COMMONWEALTH OF AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled on 13 May 1997

CANBERRA

Monday, 26 May 1997

OFFICIAL HANSARD REPORT

CANBERRA

JOINT STANDING COMMITTEE ON TREATIES

Members:

Mr Taylor (Chairman)

Mr McClelland (Deputy Chairman)

Senator Abetz	Mr Adams
Senator Bourne	Mr Bartlett
Senator Coonan	Mr Laurie Ferguson
Senator Cooney	Mr Hardgrave
Senator Murphy	Mr McClelland
Senator Neal	Mr Tony Smith
Senator O'Chee	Mr Truss
	Mr Tuckey

For inquiry into and report on:

Treaties tabled on 13 May 1997.

WITNESSES

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Present

Mr Taylor (Chairman)

Senator Abetz	Mr Adams
Senator Cooney	Mr Bartlett
Senator Murphy	Mr Laurie Ferguson
	Mr McClelland
	Mr Tony Smith
	Mr Truss
	Mr Tuckey

The committee met at 9.06 a.m.

Mr Taylor took the chair.

[9.06 a.m.]

GREGG, Mr Peter, Director, Central Europe, Nordic and Western Mediterranean Section, Department of Foreign Affairs and Trade, Canberra, Australian Capital Territory

LAMB, Mr Christopher Leslie, Legal Adviser, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

SCULLY, Mr Mark, Desk Officer, International Trade Law Unit, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

ZANKER, Mr Mark, Senior Government Counsel, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

CHAIRMAN—Welcome. Initially we are dealing with the agreement with the Czech Republic on trade and economic cooperation. Does either department want to make a short opening statement?

Mr Lamb—Mr Gregg might make an opening statement on that subject for us.

Mr Gregg—Thank you, Mr Chairman. I will start with a few facts for those of you who are not all that familiar with the region. The Czech Republic became an independent state, if you like, on 1 January 1993 with the breakup of the former Czechoslovakia. The Czech Republic has a population of about 10 million and a GDP about one-eighth the size of Australia's. Its economy is growing at about four per cent and it is expected that the Czech Republic will become a member of the European Union sometime in the next five years.

I will now trace a little bit of the background to this treaty. The proposal arose with the Czech side. They raised it with Senator McMullan in 1995. A bilateral treaty had existed with the former Czechoslovakia dating back to 1972, but that was based, of course, on the old communist economy and the Czechs wanted to replace it with a more modern treaty, if you like, which reflected their move to a market economy. It is also fair to say that, being a new state, a new entity, they wanted to replace all their existing treaties with a new set, and ones that were consistent with the MFN principle under GATT WTO standards.

Our response to this proposal was that, resources permitting, we were prepared to enter into negotiations. Our interest really was one of using the treaty to boost confidence, particularly between the business sectors on both sides. It is also fair to say that, because the Czech Republic is not a very large economy and because it is a long way away from Australia, it is unlikely to become a major trading partner.

However, there is growing Australian investment, particularly of the joint venture kind, in a range of sectors, including food processing, mining technology, building materials and transport services. We think that, as I indicated before, the main value of the agreement is in its ability to facilitate and to smooth the way for Australian companies, including those looking to take advantage of the Czech government's privatisation program.

In conclusion, I will just mention a very small example of the way in which this treaty can help. We were approached a few months ago by an Australian based environmental company that was having difficulty with a tender—this was for cleaning up old industrial sites—and the department went to the Czech government and made representations. It is true that perhaps the matter would have been resolved anyway, but with the treaty in place there is a mechanism there and they responded quite quickly and quite positively and, in the end, the company won a $129 million contract.

CHAIRMAN—Do the representatives from the Attorney-General's Department have any opening comments? We have had a number of questions in this committee over the last nine months on a number of South American trade and investment agreements. Is this part of a standard thing with the Czech Republic, is it a variation on a theme, or is there a particular format for such trade and investment treaties? For example, we dealt with Peru, Chile and Mexico in this committee.

Mr Lamb—Our basic requirements in the treaty are pretty similar. For us the most important thing is to respond to the thing that the other country thinks is the most likely stimulus for trade, economic cooperation et cetera. It is difficult to be absolutely categorical about this, but the history is that the East European countries for reasons that go back to their own way of working in the time of Soviet domination, tend to think that having bilateral treaties is more important than some other countries do.

What countries like the Czech Republic have tried to do is to set in motion a process of showing how their free market reform program is working well. They are now able to associate themselves in a formal, economic and cooperative sense with countries like Australia. That is good for them domestically. They still have a large number of state-owned institutions in their economy, although the privatisation program marches on quite well. They all understand that they need to link themselves to private economies.

This is not answering your question thoroughly, but the motivation of a country like the Czech Republic would be different from that of a country like Peru, which would

be looking at trying to use an economic cooperation agreement to create a means of outreach for itself. The Czechs do not need that so much. They need to try and show things to themselves internally, whereas the Peruvians are looking out and hoping that, by doing agreements, they can set up a process that links them somehow more effectively through governments elsewhere.

From our standpoint, the main benefit of the agreement is servicing the objectives of the other country. Our private sector works effectively and well with the economies of other countries and we do not normally need these agreements as badly as the other countries do. We would expect our entrepreneurs to go out and find the business and make it work, but if the other countries need the agreement and if the agreement means that the entrepreneurs and the enterprises in the other countries will work more comfortably with Australians, then we will respond to that and go to them.

But we do not do things very differently from country to country. We do not create, through an agreement with the Czech Republic, conditions which will make it very different in terms of an Australian making a decision: 'Will I work this week with Peru, the Czech Republic or Mexico? Good, there's an agreement; I will work with the Czech Republic.' It does not actually happen that way, but it does tend to ease the conditions at the other end and create a system with local banks, the government, investment bureaus and so on that makes them more receptive to Australians.

CHAIRMAN—It is a facilitating document.

Mr TUCKEY—Just before we go much further I wonder whether the witnesses could give us an expansion on MFN—most favoured nation. I tended, until I heard President Clinton recently, to believe that this was a fairly selective process, when in fact that is probably more to do with our treatment of Third World countries. Under WTO, where does most favoured nation fit? Is it in fact just what anybody who is a participant in WTO gets, is it better than that or what? I feel that we should have that clarified.

Mr Gregg—In a way it is a misleading term because it suggests that there is discrimination.

Mr TUCKEY—Something special.

Mr Gregg—In fact it means the opposite. It means you do not discriminate. That is the fundamental WTO principle: you do not negotiate discriminatory arrangements with one country. There are exceptions through FTAs and so on, but in the US case when they talk about MFN with China, they are really saying,'By giving you MFN we will not discriminate against you.'

Mr Campbell—In terms of the basic concept of MFN it means that each country with whom you have an MFN agreement is entitled to the same treatment as each other

country with whom you are dealing. In other words, if you give favourable treatment to one country, then you are obliged to give the same treatment to any other country with which you have an MFN arrangement.

You will notice that many MFN arrangements make express exceptions for what are known as customs unions or unions such as the EC, where there are special regional trading arrangements. We would say, for example—and I think there is such a clause in this agreement—that our CER arrangement with New Zealand falls within that category. To the extent that we give some preference to New Zealand in what we would call a customs union or special trading arrangement with New Zealand we would not be required to give that sort of treatment to every other country with whom we have an MFN arrangement.

Mr McCLELLAND—Just as a side issue, how active is Australia with these trade fairs both in Czechoslovakia and in Europe as a whole?

Mr Gregg—I am afraid I am not as well placed to answer that as I might be. It is really an Austrade issue. But in the 12 months I have been in the position there have not been any Australian trade fairs in the Czech Republic. I think Austrade tends to concentrate on those big regional fairs in Frankfurt and places like that.

Mr BARTLETT—In the NIA it indicates that two-way trade totalled $92.4 million. Can you give an indication of the balance of that? Is that balance surplus or deficit from Australia's point of view?

Mr Gregg—It is deficit. Our exports last year were $32 million something and the imports were at $50 million. But that does not tell you the whole story because there is quite a lot of Australian investment—several hundred million dollars worth—which is generating capital return.

Mr TRUSS—I note that this agreement terminates the agreement on trade relations between Czechoslovakia and Australia of 16 May 1972. What is in that agreement and what are the implications of its termination?

Mr Gregg—I am afraid I do not know the actual detail of the agreement except that, as I said in my introductory statement, that was an agreement between Australia and the former state of Czechoslovakia when that state was a communist centrally planned economy. I assume that it related to the way those economies tended to operate. They had bilateral agreements with most Western states. The situation is now totally changed, both—

Mr TRUSS—I appreciate that you are dealing with a different entity but was it a more comprehensive document than this one?

Mr Lamb—No, it was not. It was a document which just laid out a bare bones

framework. You will recall that 1972 was only four years after the demise of Dubcek's experiments in Czechoslovakia. There was not much substance in our bilateral economic relationships at the time.

Mr TRUSS—So no-one will notice its passing?

Mr Lamb—I can say that no-one will mourn it; it will not be much of a funeral. I think it is also fair to say that in both the Czech Republic and Slovakia there has been a concerted effort to try to negotiate agreements that they see suit their circumstances more precisely than something that was done for the old Czechoslovakia. They both want to put their own stamp on this modern Europe by having their own agreements. So a lot of the old Czechoslovakia agreements are being replaced by them, across the board.

Mr TONY SMITH—Which are the companies that it is thought would take some comfort from this agreement? Are there a number of particular areas that we are looking to?

Mr Gregg—I can tell you the names of a number of countries that are currently operating in the Czech Republic. If they are well established and their businesses are going well, which I think is the case, they probably do not particularly need the treaty. In a way, we would see it as helping others to get into the market and to do business there. The biggest Australian companies operating in the Czech Republic include Coca-Cola Amatil, which has a huge investment in bottling plants; a company called Mincom, which is a mining technology company that has produced all the software for the biggest coalmines in the north of the Czech Republic; Pioneer, which is there in building materials, quarries and so on, and Brambles is there with a number of transport service operations.

CHAIRMAN—Why five years for the agreement? Did the Czechs push for five years or did we go for the five years?

Mr Campbell—I do not know.

CHAIRMAN—Perhaps it is not all that important but I would be interested.

Mr Campbell—My recollection is that a number of these agreements have an initial period, be it three or five years. That is to give the agreement the chance to get off the ground and operate and not give the impression that it might be the subject of withdrawal after a period of only one year.

CHAIRMAN—Just talking informally, as I did at a formal luncheon—I think it might have been the Hashimoto one—I sat next to the Czech consul, and they are very keen to push things along, as you would imagine in an emerging new republic. We would be interested to know.

Mr Lamb—I can add something here. We have a tendency now, when we negotiate these agreements, to put a sunset on them if we possibly can because, among other things, that forces a fresh negotiation at the conclusion of the period. It is not so that the agreement can die but so that it can be negotiated afresh, with a good look at the new circumstances, whatever they are. So, before we get to that five-year period, I would feel confident that we would be back to you with a replacement for this but it will be updated to take account of the way the economy moves there and the way the interests of different Australian companies have changed perhaps.

CHAIRMAN—Just a telephone call to the secretariat is fine.

Mr Campbell—I do know that the agreement is in place for an initial period of five years but thereafter it remains in place.

CHAIRMAN—Does it?

Mr Campbell—Yes, it does. Referring to the briefing paper, page 12, it says:

Thereafter, it shall remain in force until the expiration of six months from the date on which either Contracting Party receives from the other written notice of its intention to terminate the Agreement.

CHAIRMAN—I see, yes.

Mr Campbell—So it puts it in place for an initial five-year period and then says it can be withdrawn after giving notice for a period of six months.

