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JOINT COMMITTEE ON TREATIES

Monday, 13 October 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 Martyn Evans, Mr Hunt, Mr Peter King and Mr Bruce Scott

Senators and members in attendance: Senators Kirk, Marshall, Mason, Santoro, Stephens and Tchen and Mr Adams, Mr Ciobo, Mr Martyn Evans and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled in October 2003

WITNESSES

FEWSTER, Mr Alan, Executive Director, Treaties Secretariat, Legal Branch, Department of Foreign Affairs and Trade.....	12
GRIFFITHS, Mr Paul, Assistant Secretary, Office of Legal Services Coordination, Attorney-General's Department	12
HOY, Mr Rex Jeffery, Group Manager, Workplace Relations Policy Group, Department of Employment and Workplace Relations.....	12
JOLLY, Ms Fiona, Principal Legal Officer, Legal Services and Native Title Division, Attorney-General's Department	12
MANNING, Mr Greg, Acting Assistant Secretary, Public International Law Branch, Attorney-General's Department	1
MANNING, Mr Greg, Acting Assistant Secretary, Public International Law Branch, Attorney-General's Department	12
MILNER, Mr Colin, Director, International Law Group, Legal Branch, Department of Foreign Affairs and Trade.....	1
MILNER, Mr Colin, Director, International Law Group, Legal Branch, Department of Foreign Affairs and Trade.....	12
PLAYLE, Mr Ben, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade.....	12
ROWLING, Mr John, Assistant Secretary, Safety, Compensation and International Branch, Department of Employment and Workplace Relations.....	12
SIDDALL, Dr Alexandra, Desk Officer, Ukraine, Kazakhstan, Belarus, Department of Foreign Affairs and Trade.....	1
TWOMEY, Ms Margaret Eileen, Assistant Secretary, Northern, Southern and Eastern Europe Branch, Department of Foreign Affairs and Trade	1
van der WAL, Mr Eric, Director, Northern, Central and Eastern Europe Section, Department of Foreign Affairs and Trade.....	1

Committee met at 10.16 a.m.

ACTING CHAIR (Mr Wilkie)—I declare open this meeting of the Joint Standing Committee on Treaties. As part of the committee's ongoing review of Australia's international treaty obligations, the committee will review two treaties tabled in parliament on 8 October. I understand that witnesses from the Department of Foreign Affairs and Trade and the Attorney-General's Department will be with us for today's proceedings, with witnesses from other departments joining us for discussion of the specific treaties for which they are responsible.

Agreement between the Government of Australia and the Government of the Republic of Kazakhstan on Economic and Commercial Cooperation, done at Almaty on 7 May 1997

MANNING, Mr Greg, Acting Assistant Secretary, Public International Law Branch, Attorney-General's Department

MILNER, Mr Colin, Director, International Law Group, Legal Branch, Department of Foreign Affairs and Trade

SIDDALL, Dr Alexandra, Desk Officer, Ukraine, Kazakhstan, Belarus, Department of Foreign Affairs and Trade

TWOMEY, Ms Margaret Eileen, Assistant Secretary, Northern, Southern and Eastern Europe Branch, Department of Foreign Affairs and Trade

van der WAL, Mr Eric, Director, Northern, Central and Eastern Europe Section, Department of Foreign Affairs and Trade

ACTING CHAIR—Although the committee does not require you to give evidence under oath, I remind 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. Do you wish to make some introductory remarks before we proceed to questions?

Ms Twomey—Yes, I do. Thank you, Mr Chairman. Since gaining independence from the former Soviet Union in 1991, Kazakhstan has shown itself to be one of the most stable members of the Commonwealth of Independent States and the most economically viable amongst the Central Asian republics. After Russia, Kazakhstan is seen as having the greatest potential for the development of Australian commercial interests among the former Soviet countries. It was in this context that Australia embarked, in the early 1990s, on a series of measures to build the bilateral relationship. The agreement on economic and commercial cooperation was one such measure, designed to facilitate cooperation and boost two-way trade between Australia and Kazakhstan. It was done on the basis that Kazakhstan, a resource-rich country with significant economic potential, held out good prospects for future Australian trade and investment. The agreement was signed by both parties in May 1997.

