise a lot of the history and analyse some of the key issues that people have evaluated in drafting the treaty.

Specifically on the matter of 'farmers' rights', the term was defined in 1989 and it recognises and rewards the contribution that farmers make in the conservation and management of plant genetic resources. That really does not apply in the sense of Western broadscale agriculture; it really applies to the situation you get in the centres where the crops have evolved. Farmers in the fertile crescent through Syria and Turkey have, over thousands of years, preserved wheat and barley. In South America, farmers have preserved tomatoes and potatoes. The idea of farmers' rights is that those farmers have contributed to their preservation and, if there is going to be commercial exploitation, those farmers ought to be rewarded in some way through a benefit-sharing mechanism.

Mr KING—Is this some sort of kickback arrangement?

Dr Gilmour—It is not a kickback. It was a definition that farmers have rights on these matters, that they have contributed to the conservation and sustainable use of these crops over many thousands of years, and so there should be a reward back to those farmers for preservation and ongoing conservation of that material.

Mr KING—Will you provide that paper to the Chair?

Dr Gilmour—I can pass that to you.

CHAIR—Dr Gilmour, with respect to the definition of farmers' rights in 1989, where is that contained?

Dr Gilmour—That was in a resolution of the FAO conference held in 1989.

CHAIR—So that then appears in various treaties—

Dr Gilmour—That became embedded in all of the negotiations on the international treaty.

Senator MASON—The Chair, the Deputy Chair and you, Dr Gilmour, have alluded to certain vague provisions within the treaty. Looking at the *Hansard* from last year, particularly with respect to article 6, I noticed that 6.1 talks about 'appropriate policy and legal measures' and in 6.2 about 'pursuing fair agricultural policies'. In trade, there is a big difference between Australia, the US and the European Union. I am not sure that we would get much further in this context but, given that there are those vague definitions and terms in the treaty, why would we be better off in this context in pursing a bilateral approach rather than a multilateral approach?

Dr Gilmour—Can I just clarify the question. Why would we be better pursuing bilateral rather multilateral?

Senator MASON—Yes. You mentioned before that we had an arrangement with China.

Dr Gilmour—Yes.

Senator MASON—I think you mentioned Syria as well. Why wouldn't we be better off protecting our interests? The chair mentioned intellectual property as an issue. Why wouldn't we be better off by tightening the scope and simply entering into bilateral arrangements rather than this multilateral treaty?

Dr Gilmour—In a bilateral arrangement you can maximise the benefits for both parties, uninhibited by some background commitment to a multilateral arrangement.

Senator MASON—That is right. Are you saying, therefore, that you think that the national interest could be better pursued by engaging in bilateral approaches rather than by multilateral approaches?

Dr Gilmour—No, I would not say that. There is a lot of merit in what is proposed in the treaty. If there could be a framework where everybody knows what the rules are, if that framework can be made to be operative and is not vague, and if we understand what scenarios are going to arise for Australia, I can see very positive outcomes from that. But I am also saying that bilateral arrangements have been very successful in the past, and we can design them on a win-win basis and maximise the outcomes uninhibited by something in the background.

Senator MASON—In summary, bilateralism has worked in the past, whereas the multilateral approach has a few problems with it.

Dr Gilmour—It is just the current vagueness and uncertainty. That is the issue for the GRDC.

Senator MASON—Thank you.

Senator TCHEN—Senator Mason's questions have prodded my mind.

CHAIR—He has that effect.

Senator TCHEN—Yes. Dr Gilmour, does this bilateral treaty in Rome preclude further bilateral agreements between Australia and other countries?

Dr Gilmour—No, it would not, but we would have to make arrangements that are consistent with the multilateral arrangement.

Senator TCHEN—My understanding from the hearing last year—it is a bit vague in my mind now—is that the purpose of this treaty is to provide the groundwork for international exchange rather than an exclusive set of rules. A lot of these types of multilateral treaties set the tone of further international agreements. Australia has been active in promoting this type of multilateral treaty. If Australia becomes one of the nations which are visibly reluctant to ratify the agreement so far, does this send the wrong signal to the international community?

Dr Gilmour—It could potentially send the wrong signal to the international community, so my advice would be that Australia needs to remain proactive in the ongoing development of the treaty, through the working parties that define how the treaty will operate in practice, where we get win-win outcomes from the whole operation of the treaty. We do not want to give the wrong signal; that is correct.

Senator TCHEN—Proceed determinedly but cautiously?

Dr Gilmour—Cautiously and wisely.

Senator TCHEN—Looking at your submission, your suggestion is that such an approach would not put Australia at a moral disadvantage, as it were. Thank you for your submission. I should like to put the question to the department as well and see their views. Thank you.

CHAIR—I want to take you to article 13 and your reference to private and public sector involvement. Can you clarify the nature of the Grains Research and Development Corporation sponsored consortia in terms of the public-private ownership aspect?

Dr Gilmour—The GRDC is an equity holder in three wheat breeding programs that are operating in Australia. There are currently six breeding programs. In the other three, private interests are the majority shareholder. For the corporation, the programs are contracted to deliver a set of outcomes that the corporation believes will best position the Australian wheat industry into the future. The outcome is driven by the benefits that those breeding programs will deliver to the Australian wheat industry with respect to productivity enhancement, grain quality and securing the environment—protecting the environment. The impact of this treaty on those programs is not defined. We cannot define the likely impact, because we do not know the MTA and the working arrangements that will arise.

CHAIR—Is there a concern then that ratification of the treaty would compromise the commercial viability of the consortia?

Dr Gilmour—No, we have not reached that conclusion. We are just uncertain. We do not know what impact it will have.

CHAIR—So at this stage you are not in a position to say that, if the treaty were ratified, the commercial activities envisaged by the consortia would change the access to Australian plant genetic resource holdings by international agencies or Australian access to international plant genetic resources holdings?

Dr Gilmour—I do not think it would impact positively or negatively on access or on the commercial viability of the activities. All that is going to happen is that there will be a period of uncertainty while the working arrangements are sorted out.

CHAIR—What agencies would stand to benefit from the commercial enterprises of the consortia?

Dr Gilmour—The state departments of agriculture and universities—and there is one private entity that is a GRDC partner in a wheat breeding program.

CHAIR—Does the corporation have any reservations concerning the participation of collections held by the state and territory governments in this multilateral system envisaged by the treaty?

Dr Gilmour—In principle, no, because it is very important that the collections are used. If there can be a framework that promotes the utilisation of the collections, that is a desirable thing. I often make the analogy that the collections are nothing more than a warehouse if they are just a repository for banks of seeds. The collections need to be used; otherwise they are just a warehouse. If there can be an arrangement that promotes their use, that is very important.

Mr ADAMS—Was the GRDC consulted in relation to this treaty?

Dr Gilmour—Yes, we have been consulted, over many years.

Mr ADAMS—So you have had an input into the formulation?

Dr Gilmour—Yes, we have.

Mr ADAMS—In Australian terms, in relation to the wheat that we hold in our universities, the CSIRO and our seed banks, we have been going for only 200 years. The Syrians have been going for 2,000-plus years.

Mr KING—More.

Mr ADAMS—A lot more. I should imagine there is also St Petersburg and out across the steppes of Russia. What are the gains for us in being able to use genetic material from other sites like that? There must be a lot of pluses in it for us.

Dr Gilmour—In the case of cultivated crops like wheat, maize and rice, they have been through many thousands of generations of selection and breeding. They are highly advanced, but all the time we face new challenges, new outbreaks of disease and pests. We need to find new resistance genes that confer tolerance. But there are a lot of crops that have entered agriculture only recently. I point to chickpeas and a lot of the pasture plants which have only

entered agriculture recently. Those crops have many thousands of generations of selection and breeding to go through before they become adequately adapted to Australian conditions. There is still a lot of work to do in the area of genetic resources and developing crops for Australian agriculture.

Mr ADAMS—What is the oldest wheat that we still have in Australia?

Dr Gilmour—We have collections of land races of wheat which would originate from the fertile crescent through Syria and Turkey that have been there since cultivation of crops began. It is very important that we have access to those things.

Mr KING—But we have already developed strains of our own which are very highly sought after.

Dr Gilmour—That is correct.

Mr ADAMS—In Tasmania, I remember Franklin barley being used—

Mr KING—That is one I have not heard of.

Mr ADAMS—It is for brewing beer, Mr King.

Senator MASON—That is very important.

CHAIR—I want to take up your point on consultation. If you have been involved with the consultation throughout the treaty-making process, the concerns that you have set in your submission have been raised previously I presume.

Dr Gilmour—Yes.

CHAIR—How have they been answered? Have there been any gains made in your discussions, or these matters of concern have been there from the outset and still remain unresolved?

Dr Gilmour—Yes, they do remain unresolved while the MTA is pending and a scenario analysis of the impact that will arise from those MTAs being entered into.

CHAIR—You had not seen the national interest analysis prior to it being referred to at the hearings of this committee?

Dr Gilmour—That is correct.

CHAIR—Thank you very much for your time, for being present this morning and for giving evidence in relation to this matter. We thank you.

[10.47 a.m.]

WILLOUGHBY, Mr Charles, Manager, Quality Assurance, Grains Council of Australia

CHAIR—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. Do you have any introductory remarks before we proceed to questions?

Mr Willoughby—Yes, thank you, Madam Chair. The Grains Council of Australia is the peak body representing the Australian grains industry—some 45,000 growers of the various grains. The council is non-government; it is completely funded by the growers through a federation of farmer organisations from the five main growing states. The GCA, or the Grains Council, is basically involved in representing the interests of grain farmers seeking to influence policies of government and interacting with government on issues involving grain growers' competitiveness and profitability. It is this function that has brought us to be involved in the consultation process that has been put in place by Agriculture, Fisheries and Forestry Australia.