CHAIRMAN—That answers the question.

Mr Lamb—There would still be an aspiration that that five-year period would be looked at from the standpoint of, 'We are coming to the end of the five-year period—what do we need to do to this agreement?'

CHAIRMAN—Yes.

Mr TUCKEY—I have got three questions and I will ask them all at once. Is the Czech Republic a member of WTO? Consequent to this agreement, have we set out to negotiate or have we in place a double tax agreement, which would seem to be fairly necessary if we are investing over there? Finally, if anybody can tell me, what has happened to Czech engineering technology, where they stood out—pre-war anyway? I am interested to know where our associations might lie, because they were quite outstanding in that area.

Mr Gregg—Yes, it is a member of the WTO; yes, we do have a double tax agreement; and, yes, the Czech Republic is still a major force in engineering. One of its

major exports to Australia is things like transport equipment—motors and so on—so they are still quite heavily involved in that sector. Obviously there has been some restructuring and they are dealing very much with a different market: most of the exports now go to the west, into the EU in particular, rather than going east. They seem to have maintained that technological advantage to a large extent.

Senator MURPHY—With regard to these agreements that we have, we asked a question before about trade fairs. In terms of Australian companies, regardless of what they might do, finding out about opportunities—as small as they might be—in, say, the Czech Republic, how do you link all of that back? How do people actually find out about those things? What is the feedback through Austrade?

Mr Lamb—We would expect that Austrade, which is associated with the negotiation of these agreements, would send the message out about the conclusion of the agreement to the companies that need to take part. On reflection, given the number of these kinds of agreements that there are, I suggest that at some stage you might want to talk to Austrade to find out what they do, once an agreement has been finalised, to put in place its aspirations. It would be hard for us to answer that for them. I know that they do go out and work with it, and that they do work with chambers of commerce and others, and with the companies themselves.

Senator MURPHY—It might be all well and good for companies such as Coca-Cola Amatil and a few others, but I would be very interested to see what opportunities are created for smaller businesses in this country.

CHAIRMAN—In hindsight, we really should have had Austrade represented here this morning. The questions of Senator Murphy and others can be followed up with Austrade by a telephone call and, if necessary, we can get some written comments from them.

Mr Gregg—I would like to add a small point in response to Senator Murphy. The department does make some effort, particularly in my area of the department, to promote Central Europe as a whole, not necessarily just the Czech Republic but Poland, Slovakia, Romania and Slovenia—those countries that are growing and developing. We have had, for example, seminars in Sydney; we mail out information. We had, for example, a joint commission meeting last month with Romania, to which about 100 Australian companies came along. There is some effort going on to get the message across to these people that this is an area of opportunity that perhaps they should look at. But, of course, we can only invite them and then it is up to them to pursue it.

Mr TUCKEY—Article 9 lays that down, doesn't it? They are all the promises we make each other in terms of giving people the opportunity to be involved.

Senator MURPHY—Article 9 might be in the treaty, but I am not so sure that too

many people in small business around this country get to read it.

Mr TUCKEY—Yes; but we are here to look at a treaty, aren't we?

Mr Lamb—I agree with the point that Senator Murphy makes and also with Mr Tuckey's. The treaty does not of itself go out there and make headlines in the real world of companies. What it does do, from our standpoint, is make sure that, when our companies do want to go to the Czech Republic and work there, the conditions in which they do work are facilitated as well as possible.

Then there is another job to be done by Austrade, by ourselves, by the chamber of commerce—indeed, there are a whole lot of trading entrepreneurs out there who are looking to try and stimulate business so that they can make something of it too. They see a value in this. I guess there is an Australia-Czech Chamber of Commerce that would regard this as important and would circulate it to its membership. But then you have to go beyond that. If you are in a trade deficit situation as we are, you need to go beyond it to the companies that have not even thought of doing business with the Czech Republic. With an agreement like this in place, we are able to say to them, 'You have never heard of the Czech Republic; there are these opportunities that seem to meet what you are doing. If you do go and work that market, the agreement makes it easier for you to get in than would otherwise have been the case.'

Senator MURPHY—When I was in Europe last year, there seemed to be some criticism from Austrade over there that information was not going out about the opportunities that were available for Australian companies. That was making it very difficult for Austrade to actually promote Australian products in Europe. That is why I asked the question about how the linkage happens.

Mr Lamb—We have business centres in state capitals that help to promote information. The trouble is that the information has to come from somewhere in order to be sent elsewhere.

Senator MURPHY—That is right.

Mr Lamb—One of the things that we try to do through the business centres—and it is something that Austrade tries to do itself—is to work out who wants to do what from Australia or who can do what; or what is needed in country X and what can be supplied from Australia. It is a big job to try to correlate all that. If you are dealing with 200 countries and territories around the world all at the same time, it is not easy to concentrate on one country and say, 'This is the one.' Taking into account what Peter Gregg said earlier about the size of the Czech Republic—with 10 million people, and an economy growing at four per cent—and the standard of technological excellence that Mr Tuckey points to, and the fact that there are a number of people in Australia of Bohemian-Moravian origin who play a part in all of this as well, somehow the Department of

Foreign Affairs and Trade, Austrade, the chambers of commerce and the Department of Industry, Science and Tourism have to all try to work out how to bring this together.

You would normally get a visit, such as the one that Peter mentioned, the Romanian Mixed Economic Commission, that would energise people and bring together people from lots of different sectors at the same time. I imagine that a consequence of an agreement like this is that those sorts of mixed economic commission meetings would be rather more elaborately done. They would be better advertised in both countries and have more participants taking part, and you would spread a message out from that. I also take note of what you say about the Austrade people in Europe saying to you that the message was not filtering out.

That has always been the problem that we have had, no matter what country you talk about. How do you get the message out? How do you get the right people at the other end to recognise the music and start dancing? It is very hard to do that. We are not alone in facing that problem. A similar committee in practically any other country in the world could be having the same discussion about Australia, if they were talking about trading the other way: how do you get the message out back there about Australian opportunity?

Mr TUCKEY—The point I would like to make—whilst I do not disagree at all with the substance—is that, as the committee that reviews treaties, our responsibility goes as far as making sure that the treaty provides the opportunities that have just be questioned. If there is an area of concern there, maybe we should be sending some advice to the Standing Committee on Foreign Affairs and Trade to look at whether the availability or the existence of these treaties and their benefits to business and others is being properly passed on. As I said, I do not want to sound critical, because I agree with what has been said. But we are exceeding our brief somewhat if we start to go into the performance of a department subsequent to this agreement. That is really the fine point that I want to make.

Mr Lamb—I am sure we would welcome the opportunity, if the other joint committee wanted to look into the handling of these economic agreements. Mr Tuckey makes a good point.

Mr TUCKEY—It might be part of our report—which would be fairly brief, anyway, I would imagine.

CHAIRMAN—Yes, we could perhaps make that point. Is it the wish of the committee that the document from Dr Kunwar Raj Singh on page 151 of our briefing papers be made public?

Resolved:
That the document be authorised for publication.

CHAIRMAN—Dr Singh makes mention of a number of these treaties but, in relation to the Czech Republic, he says—and this is where I would be interested in a response from you, Chris Lamb—that the agreement with the Czech Republic on trade and economic cooperation should include tourism, development, marketing and an exchange of expertise. Is there anything specifically on tourism at this stage? Is it a market?

Mr Lamb—As article 1 says, it is about facilitating, strengthening and diversifying trade and economic cooperation in respect of both traditional and potential exports including trade in goods and services.

CHAIRMAN—So it is a service—.

Mr Lamb—Yes. I would be happy, if I were responsible for our economic relationship with the Czech Republic, to see this as encompassing tourism without difficulty, without any problem at all. Tourism is a sharply growing sector of the Australian economy that ought to be part of anybody's first thinking.

We have one thing to offer to the committee and I wonder if we could table this. It is the country economic brief on the Czech Republic prepared by the department. That might help committee members if they wish to look back over these points.

CHAIRMAN—I should take the opportunity on behalf of my colleagues to formally congratulate Bill Campbell on becoming a first assistant secretary. Am I jumping ahead, Bill, or am I not?

Mr Campbell—No, you are not.

CHAIRMAN—Congratulations. We will now move on to the agreement with the United Kingdom concerning the investigation, restraint and confiscation of the proceeds of crime.

[9.37 a.m.]

BIGGS, Mr Ian David Grainge, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

LAMB, Mr Christopher Leslie, Legal Adviser, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

JENNINGS, Mr Mark Brandon, Principal Government Lawyer, International Branch, Criminal Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

MEANEY, Mr Christopher William, Assistant Secretary, International Branch, Criminal Law Division, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

ZANKER, Mr Mark, Senior Government Counsel, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

CHAIRMAN—Before I invite your opening statement, I just wanted to mention that in a few minutes we will be visited by a delegation of MPs from Bangladesh and they will be sitting in on this hearing. I think the group also includes the High Commissioner. When they come in I will give them a two-minute discourse on what this committee does and then we will go back to the evidence. Mr Jennings, would you like to make an opening statement?

Mr Jennings—Thank you, Mr Chairman. I think the NIA sets out in some detail what obligations are involved with this treaty. It is a form of mutual assistance in criminal matters treaty that relates to the issue of proceeds of crime rather than the general field of mutual assistance. It provides for assistance between the two countries in locating, restraining, seizing and forfeiting the proceeds or instrumentalities of crime. It is a particular type of mutual assistance treaty.

I think at an earlier hearing of the committee, I think it was last year, we addressed the Council of Europe money laundering convention which is a multilateral convention somewhat along the same lines. They were aiming at addressing and focusing on the proceeds of crime. As we may have indicated to the committee at that time, these are very

useful agreements because, where you have a multi-jurisdictional aspect to the crime and proceeds are being laundered through another country, you can follow those proceeds and seek the assistance of the authorities in the other country—in this case, the United Kingdom—to get hold of those proceeds.

That indicates the type of agreement that we have. I might say that, when it enters into force, this will supersede an earlier agreement that was specifically related to drug trafficking. This a general agreement that is not limited by particular predicate offences.

CHAIRMAN—Thank you. As you said, we did deal with that Council of Europe convention in our fourth report to the parliament. Also, in the seventh report we dealt with some criminal matters in relation to Hong Kong as well. Is there a standard format for these mutual assistance agreements and, if so, how does this vary from the standard?

Mr Jennings—In the context of standard mutual assistance agreements, there is a model Australian mutual assistance agreement which is a general mutual assistance agreement and has been in use for several years. If you look at Australia's mutual assistance in criminal matters treaties you will see that, by and large, they follow the general lines of the model, although obviously they do not reflect that entirely because you have to take account of what the requirements are of the other country.

We do not have an Australian model proceeds of crime agreement, so we tend in this case to look at what the other country requires and, through negotiations, ensure that it meets our requirements as well. But we do not do a lot of these types of agreements. The general mutual assistance agreements have a provision in them—one article—that deals with proceeds of crime. That is generally felt to be sufficient, or certainly was in the context of the negotiations that have taken place in the past. But the United Kingdom had a particular legislative requirement to enter into treaties of this type if they were going to be providing proceeds assistance, so it suited their purposes and obviously we were happy to deal with them on that basis to ensure that we could get effective cooperation in place.

CHAIRMAN—Just to refer you back to the exhibit, Dr Singh also made the point that this particular agreement should include intellectual property. Can you confirm that, in terms of criminal activities, intellectual property would be included in the criminal activities area?

Mr Meaney—If I could perhaps put it into context, we do not have a general mutual assistance agreement with the United Kingdom because the United Kingdom, for their own domestic purposes, will not enter into such a treaty. They say, 'We can do it administratively, so we will just go along those ways.' They did need a specific proceeds of crime treaty for their own domestic purposes, so we agreed to enter into it.