In its report of November 1997 JSCOT recommended that Australia not ratify the proposed agreement, arguing that the commercial and legal obstacles being placed in the path of Telstra, the Australian telecommunications provider, were inconsistent with the principles of cooperation

embodied in the treaty. More significantly, the committee recommended that the agreement should not be reconsidered until there were demonstrations of good faith by Kazakhstan in its trade and investment relations with Australia.

Telstra's commercial difficulties were resolved by late 1999. In March 1999 Telstra advised it had received final cash debts owing from its joint venture Satel. Kazakhstan subsequently advised Australia that Kazakh Telecom and Telstra had no further financial liabilities to each other. Telstra advises that it has been generally satisfied with the process of the liquidation. Given that this impediment has been overcome and that the case for pursuing such an agreement remains, we are resubmitting the agreement to the committee for its renewed consideration.

The agreement is a standard one, corresponding closely to the text of agreements we have with Estonia, Latvia and Lithuania. It commits Australia to encourage close cooperation and dialogue through a variety of activities. These may include providing assistance to Australian trade missions or businesses in Kazakhstan, or Kazakhstani businesses in Australia. The agreement also obliges countries to have regard for the protection of intellectual property, to encourage alternative dispute resolution procedures and to grant each other most favoured nation treatment.

This agreement is not an investment promotion and protection agreement and does not obviate the need for individual businesses to make their own assessment of business risk when exporting to or importing from another country. It does, however, provide a formal framework within which future commercial disputes can be managed. This is useful in Kazakhstan's commercial environment where links between business and government still remain strong.

We now find ourselves in the unusual vantage point of being able to review the benefits of the proposed agreement some six years after its inception. It is fair to say that, since its move to independence and the accompanying great hope for its future economic prosperity, Kazakhstan's economic development has been disappointingly slow. It is also fair to say that the initial enthusiasm and interest by Australian business in this new market has since tapered off. Australia's two-way merchandise trade with Kazakhstan in the 2002-03 financial year was a modest \$7.59 million. The trend, however, is positive. Exports have risen by \$4.3 million over the last five years and, in spite of a disappointingly slow start, Australia's assessment of the longer-term economic outlook for Kazakhstan remains positive.

Kazakhstan is enjoying strong economic growth, sustained now for the past three years, with predicted growth of six to seven per cent per annum for the next few years. The national currency is stable and inflation has been reduced to manageable levels. Kazakhstan's record on economic reform is strong. It has made slow but steady progress with structural reforms and is considered one of the most decisive reformers within the Commonwealth of Independent States. After eight years of substantive market economic reforms, the country has transformed the pension system, civil service, finance and banking system, public procurement, tax administration and communal services. The country's legal infrastructure is also slowly improving.

We continue to believe that the proposed agreement will help position Australia to do business with Kazakhstan as continued reform and economic growth make this resource-rich country a more attractive trading partner. Over the longer term, the agreement will encourage the export of Australian goods into emerging sectors of Kazakhstan's market and pave the way for the export

of services such as education and consultancy. We cannot guarantee it will result in immediate trade gains; but anecdotal evidence suggests that agreements such as these do have a long-term trade development function.

A more immediate benefit and an important starting point will be the raising of Australia's status and profile as a trading partner in the eyes of the Kazakhstan government and private companies. The agreement will build upon the awareness of and goodwill towards Australia and support the work of the Austrade office in Moscow, which is responsible for facilitating Australian trade with Kazakhstan. The agreement will also play a useful role in giving ballast to the government to government bilateral relationship. Kazakhstan is aware of the reason for Australia's delay in taking binding treaty action and will see the steps by Australia to proceed as a positive signal of our commitment to the relationship. Conversely, a decision not to bring the treaty into force risks sending a negative signal about Australia's interest in the future trade relationship.

Finally, the agreement will support Australia's broader foreign policy goal of integrating Kazakhstan into the world economy by strengthening the legal and commercial framework which commits Kazakhstan to facilitate and develop trade on a stable and predictable basis.

ACTING CHAIR—Thank you. The national interest analysis refers, at paragraph 10, to Telstra's failed operations in Kazakhstan but states that the company is generally satisfied with the process of liquidation of the joint venture it was involved in. Can the department provide more detailed comment on Telstra's reaction to the liquidation process? Which parts were they not satisfied with?