As set out in our submission, we do have some concerns about certain aspects of the treaty. We believe that as a whole the treaty objectives are quite appropriate and desirable but, very much along the lines just explained by the representatives from GRDC, we do have a particular concern about the lack of information on some detail in the treaty. This mainly has to do with benefit sharing because this clearly will have implications for grain growers coming through the breeding system and affecting the price of grain for planting.

Like GRDC, we are concerned about the lack of detail and definition in the way the benefit-sharing arrangements will work, particularly as there is no information on the level of charges that might be applied to material that is commercialised following development of material that is accessed through the multilateral system. That may or may not have impacts on the way the breeders operate, but we are particularly concerned that the material transfer agreements should be realistic and not impose undue burdens on breeders, which could then be passed on to growers.

The decision-making process in relation to the benefit sharing is unclear. As I say, the likely levels of payments are not defined. Flowing from that, we have questions about how those payments might be collected. We assume it would be Commonwealth government, but I am not aware of any legislation that would enable the government to do that. Nor are we aware of the detail of the way that would be done in terms of simply bearing the costs of that collection function. If that is going to be passed on to growers, that will be yet another burden on them.

The next issue is the coverage of the treaty. We know that it only applies to material in the public domain. We have a concern that the state and CSIRO operations could in theory be regarded as being in the public domain. We would like to know whether or not that is the case. I do not think that that has been clearly determined in relation to Australia.

CHAIR—What consequences would flow from that?

Mr Willoughby—Again, it would affect wheat breeding—whether that would then be brought under the multilateral system and therefore attract the benefit-sharing arrangements. In terms of the way that the benefit-sharing arrangements work for return of whatever funds are collected through this trust fund, we do not know whether that is going to be effective in achieving the objectives of the treaty—that is, the conservation of genetic diversity. Again, that is a question of how the trust fund is going to be administered, and that is not defined in the treaty.

We have concerns also about the attitudes of other countries that have not yet ratified the agreement. As we understand it, the US only signed the agreement at the last moment, but there are other countries such as China, South Africa, Brazil, Mexico and Russia, all of which are potential sources of genetic material for the Australian industry. We have not had any explanation of the attitudes of those countries. We would like to know what objections they may have. They may not have any, but unfortunately we do not know that.

CHAIR—Through your own inquiries, have you been able to ascertain any information as to the attitudes and interactions of those other countries?

Mr Willoughby—No, we have not pursued that.

CHAIR—Not with your equivalent bodies overseas?

Mr Willoughby—No, we have not pursued that question. As I said, we do not have any objections to the treaty per se; we do, however, believe that there are no immediate negative impacts from not joining the treaty. As was explained by the GRDC representatives, there are currently quite effective arrangements for Australian breeders to access the necessary genetic material and they are working quite well. There is nothing in the treaty that says that those arrangements cannot continue. They may well, though, come under the MTA system. I suppose the attitude of the industry is that, if there are no negative aspects from not joining the treaty, why do we need to proceed with ratification before the sorts of questions that we are asking can be answered or before some progress towards answering those questions can be made?

CHAIR—The treaty is not going to come into force until ratification by, I think, 40 countries.

Mr Willoughby—It is 40 countries, 20 of which have to be members of the FAO.

CHAIR—And we are currently looking at about 11 or 15 ratifications. I think you suggested 11, but I think our latest information is that it is 15.

Mr Willoughby—In early December there were 11 that had ratified, but there have probably been a few more since then.

CHAIR—So the council's response is that there is no need for us to rush to be one of the first 40?

Mr Willoughby—Basically that is correct.

CHAIR—Is it the council's view that, after the treaty is ratified, when 40 nations have ratified, Australia should just continue to work as part of the working parties to assist in the development of the MTAs and the like?

Mr Willoughby—I believe that, while the interim committees, or those negotiating committees, are still operating, Australia should participate there.

CHAIR—And once it has been ratified?

Mr Willoughby—I am not sure of the status. I presume those interim committees continue until the first meeting of the governing body. Perhaps the AFFA people can clarify that later. Yes, I would think that we should continue as long as we can—until such time as we are going to be excluded from the membership of those committees.

CHAIR—Thank you. Is there anything further you would like to say?

Mr Willoughby—Basically, that is it. As I say, we believe that we should continue to take part in those activities until such time as the costs and benefits can be perhaps more closely identified and we can make a judgment that there is in fact a positive balance to Australia's ratification of the treaty.

CHAIR—Has the council had a look at the national interest analysis?

Mr Willoughby—Yes, we saw that.

CHAIR—The national interest analysis states that there are impacts from not joining the treaty, specifically that the capacity of Australian plant breeders to access genetic resources from overseas is likely to become more difficult. I take it from your submission that you have not seen any evidence of that.

Mr Willoughby—As far as I am aware, there is nothing in the treaty that would make it more difficult for a non-member to access material.

CHAIR—You cannot think of any other hurdle that would be placed in the way of Australian plant breeders if we did not ratify?

Mr Willoughby—No. As far as I am aware, the treaty does nothing to impede access by non-members to the material that is available in the public domain, as is the present situation.

CHAIR—I take it that the Grains Council of Australia was consulted by AFFA on this treaty making process?

Mr Willoughby—We have been involved in the consultation process.

CHAIR—Do you have any comment to make on the scope or the focus of that consultation?

Mr Willoughby—We do not have any problems with it, except the fact that the questions that we have raised remain unanswered. I am not suggesting that AFFA has the capacity to answer

those questions, but we believe that, rather than proceeding right now with the ratification, we ought to wait for a proper assessment of the costs and benefits.

CHAIR—Have there been reasons given to you by AFFA as to why we should proceed now, apart from what was contained in the national interest analysis? If, as you are saying, during the consultation process you have raised these concerns and they have not been answered perhaps AFFA does not have the answers and the answers lie elsewhere. Have you had any reasons given as to why Australia ought ratify now?

Mr Willoughby—Not so much a reason for Australia's ratification but certainly AFFA has said that it would be desirable to participate in the interim committee negotiations so as to be in a position to influence the decisions on those sorts of issues that we have raised.

Mr ADAMS—What effect will this have on the Grains Research and Development Corporation sponsored consortium?

Mr Willoughby—It was a question as to the way that the material that is held by those bodies might be defined, whether or not it is in the public domain and if so whether that might have an effect on the way they operate. Under the treaty, obviously, if that material is defined as being in the public domain it would be made available on a fairly free basis. In other words, it may be outside their normal commercial operation. I am of the view that those bodies would be regarded as private and therefore would not come under the public domain provisions of the treaty, but that may be a question for the way that the government sees their participation.

Mr ADAMS—Or the High Court, maybe.

Mr Willoughby—I would not think it would get that far.

Senator MASON—I have one question and a point of clarification. Was the Grains Council of Australia consulted in the drafting of this treaty?

Mr Willoughby—As I said, we have been involved in consultations with AFFA, not so much in the drafting of the treaty but since Australia signed the treaty.

Senator MASON—So you voiced your objections after Australia had signed the treaty?

Mr Willoughby—Yes. We have been asking questions since that point.

Senator MASON—Did you voice objections before Australia signed the treaty?

Mr Willoughby—I was not personally involved and I do not think we had the opportunity beforehand. I could be corrected on that, but I do not think we had the opportunity before Australia signed.

Senator MASON—Committee members always ask questions about what relevant community stakeholders have been consulted. That is why I asked the question. It is important for us to know what stakeholders have been consulted.

Just a point of clarification: you mentioned in your submission that benefit sharing is perhaps the primary matter of concern you have. Is that simply because you do not know—for commercial operators who are thinking of utilising some of this genetic material—whether those commercial operators would be aware of the potential liability they would have under the treaty?

Mr Willoughby—That is certainly the primary concern because that commercial liability would obviously flow through to growers in terms of the price they pay for seed.

Senator MASON—So that affects, in effect, potential investment?

Mr Willoughby—In seed breeding, you mean?

Senator MASON—Yes.

Mr Willoughby—I would think so, yes.

Senator MASON—Under article 13.2(d)(ii) it says:

The Governing Body shall, at its first meeting, determine the level, form and manner of the payment, in line with commercial practice.

You are saying that is too vague and could be an inhibitor to investment?

Mr Willoughby—Exactly. We do not know what 'in line with commercial practice' means. The ramifications of that are simply unknown.

CHAIR—In your submission, under the heading 'Lack of negative impacts from nonmembership', you indicated:

Australia already participates very actively in the international exchange of plant genetic resources ... Australian participants have been generally satisfied with the practical operation of germplasm exchanges internationally—

Picking up on that phrase 'generally satisfied', is there any dissatisfaction under the current regime?

Mr Willoughby—Not that I am aware of. As the GRDC representatives said, they have a number of extremely effective bilateral arrangements. Those words were a bit conservative in case somebody had some problems.

CHAIR—Overall, the phrase 'generally satisfied' speaks for itself. Can you give me any indication of circumstances where somebody is dissatisfied?

Mr Willoughby—No. There may be, but I am not aware of them.

Mr ADAMS—I understand you gave us evidence that the countries that do not sign up to this still have access to this material.

Mr Willoughby—Yes.

CHAIR—In your conclusion, you state:

> GCA is of the view ... that the benefits to the Australian grains industry of ratification and membership of the Treaty are not clear and, indeed, there may be detrimental impacts through cost burdens imposed on industry from certain requirements of the Treaty.

Can you give us some indication of the areas of concern in terms of the cost burdens? Is it the benefit sharing? Is there any other aspect of the treaty that you think gives rise to potential cost burdens?