The difference between this treaty and the previous one was that the previous treaty—the one we had from 1988—dealt with the proceeds of drug trafficking, and it was only drug trafficking. This one deals with the proceeds of serious criminal activity. Serious

criminal activity is defined to be an offence punishable by more than 12 months. So, because there is this generic description of the offences, any intellectual property offence that was punishable by more than 12 months would also fall within the purview of the agreement.

Mr TRUSS—In relation to drug laws, are there significant differences between the laws in relation to drug matters in Great Britain and Australia?

Mr Meaney—I can give you a general answer, but I am not too sure if you are asking for something specific. In so far as the regime in relation to punishment of drug trafficking or dealing with drugs—that sort of thing—is concerned, yes, we can say that they are substantially similar.

Mr TRUSS—Is their attitude to drugs such as marijuana similar to the attitude in Australia?

Mr Meaney—I understand so, yes. As far as I understand, they are not a jurisdiction that is disposed to legalise or decriminalise, such as the Netherlands, for example. It has a different—

Mr TRUSS—On the other hand, are requests that we receive from Great Britain for assistance therefore likely to be consistent with the sorts of standards that we would apply in Australia?

Mr Meaney—Yes, I believe so.

Mr Lamb—Just on that, may I say that there is a great deal of discussion between our Health and Family Services Department and their counterparts in Britain. Some of the work that is done on issues like harm minimisation, if you like, that demands reduction at the county level in the UK is viewed with great interest by people looking at the same issues here, and vice versa. There is a lot of exchange.

In terms of the European jurisdictions, the British are not of the same quality as the Dutch, as Mr Meaney says, but they are interested in looking at the experience of other countries and, in particular, at areas of demand reduction. As we prepare now for the United Nations General Assembly special session on narcotic drugs, which is to be held in June 1998, the British authorities have been among those with whom we expect to have the most, I suppose, intimate discussion about the way things work at the local level in dealing with issues like demand and supply, quite aside from issues of criminality.

Mr TRUSS—There has been a change of government in Britain: are you aware of any proposed changes by the incoming government to the treatment of drug issues?

Mr Lamb—There was a statement made by Mr Blair during the campaign that I have not seen any outcome on since the election itself—but that is rather recent—about

the need for greater coordination at the national level of the struggle against drugs and the problems that are associated with them right across the board.

Mr TRUSS—What is their approach to decriminalisation of the use of marijuana?

Mr Lamb—From my knowledge, I do not think this government has a different position from that of the previous one, but we can find out more for you if you would like, Mr Truss.

Mr TRUSS—So there are no proposals to decriminalise?

Mr Lamb—I am not aware of any.

CHAIRMAN—What about the role of Interpol? Does this agreement in any way enhance that role?

Mr Meaney—The relationship between Interpol and mutual assistance agreements generally are that they are at different levels. Interpol is police to police cooperation so that it cooperates in terms of intelligence, information sharing, that sort of thing, subject of course to national privacy and secrecy laws. That is usually for the purposes of assisting the investigation.

Mutual assistance is more formal. It can use coercive powers. Usually you are looking for evidence rather than just intelligence for the purposes of the investigation. So where we have the proceeds agreement relating to the confiscation of the proceeds of crime, it would normally be done more through mutual assistance than Interpol police to police cooperation. For example, the confiscation regime is conviction based, so you must have had a conviction. There would already have been an investigation of the conduct. The evidence has been put before a court. Inevitably to trace, say, money in bank accounts and that sort of thing, you would have to have used some sort of coercive powers on financial institutions to enable the tracing of the material. So I would envisage that there would not be a large role for Interpol in proceeds type—

CHAIRMAN—If it goes beyond drugs then, surely, it widens the intelligence net, doesn't it?

Mr Meaney—If you are talking about the nature of the underlying investigations, it would.

CHAIRMAN—In terms of the agreement, it would?

Mr Meaney—In terms of the agreement, it does not make much difference because that is at the next level up.

CHAIRMAN—You are talking about government to government, as against officials to officials.

Mr Meaney—It is also talking about something that has happened post-conviction as distinct from police to police cooperation that usually goes on pre-conviction where you are trying to gather your case against certain people that they have done certain things.

Mr TUCKEY—Just because I have this opportunity and we are talking about proceeds of crime, on the diplomatic front where is the world today in these Golden Triangle areas where so much of the drugs are grown? It still amazes me that we have not got some form of agent orange or something that sorts that problem out. We keep running around trying to catch the criminals and take their proceeds yet the source of supply is apparently inviolate.

Mr Lamb—A good part of the problem lies in the fact that the area where the greater part of the Golden Triangle heroin is grown was beyond government control in Burma.In the last few years it has been possible for the government to re-establish control over some of the area, either by agreement with local warlords or because of the collapse of the communist insurgency in the eastern Shan states in Burma.

The outcome of all that has been a slow process of trying to work out how to deal with the authorities in Rangoon on an issue which is deemed by some others to have serious political problems around it. The present state of play, as I understand it—and I spent some time looking at these issues when I was at a meeting in Vienna a couple of months ago—is that the United Nations drug control program is about to embark on a program which will have a budget of somewhere over $15 million for its first stage for the economic development of the eastern Shan state area where most of this heroin is grown.

The objective would be to put in economic and social services to the area, including hydro-electric power for industrial development and roads to enable people to get legitimate product out to markets. Local warlords would be pressured by both the government in Rangoon and also by the authorities in China to leave the area; certainly to leave the trade. Although no-one thinks it is going to produce immediate instant coffee results, it will—people believe, and the United Nations drug control feels that it will also do this—produce results that will see, over a period of say five years, a substantial decline in poppy cultivation in the area.

But that does not solve all the problems, of course. There is the whole world to look at for where poppy can be cultivated, and there is also an increasing realisation that the new problem for the countries in that region—and as far east as Japan and coming down to us—is amphetamines and meta-amphetamines—drugs like ecstasy, which are also produced in those areas which have been outside government control for so long. So it is taking a long time, but I do believe that the conditions are now right for trying to do something about this.

I mentioned the special session of the General Assembly on narcotic drugs, which is to be held in June next year. I was actually going to say something for the committee's information about that at some stage. Perhaps I should do so now. We have started a process of consultation and preparation for that special session here which will look at, among other things, what we need to do ourselves to improve our development cooperation work with countries like Burma and perhaps China, and those who sit astride the Golden Triangle area.

We are also looking at this from the standpoint of health, law enforcement, the work done by the states and territories, Commonwealth, local government, and non-government organisations across the board. We have notified the states and territories now that we are going to move to a process of nationwide consultation on these issues, rather like the kinds of consultations we would undertake on a treaty, even though the special session will not itself produce a treaty.

We are going to notify this committee as well of the same thing. I would expect that because of the public interest there will be in this special session, it is the kind of subject on which the committee might wish to receive a report. Arguably, that will be something that the committee could know about even if there is not a direct function or responsibility for it, because one of the issues on the agenda of the special session will be work done around the world to implement the three United Nation conventions on narcotic drugs. So, given that proximity to the committee, it might be interesting for you to receive that.

I cannot give you, I'm afraid, Mr Tuckey, any assurance that we are about to eradicate poppy from the Golden Triangle, but there is now a recognition of the problem among the countries themselves. There are, I think, five countries that are brought together into a regional cooperation arrangement by the UNDCP, the UN drug control program, out of Bangkok; that is, China, Burma, Laos and, I think, Cambodia or Vietnam—I have forgotten which one of them; maybe there are six of them; it is the Mekong countries in other words—to try to do something serious themselves about a problem of their own.

One of the things we have found that we have been able to make more progress with over the last few years is a growing realisation in those countries that they are not just cultivators and traffickers, but they are also big-time consumers. They have got a problem of their own that we all need to work on together. It is not just a problem of the streets of Sydney and New York. With all that, the prospects for getting somewhere in the region over the next five to 10 years, I think, are good.

Mr TUCKEY—Chemically, amphetamines are just another cookdown of heroin derivatives, aren't they?

Mr Lamb—No, they are not. The principal ingredient in ecstasy, for example, is ephedrine, which comes from a different herb, if you like. It does not come from the

opium poppy which produces the morphine from which heroin is extracted. It is a different botanic base.

Mr TUCKEY—I thought that was why they went round buying these codeine pills and trying to cook them down to something.

Mr Lamb—No, they produce them from a separate botanic base. But there are problems which they have detected in Beijing and Tokyo of the mixture of some of these things together to make some quite horrendous things. If people knew what they were taking a little bit better or what they were being sold, it might make the publicity campaign a bit more effective.

Mr TUCKEY—The biggest problem at the moment is that they have started to give them a pure product in heroin.

Mr Lamb—Yes, there is a lot of trouble. If I could just say as an aside on all of this, one of the problems that we have had to confront in the United Nations meetings trying to prepare for the special session on narcotic drugs is that the title set for the special session includes the words 'the struggle against narcotic drugs.' People talk incessantly at these meetings about whether we, the governments of the world, are winning or losing the war on drugs. We have tried to change the language and talk about the need for there to be a concerted effort against drugs, but not a war. A war involves romantic language. Lots of people who are out there in youth communities who might fancy the idea of being at war with government find it is sexy or romantic to be involved in that war and to be on the other side.

Anyway, if you talk about it as a war, it is one that you will never actually win, because the struggle against drugs will never conclude. Even if you managed to maintain a line on criminality et cetera, you will have people in the community who will continue to commit crimes associated with narcotics. After all, murder has been an offence since Moses made it one but it still gets committed, and we do not think that will change in the area of narcotics either. What we are trying to do is create an atmosphere in which all the arms of government, at both federal, state and local levels in Australia, and the counterparts in other parts of the world, recognise that this is something that everybody needs to be involved in. To that extent we would like to make sure the parliament knows too what we are doing.

CHAIRMAN—As there are no further questions on this particular treaty, we will move on to the air services agreement with Egypt and Lebanon.

[9.57 a.m.]

BIGGS, Mr Ian David, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

LAMB, Mr Christopher Leslie, Legal Adviser, Department of Foreign Affairs and Trade, Casey Building, John McEwen Crescent, Barton, Australian Capital Territory

CAMPBELL, Mr William McFadyen, First Assistant Secretary, Office of International Law, Attorney-General's Department, Robert Garran Offices, National Circuit, Barton, Australian Capital Territory 2600

ZANKER, Mr Mark, Senior Government Counsel, Office of International Law, Attorney-General's Department, Robert Garran Offices, Barton, Australian Capital Territory 2600

PARLE, Mr Andrew John, Acting Director, International Relations Aviation Policy, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory 2601

WHEELENS, Mr Tony, Assistant Secretary, International Relations, Department of Transport and Regional Development, GPO Box 594, Canberra, Australian Capital Territory 2601

CHAIRMAN—Would the new witnesses like to make a short opening statement?

Mr Wheelens—Yes, very briefly, Mr Chairman. Australia has had aviation treaties with Egypt and The Lebanon since the early 1950s. The two documents in front of the committee at the moment represent updates and modernisation of the text of those two treaties. The principal areas of modification relate to the inclusion of articles on aviation safety, aviation security and provide for multiple designation of airlines for both sides. The text has remained very close to the Australian standard draft international air services text.

CHAIRMAN—Thank you very much. Just to open, would you like to say a little bit about the aviation rights of passage and the various freedoms—as I understand it, there are eight—and perhaps how those freedoms impact on either or both of those?