Ms Twomey—I think 'general' is the key word there. They found the process of liquefying the joint venture a slow, drawn-out affair. They did write off some assets in the process. They have handed over some remaining assets that they determined were not worth pursuing to the new privatised telecommunications carrier that has been born of Telstra—and that is Reach. In case there is anything extra we can say, I would like to defer to Ms Siddall, who has been in direct contact with Reach in discussing taking this agreement forward.

Dr Siddall—I do not think there is. The comments we have from Telstra on file from 1999 do indicate that they were merely concerned about the slow pace of the liquidation, but in the final analysis full debts were paid out and they were content—I guess that is the nearest word—with the outcome. The files indicate that the concern was merely with the pace with which it was carried out.

ACTING CHAIR—Thank you.

Senator MASON—We are entering into a treaty with Kazakhstan and entering into an agreement with another nation. You hope it is going to be enforced and that the other country will enter into it in a bona fide fashion and that it has structures to ensure that the treaty obligations are met, even though there are not many obligations in this treaty. Are you convinced or are you satisfied that there is sufficient political, economic and legal stability in Kazakhstan such that this treaty will be enforced and followed?

Ms Twomey—You can never offer any guarantees on issues like this. We have not found them in many other bilateral treaties of this sort. We do, however, believe that there has been significant improvement over the years since Kazakhstan became independent. Some areas have strengthened more than others. While there has been significant economic reform, and we are very encouraged by that, there are still things that remain to be done. Legal reform has been very slow and there are still areas that need to be brought through. It is certainly a feature of discussions in WTO negotiations. Politically, Kazakhstan is not quite where we would like to put a proper reformed market economy. It still has a way to go.

Senator MASON—How do you enforce an agreement like this in a country like Kazakhstan? How do you enforce this agreement?

Ms Twomey—I do not think the agreement is enforceable. It is one of encouragement and of bringing the issue to government to government level, giving it that extra force at the government to government level. It is not an enforceable treaty.

Senator MASON—I suppose it is one of intimacy rather than enforcement.

Ms Twomey—Correct.

Senator MASON—In the national interest analysis, in paragraph 13, it says in the last sentence:

Australian lawyers working in Kazakhstan have reported frustration in having to deal with a corrupt judiciary.

That does not bode well, does it, for any enforcement necessary? But you are quite right; if it is simply a matter of cosyng up, that is delightful.

Ms Twomey—That is right. All investors and traders have to do their own risk analysis before they enter into high-risk markets, and this is still a high-risk market.

Senator MASON—Thank you.

Senator TCHEN—Firstly, a couple of housekeeping matters on the NIA. In paragraph 4 you refer to the Minister for Foreign Affairs and Trade agreeing in September 1999 that Telstra's difficulty had been resolved but then an election intervened and then you state that in August 2001 Senator Hill recommended to parliament that the agreement be ratified. Why Senator Hill? In what capacity?

Ms Twomey—I would expect that was in his capacity as minister representing the Minister for Foreign Affairs in the Senate.

Senator TCHEN—I see. The other issue is that in paragraph 19, in the third sentence, you said:

Australia's profile in Kazakhstan is probably higher than in any other country of the CIS ...

How high is that?

Ms Twomey—We are trying to put it in relative terms. It is pretty modest. As you will have also seen in the NIA, we have closed down our mission in Kazakhstan, so the profile is not as high as it was in the nineties, when this agreement was first signed. In fact, we see the agreement as an opportunity to give some ballast to the bilateral relationship. As you now know, we are covered from Moscow.

Senator TCHEN—Earlier you referred to the WTO regime. Is Kazakhstan an admitted member of the WTO?

Ms Twomey—No. Negotiations are ongoing.

Senator TCHEN—This agreement will be a bilateral agreement which fits into a WTO framework?

Ms Twomey—Within the WTO framework?

Senator TCHEN—Would it fit within the WTO framework?

Ms Twomey—It is WTO consistent. Inasmuch as it has, it is a pretty modest agreement.

Senator TCHEN—How far away is Kazakhstan from being admitted to the WTO?