Mr Willoughby—They would all flow from the benefit-sharing arrangements, be they the direct payments that would be going to the trust fund or be they associated with the collection and remittance of those funds back to the trust fund.

CHAIR—As there are no further questions, thank you very much for your presence here this morning and for taking the time to give evidence to the committee.

[11.08 a.m.]

MELHAM, Mr Christopher, General Manager, Seed Industry Association of Australia

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. Would you like to make some introductory remarks before we proceed to questions?

Mr Melham—Thank you for inviting the Seed Industry Association of Australia to appear before the committee. The association is the peak body representing the interests of Australians sowing seed generally. Unlike my colleagues prior, we represent germplasm covering all varieties listed in the annex of the treaty. As you know, this is not specifically related to grain but it does cover vegetable, floriculture and virtually every type of germplasm that we have here in Australia. As you are aware, the SIA tendered a written submission to the committee on the 17th. My intention is to address the four key issues raised in that submission.

The association's membership, in sowing seed turnover, would total approximately $800 million per annum of a total of $1.2 billion Australia wide. It is therefore an issue that is dear to our heart. We want to make sure that Australia has conducted proper due diligence before ratifying the treaty. I would state up-front that the association is not in opposition to Australian ratification. We believe the objectives of the treaty are of such a nature that we should ratify it. What I mean by that is that ensuring the equitable and sustainable exchange of germplasm globally is an objective that every country should support because we are also going to the heart of other issues, such as poverty. However, there are some key issues that we need to conduct further due diligence on before rushing in and signing the treaty.

CHAIR—So the position of the Seed Industry Association is that, while you agree with the objectives of the treaty, at this stage you would suggest that Australia not ratify it until certain aspects are clarified?

Mr Melham—Yes, because, as I will clarify shortly, Australia has not conducted proper due diligence on some key issues, and therefore we cannot determine the true impact of ratification. The first of those issues is funding. The SIA is concerned that, to date, the cost of administering the treaty in Australia has not been clarified—and I mean the cost of international administration and national administration. The questions we have previously put to AFFA are: how much will it cost Australia to administer the treaty; how will the funds be raised; how will the functions of the governing body be financed; will Australia be required to assist the running of the governing body in a financial capacity; and, if so, how will those funds be raised? The second issue is the material transfer agreement that has been touched on already. As we all know, the MTA has not been finalised by the expert group. That in itself is an interesting observation, that we have an expert group established to address this very issue over the next six to eight months. The association is certainly interested in awaiting the outcomes of that group.

CHAIR—Why do you say that that is interesting?

Mr Melham—Because they have been given the specific task of addressing the materials transfer agreement. We are putting the horse before the cart if we ratify prior to the expert group clearly defining the finer details of the MTA—the reasons being that, as stated in the submission, we see the MTA as effectively having three components that need more information. They relate to technical, financial and policy issues.

CHAIR—Do you see the MTA as the nub of the treaty?

Mr Melham—Absolutely. I point out that the association is a member of the International Seed Federation. The federation represents 78 countries. It is the international NGO that has had an observer seat at all the international meetings to date and will be contributing to the expert group. So I confirm that the MTA, as proposed by the International Seed Federation some 18 months ago, is the absolute hub of the treaty. It is the make or break. Without it, the treaty would absolutely not function at all.

CHAIR—So what is in the MTA is essential to an understanding of how this treaty will operate?

Mr Melham—Absolutely. Regarding the technical issues, it is important to understand at what point commercialisation triggering has occurred and what constitutes commercialisation triggering of benefit sharing. As I understand it, that will be one of the issues that the ISF will be putting to the working group. The committee has already touched on the topic of loose definitions. We would also put the question: what is meant by incorporation of material under the MLS and accessibility of freedom to use for further research? In Australia, we have a piece of legislation called the Plant Breeders' Rights Act. That clearly defines how we can use material for further research. It gives us an exemption. We certainly would like to think that the treaty would reflect the legislation in Australia—that is, the Plant Breeders' Rights Act.

Regarding the financial issues, the question is: what will the level, form and manner of payment be under the MTA with respect to benefit sharing? Regarding the policy issues, the question is a very important one: how will the MTA be binding upon the parties in contract? That leads to my next major issue. During your hearing on the 9th, I think AFFA stated that, in their opinion, the treaty would be administered in an administrative capacity and there would be no need for legal change in Australia. We question that and, again, this issue has been put to AFFA. To date, we have not received a satisfactory answer that would absolutely confirm that there is no need for legislative change in Australia to conform with ratification of the treaty.

CHAIR—Can you clarify that? My recollection is that the national interest analysis said that domestic legislation changes would not be necessary. You refer here to a debriefing paper suggesting changes distributed to industry on 22 August. It says:

Changes to domestic legislation do not appear necessary ... However when the Treaty comes into force for Australia it will be necessary to ensure that holders of ex situ PGRFA conform with the requirements of the treaty, particularly in relation to the material transfer agreements.

What does that mean?

Mr Melham—That is the question I am putting to AFFA: what do you mean by that?

CHAIR—Have you had a response?

Mr Melham—No.

CHAIR—How many countries make up the ISF?

Mr Melham—There are 78 countries. The membership comprises the equivalents of the Seed Industry Association of Australia. They are the peak NGOs.

CHAIR—Are any of those 78 member countries of the ISF among the 15 countries who have ratified the treaty?

Mr Melham—I do not know that, I am sorry. I have not studied who of the 15 are ISF members.

CHAIR—Is Canada an ISF member?

Mr Melham—Yes.

CHAIR—They have ratified.

Mr Melham—Yes. The questions under legal implications are: if legislative change is required, given that we have not had a substantive answer to the last issue, what form will that take, and will it have implications for the main pieces of legislation that provide for intellectual property protection for plant material in Australia—that is, the Plant Breeders' Rights Act 1994 and the Patents Act 1990? It may also include the innovation patents act 2000, as it is currently being considered whether this act will include plant and biological material.

Finally, regarding the coverage of the multilateral system, in our opinion, articles 11.2 to 11.4 of the treaty appear to be a default mechanism whereby contracting parties are encouraged to invite all other holders to submit their material into the multilateral system and to take whatever measures they deem necessary to do so. Then, after two years, the governing body will have the option of determining what action should be taken against these holders if they fail to comply with their obligations under the treaty. This is an extremely important issue, because it is going beyond Commonwealth versus state public germplasm. We are now talking about germplasm that is effectively held in the private domain under intellectual property resumes. Accordingly, we would like to know what the impact on those collections will be if, after two years, they are not submitted into the multilateral system.

CHAIR—Does the Seed Industry Association see that as somewhat of an implicit threat to withhold access or to take other measures against private holders who do not join the system?

Mr Melham—One of our interpretations is that, yes, it is effectively a threat to deny access to the multilateral system if material is not submitted.

In summary, until the above issues have been addressed, SIA certainly recommends that Australia refrain from immediate ratification. It takes 90 days from ratification to assume a seat on the governing body. We do not believe that in that interim we are going to be adversely

affected with respect to the international exchange of germplasm. I share the observation that both the committee and industry colleagues have made: only 15 out of 40 countries have ratified to date. We see this cooling-off period as a great opportunity to get these issues bedded down. I do not believe that it would take a length of time that would prevent us from taking our seat on the governing body.

CHAIR—Thank you. Regarding the concerns you express in your submission that the Commonwealth will somehow compel plant genetic holders and users to participate in the multilateral system, what impacts would that have? What would the manifestation be if holders and users were compelled to participate?

Mr Melham—I cannot see the private sector having a problem with participating if the administrative, legal and financial issues have been addressed satisfactorily. It is more the issue if they do not participate. Articles 11.2 to 11.4 say that the contracting party can take whatever measures it deems necessary, so I do not necessarily agree that if we have not ratified we can still gain access. I think one of the threats that hang over our heads is that we may be denied access if we do not submit our materials into the multilateral system.

CHAIR—The national interest analysis was concerned with the capacity of Australian plant breeders to access genetic resources from overseas which would become more difficult if we did not ratify. Is that where you think the problem sits?

Mr Melham—That is a distinct possibility, yes. One of the questions we would like answered—and this is an issue Australia should put to the interim committee—is: can you better clarify what actions you will take after two years if contracting parties have not submitted material into the MLS?

CHAIR—Through your ISF, are you able to ascertain the attitude of any of the other countries or the likely future action as far as your members are concerned?

Mr Melham—I know the majority of the member countries of ISF will withhold ratification until such time as the work of the expert group is completed with respect to the materials transfer agreement. I think that is most important.

CHAIR—So how would this work? Chronologically we are currently quite short in terms of numbers ratifying. So the expert committees will continue to work on the MTAs and whatever else has to be clarified. They will continue to work while the ratification process is going on. Australia can continue to take a part in the working parties.

Mr Melham—Correct.

CHAIR—Upon ratification—and say 40 countries come on board—what happens to the work of the working party?

Mr Melham—My understanding is that the work of the working party should be completed within six to eight months from now. They are to submit an interim report, a draft report, to the interim committee within eight months.

CHAIR—So that may or may not coincide with a ratified treaty?

Mr Melham—That's correct. By the time they submit their report we still may not have the 40 countries.

CHAIR—Or we may.

Mr Melham—Or we may. But if we do as I said in the submission, I do not believe that Australia, by effectively delaying its ratification for a few months—and I go back to the issues that have been raised—needs more than six months to confirm these issues of legal, administrative and financial implications.

CHAIR—So if the working committee, the working group, has to report within six months, you are suggesting that we wait for that six-month period and see what the report recommends.

Mr Melham—That is correct.

CHAIR—And wait to see what happens to the report, whether it is adopted? What does happen to the report?