Mr Wheelens—I can give you a little of the history, Mr Chairman. In 1944 there was an attempt by the United States to create a multilateral approach to the management of international aviation at the Chicago convention. For a variety of reasons that failed and subsequently aviation internationally at the economic level was regulated on a bilateral basis. There are various accounts as to how many of these treaties are in place; the last estimate is of the order of about 8,000, of which we have 50. They joined together about

900,000 city pair combinations around the world. It creates the international fabric for the economic regulation of international aviation.

There are five principal so-called freedoms, which is something of a misnomer. The first involves the right of overflight or the right of free passage for purely technical reasons, such as the right to fly from Australia to Singapore overflying Indonesia. The overflight of Indonesia is a first freedom right.

The second freedom relates to the obvious need for aircraft to land for technical reasons only and this has to do with the range and technical efficiency of aircraft. Again it is a right of passage and it does not imply any commercial benefits or rights. The commercial rights are caught up in the third, fourth and fifth freedoms. The third freedom is the right in a bilateral agreement for the home country to pick up traffic, say in the case of Australia-Singapore, the right for Qantas or Ansett to pick up traffic in Australia and carry it to Singapore.

The fourth freedom relates to our ability to pick up traffic in Singapore and carry it to Australia. It is the reverse for Singapore. It relates to home country carriage.

The fifth freedom is the right to pick up traffic in the territory of your bilateral partner and carry it on to a third country. Qantas's ability to carry passengers between Singapore and London is an example of fifth freedom traffic rights.

The sixth, seventh and eighth I cannot recall for the moment. The sixth is something of an academic one. It is not actually traded. If you take the situation of Australia-Singapore-UK where Qantas might operate Singapore-London as a fifth freedom right, that is a right that is conceded to us by Singapore in exchange for a benefit to Singapore carriers. That benefit might be an additional traffic point in Australia; it might be the ability to carry traffic between Australia and New Zealand. Singapore, because of its geographic location, sits between Australia and the UK obviously, but in treaty terms it enables Singapore to join together its fourth freedom rights from Australia to Singapore and its third freedom rights in the Singapore-UK agreement. That is a bit way about, but by virtue of their geographic location they achieve access to the Australia-UK market by joining those two treaties together. We then do not have the opportunity to trade for those rights that they are taking. The only way that we can actually influence that is by restricting the amount of capacity that they can actually operate in the market and that has some commercial consequences.

CHAIRMAN—The eighth one was cabotage.

Mr Wheelens—Yes, cabotage.

CHAIRMAN—I want to officially welcome the delegation from Bangladesh and the Deputy High Commissioner to one of the regular hearings of the Joint Standing

Committee on Treaties. Until March last year when my government came into power there was very little formalised machinery, particularly at a parliamentary level, for consideration of the treaty making process.

There were perceptions out there in the electorate at large that simply because New York or Geneva coughed that Australia got a cold in terms of treaties. What the now Prime Minister decided, and what was the subject of the first statement by the Foreign Affairs Minister in the House was the establishment of this committee.

There are three levels. We already had an existing level of officials between departments with local and state governments. What my government did was to build on that at the parliamentary level to have the Joint Standing Committee on Treaties—and I will come back to that in a moment. At the top level is the Treaties Council which the Prime Minister actually chairs. A meeting has not yet taken place, but we understand that the first meeting of the Treaties Council is likely, I think, in July and there are some fairly major issues which, perhaps, need to be discussed at that inaugural meeting.

My committee was set up by joint resolution of both the House of Representatives and the Senate. It comprises 16 members from all parties and both Houses, and is chaired by me as a member of the government appointed by the Prime Minister. The deputy is appointed by the opposition leader. The committee, of course, involves both members and senators.

What is our role? As you would all know, when you enter into treaties you have an initial signature which gives the moral intent. When you get to the ratification level it of course introduces an international legal intent. My committee gets involved in the new procedure when every bilateral or multilateral treaty that is entered into will be tabled. When tabled, my committee is then given 15 sitting days—and I emphasise sitting days—because that can translate, depending on what the sitting pattern is, into anything up to two or three months, if we are lucky. We have not so far been that lucky. It gives us time to report back to the parliament as to whether that initial signature should be endorsed, and we therefore ratify the treaty. That is the general rule and so far we have been able to adhere to that with a couple of exceptions.

One international convention that comes to mind is the Inhumane Weapons Convention, and we dealt last year and early this year with a couple of protocols to that. One in particular in which you would have some personal interest, I suspect, is in terms of the use of anti-personnel landmines and that is something that is a very topical issue as we speak. We have an agreement with the foreign minister that until such time—with that protocol and another one in terms of laser blinding weapons—as this committee reports to the parliament and, therefore, to the government, that they would not ratify. And that is the case.

There is also an urgency provision, whereby the government has, of course,

constitutionally the right to make treaties. It is an executive function in this country. We have had one or two of those already since this committee was set up. I give you an example of one that would be regarded as an urgent treaty and that was one that was entered into by the previous government under the previous regime: a bilateral security agreement with Indonesia. That was done quickly. We have had another one since this committee has been established which was in relation to a fairly mundane, albeit very important, bilateral treaty with Japan in terms of southern bluefin tuna fishing.

This committee deals with a wide range of issues. I understand you have been given copies of what is termed the national interest analysis where we are dealing with each of the treaties here today. Before you arrived we dealt with the agreement with the Czech Republic on trade and economic cooperation and with the agreement with the United Kingdom concerning investigation, restraint and confiscation of the proceeds of crime. We are just in the process of dealing with air service agreements with Egypt and Lebanon. We then have one with New Zealand on a technical advisory council and, finally, we have one on trademark law treaty.

There is a very wide ranging area of remit for this committee. There is a lot of legal stuff involved, and we have among the 16 committee members a very large number of lawyers—which is very helpful. I do not know about your parliament, but some might argue in our parliament that we have too many lawyers. Nevertheless, they are very helpful at times and, particularly, in this committee.

We welcome you and later on, in another capacity, as Chairman of the Foreign Affairs Committee, I will be meeting with you this afternoon at 4 o'clock before you go to talks with the Foreign Affairs Minister so we can talk about other issues then. Please bear with us for a few minutes as we deal with the very technical details of these treaties. We hope that as a result of being here this morning you can see the way we are trying to involve people now. We have in front of us representatives from the Department of Transport and Regional Development, the Department of Foreign Affairs and Trade and the Attorney-General's Department. The Department of Foreign Affairs and the Attorney-General's Department are regular visitors to our committee and we bring in other specialist departments as we have to. Also, we deal very much with non-government organisations. We have, at the moment, a public inquiry right around the country which will take four or five months to complete on a treaty which is already ratified.

We have about 1,000 treaties which are extant in this country—bilateral and multilateral. One of the multilateral ones which is already ratified is one which creates a few emotions right around the world, and that is the UN Convention on the Rights of the Child. We are revisiting that at the moment right around the country six and a half years after we have ratified it. It is interesting to see what has or, in some people's view, what has not happened in domestic law in terms of that particular treaty.

Mr LAURIE FERGUSON—This may be outside your province, so I apologise if

you are not aware of them. Do you have any knowledge of ownership of major Middle Eastern air companies in regard to the government and private sector?

Mr Wheelens—We do have access to that material and I can provide it to you. I do not have it at the front of my mind at the moment, but we can certainly provide that.

Mr LAURIE FERGUSON—This point is a bit esoteric, as well. I happened to read during the last week or so about the 1953 agreement with regard to duty free cigarettes. The situation is obviously increasingly questionable, with the thrust against tobacco. Does that come within your department's province? Do you know whether there has been any move to renegotiate that?

Mr Wheelens—No, it does not come within our province.

Mr Biggs—Could I revert to my previous expertise as Middle East analyst to say that Lebanon is one of the very few Middle Eastern countries with a privately owned air company. The Middle East Airlines is privately owned, but in almost all other cases, including Egypt, they are government owned.

Mr LAURIE FERGUSON—Is Middle East Airlines owned by Lebanese nationals?

Mr Biggs—Yes. It is owned by various private Lebanese businessmen and there is a reasonable amount of political controversy when the shares are traded. Occasionally, there are accusations of government involvement and so forth. But, yes, it is an active and privately held portfolio.

CHAIRMAN—What is the current frequency? I think Egypt Air is only about once or twice a week.

Mr Wheelens—Twice a week for Egypt Air and once a week for Middle East Airlines.

CHAIRMAN—Do they operate out of Sydney and Melbourne or just out of Sydney?

Mr Wheelens—MEA is out of Sydney and Egypt Air is out of Sydney as well.

CHAIRMAN—Egypt Air run out of Melbourne as well, do they not?

Mr Wheelens—No.

CHAIRMAN—I have seen an aircraft there but it might have—

Mr Wheelens—Gulf Air and the Emirates Airlines run out of Melbourne.

Mr TUCKEY—Which of our airlines service Lebanon or Egypt directly?

Mr Wheelens—None directly, but indirectly, through connecting services, Qantas would carry about 35 to 40 per cent of the traffic to both countries, but not on direct services.

Mr TUCKEY—And they use BA or someone to make the link, do they?

Mr Wheelens—Linking over Rome or Singapore or other places. There is a presence, but the markets are fairly thin and it is not surprising that there is not an Australian presence there.

Mr TUCKEY—The treaty also provides that both parties are obliged to protect the security of civil aviation against acts of unlawful interference, et cetera. What is our confidence in that regard? Do we have any overview of the treaty agreement or is it reported to us by airlines? There is a fair bit of history of some fairly slack control in some countries, particularly throughout the Middle East. Is that a problem for us?

Mr Wheelens—No, it has not been to this point, but it is an issue and there is, as you would expect, a considerable amount of activity in respect of those issues.

Senator MURPHY—Mr Tuckey, what was the question you asked? I could not hear you.

Mr TUCKEY—The question I was asking related to that part of the agreement which deals with the obligation of parties to protect the security of civil aviation, and how we monitored that in some of these countries where there is historical evidence of it not being up to scratch.

Senator MURPHY—In terms of these agreements—not only just this one, but as they are negotiated—what is the involvement of the domestic airlines in this country in negotiating these agreements?

Mr Wheelens—The airlines form part of the Australian delegation and they are technical advisers to the delegation. They are present on most, if not all, of our treaty negotiations.

Senator MURPHY—I might be wrong but I think I have heard some criticism before—not relating to this agreement but to some other agreements that have been developing—about the lack involvement of Qantas and/or Ansett.

Mr Wheelens—They sit next to me!

Senator MURPHY—This has been raised in estimates.

Mr Wheelens—It was raised in estimates a couple of weeks ago in respect of the Singapore agreement. I guess this is an issue that Australia will come to terms with. It is something that we are dealing with in our area on a daily basis, and that is the role that national carriers should play in what is a regulated environment. There are a couple of simple statistics that are illuminating in that respect. For many years Australian resident departures have been greater than visitor arrivals to Australia. That is no longer the case and we are in the fortunate position of having a very significant increase in visitors to Australia.

The question that sits in front of us in terms of national industry policy is the role that Australian airlines should play in that and whether or not the system should reward carriers, or that there is a broader national interest perspective that has to be brought to it. The government is opting for the broader national interest perspective, which I think is clearly appropriate.

There is clearly a practice of nationals preferring to travel on their own national airlines. Inbound tourism growth to Australia is about 12 per cent. Resident departures are about eight per cent. Qantas's growth last year was 6.8 per cent. There is clearly a gap between the two. Government policy needs to reflect the engines of tourism and trade in the Australian economy and, as the growth of international tourism and trade to Australia accelerates, as we want it to, there will be a diminishing role for Australian carriers, albeit a very important one.

I think the suggestion that was being made in the case of Singapore was that it was perhaps overly generous towards Singaporean interests. If you sit back and dissect that agreement and have a close look at it, that is probably not a fair assumption.