Ms Twomey—Probably about three years from now. We still have some time to go without a WTO agreement, which highlights one of the features of this agreement, which is guaranteeing most favoured nation status for both sides. This is a valuable aspect of the agreement to have until Kazakhstan does become a member of the WTO, when that provision will click in for all WTO members, including Australia.

Senator TCHEN—Previously this committee's recommendation was to delay ratification until Telstra's problem was resolved, and Telstra's problem since has been resolved. Can you advise the committee whether, in your assessment, the fact that the previous agreement was not ratified assisted in resolving Telstra's problem?

Ms Twomey—That is a very difficult question to answer and I think you would probably need to ask Telstra direct. My sense is that the dispute was very much a commercial one. Certainly our embassy did have a role in taking our concerns to the highest government levels as that dispute went on. I could judge that that had an impact, but you would need to ask Telstra that.

Senator TCHEN—Telstra did not indicate that to you in your discussions with them?

Ms Twomey—I would like to check that one with Ms Siddall. There is nothing on the file to suggest that, Senator.

Senator STEPHENS—Having looked at paragraphs 15 through to 17, I am quite interested in the tone of what you have written there, in terms of what the opportunities really are for Australia. You say we closed our office in Kazakhstan and are operating out of Moscow now?

Ms Twomey—Correct.

Senator STEPHENS—What kinds of arrangements are in place to educate Kazakhstan businesses about opportunities and the processes of engaging in business in Australia? Is there an educative process somewhere?

Ms Twomey—The normal way we would do that would be through trade missions. We most recently had a trade mission looking at selling Australian education to Kazakhstan, I think in April 2003. We have had Austrade go over there more recently than that, and of course we have regular visits through our embassy in Moscow, which also has a trade promotion function, which most recently occurred with a visit by our consular officer in August. But perhaps the most recent substantial meeting would have been with our ambassador when he presented credentials there in October last year. We also had Senator Robert Hill go through Kazakhstan on his way to Afghanistan last year to visit our troops, so we do make the most of the visits that we have to Almaty, and we have an Austrade office in Moscow that is specifically tasked to look at the Kazakhstan market. Austrade here similarly look at Australian business and see where they can match the two.

Senator STEPHENS—I noticed in the brief that SMEC has an office in Almaty.

Ms Twomey—That is correct.

Senator STEPHENS—Is SMEC continuing its involvement in Kazakhstan?

Ms Twomey—It does not have any big projects on at the moment but it is continuing, and the fact that it has an office there proves that. It certainly identifies future opportunity and a reason to keep its foot in the door and to keep its office operative.

Senator STEPHENS—Given that in paragraph 15 you acknowledge that the agribusiness was not as successful as forecasts might have been, what are the current forecasts for opportunities other than in education and services?

Ms Twomey—Education and services have turned out through the consultancy process that we have just engaged in as one of the biggest. Austrade has identified a few areas. It continues to think that agribusiness has some potential. As far as the big mining and gas sectors go, there has not been any interest by our own mining companies. As we are now finding with our engagement with the Russians in Sakhalin, where two big multinational projects are going, there is opportunity for Australian business in being subcontracted to various elements of those big projects.

To put it in general terms, while the Kazakhstan economy booms, as it is doing now as a result of its oil and mineral exports, and that boom will get bigger, that will strengthen the economy. It will give greater wealth to the citizens of Kazakhstan, who in turn will change their living habits. We see a myriad of different export opportunities opening up. I cannot quite find the page that I was given by Austrade on the specific opportunities they identify, but perhaps one of you who has it could read out precisely what they said to us.

Dr Siddall—It says:

Austrade is optimistic regarding the potential for Australia's trade with Kazakhstan, particularly in the agribusiness, construction, food, oil and gas, and education sectors.

That was the specific comment that Austrade gave us during the consultation process.

Senator STEPHENS—Thank you very much.

Senator KIRK—I understand this is the first treaty that has been entered into with Kazakhstan.

Ms Twomey—That is correct. We have an MOU with Kazakhstan but this is the first treaty agreement.

Senator KIRK—I wondered whether or not there were any plans to enter into any further treaties with Kazakhstan.

Ms Twomey—Not at this stage.

Senator KIRK—There have been no negotiations initiated in any field?