Mr Melham—The report goes to the interim committee and then the interim committee decides what it wishes to do with the report. My understanding is that, given the widespread consultations that are being undertaken by the working group—remembering that the ISF representing those 78 NGOs will be having input—the interim committee will view the report very favourably. They have invited virtually those who have signed the treaty to participate. So yes, I do think there is great merit in awaiting the outcome of the working group.

Senator SANTORO—What you are really doing is advocating a bit of a 'suck and see' approach. My question, for a bit more clarification, is: are there any consequences, particularly financial, for Australia in delaying? It seems to me that, if every other country took the advice that you are giving us, not much would happen. We are benefiting from the experience and the work of those who are prepared to participate. Would any adverse financial penalties apply to countries which—like Australia, if it were to take up your suggestion—take the course of action which you are suggesting?

Mr Melham—I do not believe so, because the interim committee has to wait two years to determine what implications, if any, are imposed upon those countries which do not ratify. I am saying that within 12 months Australia should be in a position to ratify. If we are sitting here in four years time without having ratified then we may have problems. I think that financially we will be in trouble because one of the consequences may be that both public and private entities will be denied access to international germplasm. That is where the real financial costs will then effectively be felt. However, in the short term I do not believe there are any financial implications for not ratifying.

Mr MARTYN EVANS—On that basis, how could the treaty deny us access to international germplasm if another country and another organisation in that country wanted to grant us, on a bilateral basis with a research agreement, access to that germplasm? How could the treaty deny us access to it?

Mr Melham—That question is probably best put to the interim committee. I would hope that your assertion is correct. I would hope that even with ratification and our not being a ratifying body we could continue bilateral exchange of germplasm. However, I do not think that that is in the best interests of Australia, nor do I think it is in the best interests of the global seed industry.

Mr MARTYN EVANS—That may well be true but, given that you have repeated a number of times this view that in the future there is a possibility that we may be denied access, that is a serious matter. However, I cannot contemplate how the domestic laws of Russia, Syria, China or whatever country would denied us access, lock us out of access, when international norms would be such that bilateral agreements would still prevail. There would have to be some international ban on the exchange of material, and we have not yet been able to ban the exchange of all sorts of material far more threatening than seeds.

Mr Melham—I think you are challenging articles 11.2 to 11.4 of the treaty.

Mr MARTYN EVANS—I have challenged a fair bit more than that in the treaty!

Mr Melham—I know, but I share your concern: this is the very issue that we need to ascertain from the interim committee. I do not believe that we should be hedging our bets by ratifying and then waiting two years. I think we need an answer now with respect to what the interim committee intends to do in two years time if material is withheld from the MLS.

Mr MARTYN EVANS—I agree.

Mr CIOBO—You express your concern about the way in which the MTA will possibly conflict but largely interact with existing contracts. What are some of your preliminary thoughts on that? Have you received or sought advice on the way in which it might have an impact?

Mr Melham—No, we have not. I raise it in the context that obviously as of today germplasm is exchanged under commercial contract under common law. We are simply asking for information to enable us to determine whether our current contracts will be impeded in any way. I guess our main concern is whether those contracts have to be amended to meet any possible changes in domestic legislation.

Mr CIOBO—But that could arise not only as a result of Australia ratifying the treaty but also if your trade partner ratified the treaty, couldn't it?

Mr Melham—Sorry, if what?

Mr CIOBO—It could also occur if the party with which you were trading entered into the treaty, whether Australia did or did not. I am wondering whether you have sought any advice in that area?

Mr Melham—No. Our immediate concern is changes to Australian legislation. We are not particularly concerned about our collaborating partners internationally and what changes they may have to make. Market forces will determine, as they do now, which countries we trade with. If they make those conditions too onerous, we will move on to another country and source our germplasm elsewhere.

Mr CIOBO—For the vast majority of international countries that you trade with, the form of the contracts that you enter into centres around which jurisdiction? Is it Australian law, US law or the law of the country with which you are trading? What do you normally impose?

Mr Melham—Both.

Mr CIOBO—In that context, I can see that what the trading partner actually does will have a direct impact upon your ability to exercise the contract. I just ask out of interest. I was interested to find out. Another question which I think you possibly have already answered is this. You have not had a reply yet on those questions that you have put to AFFA?

Mr Melham—We have had a very scant reply, which at best—and I know my colleagues at AFFA are sitting behind me—I would probably rank as two out of 10. The standard response—

CHAIR—Meaning?

Mr Melham—Ten being excellent and one being poor. The reason I say that is that the standard response is: 'We can't answer that. That is an issue for the governing body at some point later down the track.' As you can see from my submission, I am saying that that is not good enough, because this treaty is going to impact upon stakeholders in Australia. We should be asking these questions and advising the interim committee that we need answers now. These are the signals that I think we should be sending. They are asking Australia why we have not ratified it. These are the reasons why.

CHAIR—Presumably they are asking a whole range of countries why they have not ratified.

Mr Melham—Perhaps they all share our concerns.

Mr CIOBO—In terms of ISF, are you receiving any input in terms of the way that they view the treaty operating, insofar as, for example, the treaty—and I do not know, so this is not a contention; it is just a question—simply seeking to codify, for lack of a better term, standard commercial practices as they exist at the moment? Are you getting any advice from ISF either in support of that position or contrary to that position, or does it not deal with that at all?

Mr Melham—There is no advice whatsoever. ISF effectively has restricted its input purely in terms of a technical input. You will see in the submission that I raise those three areas of the MTA and technical, financial and policy issues. ISF is currently drafting a series of questions to put to the working group, and they have sought my opinion and the opinion of my colleagues elsewhere in the world. We have identified and supported those areas as critical in terms of the MTA. They will put those questions at the next meeting.

Mr CIOBO—In terms of the concerns you raised about there being necessary changes to domestic legislation, again, in that area, have you sought or have you obtained any advice? Or is it just based upon the quote that you used from AFFA, indicating that you think domestic changes may be required?

Mr Melham—No, we as an organisation have not sought any legal advice. We are relying on A-G's advice on this one. To date, we have seen no detail of that advice that has been received

by AFFA. We have received the verbal opinion: 'In our opinion, it is unlikely that there will be.' To us, that is not good enough. We want more substantive feedback about the possible implications of legislative change.

Mr CIOBO—Do you think that there is more of an opportunity, should we get on board now, for us to have a greater role in determining and steering the course that this follows and the actual practices that are adopted than if we stand back and wait and watch? Do you think we would be forgoing an opportunity to have more impact in that regard, or do you think it would not make any difference in terms of the final destination?

Mr Melham—Again, as I said earlier, within eight to 12 months we should be able to bed down these issues. So, in that context, no, I do not see that, by sitting back, we are going to impose any undue disadvantages on the Australian seed industry.

CHAIR—Would we be sitting back? Wouldn't we be part of the—

Mr Melham—I think the question was: by not ratifying, do you think—

CHAIR—Yes, but 'sitting back' gives the impression that we would not be doing anything. I assume that we would be continuing to operate through the working party. But you mean not as part of the governing body?

Mr CIOBO—Mr Melham deals with the core of it.

Senator SANTORO—Following up from a point that Mr Ciobo made, from reading the material—and I must admit that I have not gone into it in great depth—it seems to me that, should the treaty be ratified by Australia, the states and the territories are not directly party to or bound within their own jurisdiction to the treaty. I am wondering whether you think there is a case, and that it would make good sense, for some mechanism—administrative or legislative—to be put in place which would capture the states in terms of their participation in this particular treaty.

Mr Melham—I guess the first issue is this grey area as to whether or not the state collections are in fact part of the treaty. That needs to be clarified. If we assume that the state collections are not part of the treaty, then I think it is quite clearly up to the states to determine whether or not there is a benefit in putting their material into the MLS. That is the first point. If they agree that there is a benefit, I would say that the states and the Commonwealth would—as we have done in the past—most possibly put in place a memorandum of understanding to participate in and conform with all aspects of the treaty. Again, these are the issues that need to be explored: is legislative change required? Is a memorandum of understanding required in an administrative sense? To take it one step further, if the states are not required and the private sector is not required and this is simply about Commonwealth germplasm, how are we going to entice the privates in? I guess I am sending a signal to say that, if these four issues are addressed to the satisfaction of the private sector, they will sign up to the treaty. We do see great benefits and, as I said before, we do support the principle of the treaty in terms of equitable and sustainable exchange of global germplasm.

Mr CIOBO—Is it basically your position that it is not that there is a problem with the treaty; it is that there is a lack of information to determine the practical outcomes of ratification of the

treaty? In that context, have you strongly communicated to AFFA the message that you have been communicating to us today?

Mr Melham—With all due respect, I think there was a question asked earlier about whether there had been consultation by AFFA on ratification of the treaty. My answer to that would be yes. But I would say that I am extremely concerned that the consultations with respect to the treaty—as opposed to the consultations on the undertaking, which took seven years—have been extremely short. I do not know what the rush is to get all of this over and done with in a 12- to 14-month period, considering it took seven years to bed down the undertaking. What I am saying is that I believe that there has not been adequate consultation between AFFA and the stakeholders about the true implications of ratification. I think there is still a way to go on that. It has been too short a time period.

CHAIR—As there are no further questions, I thank you, Mr Melham, for your presence here this morning and for the evidence you have given to the committee. It has been most helpful.

[11.40 a.m.]

BURDON, Dr Jeremy James, Assistant Chief, Division of Plant Industry, Commonwealth Scientific and Industrial Research Organisation

BURNS, Mr Craig Stuart, General Manager, Trade Policy, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia

HERRMANN, Ms Kristiane Elfriede, Manager, FAO Plant Genetic Resources Treaty, Trade Policy, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia

MORRIS, Mr Paul Charles, Executive Manager, Market Access and Biosecurity, Department of Agriculture, Fisheries and Forestry Australia

CHAIR—I welcome representatives from the Department of Agriculture, Fisheries and Forestry Australia and CSIRO. 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.

