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JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 4 March 2003

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JOINT COMMITTEE ON TREATIES

Monday, 16 June 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 Mason and Santoro and Mr Adams, Mr Bartlett, Ms Julie Bishop, Mr Ciobo, Mr Evans, Mr Peter King and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled on 4 March 2003

WITNESSES

CHURCHE, Dr Milton Patrick, Services and Investment Negotiator, Free Trade Agreements, Office of Trade Negotiations, Department of Foreign Affairs and Trade 39

DEADY, Mr Stephen Patrick, Special Negotiator, Office of Trade Negotiations, Department of Foreign Affairs and Trade 39

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade 39

LADE, Mr Graeme Freear, Director, Philippines, Singapore and Malaysia Section, Department of Foreign Affairs and Trade 39

RICHARDSON, Mr David Jonathan, Director, World Trade Organisation Regional and Free Trade Agreements Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade 39

WILD, Mr Russell, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade 39

Committee met at 12.12 p.m.

CHURCHE, Dr Milton Patrick, Services and Investment Negotiator, Free Trade Agreements, Office of Trade Negotiations, Department of Foreign Affairs and Trade

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Singapore-Australia Free Trade Agreement

CHAIR—We will now hear evidence on the Singapore-Australia Free Trade Agreement, which was tabled in the parliament on 4 March. Twenty-six submissions have been received for this inquiry, and the committee has considered that supplementary evidence from the departmental officials would be of benefit to the parliament and the community as this treaty has important ramifications as a proposed template for future agreements of its kind. Although the committee does not require you to give evidence under oath, I advise you that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Mr Deady, as you are aware, we have considered the submissions we have received and, from those submissions, have gleaned a series of questions or issues that we wish to put to you and the department. We have already given a series of questions to you. Thank you very much for the responses, which were provided in a very efficient manner. Before we go to questions, is there anything you wish to say generally either about the questions and answers that you have received and answered or about this matter generally?

Mr Deady—No. We are happy to try and answer some questions.

CHAIR—There has been some discussion about the local government consultation—I think that was the fourth question—and some comment as to whether or not all levels of government were consulted. Can you expand on the position of local government vis-a-vis the provisions of SAFTA?

Mr Deady—Yes, the two chapters that I think are most relevant to state government and local government measures are the trading services chapter and the investment chapter. As you know, there is a negative list approach which we have taken to the commitments in those two chapters.

All existing local government measures have been exempted from the obligations under those chapters, both in relation to the national treatment and the market access obligations of those two chapters. That is the annex 1 reservations list that we talk about in these commitments. The other aspect of this which I think is noteworthy, and which is picked up in our responses to the questions on this, is that where the federal government or any state government takes out reservations under annex 2—that is, the general sectoral reservations under these agreements—then, of course, those reservations would also apply to any local government measures that may be in place or may be put into place in the future.

CHAIR—Is this how you propose to proceed in relation to the US free trade agreement negotiations as well in terms of local government consultation?

Mr Deady—In broad terms, what we have essentially agreed as part of the architecture of the US FTA is that we will, under the services and investments chapters, certainly be looking at a negative list approach again. So, yes, that architecture will be the same. That will require, again, the development of reservations lists: annex 1, reservation stance, and annex 2, the more general reservations excluding particular sectors. We are in the process of consulting with people as those negotiations proceed. Yes, it would be our intention to include negotiations with local governments as part of those processes.

CHAIR—My other question was in relation to the concerns raised by the Institution of Engineers about mutual recognition agreements. Could you clarify for us the position regarding the omission of engineering qualifications from the proposed treaty and where we go from here?

Mr Deady—My colleague Dr Churche may have something to add here as well. This was one of those areas where we were looking at encouraging the further pursuit of this mutual recognition agreement between the Institution of Engineers in Australia and the professional bodies in Singapore. We used the opportunity of the FTA, on a number of occasions, in talking to our Singaporean colleagues to encourage them to speak to their professional body in Singapore to encourage this process. We understand that there has been some further good progress made in this area, but I do not believe there has yet been a sign off on the mutual recognition arrangements. I think one of the very useful benefits of the FTA negotiations is that it does give you a framework in which to carry out those sorts of discussions and look at the pursuit of those arrangements. We will certainly continue to encourage the engineers here to discuss it with their counterparts and see if that issue can be moved forward.

CHAIR—Do you think the FTAs provide an impetus for this ongoing negotiation between such bodies?

Mr Deady—I certainly think that it provided a strong impetus both for the architects and the engineers, which are the two bodies that are most actively engaged in this process already, and, through the negotiations, it did give us an opportunity to get the Singapore government officials to be talking to those professional bodies and to push that agenda along. So, yes, I do think they assisted in that process directly in terms of the engineers and architects and now they provide a framework that could allow those discussions to go on with other professional bodies.

CHAIR—Thank you.

Mr WILKIE—One of the things that I am very concerned about is this ongoing practice of seeing legislation brought before parliament before it has actually come before this committee, been reported on, tabled and the government has considered the findings of our report. I believe it is a contempt of the committee process.

CHAIR—But you would not offer a legal opinion on that?

Mr WILKIE—No, it is a personal opinion. The response here states that it has happened on two other occasions. I think the previous occasions were wrong in the same way that bringing forward legislation in this case before we have had a chance to actually consider what is being proposed and make recommendations is wrong. Such recommendations may, in fact, lead to the alteration of any legislation that has been brought forward. I understand the government saying that they want business to be in a position to take advantage of this straightaway but, surely, if we are going to make recommendations about the treaty—which they may consider and adopt—we have got to get the chicken before the egg. I am interested in your comments on that.