Ms Twomey—At the time of Kazakhstan's independence there was quite a flurry of activity on the part of the Australian government and many other governments with regard to agreements. As time wore on and the boom did not show itself to be quite the El Dorado that some might have thought it would have been, we rationalised our agreement activity with them. I understand an investment promotion and protection agreement did get to the stage of being initialled but negotiations stalled after that. At this stage there is no plan to put it high on our list of priorities to have another go at negotiating it but a partially done piece of work is out there on an IPPA.

Senator KIRK—Is it the intention to wait until there is greater economic—

Ms Twomey—To wait until we have greater demand for it.

Mr CIOBO—I was just having a look over some of these consultation responses that have come through. It would seem that the vast majority of them are not responding at all. In large part that probably reflects a fairly high level of disinterest from a fairly understandable view that it does not hold much of a market future for these industries, particularly in education and mining resources. In which industries do we see a very viable and perhaps strong, positive business climate and a strong market in Kazakhstan for Australian companies? Is it education? Is it mining resources? Is it telecommunications?

Ms Twomey—I take issue with the points you make about the responses perhaps concluding that they did not hold much interest in the future. It is more the case that most of them do not hold out much interest now. We would argue that what this treaty is about is positioning ourselves for the long-term future. We certainly assess that there will be opportunities for many of these countries. The response was quite disappointing and I was surprised at how modest the response was.

In terms of where we see the more immediate activity going, I refer to our discussion before about SMEC. The international aid agencies—the Asia Development Bank, the European Bank for Reconstruction and Development, the World Bank—have contracts that certain companies in Australia are at the moment watching and have some hope that they might be able to get contracts from in the future. We have had some companies in the past who have done work in Kazakhstan under the auspices of these organisations. That mainly involves reconstruction work and you are right in identifying education as probably the second greatest level of interest at the moment. That is certainly reflected in the recent trade delegations that we have had go to Kazakhstan.

Mr CIOBO—Is the majority of it government and NGO infrastructure type projects where there are specific mandates from ADB or something like that?

Ms Twomey—That is right.

Mr CIOBO—I notice that Curtin University had undertaken a mission over there to look at educational opportunities. What did they find? Do we address any of the barriers that they encountered within this specific treaty?

Ms Twomey—I might hand over to Ms Siddall, who spoke directly to Curtin University about their visit.

Dr Siddall—There was an Austrade coordinated mission. They spoke to several universities in Kazakhstan and had quite a positive response. They have several students now studying in Western Australia. Some are sponsored by the government and others are sponsored by international scholarships. There are a couple of private fee-paying students as well. They did not talk specifically about barriers to educational services. They did indicate to me that this sort of agreement would be very positive in improving the profile of educational services, as other agreements have done in other countries. It does promote the idea of Australia as a world leader in education. Did you have a more specific question?

Mr CIOBO—Just in terms of barriers that they encountered and whether this treaty engages any of those barriers to remove them.

Dr Siddall—In my discussions with them they did not mention any barriers per se but the idea of the profile and the awareness of Australian educational services I guess you could call a type of indirect profile. Their perception was that this treaty would increase Australia's profile in educational services in Kazakhstan. It may lead to further trade missions and further prospects for Australian universities to enter into the Kazakhstani education market.

ACTING CHAIR—Well picked up on Curtin University, Mr Ciobo! It is an excellent university in a fantastic electorate in Western Australia!

Senator SANTORO—Would the officers be able to tell us if we have entered into any other agreements or treaties with any of the other Soviet bloc republics, or is this the first one?

Ms Twomey—It is certainly the first one in Central Asia. We have entered into similar agreements with the Baltic states. With Latvia, Lithuania and Estonia we already have agreements along very similar lines. They are the only three I can think of.

Dr Siddall—We have agreements with other CIS countries, however, such as Ukraine.

Senator SANTORO—But not a formal treaty.

Dr Siddall—Yes. We have an agreement with Ukraine on trade and economic cooperation, signed in 1999.