From the outset, I thank you for coming back before the committee to provide further evidence in relation to this matter. You will have heard the evidence of representatives of the three associations, and I believe you are aware of the concerns that have been raised both by the committee after the last hearing and in subsequent submissions. Is there something you wanted to say at the outset—some introductory remarks?

Mr Morris—I did not really come prepared to say anything, but could I seek your indulgence to make a few comments in regard to some of the evidence we have heard this morning?

CHAIR—Certainly. Make your introductory comments and then we will go to questions from the committee on each area of concern.

Mr Morris—It is worth noting from the outset that, from the evidence we have heard this morning, there is support for the objectives of the treaty from all the parties we have heard—from the GRDC, the Grains Council of Australia and the Seed Industry Association of Australia. I think that is certainly worth noting. The only issue really—at least, from the evidence we have heard this morning—is whether we ratify now or whether we ratify at some point in the future. There are very good reasons why this is the case, because there are some very clear benefits to Australia from being involved in this treaty, and perhaps some of those have not come through very clearly this morning— although I think GRDC made some very strong comments earlier on about the importance to Australia of access to international gene banks.

The GRDC mentioned that there had been strong growth in productivity in the grains industry in Australia over a long period and that at least half of the growth that had occurred was directly attributable to access to gene banks around the world. That is consistent with the comment I made at the last hearing that research had been done by NSW Agriculture that showed that

Australia had made about $2.64 billion in benefits over the 20 years to 1993 that were directly attributable to access to one gene bank, the International Maize and Wheat Improvement Centre. So it goes without saying that this is extremely important.

Bilaterally, it is in our national interest to be involved in this treaty, because what it does provide which is different from the undertaking is guaranteed access to those gene banks in the future. I think that is what the previous speaker was referring to—that there is a chance that, in the future, that guaranteed access will be compromised. Being a member of this treaty will give us that guaranteed minimum access—in fact, free access, if we provide the future material for research and development—in the future.

CHAIR—Are you saying that that guaranteed access would be compromised upon ratification of the treaty if we were not one of the ratifying parties?

Mr Morris—Not immediately, no, if the evidence we have heard this morning is correct that nonparties will potentially still have access to that material in the future. What they will not have in terms of benefits from the treaty is that guaranteed access to the gene banks in perpetuity. There are provisions in the treaty, as referred to by the last speaker, that there may be a revisiting of the situation for nonparties. That means that there may be a change in arrangements in the future which may block that access.

CHAIR—This is the two-year review?

Mr Morris—That is right.

CHAIR—Essentially we could say that from the date of ratification, from the date of 40 nations coming on board, there is that two-year window before the first review when you would say that access was still guaranteed. It is just thereafter that it becomes more vulnerable.

Mr Morris—That is a fair statement; that is correct, yes.

CHAIR—So we have essentially got two years from the date of ratification.

Mr Morris—The issue as to the reason why we should ratify now versus ratifying later basically gets to the heart of the treaty itself, and that is article 13.2(d)(ii) which refers to the governing body at its first meeting making some important determinations with respect to benefit-sharing arrangements and the material transfer agreement. Under that article, the governing body at their first meeting will tick off on whatever has been put to them or they will have discussion on those issues and determine the future directions of the treaty. That is why we have highlighted both at the last hearing and at this hearing that while we will participate actively prior to ratification through the implementing committee and through the expert group, unless we ratify we will not actually have a say in what the governing body eventually ticks off on in that first meeting. This is not some time down the track—it is not their third meeting or their fourth meeting—it specifically says in the treaty that at their first meeting they will decide these things.

CHAIR—By the time they get to their first meeting, they will have had to have had in place the reports of the working parties? They are not going to sit down and start from scratch at the

first meeting, so essentially they will be ticking off the reports from various working parties. Would that be right?

Mr Morris—Potentially, although they will obviously have the ability to revise those so that whatever the interim committee comes up with or the expert group comes up with, that will be negotiated and discussed at the governing body. The governing body will decide whether to accept those positions or to change them. So while we may have input into what the expert group decides or what the interim committee decides, unless we ratify we will not actually be at that governing body meeting to decide on the final form of the MTA or on the benefit-sharing aspects.

CHAIR—You are basically saying that Australia has got to be there as part of the governing body at that first meeting in order to vote or otherwise in relation to these fundamental aspects of the treaty.

Mr Morris—That is right, although that is using scare tactics in a sense and I do not necessarily mean to do that because we actually think this treaty is very important and has some very significant, positive benefits to Australia. It is not just being there to prevent something bad happening, it is being there because we think there are some real positive benefits to Australia in continued access to the system and being involved in a multilateral system.

CHAIR—Sure, but the reason for being at the governing body's first meeting is to ensure that Australia has its say on the future of the treaty.

Mr Morris—That is correct.

CHAIR—It is not scare tactics, it is just saying that Australia wants to be able to—

Mr Morris—It is a fact.

CHAIR—pull its weight.

Mr Morris—Yes.

CHAIR—When, under the treaty, is the first meeting of the governing body to take place after ratification? Is there a time frame stated?

Ms Herrmann—There is no time frame stated in this particular treaty.

CHAIR—There is no obligation upon ratification for them to hold a first meeting at any particular time?

Ms Herrmann—I would need to look at the resolutions again, but there was an interim committee meeting last October which set in train the work program which has been addressed in previous submissions just now. There were some indicative time frames set out for when the work would be undertaken, but that was subject to the provision of extra budgetary funding within the international sphere to hold those meetings and so far no dates of meetings have been

set. So the question of whether there would be a further interim committee meeting before a first governing body meeting is still very much in the air.

CHAIR—But this is all going to depend on how quickly nations come on board, so they would not be able to set a time frame, would they?

Ms Herrmann—Exactly; that is right. So if we have now got 14 or 15 ratifications, it could be any time after the 40th ratification.

CHAIR—How long has it taken for us to get the 15 ratifications? I think there have been a couple more since we spoke in December.

Mr Morris—We have 15 ratifications at the moment. We provided the secretariat with a copy of the list of countries that have currently ratified. There have been four additional ones since we met in December last year, when we had the last hearing.

CHAIR—And they are?

Mr Morris—Those countries are Algeria, Mauritania, Myanmar and Paraguay.

CHAIR—I feel a lot better to hear that Myanmar is there. Since when has this been open for ratification?

Mr Morris—The treaty has been open for adoption since November 2001.

CHAIR—So in 12 to 15 months we have had 15 ratifications?

Mr Morris—It is important to recall that there was a period for signing initially, so most countries have decided to sign initially, including Australia. That signing period ended on 4 November. I would envisage that most countries would sign first and then consider it and go through their internal ratification processes, which, similar to Australia, obviously take some time to get through.

CHAIR—For the *Hansard* record, can you list the countries that have currently ratified?

Mr Morris—Yes. I am using the word 'ratification' loosely, because some countries ratify in a formal sense, like we do, and other countries use other processes called acceptance, approval or accession. But they all amount to the same thing. The actual treaty itself refers to countries ratifying, acceding, approving et cetera.

CHAIR—Perhaps we will just talk about the countries that, by virtue of whatever they have done, could be present on the governing body at the first meeting.

Mr Morris—At present, those countries are listed in the document that we provided to the secretariat. They include Algeria, Cambodia, Canada, Eritrea, Ghana, Guinea, India, Jordan, Malawi, Mauritania, Myanmar, Nicaragua, Paraguay, Sierra Leone and Sudan. I think that is all.

CHAIR—Would it be fair to say that, out of that group, only Canada would be one of the developed countries with a similar agricultural base to Australia's economic, agricultural base?

Mr Morris—Paraguay would also be an important exporter, although it is not a developed country. In terms of your specific question regarding a developed country of that nature, Canada would be the only one. But, of course, any 40 countries can ratify, including countries which are not on the list of those that have signed it. You do not need to have signed it to ratify it.

CHAIR—Have you made inquiries or are you aware of why some countries have not yet ratified? Are you aware of countries that do not intend to ratify? Let us just take our major trading partners for a start. What information can you give us about their status? Is this the sort of discussion that you have with other nations?

Mr Morris—Other countries are going through ratification processes similar to ours, so we would expect that a number of these other countries, including some of our trading partners, will eventually ratify, approve or accede to the treaty as well.

CHAIR—Are you aware of any of those countries who are down the track and about to ratify?

Mr Morris—I am not personally aware of them. I might check with a colleague.

Ms Herrmann—We have not had an indication from any of the countries that have participated in the interim committee of the FAO or that are on this list that any of them—apart from the US, which has made some qualifications on its signature statement—

CHAIR—The US has qualified its signature statement. Has it given any indication as to whether or not it intends to ratify?

Ms Herrmann—In its press release, it has indicated that it sees many major benefits in the treaty on signature. That will then be subject to a ratification process.

Mr Morris—I think it is fair to say that they have concerns, as a number of countries do, including ourselves, as to the shape of the eventual treaty. At the moment, it is a framework treaty. We have a concern that the material transfer agreement and the benefit-sharing arrangements put in place actually benefit us rather than having arrangements put in place which do not benefit us. We think that we would like to be there to make sure that they do benefit us.

CHAIR—We are only one voice on the governing body.

Mr Morris—The governing body is a consensus body, which means that potentially we could veto an agreement. If we are on the governing body, we will have a say in terms of potentially stopping—

CHAIR—So any one member of the governing body can veto, for example, a proposed MTA?