Senator MURPHY—With regard to the eighth freedom, I would like you to explain that a bit further. Under the heading ' "Eighth" freedom or Cabotage' you say:

Also known as cabotage, this right is rarely granted to foreign airlines, although this may change in a single aviation block comprised of a number of countries (eg the European Union).

Could you explain that to me, please, and also what the government's policy is with regard to Australia?

Mr Wheelens—The government's policy is to preserve domestic markets for Australian domestic carriers. There is one rider on that—the single aviation market that we have with New Zealand which enables New Zealand carriers to operate within Australia as if they were Australian domestic carriers. The policy of the government, though, to deny access to other foreign airlines reflects a universal practice. I think it is important to see this in the context of future negotiating rights.

It is a very powerful asset in some economies to have access to the domestic market, none more important than the US domestic market which, with its international market, provides about 40 per cent of the total global activity in aviation. As this is an asset it is important to trade it in the right sort of environment. It is not yet an appropriate time to be trading domestic rights, given the views of other governments to access to their domestic markets.

Senator MURPHY—Do you see a time in the future that Australia might get to trade, if you like, its domestic carrying rights?

Mr Wheelens—My personal view would be that, yes, that is probably true. I think there is no doubt that in the international community we are moving towards greater liberalisation of trade across the board. It makes no sense for the transportation sector not to move with that international trend. Timing is quite a different issue, but I do not think there is any doubt that in the long term we will end up in a far more liberal environment and that the trading access to the internal domestic market will be one of the features of that at some point in the future.

CHAIRMAN—Seeing that we have a Bangladesh delegation here, do we have a bilateral with Bangladesh?

Mr Wheelens—No, we do not. At this point the traffic levels between Australia and Bangladesh are particularly small and there are strong aviation markets in Pakistan and in India, adjacent to Bangladesh, where a lot of traffic tranships into Bangladesh.

Senator MURPHY—When you are negotiating or trading, if you like, domestic freedoms, access to domestic air markets, would that be on the basis that you have a similar agreement or a bilateral agreement with the country from which the airline comes that you are intending to allow access to, like we do with New Zealand?

Mr Wheelens—That would generally be the case. We do not have to deal with this yet. One of the technical issues that we have to deal with is an obligation to provide rights without discrimination, so if we give another country access to the Australian domestic market we are then obliged to provide that facility for everybody else. Until such time as we are in a much freer environment, I do not see that being a part of our treaty arrangements in the future.

Senator MURPHY—But that would be a major consideration, would it, to actually get some exchange, a legal right?

Mr Wheelens—Yes, of course. It would be a traded right.

CHAIRMAN—Referring back to Dr Singh's submission that we introduced before, he said:

- The Agreement with Egypt and Lebanon on Air Services should provide for periodic reviews and exchange of information.

Is that implicit or explicit in the—

Mr Wheelens—Articles 17 and 18 of both treaties provide for the consultation mechanism. Coincidentally, Andrew and I will be in the Middle East next week negotiating with Dubai, Abu Dhabi and Egypt.

Mr TRUSS—Are these agreements in accord with the model?

Mr Wheelens—Yes, they are. There may be some minor technical drafting issues, but the substance of the agreement is consistent with the model.

Mr TRUSS—In relation to the clauses of the agreement regarding certification and licensing, is there any capacity for third parties to access the certification and licensing agreements of a treaty of this nature?

Mr Wheelens—In what sense?

Mr TRUSS—I am referring to the flags of convenience type arrangement which might occur in shipping. Is it possible for a third country to get a certification in, say, Lebanon and then Australia be obligated under this agreement to honour that certification?

Mr Wheelens—I do not know the technical answer to that question. That is a matter for the Civil Aviation Safety Authority in the way that it administers the licensing. The airline that operates it, as designated by the Lebanon or by Egypt, under the terms of the agreement needs to be substantially owned and effectively controlled by nationals of both those countries. It would only be Egypt Air or Middle East Airlines or an airline registered and owned by Egyptian or Lebanese nationals that could operate under the terms of the treaty.

Mr TRUSS—And that could obtain the certification.

Mr Wheelens—It could. It could, for example, use a third country aircraft, but we would regard the Lebanon and Egypt as being the licensing countries for that aircraft.

Mr TRUSS—Let me take an extreme example and perhaps move backwards: could I buy a clapped out Cessna and go to, say, Lebanon and get it certified and therefore Australia would have to recognise that certification?

Mr Wheelens—That certification would have to meet certain international standards and if it met the Egyptian-Lebanese standards and, as a consequence of that, met international standards that Australia recognises, yes, you could.

Mr TRUSS—So you are satisfied then that with every country that we undertake a bilateral air services agreement that their certification and licensing systems are adequate?

Mr Wheelens—There are independent checks done here in Australia and those airlines need to be licensed by the Australian Civil Aviation Safety Authority.

Mr TRUSS—The airline has to be?

Mr Wheelens—Yes.

Mr TRUSS—So Egypt Air has also got to be licensed by the Australian authority?

Mr Wheelens—It has a Civil Aviation Safety Authority licence and it has an international air services licence from the Department of Transport and Regional Development.

Mr TRUSS—But, under this agreement, aren't the Australian authorities obligated to accept the Lebanese or Egyptian certification?

Mr Wheelens—They are, but there are checks that are done to make sure that those standards are being met and, if the standards are not being met, then there are consultative mechanisms in the treaty to ensure that they are met.

Mr TRUSS—So we cannot have a ships of shame with aircraft?

Mr Wheelens—Hopefully not. There are lots of checks and balances in there to ensure that the ships of shame issues do not arise in aviation but there are degrees in all of this, as you would appreciate.

Mr TRUSS—Would that checking actually involve, say, Australian authorities boarding and looking over aircraft from another country to ensure that they meet reasonable standards?

Mr Wheelens—Yes. The Civil Aviation Safety Authority has a regular program. We are advised of the airlines that are being checked. In fact, I think this week Emirates is one of the carriers which is being subjected to those checks.

Mr TRUSS—I know there is no route annex attached to the Egyptian agreement but there is to the Lebanese one: are there any limitations on the routes that Egypt can take into Australia, or have I missed something?

Mr Wheelens—It should be there. The Egyptian carriers can operate via Singapore as an intermediate point to Sydney.

Mr TRUSS—My apologies—I turned over the wrong page; it is there. I noticed in the Lebanon one that the Lebanese airline has an opportunity to land at three intermediate points on the way to Australia. Is that correct?

Mr Wheelens—Yes, that is correct.

Mr TRUSS—But it may not pick up passengers at any of those points destined for Australia.

Mr Wheelens—No. The only constraint is that at Bangkok they are only permitted to pick up their own stopover traffic—that is, passengers they have previously carried into Bangkok they may pick up and carry on.

Mr TRUSS—Yes.

Mr Wheelens—But there are no other constraints on their operations at intermediate points; simply at Bangkok.

Mr TRUSS—If they land at Singapore instead of Bangkok they could pick up other national passengers if they choose to do so.

Mr Wheelens—Yes, they can.

Mr TRUSS—Which is the fifth freedom, is it?

Mr Wheelens—Yes, it is.

Mr TRUSS—Do we have similar rights into Beirut?

Mr Wheelens—Yes. We have the ability to operate via any three intermediate points and, in addition to that, we can operate beyond to three points in Europe.

Mr TRUSS—If Qantas, say, were to land in Rome it could hub out of Rome into Beirut.

Mr Wheelens—Depending on what we have in the Italian treaty, yes. All these things interlock, so we would have to have rights with the Italian government as well. On the assumption that they are in place—and I would have to check this—then, yes, we would be able to do that.

CHAIRMAN—Thank you very much, gentlemen. You have been a great help. For the benefit of the Bangladesh delegation, we have now taken evidence from departmental officials.

Mr Suranjit Sengupta MP, Adviser to the Prime Minister of Bangladesh on Parliamentary Matters, expressed his thanks to the committee for its welcome to the delegation from Bangladesh. He outlined the background and positions of members of the delegation and described the parliamentary system in Bangladesh as unilateral rather than bilateral. He mentioned that Mr Tim Fischer, Deputy Prime Minister of Australia, had recently visited Bangladesh, and that the names of Australia's cricketers are well-known across his country.

Mr Sengupta invited committee members to visit Bangladesh, and concluded by saying that he felt the delegation had learned a great deal from observing the committee process. He expressed the hope that the friendship between Bangladesh and Australia will grow to the extent that one day the Joint Standing Committee on Treaties will examine the alliance between Bangladesh and Australia.

CHAIRMAN—Thank you very much, and thank you for coming along. As a result of what you have just heard, as a committee we will consider what we might recommend. We will obviously consider the basic question as to whether the treaty should be ratified and, if there are any other recommendations that need to be made in the light of the evidence given by officials in this case, then we will make the appropriate recommendations. It is then up to the government to consider those. We will table the report on all of these on 23 June, and the government will respond in due course to the recommendations.

Mr Lamb—Mr Chairman, may I say on behalf of the officials that we, too, are very pleased to have been able to be here at the time that the delegation was here from Bangladesh. The Australian High Commission in Dacca has been sent a good deal of material over the years about our work together between the executive government and the parliament on the treaty system. What we might do now is send some more material to our High Commissioner in Dacca, Charles Stuart, and ask him to pass it to the delegation, perhaps including today's *Hansard* and the report that will come down of this session.

CHAIRMAN—Thank you very much.

[10.38 a.m.]

ANDISON, Mr Drew Cameron, Director, Standards and Conformance Policy Section, Department of Industry, Science and Tourism, 20 Allara St, Canberra, Australian Capital Territory 2601

FANNING, Ms Margaret Patricia, Assistant Secretary, Business Environment Branch, Industry Policy Division, Department of Industry, Science and Tourism, 20 Allara St, Canberra, Australian Capital Territory 2601

HULBERT, Mr John Leslie, Executive Director, Joint Accreditation System of Australia and New Zealand, 1st Floor, Protech House, 6 Phipps Close, Deakin, Australian Capital Territory 2600

CHAIRMAN—Again, for the information of the delegation, the witnesses have already been sworn or affirmed so they are under oath, in general terms, before this committee. Would you like to make a short opening statement in relation to this agreement?

Ms Fanning—Yes. The proposed new agreement between the Australian and New Zealand governments is, in effect, a revision of an existing agreement which was signed in 1991 and which established JAS-ANZ—the Joint Accreditation System of Australia and New Zealand. The existing agreement has been revised to reflect several recommendations made by the Kean committee of inquiry into Australia's standards and conformance infrastructure, which reported in 1995.

The objectives of the two governments in setting up JAS-ANZ are set out in article 2 of the current agreement. JAS-ANZ was set up to establish a joint mechanism for accrediting bodies which provide conformity assessment services. The establishment of JAS-ANZ was in response, in particular, to a demand for an accreditation system for providers of quality management systems and product certification services. It was recognised that participation in a joint system would enhance trade between Australia and New Zealand and would promote wider export opportunities for producers of goods and services in both countries.

A principal objective was to obtain international recognition of Australian and New Zealand goods and services, and also conformity assessment providers, by accrediting conformity assessment bodies to internationally recognised criteria and also by establishing links with accreditation bodies in other countries with a view to developing arrangements which would ensure that certificates of conformity issued by conformity assessment bodies in Australia and New Zealand were accepted elsewhere.

The 1991 agreement provided that JAS-ANZ would be managed by a council appointed by the respective ministers and comprising 14 Australian and seven New

Zealand members representing industry, business and professional bodies, standard setting bodies, certification bodies and government. Although some seed funding was provided by the two governments, JAS-ANZ operates essentially on a self-funding basis through fees charged for accreditation. The only funds which have been provided by government, apart from the establishment funding, have been for some international activities which have been recognised as being in the national interest and for some specific services provided to government.