Senator SANTORO—One of the concerns that has been identified and stated within the national interest statement is the issue of corruption. When this treaty is ratified, it may send out signals to Australian companies wanting to perhaps look at the possibilities of entering into economic relationships with entities in Kazakhstan that everything is fine there. What precautions does the department have in terms of warning or preparing companies and principals of those companies to cope with the culture that has been identified and briefly described? There is some reference there that is basically, ‘It’s up to you guys to get in there and do the business and buyer beware.’ Is there a proactive strategy in terms of letting people know of the difficulties?

Ms Twomey—In the engagement that we seek out and have with companies that are investing in the region, we explain. But you are quite right: it is a risky environment and commercial enterprises are entered into at their own risk.

Senator SANTORO—You are pretty blunt, though, in terms of letting them know what the realities are?

Ms Twomey—We certainly are. There are bits of fairly blunt data out there, like Transparency International’s corruption rating and things like that to be looked at. You can see what you are working with in a global relative context but also in a context within the region that you want to operate in.

Senator SANTORO—And presumably the experience of Telstra would be a fairly blunt or significant—

Ms Twomey—It would be well known now within the business community in Kazakhstan, and Telstra was not the only carrier that had those sorts of problems at that time.

Senator SANTORO—Obviously, once the treaty comes into effect, we are not just going to let it lie. What promotional activities can we expect from our side within Kazakhstan, just letting them know of the potential for trade with Australia and vice versa? Is there an equivalent of an Austrade effort? How proactive are we going to be in terms of promoting awareness of opportunities?

Ms Twomey—We would use the ratification of the treaty to make a song and dance about the Australia-Kazakhstan trade relationship and use it as an opportunity to again probe the market. After that, as you will see in the agreement itself, there are provisions for government to

government talks. We have been pretty modest in what we have described as the reality—that they will be on a needs basis. We do not want to institutionalise them so that we go over every six months or every year, when in fact there might not be anything interesting to discuss. We will probably end up taking our lead from business. As I say, from the Australian side at the moment, interest is quite low. We expect that will change. But we would also use the ratification of the treaty to see if we could stimulate Kazakh business trade with Australia, see what comes out of that and evaluate where we go from there.

Senator STEPHENS—You say that the parties grant each other most favoured nation treatment in respect of duties, taxes or charges imposed in connection with imports or exports. Are there any other things involved?

Ms Twomey—Not that are incorporated into this treaty,

Senator STEPHENS—Generally are there other conditions that might be—

Ms Twomey—I think there are but I am not an economist and I am not aware. Perhaps my legal colleagues could tell me.

Senator STEPHENS—That is in paragraph 6 of the letter.

Mr Milner—Senator, the provision derives from the WTO article 1 of the GATT in 1994, which entitles a country to receive treatment for its products that is no worse than the treatment accorded to products from any other country. I would have to do an examination to be absolutely certain of how far this goes in terms of the relationship with the sorts of provisions that go round the GATT. I could take that on notice, if you wish us to get back to you.

Senator STEPHENS—I think it would be useful for us to have the future treaties.

Mr Milner—I can arrange for a specialist to have a look at that.

ACTING CHAIR—I am mindful of the fact that the time allocated for consideration of this matter has expired but I just have two quick questions. I am wondering what the memorandum of understanding is that we already have in place with Kazakhstan and I am also wondering if we are looking at developing any other treaties with them.

Ms Twomey—I am not sure if I brought the memorandum with me. Does anyone have a copy with them? It is a pretty standard document that is non-binding and talks about friendship and keeping in touch and general things like that. It was signed in the mid-nineties, I think during a prime ministerial or presidential visit here to put on paper that we had a relationship. It was really to presage the agreement. I cannot, unfortunately, read out any of the contents as I do not believe I brought it with me. Would you like me to provide a copy?

ACTING CHAIR—No, that is fine.

Ms Twomey—We have no other treaties that we are looking at imminently but in the longer term we would be looking at the normal suite as the economy expands and as interest here

increases. The first one we would be most likely to look at would be an investment promotion and protection agreement.

ACTING CHAIR—You were saying that there have been a number of these treaties made with other countries in the region.

Ms Twomey—Yes.

ACTING CHAIR—Have they been effective?