Mr Morris—A consensus decision-making body is of that nature. If somebody has a strong disagreement with a particular aspect of it, consensus would not be seen to be reached. On occasions, in such a body, of course, you make concessions, or you agree to things that you do not 100 per cent agree to, to get the whole of the treaty through or the whole of the agreement through. Yes, basically, if a country strongly disagreed with something, it would be difficult to say that consensus had been reached.

CHAIR—I will hand over to my colleagues in a moment. I just want to explore this one aspect. In relation to the expert groups, is there more than one expert group working on various aspects? Is there one group working on the MTA and one group working on something else?

Ms Herrmann—The arrangements which were set in train cover the range of issues which need to be addressed by the first governing body. The expert group is one matter. The other groups were a group to deal with measures to promote compliance with the treaty, as foreseen in article 21 of the treaty, and a group dealing with rules of procedure for the governing body and financial rules. There was a range of activities set in train in preparation for the treaty's entry into force.

CHAIR—But obviously the expert group is the one dealing with MTAs and such issues.

Ms Herrmann—That is right, yes.

CHAIR—Who is on the expert group?

Ms Herrmann—The expert group is based on FAO regions. Each of the regions has four representatives and four advisers, with the exception of the south-west Pacific region and the North American region. This follows some regional groupings within the FAO context. The south-west Pacific and the North American region have two representatives and two advisers.

CHAIR—How many members of the expert group have ratified or accepted the treaty? How many of the 15 are also members of the expert group?

Ms Herrmann—It is up to each region to determine what its representation will be within the expert group. The expert group is an advisory group only for the interim committee or for the governing body. It will develop recommendations only.

CHAIR—I understand that. I am asking this. Separate nations are members of the expert group?

Ms Herrmann—Yes, and we—

CHAIR—I understand what they are there for. How many of the nations that are members of the expert group are also nations that have ratified the treaty?

Ms Herrmann—We have no details of the composition of the nominations from other regions.

CHAIR—So the committee has not been set up yet?

Ms Herrmann—It has been established in name, with a process, but we do not have the details of all of the members.

CHAIR—Any of the members?

Ms Herrmann—We have details of some of the members. The United States and Canada, for example, in the North American region, have identified that they will be participating, but we have no official confirmation of the representatives from the other countries.

CHAIR—Are we one?

Ms Herrmann—We are involved in negotiations with New Zealand and the Pacific island countries in the south-west Pacific region. We anticipate participating in the work of the expert group.

CHAIR—When does the membership of the expert group become determined? When is it finalised?

Ms Herrmann—They had sought names as soon as possible. They wanted them by the end of last year, but we were involved in some consultations with the south-west Pacific. We have recently been in touch with our post in Rome. As yet, we still have no details of the composition of the expert group.

CHAIR—So the expert group has not been finalised?

Ms Herrmann—No.

CHAIR—So, once its membership is finalised, then it gets to work?

Ms Herrmann—That is right. At this stage, only one meeting is envisaged.

CHAIR—One meeting of the expert group?

Ms Herrmann—Yes.

CHAIR—To determine the MTAs and other aspects?

Ms Herrmann—Yes.

CHAIR—And we do not know when that meeting is going to be?

Ms Herrmann—No.

CHAIR—Sometime after the membership is finalised.

Ms Herrmann—And once they have money for it.

CHAIR—Once they have money? What is the problem with money?

Mr MARTYN EVANS—Where they get it.

CHAIR—Where do they get it?

Mr MARTYN EVANS—Yes.

CHAIR—How long does the expert group have after its one meeting to report to the interim committee?

Ms Herrmann—At this stage, a second meeting of the interim committee is foreshadowed towards the end of next year.

CHAIR—The end of 2004?

Ms Herrmann—That is correct. The resolution setting up the interim committee said that it should, as far as possible, hold meetings back to back with meetings of the Commission on Genetic Resources. That is not scheduled to meet for another two years. So the timing of all of these meetings is really contingent on progress, on the number of ratifications and when a meeting of the governing body might be held.

CHAIR—Say all these nations had a rush of blood to the head and all decided to ratify at the end of next week, we would have the governing bodies in place, because there are 40 ratifications, but the expert committee might not be confirmed.

Ms Herrmann—That could be a possibility.

CHAIR—And I assume the governing body would not have a first meeting until they had received a report from this expert group.

Ms Herrmann—I think I would share your assessment. But if someone decided to sponsor a meeting, they could try to rush something.

CHAIR—To what end?

Ms Herrmann—To settle the details.

CHAIR—But if the details have not been drafted by anybody and the expert group is still fighting over membership, it could be two years.

Mr Morris—There are other scenarios. That is one scenario. Sometimes processes do take a long time in these international bodies. On the other hand, if ratification does pick up, as you suggest, and we do—

CHAIR—I am not suggesting that; I was just fantasising.

Mr Morris—Sorry, as you speculated, I think the processes on the expert group would speed up and that could happen much more quickly than otherwise.

CHAIR—What period of delay would there be from the time the executive of the Australian government ratified to us being a member of the governing body? Is there a delay?

Mr Morris—It would be 90 days.

CHAIR—So 90 days from the date we formally ratify to the hopping on board?

Mr Morris—That is right.

Mr MARTYN EVANS—What mechanism would be used within the treaty as it stands to deny us access to genetic resources in another country that was also a member of the treaty?

Mr Morris—There is not one at the moment. The only relevant article is the one that refers to possible review after two years.

Mr MARTYN EVANS—Review of the treaty?

Mr Morris—The relevant provision of the treaty refers to the possibility of contracting parties looking at the access by natural and legal persons who were not currently participating in the system and their access to the agreement or the system in the future. The treaty provides guaranteed access to the material held by parties to the treaty. If we are not a party to the treaty, that guarantee of access does not exist; so anyone at any time could potentially deny us access to their material. It is important to note that at the moment we do not have guaranteed access to material held by other countries or to public bodies in other countries. Under the treaty we would have guaranteed access to materials held by other contracting parties.

Mr MARTYN EVANS—If they sign up. If they are part of the treaty, yes. I am a strong supporter of the use of genetic resources to strengthen our indigenous material. As you say, we have had evidence that the use of external genetic resources has been of terrific use to Australian agriculture. Our bilateral agreements to date have been enormously supportive to Australian agriculture. Indeed, their massive success to date has pointed to the success of the bilateral agreements we have had in place.

You are implicitly saying that we have to be part of the multilateral system in order to protect our access in the future and that you have less confidence that the bilateral agreements will work in the future. But that is strictly on the basis that someone may deny us, potentially, access in the future. They have always been able to do that. We have always had in the past the threat that someone may deny us access because that is the basis of a bilateral agreement—you need agreement of two parties. We have never had access guaranteed in the past because we have always had bilateral agreements in the past, and you always need the agreement of two parties to have a bilateral agreement. So we have never had that agreement in the past but, as you have said in your previous evidence, we have had massive success in the past. So what is changing?

Mr Morris—I think what is important is we have a very strong system of access to plant genetic material around the world. This treaty provides a basis for that continued strong multilateral system of access to our material around the world. In terms of what is changing, you are probably aware that there is a lot more interest in intellectual property rights around the world—in patenting new varieties, in controlling the use of that material, in charging people for access and use of that material, and so forth. What this treaty, I hope, will do—and by all

indications this is what it is intended to do—is to provide guaranteed free access to that material in the future and encourage you, in return for that free access, to make the material that you develop available for others. So, hopefully, it continues the strong system of international transfer of plant genetic material we have had in the past into the future and so gets around the growth in people trying to put in intellectual property arrangements and so forth that might restrict the spread of that material in the future. But also it provides this benefit-sharing arrangement, which will also continue to support the conservation and development of plant genetic material and banks in the future. That is what it is trying to do.

Mr MARTYN EVANS—But we have had the basis of that as the exchange of material on the basis of bilateral agreements where we have seen genetic resources that would benefit Australian research. Because someone has salt tolerant material, and we need salt tolerant genes because of particular hazards in Australia or particular problems in Australia, we have sought out biological resources with salt tolerance and we have entered into agreements with the people who have them. We have made them appropriately, and we have exchanged material which they have needed that we had. So we have paid them in resources, we have paid them in cash, we have paid them in the exchange of material. They have been appropriately rewarded and we have been appropriately rewarded. What is the problem with that?

Mr Morris—There is no problem with that. In fact, the treaty will allow that sort of thing to continue to happen in the future—and it should happen in the future. The treaty underpins that whole system. It provides a basis that supports the continuation of that system in the future, whereas at the moment the only reason why that survives is because there is goodwill amongst researchers and the need for that material around the world. As I said, there are some changes in the approach of people to intellectual property which could very well have an impact on those arrangements in the future. We have also seen a fairly fundamental change in that some of the growth in yields that we saw in wheat, for example, during the 1960s and the 1970s has started to tail off.

There is data that could be provided from ABARE and from others that actually shows that wheat yields grew very strongly during the 1960s and the 1970s in Australia, and during the 1980s as well, but that those wheat yields have started to tail off. In order for us to continue to basically provide that productivity growth in the future, it is vital that we have a strong international system of plant genetic resources available to people to continue that research. We are not saying that this treaty is the be all and end all of achieving that. We are just saying that it is one thread in the fabric of actually maintaining a strong international system in the future. We have heard from the GRDC and from the Grains Council and from the Seed Industry Association that they accept those objectives of the treaty.