Mr Deady—I do not have a lot to add. This issue has been raised several times, including in these additional questions. I do think that it is very appropriate and responsible for us to be putting in place the legislative changes that are required to bring into force the FTA. We have dealt with our Customs colleagues—the officers responsible for putting this legislation requiring the changes to the customs bills—to bring about the one legislative change we require to bring into force SAFTA. Again, the point we have made, which I think is an important one, is that the timing of those legislative changes going through the House and the Senate need to be followed. SAFTA cannot enter into force until all of the necessary action to complete the treaty-making process in Australia is complete. Once that is done, notification will be passed to the Singapore government and Singapore has to go through its internal processes. The date of entry into force is the key thing at the end of the day. Certainly, we want that to happen as quickly as possible and Australian industry wants it to happen as quickly as possible.

I was coincidentally having some discussions in Queensland with Queensland state government officials last week. It is very interesting that they are very active already, talking to professional bodies, lawyers and education service providers in Queensland to see if they can be prepared to hit the ground running once SAFTA comes into force. There is a good, strong incentive to move these things forward but, at the same time, the treaty-making process goes ahead. Its entering into force, of course, has to have all of that process complete.

Mr WILKIE—What would happen if this committee were to recommend that it was not in Australia's interest to ratify the treaty? It is a hypothetical question, but that could happen with other treaties that we are dealing with in similar circumstances.

Mr ADAMS—It could happen to this one.

Mr WILKIE—It could happen with this one—we still have to consider it and make a recommendation.

Mr Deady—Those recommendations would be considered by the government. I do not know what I can say.

Mr WILKIE—The reason I make that point is that I think it is inappropriate to introduce legislation when, in fact, we may not even recommend the ratification of the particular treaty that we are dealing with in the legislation.

Mr Deady—I do not know what more I can say. We have explained why we believe it was quite appropriate to be moving forward that legislation in order to bring the treaty into force as quickly as possible to the benefit of Australian industry—and that is certainly the driver for the government in this regard. But we are also fully cognisant of all the treaty-making processes that have to be gone through. It is only once those have been done that we would notify the government of Singapore and we would agree on a date of entry into force. I do not know what more I can say on that.

CHAIR—The legislation has not been through the Senate.

Mr Deady—No, not as I understand it.

Mr WILKIE—I turn to the rules of origin. There has been a debate about whether our rules of origin are adequate for the purposes for which they are required. I believe that the agreement that the US has with Singapore runs to some 300 pages and is very comprehensive, whereas our rules of origin test is only about 15 pages long and covers nowhere near as many issues. Why do we have only 15 pages as opposed to the US's 300?

Mr Deady—There is a very different approach that the United States has to rules of origin in relation to these preferential free trade agreements. The fundamental concept or objective of both Australia and the United States is to ensure that product that benefits from the preferential duties in these cases is subject to substantial transformation; that it actually is the product—in this case, the product of Singapore—entering the US market. I think it is probably not the right comparison just to look at the number of pages in these two things. As I say, the objective is substantial transformation. We believe that, in the case of our rules of origin with Singapore, which are the same rules that apply to CER, there is 50 per cent value added. It is a formula approach, if you like. It is a matter of establishing the value added to the product to ensure, in the case of the majority of trade, that 50 per cent is added in Singapore to qualify for the rules of origin.

The United States approach, as I said, is very different. Basically, it goes through a tariff line by tariff line, change of tariff heading process. Also, the US system has a little bit of both. For some tariff lines it includes a change of tariff classification and also a formula type approach—some sort of concept of value added is also part of their arrangements. So I think that the key thing is to ensure the substantial transformation of the product—that it is actually product of Singapore that is benefiting from the arrangements. We are confident that our rules of origin approach delivers that very clearly, that it is enforceable, that it is able to be monitored very closely and that it delivers that outcome.

Mr WILKIE—The other question relates to whether there has been an analysis done of the impact ratifying this treaty may have on our dealings with other trading partners in the region. To put that into context, it has been put to me that, if we ratify the US free trade agreement, we may lose markets in China and other parts of Asia, for example. That could be a result that we have not considered. Have we looked at this agreement in the context of our dealings with other

people in the region and looked at the impact of having an agreement with them as opposed to others?

Mr Deady—We have not done any particular analysis in that regard. I think a couple of points are worth making there. Getting back to the rules of origin, one of the actual concessions that we made to Singapore as part of the overall package was an allowance, under the rules of origin, to take account of the specific nature of the production and manufacturing processes in Singapore, some of which are done offshore in Indonesia. That was one of the issues that Singapore asked of Australia as part of the negotiations, and we did come up with an outcome there that provided some further allowance for product that is processed in Indonesia—or for which some of the processing is undertaken in Indonesia—for that to qualify under the rules of origin.

So, straightaway, I think that provides some benefit, for example to Indonesia, as part of that process. So I think there is a dynamic there. The overall dynamics of expansion of trade between Australia and Singapore would also lend some broader flow-on effects to trade within the region. Again, we do not see any significant prospects of trade diversion as a result of the agreement with Singapore. Australian tariffs, primarily, are fairly low across the board. I think that, when we did this analysis, we found that 90 per cent of Singapore trade was already entering Australia duty free or very close to it. So I think the prospects of trade diversion affecting negatively other countries in the region are pretty low in that regard.

CHAIR—The joint standing committees are not meant to continue past 12.30 p.m. on a Monday because that is when the Senate starts to sit.

Resolved (on motion by **Mr Wilkie**, seconded by **Mr 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 12.30 p.m.