Ms Twomey—It is a very hard one to judge. They were done in the same context at the same time, at the end of the fall of communism. They had multiple purposes to them. They were not just to expand trade; they were to bring these countries into the right direction. When you evaluate success, you have to look at all those things. In terms of seeing, for example, the Baltic states go the right way, they have done a very impressive job. Trade levels have remained quite modest and in fact are quite similar to the level of trade we have with Kazakhstan. Anecdotal evidence suggests that these trade agreements do over the long term have an impact but it is always very hard to quantify, so I cannot really answer the question in any specific terms.

ACTING CHAIR—Thank you for giving evidence today.

[10.56 a.m.]

GRIFFITHS, Mr Paul, Assistant Secretary, Office of Legal Services Coordination, Attorney-General's Department

JOLLY, Ms Fiona, Principal Legal Officer, Legal Services and Native Title Division, Attorney-General's Department

MANNING, Mr Greg, Acting Assistant Secretary, Public International Law Branch, Attorney-General's Department

HOY, Mr Rex Jeffery, Group Manager, Workplace Relations Policy Group, Department of Employment and Workplace Relations

ROWLING, Mr John, Assistant Secretary, Safety, Compensation and International Branch, Department of Employment and Workplace Relations

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

MILNER, Mr Colin, Director, International Law Group, Legal Branch, Department of Foreign Affairs and Trade

PLAYLE, Mr Ben, Executive Officer, International Law and Transnational Crime Section, Legal Branch, Department of Foreign Affairs and Trade

International Labour Organisation Convention No. 182: Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour, done at Geneva on 17 June 1999

ACTING CHAIR—I now call representatives of the Department of Employment and Workplace Relations. Although the committee does not require you to give evidence under oath, I advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings in 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?

Mr Hoy—I do; thank you, Chair. The government proposes to ratify ILO convention No. 182 on the worst forms of child labour, subject to all legislation required for Australia to meet its obligations under the convention being in place prior to ratification. The convention commits ratifying countries to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, including slavery, trafficking, involvement in prostitution and pornography, and a range of other hazardous and exploitative activities. The convention applies to all persons under 18 years of age.

Convention 182 was adopted by the International Labour Conference in June 1999 with the unanimous support of delegates voting in the plenary session. It is one of the ILO's core conventions and has been ratified by 144 of the ILO's 177 member states, including all Western countries except Australia and Israel. Such a rate of ratification among recent ILO conventions is unprecedented and is indicative of the level of global support for its provisions. The government considers that ratifying the convention would be consistent with Australia's policy positions on the protection of universal human rights and would demonstrate to the world Australia's abhorrence of the worst forms of child labour and a commitment to their eradication.

Implementation of the convention's obligations falls partly within the jurisdiction of the Australian government but primarily within the jurisdictions of the state and territory governments. As a matter of policy, the government will not normally ratify an ILO convention unless all state and territory governments have formally agreed to ratification and law and practice at Australian state and territory levels is in compliance with the convention. The Australian government has taken the step of bringing the convention before the committee for consideration, even though law and practice in a number of states and territories is not fully compliant with its provisions.

All jurisdictions implement most provisions of the convention; however, legislation in some jurisdictions does not fully implement article 3B of the convention dealing with the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. All jurisdictions have legislation dealing with child prostitution and child pornography. With respect to child pornography, some jurisdictions do not protect 16- and 17-year-olds as required by the convention. Most jurisdictions have legislation dealing with pornographic performances.

The government chose to commence the parliamentary process prior to all compliance legislation being enacted in order to speed up the overall ratification process. This demonstrates the importance the government attaches to ratifying this important human rights convention as soon as possible. The government hopes that the committee will see its way clear to consider the merits of ratifying the convention and make an appropriate recommendation.

It is envisaged that Executive Council approval for ratification could then be obtained very quickly once all jurisdictions have enacted the necessary laws. The government has consulted with the state and territory governments and the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. All have advised that they support ratification of the convention. The Workplace Relations Ministers Council agreed on 8 November 2002 to support ratification. All ministers agreed to provide their governments' formal agreements to ratification and commitments to achieve compliance where appropriate. In March 2003 the ministers renewed their commitments to ratify convention 182 and agreed to do whatever they could to fast-track this process. State and territory governments are being asked to provide frequent updates on their progress in developing and implementing compliance legislation.