Mr MARTYN EVANS—I do not quite understand. When you say that there is a trend in the world towards the profitisation of seed resources and intellectual property, I understand that and I think that is a good idea. Genetics and the development by farmers and others and the capturing of that in developing countries is appropriate. They have intellectual property as well. They capture that intellectual property in appropriate rights and they should be rewarded for those rights as people in developed countries are. That is entirely appropriate and correct. They have every right to be rewarded for that work. They do not need necessarily an international treaty and an international body to tell them that. They have discovered that for themselves and worked that out for themselves and they have captured that in domestic law, as we have in Australia. They can enter into agreements—as we have with our colleagues in Russia and Syria,

as the grains research council told us this morning—and they have appropriate intellectual property rights in those countries at whatever level they want them. We enter into agreements with them and they capture those rights in those countries and they enter into agreements with us and we pay them for them. That trend that you observe is not a threat; it is the correct thing for them to do. We enter into an agreement and we pay them.

Mr Morris—I am not arguing against intellectual property rights as a means for researchers to get adequate or good returns from the various species that they develop—do not get me wrong on that one. In fact, a strong intellectual property system has some benefits in that regard. But it mainly has benefits in terms of commercialisation of species and selling the eventual commercialised product, a seed product, to farmers around the world. So that is potentially a good thing. But for every seed variety that is commercialised, there are many hundreds that actually never get to that commercialisation stage. What we are really talking about with this treaty is allowing researchers to have basically free access to gene pools around the world so that they can research those hundreds of varieties and eventually find the one that is actually suitable for growing in Australian conditions. If they then choose to not allow that variety to go back into the system, they are well within their rights to charge something for access to that plant. But if they do not put it back into the system, all the treaty is saying is that you should pay some benefit to the system. As a result of your drawing material out of the system, you should pay some benefits back into the system associated with that commercialised variety.

The main point I want to make though is that there are hundreds of different varieties that people come up with of which only one or two might actually eventually get to the commercialisation stage. What the treaty will do is just facilitate access to the material so that they can look across the whole spectrum. It may be worth my tabling—

Mr MARTYN EVANS—So you are saying that the treaty will give us access to all of the biological resources in any of the countries that sign up to this treaty. So if Algeria has signed up to the treaty, as it has, and Australia signs up, we would have unlimited access to Algeria's biological resources.

Mr Morris—To what is held by the actual contracting party—in the same way that they would have access to material that the Commonwealth government holds but not necessarily to that held by the states or the private sector.

Mr MARTYN EVANS—Precisely. It does not give us access to the hundreds of seeds that are held across the board in Algeria; it only gives us access to the seeds that are held in Algeria's public sector seed banks. It does not give us access to the hundreds of natural varieties that are scattered across Algeria's biosphere; it only gives us access to those very few commodities that they hold in their public sector seed banks, which are probably highly limited. It is totally different from the picture you painted a moment ago. Australia has a highly developed public sector research facility which provides an enormous resource to those who want to come shopping, whereas there are countries that are signed up on that list that have little, if anything, in that regard, to put it bluntly. If it did give us access to the whole of Algeria's biosphere, it might well be worth it. But a one-to-one bilateral agreement with Algeria, for example—to pick a contracting party—under which we had negotiated and targeted rights of access with appropriate compensation for the farmers of Algeria whereby we could specify the kinds of resources we wanted and the compensation they wanted would give us highly targeted and refined access. I am not sure why the world is a better place for Australia because we have this

ill-defined and impossible to quantify access to resources which we can hardly even specify in Algeria, as against targeted access.

Mr Morris—More than just countries will be involved in the agreement. The treaty also provides access to a number of international research centres around the world such as the IRRI, the Rice Research Institute, CIMMYT, which is the International Maize and Wheat Improvement Centre, and a number of others which hold very large banks of plant genetic resources.

Mr MARTYN EVANS—Don't we do that now?

Mr Morris—That is right, but Algeria has the right to say no to us now. Under this agreement we would have access at least to their public plant resources. It is not an all singing, all dancing treaty that gives you access to every piece of genetic material around the world; that is true. I do not think we would be willing to sign on to something that provided other countries with unlimited access to our in situ resources at this stage. But it does provide access to the gene banks that we have been drawing material from in the past and at least it goes that far in providing us some guarantee of access in the future.

CHAIR—Has AFFA done an analysis of the extent of the material held in our public sector as opposed to the 15 countries that have already ratified? Let us compare apples and oranges—who is providing what? Is there a far greater level of resource in Australia's public sector holdings than those of, say, Myanmar or Nicaragua?

Mr Morris—I could get our CSIRO colleague to comment on that but, as I understand it, we are much greater demanders of material from other countries than suppliers of material to other countries.

CHAIR—Is there any other country that we would like to see in this? Are we excited about this list?

Dr Burdon—I would like to see a lot more countries involved.

CHAIR—Are there countries that we would really be interested in seeing on the list—the United States, Japan, China, Russia?

Dr Burdon—Yes.

CHAIR—Are there countries that hold a great deal of their resources in public sector banks?

Dr Burdon—I am not absolutely sure. In Australia, what is held by the Commonwealth is very limited relative to what is held by the states.

CHAIR—And we do not know whether or not this applies to the states.

Dr Burdon—I honestly do not know how the system works in places like Canada, which also has a federal system.

CHAIR—Are we able to say whether or not this treaty applies to the holdings of our states and territories?

Mr Morris—The advice from A-G's is that it does not, but we have had indications in written form from five of the states and two of the territories suggesting that they support our ratification and are interested in participating in the MTA when it has been finalised.

CHAIR—But there is no obligation on them, according to the Attorney-General's advice?

Mr Morris—That is correct.

CHAIR—What about Canada? As Dr Burdon said, they are a federation. What advice is the Canadian Attorney-General giving to the Canadian states and provinces?

Mr Morris—The intention of the treaty—in fact, it explicitly suggests this—is to try to get as many people involved in the system as possible. It specifically tries to encourage people. We do not have details on how Canada is going to run the system or how the US is going to run it or whatever. It is hard for us to say what might happen there.

CHAIR—Doesn't this come down to the fundamental cost-benefit analysis?

Mr Morris—What is a cost of us being involved? The benefit is clearly in terms of having access at least to resources held by the International Agricultural Research Centres—a guaranteed access. Obviously we have access now, but guaranteed access in the future will provide access into other countries that might become parties to this agreement. It provides a standardised agreement on how that material will be transferred, how benefits will be shared and so forth.

CHAIR—That is if we like the terms of those agreements. In relation to the material transfer agreement, I assume that this expert group is to come up with recommendations in relation to it and will answer the sorts of questions that have been raised by the witnesses before us this morning—the technical, financial and policy issues that the Seed Industry Association of Australia raised. Do we have any idea of how these MTAs are going to be drafted or defined?

Mr Morris—That is right. The expert group will have a role and will put suggestions and recommendations to the governing body. But it gets back to the point that we started on. Ultimately, it is the governing body that signs off on this; it is not the expert group.

CHAIR—We do not even know who is going to be on this expert group. The US and Canada say they want to be but the United States has made it quite clear, as I understand it, that it is not going to ratify until it is satisfied with the resolution of the outstanding issues relating to benefit sharing, intellectual property rights and financial responsibilities.

Mr Morris—I think the US, as more of a supplier of gene material than a demander, has probably got more power in those sorts of negotiations than what we do.

CHAIR—We are more of a demander than a supplier?

Mr Morris—We are. That is partly why it is important for us to be involved. But the reason why in so many international agreements that Australia actually tends to have an influential role, despite the small size of our country, is because we are actually in there making strong and sound arguments as to the direction of these international agreements. On this one—

CHAIR—We would want to get on the expert group, then, wouldn't we?

Mr Morris—We definitely need to be on the expert group, but at the end of the day it is the governing body that makes the final decision as to what the arrangements will be. The expert group is just an advisory body.

CHAIR—But, step 1, you would want to be on the expert group or at least have like-minded countries on the expert group because if there is only going to be one meeting of the governing body to determine all this one would assume that the expert group's report will be given considerable weight.

Mr Morris—Definitely, and we definitely want to be on the expert group and we are pursuing that objective at the moment. We definitely want to be on the expert group, but at the end of the day the governing body may choose to accept or reject the recommendations of the expert group.

CHAIR—Any one member of the governing body can veto?

Mr Morris—Potentially, yes.

CHAIR—So Nicaragua has the same—

Mr Morris—Algeria; Myanmar. But they also have the option to put new suggestions into the system. They may decide that there has to be a very large benefit-sharing component, which we may not be happy with, for example. If we are not there, we cannot actually do anything about that.

CHAIR—Another issue that has been raised by the United States but also other witnesses before us is the funding—the cost of administering this treaty. The seed industry specified three questions. How much will it cost Australia to administer? How will the funds be raised? How will the functions of the governing body be financed? Obviously, you have looked at that. Is there anything you can assist the committee with in relation to those issues?

Ms Herrmann—In terms of the actual funding under the treaty, I would like to clarify that funding in terms of the material transfer agreement is just one small component of the treaty. They provide for a monetary benefit-sharing component of a material transfer agreement, as is normal commercial practice. If you develop something, then you may in certain circumstances have to provide a monetary contribution. That is one side of the coin.

In terms of the other funding elements, the agreement has been established as an agreement under article XIV of the FAO constitution, which means that it will be very closely administered in association with the FAO, and there are provisions in here which deal with the FAO. The treaty also has a funding strategy whereby the contracting parties are encouraged to mobilise

funds from many quarters. And the governing body itself will develop agreed plans and programs for the implementation of the various conservation, sustainable use and capacity-building technology transfer provisions which form part of this treaty.

In fact, the treaty establishes a framework through which there will be additional transparency, and there will be other funding bodies to implement certain plans and programs under this treaty. The supporting components include the international agriculture research centres. They have been supportive of the policy framework which has been established by this treaty. The treaty has no new and additional obligations on contracting parties to provide funds, but it has a funding strategy.