In 1994-95, the Kean committee carried out its inquiry and, as part of that inquiry, made recommendations on the efficiency and the effectiveness of the provision of accreditation services. In its report, the committee noted that there was wide support for the structure of accreditation being developed under JAS-ANZ; and that JAS-ANZ had, in a short time, developed valuable international links and was held in high regard internationally. However, the committee raised certain issues in relation to JAS-ANZ's governance arrangements, particularly the potential for conflict of interest with certification bodies being represented on the council.

The committee recommended that the Commonwealth government explore and resolve with New Zealand ways of giving JAS-ANZ legal status to enable it to operate commercially under its own corporate authority. It also recommended that the JAS-ANZ council be replaced with a board of no more than nine members and that care be taken not to include in its composition any members formally associated with certification bodies. It recommended as well that an advisory council, representative of certification and other relevant interests, be established to assist the board with the views and advice of certification bodies on accreditation policy matters and on the functioning of the JAS-ANZ system. Finally, the committee recommended that the charter be amended to remove accreditation of laboratory accreditation bodies from its accreditation program.

In response to the first recommendation, the recommendation concerning JAS-ANZ's legal status, the two governments agreed that the most appropriate course was for JAS-ANZ to be accorded status under Australian and New Zealand law as an international organisation. The Australian government took steps to declare JAS-ANZ an international organisation on 12 April 1996. The two governments were also in agreement that the JAS-ANZ agreement should be revised to provide for new governance arrangements along the lines recommended by the Kean committee.

Five main changes have been made in the proposed new agreement. Firstly, the current council is to be replaced by a 10-member governing board. That board will be supported by a technical advisory council and there is also provision for an accreditation review board which will have responsibility for day-to-day accreditation activities.

Secondly, formal associates of certification bodies are excluded from membership on the new governing board to reduce the potential for conflicts of interest. They may be, however, included in the technical advisory council, and that will satisfy the requirements

of an international standard which specifies general requirements for a body, such as JAS-ANZ, to follow if it is to be recognised at an international level as competent and reliable in assessing and subsequently accrediting certification bodies. That standard requires participation of all parties significantly concerned in the development of policies for the operation of an accreditation system, such as JAS-ANZ.

Thirdly, article 4 and article 7 set out the reporting responsibilities of the governing board. Article 4 requires it to develop and maintain international recognition by establishing links with appropriate organisations. There are provisions there which require JAS-ANZ, in developing those international arrangements, not to enter into any obligations which impose obligations on either the government of Australia or the government of New Zealand. JAS-ANZ is required to advise the Australian and New Zealand ministers of any intended negotiations and to keep them advised of the progress of those negotiations. Before signing or committing to sign an agreement, JAS-ANZ is required to obtain clearance from the Australian and New Zealand ministers.

Fourthly, article 7 sets out more detailed accountability requirements. Lastly, unlike the existing agreement, the new agreement does not include references to accreditation of laboratory accreditation procedures. JAS-ANZ has, in fact, never performed this function which has been undertaken in Australia by the National Association of Testing Authorities, NATA, since 1948, and by the New Zealand counterpart in New Zealand since 1972. The removal of laboratory accreditation from JAS-ANZ's charter is consistent with the government's decision to recognise NATA as the national authority for laboratory accreditation and to discourage other bodies from offering competing programs.

CHAIRMAN—Thank you. Did either DFAT or A-G's have anything in their opening comment? No? Let me just go back to a hearing we had some months ago in relation to a double taxation agreement with Vietnam in which we had one of the deputy commissioners of taxation here giving evidence. This committee, to its horror, found that there had been little or no consultation with non-government organisations. In this one, as I understand, you have had very extensive discussions under the standing committee on treaties with state and local governments, as appropriate. What has been done in relation to non-government peak bodies in consultation? Are you confident that the appropriate peak bodies in the non-governmental area have been consulted and are happy?

Ms Fanning—I am confident that they are happy. The changes to the agreement reflect the outcome of a committee of inquiry into the standards and conformance infrastructure.

CHAIRMAN—You might just give us some examples of some of the non-government organisations for the benefit of the *Hansard* record, such as the sorts of things that cover other than governmental agencies that have been picked up in this consultative process.

Ms Fanning—Most of the major industry associations made submissions to the Kean committee and on its report when it was released, as did a number of firms and individuals. None of those organisations raised any objection to the recommendations relating to the changes to JAS-ANZ that I can recall. Let me just add that some of those organisations are represented on the JAS-ANZ council. JAS-ANZ itself has been consulted during the renegotiation of the agreement. It did make a submission on the Kean committee's report. Its main concern was to ensure that the new government's arrangements accommodated the international requirements in terms of representation of certification bodies on the advisory council. The council is satisfied that the proposed new governance arrangements do meet those international requirements.

CHAIRMAN—Let us take one specific area and that is in terms of accounting standards and professional bodies. For example, one would assume, either through their peak body or, if they are member of the council, that the Institute of CPAs would have been consulted in relation to this. Is that true?

Ms Fanning—They have not been consulted recently during the negotiations. I think that they did make a submission to the original inquiry. I do not recall their having made any comment specifically on these matters, but Mr Hulbert may be aware of matters that they may have raised.

Mr Hulbert—I am not aware of matters that they may have raised, but the work of JAS-ANZ has not been involved in areas that would impact on those particular standards. Primarily, the work of JAS-ANZ impacts on management systems related standards and standards relating to the provision of certification services for management systems and products. That organisation would not really be affected in respect of the standards that you are talking about.

CHAIRMAN—Let us take a specific company like Ernst & Young, or their representative body. Would they have been consulted in terms of management systems standards?

Mr Hulbert—There is, in fact, an association of certification bodies in Australia and a similar association in New Zealand. Both of those organisations were consulted in the context of the Kean committee and they made submissions in that context.

Senator MURPHY—This JAS-ANZ agreement also goes to products, doesn't it?

Mr Hulbert—Yes.

Senator MURPHY—Does Australia have uniform national standards in relation to, say, safety equipment within this country?

Senator COONEY—You will probably find that each state had its own safety

regulations.

Mr Hulbert—The standards vary, but may I point out that the purpose of the JAS-ANZ treaty is not to establish uniform standards. It is to establish the competence of organisations to certify compliance with standards, whatever the standard set happens to be. Primarily, our role is to determine that an organisation is competent to perform a certification function and, in terms of products, those standards will be quite different.

Senator MURPHY—In the briefing note, it says that the objectives are to strengthen trading relationships among Australia, New Zealand and other countries, and to establish a joint mechanism for accrediting bodies which will undertake to provide conformity of assessment services, et cetera. One of the problems that I see in terms of developing and even in having this sort of a treaty is that within our own country at the moment there is a difference between the types of standards that apply, say, to safety gear. I think that is a real problem when you are trying to work a treaty of this nature. I do not understand how we can actually proceed to have a comprehensive approach and say, 'We'll sit down and we'll work out what the standards ought to be,' or, if the assessment process is right, to develop the standards when we still have not determined what the standard ought to be within Australia.

With safety boots, for instance, in New South Wales the standard for safety boots is different from, say, Tasmania under state legislation. When we are looking at the development of standards, I think it would be very important for our own companies that we at least have a uniform approach within this country. If we are expecting businesses to develop in the area of product manufacturing and we say, 'The standard is this, and to export you have to meet this standard,' then we would to have uniform standards within this country.

I would suggest, Mr Chairman, that that might be something which might be fed back into the system. I understand it is not necessarily the role of the people before us at the moment but I think it is something that ought to be fed through the system to raise some questions in the appropriate place, which I am probably not doing.

CHAIRMAN—Maybe you could take that on notice and give us a supplementary note, unless you would like to make a comment—or you might like to do both.

Mr TUCKEY—Mr Chairman, again, it is outside what the treaty is about. We have had the treaty's role pointed out to us. These are issues that are the responsibility of governments and possibly involve constitutional change. We are talking here about an international treaty that is supposed to be setting up the conditions under which organisations accredit individuals presumably or businesses as having operated to the acceptable standard, whatever that might be from country to country. It is not a case of uniform requirements, is it?

CHAIRMAN—I think the point that Senator Murphy is raising is: how can we exercise this sort of judgment at an international level if we do not exercise a certain amount of prudence—

Senator MURPHY—The reason I raised it simply is that if we expect companies in this country to manufacture at a state level to a certain standard that adds to their cost of production and makes them uncompetitive, when we have a national body that is reaching agreements with other countries that have a lesser standard, which opens them up to unfair competition, in my view, then we ought to have a good, long, hard think about that. That is the point I raise. I understand the realm of this committee in terms of looking at this agreement. But I would say it is in the national interest that, whether it be the right place to raise the issue or not, it is something that all of the departments and all of the people responsible for drawing up treaties of one form or another as it relates to this sort of thing ought to be thinking about.

Mr TUCKEY—But through you, Mr Chairman, the point being that if, for instance, New Zealand has a lower standard on steel cap boots and delivers them into Tasmania that has a higher standard, the Tasmanian authorities will not allow them to be sold. You have got to meet the standard at the point of consumption; you are not meeting the standard the other way around. It is a separate issue. The accreditation process is what this treaty deals with.

CHAIRMAN—Do you want to make a comment, Ms Fanning?

Ms Fanning—Just one comment, Mr Chairman: there is an agreement between the Commonwealth and all the states regarding mutual recognition of standards so that a product made to the standard of one state can be legally sold in another state. That was the intention of the mutual recognition agreement. A trans-Tasman mutual recognition agreement has now been developed which will, in effect, extend those provisions between Australia and New Zealand. That agreement includes a transitional period and provisions for some exemptions where there are ongoing safety concerns. But the intention of both agreements was to promote greater harmonisation of standards. That agreement does not extend to use as distinct from sale, which does mean that sometimes although products can be legally sold, they may not be able to be used in certain circumstances where regulations relate to use rather than sale.

Mr TUCKEY—I wanted to get clarification on the extent of this accreditation. Reference has been made to management activity. Is it as narrow as that? Or, for instance, taking a special interest of my own, is this body able to accredit the various organisations that might consequently approve of farm chemicals or pharmaceuticals—or aircraft for that matter? In other words, so we overcome a longstanding problem. For instance, an agricultural chemical was in use in New Zealand for five years before local authorities here would approve of it, which they eventually did but at great cost to the rural industries here while they made up their minds. Where does this fit into all of that? Does this

agreement allow this body to accredit the health department of New Zealand as a body that could say, 'Yes, you can use this pharmaceutical and therefore it can be used in Australia'? You talked about NATA as being excluded. Is that telling me that the answer to my question is no?

Ms Fanning—The agreement does not include a requirement for government regulatory authorities to be accredited by JAS-ANZ; nor, for that matter, is there a requirement for government regulatory authorities as a general rule to be accredited by NATA. JAS-ANZ is providing a mechanism for the accreditation of conformity assessment bodies, which may be certifying products to voluntary standards or to regulatory standards. But JAS-ANZ in no way impinges or detracts from the responsibility of the regulatory authorities themselves. The regulatory authorities may recognise certifications made by conformity assessment bodies which have been accredited by JAS-ANZ or they may recognise test results from laboratories which are accredited by NATA. In fact, the normal practice in Australia is that Australian regulatory authorities will recognise such test results.

Mr TUCKEY—So there is nothing in this agreement that improves the circumstances that I raised with the particular farm chemical?

Mr Hulbert—No.