In view of the broad support for ratification and in recognition of the importance of the convention as an international human rights treaty, we ask the committee to recommend that the government proceed to ratify convention 182 once all states and territories have legislation in place which brings their law and practice into compliance with the convention.

Senator STEPHENS—Why is Australia the only Western industrialised country that has not ratified the convention?

Mr Hoy—Senator, I explained in the opening statement—and it is in the NIA—that there are some issues with some of the legislation in some of the states.

Senator STEPHENS—I appreciate that. It just seemed to be quite extraordinary that Australia would be the last one to sign this particular convention.

Mr Hoy—I agree with you, Senator.

Senator STEPHENS—Are you able to tell us which states and territories they are?

Mr Hoy—The only states that fully comply are New South Wales and Queensland.

Senator STEPHENS—Are the other states working towards compliance?

Mr Hoy—They are.

Senator KIRK—The NIA states that it is anticipated that the enactment of all legislation necessary for full compliance could take some time to complete. It is also noted that state and territory governments formally agreed to ratify ILO convention No. 155, yet over a 12-year time frame, as a result of bringing the legislation into compliance. On this question of a time frame, has any time frame been set down for the Australian jurisdictions to bring in their legislation for convention 182.

Mr Hoy—Senator, all ministers have given commitments to make the necessary legislative amendments as soon as possible, but I cannot give you a time frame because it is essentially in their hands. I hope, though, it does not take the 12 years that convention 155 took.

Senator KIRK—What steps is the Commonwealth or the department taking to follow up on those commitments given by the states?

Mr Hoy—As I outlined in the opening statement, there have been commitments at ministerial level on at least two occasions in the last year, and we are pursuing it actively with the state and territory governments.

Senator KIRK—When you say ‘pursuing it actively’, what do you mean—following up on a weekly basis?

Mr Hoy—Following up with our counterparts in the states and territories.

Senator KIRK—On a regular basis?

Mr Hoy—Yes, on a regular basis.

Senator KIRK—How regularly?

Mr Rowling—Senator, we use virtually every opportunity we can to raise the issues. It involves both the workplace relations ministers and the attorneys-general. Our colleagues from Attorney-General's are also keeping the pressure on. We meet with officials from the states pretty regularly, and through the technical officers as well as through the officials leading up to Workplace Relations Ministers Council meetings.

Mr Hoy—The next meeting of the Workplace Relations Ministers Council will be on 20 November and that will be another opportunity to seek progress reports from the states and territories.

Senator KIRK—Is the matter listed on the agenda, or will it be listed?

Mr Hoy—Yes, it is on the agenda.

Mr Manning—From the Attorney-General's Department perspective, both through the Standing Committee of Attorneys-General officer level paper on human rights and through the Standing Committee on Treaties—both of which happen twice a year—this issue is on the agenda and discussed. The Standing Committee on Treaties deals with people from the Premier's or Chief Minister's department of each state and territory. The Standing Committee of Attorneys-General deals with the attorneys-general, obviously, so it is followed up in those two forums as well as the forums already mentioned.

Senator KIRK—Are you optimistic that some progress will be made soon?

Mr Hoy—I am optimistic.

ACTING CHAIR—Mr Hoy, you mentioned that there were, I think, 176 ILO member states, but paragraph 9 of the NIA talks about 177. Is it 176 or 177?

Mr Hoy—I thought I said 177, Chair. It is 177.

ACTING CHAIR—Obviously the states and territories have primary responsibility for the treaty. How long before it is likely to get through the ILO? You were saying one took 12 years. How long will we have to wait for this treaty to be sorted out?

Mr Hoy—In answer to Senator Stephens's question, I said that states and territories have given a commitment to do this as soon as possible but I cannot give a time frame.

ACTING CHAIR—Article 7(3) of the convention requires ratifying states to designate an authority responsible for the implementation of the provisions giving effect to the convention. What government authority will be responsible for the implementation and enforcement of that convention? Will the states be doing it themselves, or will there be an overriding body looking after it?

Mr Hoy—As I understand it, the states would normally have carriage of it within their jurisdictions.

ACTING CHAIR—As there are no other questions, thank you for your evidence today.

Resolved (on motion by **Senator Stephens**):

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

Committee adjourned at 11.08 a.m.