CHAIR—So, if Australia were to ratify the treaty, you are saying that Australia would not be asked to provide funds for the administration of the treaty or the governing body?

Ms Herrmann—Only to the extent that it agreed. Any funding would be sought in a future budget context if there was a need for funding for secretariat activities in the future. At this stage, none have been identified.

Mr Morris—It is a reasonable assumption that there will be some secretariat costs at some point in the future. We do not envisage that those will necessarily be all that high. At the moment, we contribute about $10 million a year to the FAO for a broad range of activities. Presumably the cost could be added onto that or built into that in some way. Again, that would be something to be decided in the future.

CHAIR—Mr Ciobo, do you have any questions?

Mr CIOBO—I just have a statement, really, although it is also a question. Based on your testimony, it seems to me that the proposition that was put forward by previous witnesses with regard to having some of those unresolved issues resolved cannot in fact be sorted out through the passage of time—given the most likely scenario playing out with regard to the working group and the expert group. Is that a fair comment?

Mr Morris—They will not be sorted out until the governing body meets and makes a decision on them. There will be expert group consultations, and the expert group will make recommendations, but they will not be finally sorted out until the governing body's first meeting, when they will agree or disagree to whatever recommendations have been put to them.

Mr CIOBO—But we need to ratify to be on the governing body, don't we?

Mr Morris—We need to ratify to be on the governing body.

Mr CIOBO—Thanks.

CHAIR—Mr Morris, all three witnesses today—and presumably some other countries—are arguing that Australia can continue to work on the treaty process as a full participating party without ratifying it, and that, in the event that we get on the expert group, we can play a pretty significant role there. Is the position being put forward by the seed industry, the Grains Council and the like practicable? Would we be accepted as a genuine participant on the expert group,

and can we continue to work as a participating supporter of the treaty process without actually ratifying it, given that we are some considerable way short of the requisite number of nations for ratification?

Mr Morris—I think the answer to that is yes. Assuming we do get the seat on the expert group that we are striving to achieve, we will have a say—the same as other countries. The problem arises, though, when 40 countries have ratified. Then the question becomes how quickly the governing body meets and makes a decision on some of these issues. If we wait until 40 countries ratify and then we ratify at some point in time after that, we still have to wait 90 days before we actually join the governing body. That is the major problem. We are not arguing that we will not have a say in the expert group. We accept that. We will have a say. If the interim committee meets again before the governing body, which may or may not happen, we will have a say in that. We will not have a say, though, in the final decision.

CHAIR—But you accept that these concerns are genuine—the concerns that the witnesses have expressed. What about the suggestion that we wait until we see at least what the expert group is going to come up with? That is a reasonable proposition. If we jump in now, ratify and be bound, and then the expert group comes up with some mad proposal, sure, we might be able to veto it later, but that is hardly being a useful member of the governing body. The idea of getting on the governing body is presumably to ensure that the treaty works, not to veto the first proposal that comes before it.

Wouldn't it be better for us to wait to see what the expert group comes up with? If we are on the expert group, we will know what the report is going to say. We are on the expert group; we have an idea of the attitude and the approach of other countries; we have an idea of what the report is going to say. We will be asking questions and investigating, so we can assume that the governing body will take notice of the expert group's report. We would be in a far better position, armed with a lot more information as to whether or not this is going to be in Australia's national interest. Is that not the case—particularly if we keep an eye on which other countries are going to ratify?

Mr CIOBO—Revisit it at 35.

CHAIR—Yes, revisit it when we get to 35 ratifications.

Mr Morris—If the EEC were to ratify, they could ratify in bulk. That is 15 countries, plus the EEC counts as one. So you could get 16 come on board very quickly if the EC comes on board quickly.

CHAIR—That is 32.

Mr CIOBO—Send us an email.

CHAIR—If the EEC comes on en masse—

Mr Morris—I think it is a question of—

CHAIR—How likely is that?

Mr Morris—That the EEC comes on en masse? It is hard to predict.

Mr MARTYN EVANS—You will have six months notice. The EEC does not move that quickly.

Mr Morris—It will be interesting to see how that develops. You could argue that we wait and see what the expert group comes up with, but there is a risk.

CHAIR—Is that a good idea?

Mr Morris—There is a risk in doing that.

CHAIR—What is the risk?

Mr Morris—The risk is that the governing body meets before we get a chance to go through our ratification processes again and then we go through the 90-day wait before we actually get on.

CHAIR—We will be watching the countries ratifying. The executive of the government of this country can ratify in an instant, whatever we as a committee say.

Mr Morris—The FAO can put very strong pressure on some of the member countries to ratify very quickly. As I said, some of the ratifications are not detailed processes like we are going through. There can be simple approval, acceding or whatever. That can happen quite quickly. There is the other side of it too. We have a strong feeling—and I think this is supported by GRDC, the Grains Council and the Seed Industry Association—that this treaty could have some benefits for Australia.

CHAIR—Absolutely, but not at any price. I think everybody agrees that the aspirational aspect of the treaty is in Australia's national interest and in the national interest of probably every other country in the world. But the devil is in the detail. You would not sign up to a treaty at any price. And there are downsides. I have to assume there are downsides because we do not know what the cost-benefit analysis is. Until we see who is on the expert group and what is likely to come out of the expert group's deliberations, aren't we jumping the gun?

Mr Morris—I must say—

Mr MARTYN EVANS—But you cannot say that the aspirational nature is that there should be the free exchange of genetic material and then also say that you want the farmers to capitalise on their rights to intellectually have the property that they have developed and contain, and get the value from that property. You cannot have the free exchange of material and then also have every farmer in the world capture the intellectual property of that material. Then it is not free. It is certainly true that you want everyone to be able to capture the intellectual property right benefit of the material that they have developed. If you do allow that, you must have a property right transfer system that allows the transfer of that property. If you have that right, then you have the right to say no as well.

You cannot have both the intellectual property rights and then the unlimited right to force people to transfer that property right. All of those aspirations are somehow inconsistent at the end of the day. You cannot simply capture all of those things and say that you can marry all of those aspirations in one single treaty. Yet it must also be possible to allow people to have bilateral agreements for these things. I am not sure that it is in Australia's interests nationally to say that we are going to accept a situation where we will allow our bilateral options to be subsumed, potentially, in a treaty which may allow, ultimately, the abrogation of our bilateral rights. If this treaty does potentially allow our bilateral rights to be set aside, I would be very concerned about that. We should be potentially very concerned about a multilateral treaty which can potentially forbid our bilateral rights. If this treaty does allow that, I would be very concerned about that. If we could be in a position where we would sign up to a treaty that would be potentially forbidding Australia to have those bilateral options, I think we should be very concerned about that.

Mr Morris—It does not do that.

Mr MARTYN EVANS—Then where is the risk? If you say to me—to the treaties committee—that there is this terrible risk that we will be forbidden to have these bilateral agreements, that we will be locked out of the international seed agreements, that we will not be able to go to the international seed research institutes and that we will not have that access—if that is a risk, you say—then that is a concern I have about this treaty.

Mr Morris—That is a risk whether we sign on or not, though.

Mr MARTYN EVANS—You are saying to me that that is a risk of this treaty—that this treaty is a threat to Australia because it will potentially lock us out of these international opportunities.

Mr Morris—This treaty provides support for the international system and enables it to continue on into the future. It provides the underpinnings that will enable that system to continue. You put the negative spin on it, but the positive spin is that, without that support and protection, the system could deteriorate in future.

Mr MARTYN EVANS—But this treaty is a threat to Australia's interests in terms of access to the bilateral agreements we have now. This treaty represents a serious threat to Australia's future access to the bilateral agreements we now have and to Australia's access to international seed banks. You told me that it can prevent us accessing those areas. I see that as a threat as well as a potential future guarantee. If this treaty does not exist, it cannot block our access.

Mr Morris—Those individual countries can—

Mr MARTYN EVANS—You present this as a very rosy picture of a treaty. I am not opposed to it on that basis; I am just showing you that this treaty has two sides to the coin. It does have this potential rosy benefit, but it also is a serious threat to Australia in that context. It has two sides.

Mr Morris—In that case, let us look at whether you accept the rosy picture or the threatening picture. If you accept the threatening picture, we should be on there to prevent the threat from

happening. If we are not on there, 40 other countries will determine that that may or may not happen. If we are on there, we can actually stop that from happening.

Mr MARTYN EVANS—We should have helped to write the treaty in the first place so that it did not have such a provision. We should have made sure that that was explained in the first place.

Mr Morris—We contributed to the negotiation on it so that that was not actually built into the treaty as a definite event but, rather, was dealt with as something that might be considered down the track.

CHAIR—Could I interrupt here? Under our standing orders, we have certain constraints about sitting beyond a particular time. I would not want anybody to be saying anything when we are not covered by privilege. On that basis, Mr Morris, you will appreciate that there are some concerns that have been raised. Obviously, they are concerns that have been out there for some time. We are charged with looking at whether or not those concerns can be addressed within the time frame that you suggest—that is, immediate ratification and Australia being on board. We have a report to write, but obviously we would appreciate some feedback—if there is any—on Australia's accession to the expert group and also perhaps on the legal implications of ratification, especially the issue raised about whether or not changes to domestic legislation will be necessary. There are a couple of statutes referred to: the Plant Breeder's Rights Act, the Australian Patents Act and the innovation act.

Mr Morris—Could I come in on that now?

CHAIR—Yes, as long as you do not mind not having parliamentary privilege.

Mr Morris—The advice from A-G's is that it can be implemented administratively—that is, no legislative change.

Resolved (on motion by **Mr Martyn Evans**):

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.

Committee adjourned at 12.40 p.m.