Mr BARTLETT—Is there any evidence of us achieving the aim of increasing exports as a result of this treaty, say, since 1991? Can you isolate any industry groups where, as a result of this, there has been increased export possibilities for Australia and New Zealand?

Ms Fanning—I think it is difficult to point to statistics which would conclusively demonstrate that the establishment of JAS-ANZ had resulted in increased exports. However, at the same time, I think the existence of JAS-ANZ and the accreditation facility that it provides means that exporters, where they are required by their overseas customers or by overseas regulatory authorities to have certification of their products—either ISO 9000, the quality management system standard, or certain product certification—and they have certificates which have been issued by a conformity assessment body which has been accredited by JAS-ANZ, these are more likely to be accepted by overseas customers and overseas authorities and not be required to have to go through subsequent retesting. That retesting—if it has to happen—imposes considerable extra costs on exporters and may make them uncompetitive. So it is very much trade facilitation.

Mr BARTLETT—I would have expected that if one of the stated aims was export enhancement that there would have been a process of review or revaluation to determine whether that objective has or has not been achieved.

Ms Fanning—There has not been an exercise which specifically addresses that, no.

Mr BARTLETT—Is there any intention of doing so?

Ms Fanning—There is no plan to carry out such an exercise at this time, no.

Mr BARTLETT—So how do we know whether the whole thing is working?

Mr Hulbert—I can give you an example of where the organisation's ability to accredit certification bodies is at least leading to a situation that does not prevent export and that is in the automotive industry. The three major auto manufacturers in the United States have collectively established a policy that suppliers to those big three are required to be certified as complying with the management system standard that they have issued—that is, QS 9000. That certification has to be provided by an accredited body that they recognise and the accreditation body has to be a local or regional body.

In the context of Australia and New Zealand, those auto industries have recognised JAS-ANZ as the appropriate accreditation body. As a consequence, we have been through a process of accrediting six certification bodies to date. There are others going through the process that will enable them to certify auto industry suppliers to that standard, without which they would not be able to export their product into the US or into any of the big three manufacturers' plants around the world. That policy comes into being in January of 1998, so JAS-ANZ has enabled that export. If it had not occurred, the local industry would have been somewhat disadvantaged.

Mr BARTLETT—But you cannot point to any examples over the past six years where exports have increased as a result of JAS-ANZ?

Mr Hulbert—I do not have any statistics to support that.

Mr TRUSS—What about imports from New Zealand? The anecdotal evidence suggests that New Zealand has done rather better out of CER than Australia.

Mr TUCKEY—That is not the fault of a treaty.

Mr BARTLETT—What evidence have we got that would suggest that the establishment of the technical advisory group and an accreditation review board would be any more likely to achieve that objective, if we cannot point to any examples in the past where JAS-ANZ itself has done that?

Ms Fanning—The establishment of the Technical Advisory Council is to satisfy the criteria which is set by international organisations for recognition of JAS-ANZ as an accreditation body and hence that recognition flows on to the conformity assessment bodies which JAS-ANZ accredits. I think it is worthwhile noting that the demand for and the success of JAS-ANZ is to some extent illustrated by the demand of conformity assessment bodies themselves to be accredited. It is set up on a fee-for-service basis.

There is a demand in the marketplace for accreditation.

I think that illustrates that exporters of both goods and services recognise the need to have quality management system certification and, in some cases, product certification to be able to sell successfully in international markets. That demand leads to the demand for conformity assessment bodies to be accredited. That was the rationale for it being set up and I think its success is in part demonstrated by the number of bodies which have since sought accreditation and the fees they have been prepared to pay to get that recognition.

Senator MURPHY—I wish to ask a question with regard to the membership of the council where it talks about representing industry, business, professional bodies and standard settings. Is Standards Australia represented on the council?

Ms Fanning—Yes, it is represented currently on the council.

Senator MURPHY—Are employee organisations represented on the council?

Ms Fanning—Yes.

Senator MURPHY—Is that the ACTU?

Ms Fanning—Yes.

Senator COONEY—You have been asked about the success it has had or otherwise. What is the impression of people on the council, people who have been working with it since 1991? Do they have a positive or a negative approach to it?

Ms Fanning—I am a member of the council myself. My impression is that they have a favourable view of JAS-ANZ and the importance of its activities. Perhaps Mr Hulbert can also comment on that.

Mr Hulbert—I would certainly report favourably. I think the commitment that the industry people, in particular, on the executive committee of the current council have been prepared to put into JAS-ANZ is a demonstration of their positive view of the value of JAS-ANZ. I would argue that that view is one that is reflected on both sides of the Tasman. The members of council have supported very strongly the programs that JAS-ANZ has introduced. They have also supported very strongly the involvement of JAS-ANZ to establish international mutual recognition agreements. That has been a long and tortuous path but they have provided a commitment both through their own personal involvement in some cases and through their budgetary response to underpin that work.

Mr TRUSS—How are issues decided at meetings? Australia outnumbers New Zealand two to one. Are things decided by a majority vote or by consensus?

Ms Fanning—The aim is to reach decisions by consensus but there are provisions in the agreement, if there is a division of opinion, for the majority that is required. I would have to check what the provision is in the current agreement. For the proposed new agreement, the provision is that decisions shall be made wherever possible by consensus. However, where consensus cannot be reached, decisions may be made by a majority. Such a majority must include at least one member of the governing board appointed by the New Zealand minister.

Mr TRUSS—So you can have 14 to seven and still not—

Ms Fanning—This is for the proposed new board where the board would consist of 10: six members appointed by the Australian minister; three members by the New Zealand minister, and the executive director ex officio. That provision reflects the same sort of proportion as is required in the current agreement with the number scaled down to reflect the smaller size of the board.

In the time that I have been on the council—which is about 3½ years—I cannot recall decisions being taken on that basis. There has usually been consensus or, where there has not, the division of view has not been on the basis of an Australian view and a New Zealand view; it has been very much how the council members themselves have seen the issue. I would feel fairly confident in saying that the provision in the current agreement which is the mirror provision of the one that I read out, has actually never been called into play.

CHAIRMAN—If there are no more questions, thank you very much indeed. We will move onto trademark law treaty.

[11.17 a.m.]

BENNETT, Ms Barbara Jean, Deputy Registrar of Trade Marks, Trade Marks Office, Discovery House, Woden, Australian Capital Territory

FARQUHAR, Ms Susan, Director, External Relations Section, Corporate Strategy Business Unit, Australian Industrial Property Organisation, 13 Bowes Street, Phillip, Australian Capital Territory

CHAIRMAN—Would you like to make a short opening statement, or will we just go straight to questions?

Ms Farquhar—This treaty represents a constructive step along the path of international harmonisation of national trade mark laws. It provides for the simplification of the process of obtaining protection of trade marks and it makes the system more user friendly. Australia's trade mark law is consistent with the treaty provisions, and Australian trade mark owners benefit domestically from our trade mark law, thus conforming.

They will also benefit from other countries becoming party to it since the process of registration of their marks in those countries will be the same. Australia's accession to the treaty will be seen as support for the international harmonisation process and thus encourage similar action from other countries. The terms of the treaty are limited to the administrative elements of the registration process. It does not address the requirements of what constitutes a registrable trade mark.

These procedural matters include the details which an applicant for registration has to provide, such as identification details, the representation of the trade mark, and a description of the goods or services in respect of which the mark is to be used. The treaty also provides for simplification of the process of maintaining a registered trade mark. For all stages in the processing of trade mark applications and registrations it identifies the maximum requirements that a member state can impose on a trade mark owner. The process of obtaining and maintaining a trade mark registration under the terms of the treaty will thus be simpler and less costly for trade mark owners.

CHAIRMAN—Thank you. What is Australia's contribution to the World Intellectual Property Organisation at the moment?

Ms Farquhar—Seven hundred and fifty thousand.

CHAIRMAN—Seven hundred and fifty thousand?

Ms Farquhar—Yes.

CHAIRMAN—What has been the consultative process in terms of reaching the

stage where we are now? You were not here when I asked the previous department about the consultation where other government bodies were consulted—whether at official level, or department to department. Have non-government organisations and peak bodies been consulted in relation to trade marks?

Ms Farquhar—Yes. I think that we have indicated in the national interest analysis that in the review of the trade marks legislation which took place over a number of years from 1989 through to 1994, there was very extensive consultation on the whole of the system. Throughout that process, the preparation for the Trademark Law Treaty was under way. That was part of the international context in which Australia's trade mark laws were being reviewed. At all relevant stages in the consultation process, it was known to the interest groups that the legislation was being reviewed with the proposed treaty in mind and to bring the Australian legislation to be consistent with, amongst other things, the terms of that treaty.

CHAIRMAN—Yes. You talk about the exposure draft for public consultation, 35 seminars conducted throughout Australia and extensive written comment on the draft legislation.

Mr TRUSS—It was quite controversial at the time.

Ms Farquhar—The Trademark Law Treaty?

Mr TRUSS—Yes.

Ms Farquhar—Not really. It goes only to administrative matters and it does not deal with whether a particular type of trade mark is registrable, or was to be registrable.

Mr TRUSS—From my memory of the legislation, there were concerns about whether you could register things like shapes, smells and amorphous things.

Ms Farquhar—Yes. That is not covered under the terms of this treaty.

Mr TRUSS—My comment was that the legislation was reasonably controversial.

Ms Farquhar—Yes. I guess that you could say that those aspects of the proposed changes to the legislation attracted a great deal of comment. The idea of registering a smell as a trade mark was a fairly new concept.

Mr McCLELLAND—I understand that Australian procedures and law regarding registration now comply with the treaty so the main advantage for Australian proprietors is the ease with which they will be able to register trade marks overseas.

Ms Farquhar—Yes. That is correct.

Senator COONEY—What is the position now for an Australian inventor? Is it sufficient for him or her to register within Australia now and to carry that throughout the world?

Ms Farquhar—No.

Senator COONEY—We still have not got to that?

Ms Farquhar—No. Australian trade mark legislation provides registration rights only for Australia. There is a type of international registration that is administered by the World Intellectual Property Organisation under the so-called Madrid Agreement and the protocol to that agreement, but Australia is not a party to that. In fact, the protocol which is the more recent development has been ratified but there are a limited number of countries that have acceded to it.

So, for Australian trade mark owners to obtain protection for their trade marks in other countries, they have to apply for registration in those other countries.

Senator COONEY—In each of the other countries?

Ms Farquhar—Yes.

Mr TRUSS—Which leads me to the question: what on earth is the point of this treaty? It does not actually achieve a single thing for an Australian who wants to register a trade mark. He still has to shop around the world to every country he chooses to go to. Those that have signed the treaty will have an administration system in conformity with this and those that do not, will not, and so you will be no better off.

Ms Farquhar—Insofar as Australia acceding to the treaty, it will demonstrate our commitment to general harmonisation of trade mark legislative procedures around the world, and we would see this as encouraging other countries to do the same. That would then increasingly simplify the process that Australian trade mark owners would need to go through in obtaining protection in other countries.

Mr McCLELLAND—For instance, they could lodge the same forms if the other countries comply?

Ms Farquhar—Yes.

Mr TRUSS—Is the United States a signatory, or likely to be?

Ms Farquhar—They have not yet acceded. They signed as a participant at the diplomatic conference in 1994, but as yet they have not acceded.

Mr TRUSS—It would be obviously critical, for the treaty to have any real credibility, for a country like the United States to be a participant.

Ms Farquhar—It certainly adds to the credibility of the treaty. Currently the United Kingdom and Japan would be two of the most significant signatories to the treaty. There are eight states party to the treaty as of—

Mr TRUSS—Eight?

Ms Farquhar—Yes. From Australia's point of view, the UK and Japan would be the two most significant. The Czech Republic, Sri Lanka, Monaco and the Ukraine are also parties.

Mr TRUSS—The countries that are traditionally very difficult to deal with in this area have so far not been signatories.

Ms Farquhar—Difficult in what sense?

Mr TRUSS—It can be very difficult to get a trade mark registered in the United States.

Ms Farquhar—That may relate to the criteria for registrability as much as to the actual procedural requirements there. It is something that I am not in a position to comment on here. What constitutes difficulties in terms of obtaining registration can differ from jurisdiction to jurisdiction. For example, if the trade mark that an Australian trade mark applicant was seeking to have registered in another country was already registered in that country in the name of another person, that would of itself constitute a barrier against the Australian owner obtaining registration.

Senator ABETZ—In the event that these matters have been covered, just pull me up.

CHAIR—We have just started on this.

Senator ABETZ—Thank you. On page 117 of our briefing paper, under 'Obligations', we are told:

Under the Treaty member States are obliged to reduce the administrative processes and associated paper work imposed on trade mark applicants and registered owners.

What is that going to mean in the Australian context? Does that mean that we will be limiting the amount of paperwork or increasing it? How does Australia's system compare in relation to this regime?

Ms Farquhar—I will ask my colleague Ms Bennett, from the Trade Marks Office, to expand on my short answer. Presently our trade mark legislation is in accord with the treaty provisions. The overall simplification and streamlining of the trade mark system, that came out of the comprehensive review, which was completed in 1995, have brought the benefits of the treaty into place here.

Ms Bennett—Yes. Certainly there were some changes made during the preparation of the Trade Marks Act 1995, which came in primarily to make sure that, if it appeared appropriate for us to accept the treaty, we would be in a position to do so. Some of those changes are related to things like the duration of the initial and ongoing registration periods.

Senator ABETZ—So this was one of the healthy examples of our domestic law being put in place prior to us entering into an international—

Ms Bennett—We were fortunate enough to be able to do that because of the timing of the review of the trade mark legislation. Equally, of course, that could be one of the things which is delaying some other states in acceding to the treaty. There is a limited period of some three months allowed from the time you indicate your accession to the time you must be in a position to fully implement the provisions.

Senator ABETZ—What does our intelligence tell us about that? I was surprised that there are only eight countries at this stage. Do we have any serious indications about countries like Germany,? Is Germany part of—

Ms Farquhar—It is not currently a party. But Germany, along with most of the other trading partners for Australia—and most countries in the world—were part of the negotiations for the treaty and indicated commitment to become party to the treaty once their national legislation permitted it.

Senator ABETZ—I must say this list of eight looks a bit scant. I suppose the UK and Japan may be the major players. If Germany is giving it active consideration, are you able to indicate to us the names of some other countries that may be at the forefront of these sorts of developments and technology that people might wish to register?

CHAIRMAN—Sweden, for example?

Senator ABETZ—Yes, Sweden is another good example.

Ms Farquhar—I am not in a position to answer that, but I can certainly make inquiries and take that on notice.

CHAIRMAN—Could you give us a note fairly quickly?

Ms Farquhar—Yes.

Senator ABETZ—Ms Farquhar, you have already answered that, to a certain extent, the treaty will be implemented on the basis of existing legislation. So the advice is that we do not have to have any further amendments to our legislation to enable this treaty to be implemented.

Ms Farquhar—That is correct.

Mr Campbell—There are two comments I want to make. I understand my colleague Mr Zanker has gone through the amendments that were made to the Trade Marks Act and come to the view that the amendments made in the act did give effect to the convention.

The second point is that it seems to me that this is a treaty where there may be a low accession ratification rate at the moment. In so far as this treaty will reduce the amount of paper work required and mean that the other countries will be required to accept certain forms of documentation, each additional country will provide an additional benefit. I am not sure that I would draw the conclusion that, because there are a relatively low number of accessions now, it is not worthwhile being party to the treaty.

Mr TRUSS—Might you perhaps then be able to identify for us what actual benefits signing the treaty will provide for an Australian industry?

Mr Zanker—The treaty is largely procedural, as indicated. It simplifies the process of obtaining registration of a trade mark. That does not go to substantive issues such as what might be required in terms of originality. In fact, the treaty is largely negative. It says a state party cannot require X, Y and Z particulars. Consequently the legislation—both the Trade Marks Act and the trade marks regulations—has been simplified to remove requirements that hitherto existed in relation to registration. The real benefit is that it simplifies the actual process. Given that Japan has recently indicated an intention to accede, I would expect other major trading partners would go down that track, albeit perhaps somewhat slowly. The benefit is simplicity of process.

Mr Lamb—I might add that, once we ratified a treaty like that, we would normally see one of our tasks being to go out among our trading partners—or, in this case, the countries that we would have the most to do with—and encourage them to ratify as quickly as we could, with the credentials of being a party. In this case, because it is a treaty that comes under the umbrella of a major international organisation, WIPO, that body would welcome our participation in the treaty and put its resources behind efforts that we might make to get others to ratify.

It is a relatively new treaty. Other countries will have to look at it and work out what they need to do with their legislation. Not all will be in the fortunate position that

we were of having an inquiry begin in 1989 and go through a very extensive period of consultation within Australia, leading eventually to the amendment of the Trade Marks Act. Other countries will be looking at what they need to do to get their legislation into conformity with the treaty. They will plan to ratify too. Many of them will look at our legislation once they see us as a party providing a basis on which they can work and look at their own legislation.

It is very common among prospective treaty partners to look at the legislation enacted in countries already a party, especially if there is a process like this where a parliamentary committee has met, looked at ratification and noted the legislation conforms. In many respects, we provide a model. Perhaps we should trade mark our legislation as well. Having provided that model, other people will then work with ours. That is common. I can give you a number of examples of cases where our legislation has been used by others as a model once they have seen us as a party.

I think there are very definite benefits for us in lots of respects in terms of reducing the encumbrances on Australian industry by being a party, in terms of being able to encourage others to follow models that we have set in legislative terms. I would hope that, by ratifying the treaty, we would then be in a position to get other countries with whom we do substantial business to follow our legislative model and, from that, to ease the processes for Australian business outside.

Senator ABETZ—I would like to follow my line of questions and, before I do so, just make the interesting observation that we have just been told by a departmental official that we should not be worried that we have only had about eight signatories to this convention. On other occasions, and on one that I take particular interest in, we were told that it was a great virtue that so many had signed up. If we are to take a lot of note of the idea that 190 have signed up to one convention and that that ought to make us anxious about upholding this convention, et cetera, does not the reverse also apply? If only eight have signed up, shouldn't we therefore necessarily be on our guard? That is more rhetorical—

Mr Lamb—I think it is extremely rhetorical, if I may say so.

Senator ABETZ—I must say it is a very valid point.

Mr Lamb—I think I would have to argue with that, with greatest respect. I think you get different circumstances at different times. In this case we are talking about a treaty which is done by Australia in the national interest for the benefit of Australian business and to ease conditions for them. It is not so relevant as to how many states parties there are. If it is in our interest to get a lot of other countries to become a party to a treaty, we can ratify early.

As we have said before, I think an example we gave in this room was the Waigani

convention on hazardous waste—the Pacific regional convention—when it was accepted that by ratifying early we would be able to encourage others to move to accept common standards so that Australian business would be able to deal with its partners on a common basis. That is a very different issue from a treaty which has, if you like, widespread social ramifications, as in the case of the Convention on the Rights of the Child, which is not of any particular interest to Australian business.

Senator ABETZ—I welcome the approach of national interests being important, but can we take it that consultation with business groups, in fact, occurred at the time of the 1995 legislation and that, basically, there is agreement with the active players in the trade marks area that the Commonwealth legislation is good and the international treaties are also a desirable thing to pursue from their business point of view?

Ms Farquhar—Yes. I think that is an acceptable way to go. Certainly, one of the representative bodies for industry and business, AMPICTA—the Australian Manufacturers Patents, Industrial Designs, Copyright and Trade Mark Association—was a member of the working party that had the overall carriage of the trade marks legislation. In the seminars that the chairman referred to there were representatives from business as well as from professional areas.

CHAIRMAN—Can I get it clear? The NIA talks about accession and, after it has been tabled for at least 15 sitting days, becoming binding. In other words, ratification is three months after the accession. Is that correct?

Ms Farquhar—Yes. Those are the terms of the treaty.

Senator ABETZ—One aspect that I always look at with these treaties is withdrawal or denunciation. On this occasion it is not about how we may or may not get out; but we are told in the NIA in the very last sentence, 'However, the treaty may continue to apply to a registered trade mark or pending application after that time.' That refers to after our renunciation or withdrawal. How could it continue to apply? When we say 'may continue to apply', does that mean that there is some uncertainty in our minds as to whether it actually will or will not? Are there peculiar circumstances where it would apply and other circumstances where it would not apply? It surprised me also that it would apply to pending applications. I would have thought that, once we had renounced, any pending application would fall by the wayside. Can somebody explain those technical matters to me?

Ms Farquhar—I think what that applies to is that some of the provisions of the treaty would have an ongoing effect even after a party had renounced the treaty, because to meet the provisions of the treaty the national legislation has to be in place. For example, one of the requirements of the treaty is that the period of registration should be 10 years and renewal of the registration can be for multiple periods of 10 years. Our trade mark legislation now expresses that provision and that would continue to apply to any

trade marks registered, whether or not we were still party to the treaty.

Senator ABETZ—But what would happen if we were to change our domestic legislation? Let us say we were to renounce and say, for whatever public policy reason, that trade marks will be registered for five years instead of 10 years; what would be the impact?

Ms Farquhar—That would then depend on how that change was implemented in our legislation. Most changes to legislation are not retrospective, but it would depend on how it was implemented. So anything that has been registered would continue.

Senator ABETZ—Yes, I understand that.

CHAIRMAN—There is a certain inconsistency. Article 23 of the NIA says:

Any Contracting Party may denounce this Treaty by notification addressed to the Director General. Denunciation shall take effect one year from the date on which the Director General has received notification. It shall not affect the application of this Treaty to any application pending or any mark registered in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period, provided that the denouncing Contracting Party may, after the expiration of the said one-year period, discontinue applying this Treaty to any registration . . .

I am not a lawyer, so that really does confuse me a little.

Senator ABETZ—That is why I was asking those questions; I wanted to get some clarification.

Mr Lamb—In my judgment, what it means is that if there is a trade mark which is registered in the denouncing party, the treaty will continue to apply to that trade mark unless the denouncing party takes specific action to except that trade mark from that provision.

Senator ABETZ—So therefore is the idea to try to provide the commercial operators with some certainty? Even in the event of a political change, there would still be the certainty that the trade mark would be registered for 10 years, or whatever is left of that.

Mr Lamb—That is right. It would remove the problem of vacuum as well. For example, if you look at a country like the former Yugoslavia as a country which essentially disintegrates, what happens to trade marks in Yugoslavia while the five successor states sort themselves out and they try and work out who is in what condition? The trade marks that are registered either from or in Yugoslavia or in any of the five successor states are protected for a period while countries sort out whereabouts their politics actually are and how the successor states will form.

Senator ABETZ—I understand that for registered trade marks but why pending applications?

Ms Bennett—I think that that again is to allow a degree of certainty. Applications, of course, are filed and then need to go through an examination process. Indeed, it is possible—

Mr McCLELLAND—That process is not cheap either, is it? I recall doing one and the searches cost about $2,400 to do.

Ms Bennett—I think that would probably be where one was using a commercial search firm. It is quite possible to apply to the Trade Marks Office to have your mark registered. I can assure you that the fees are very much lower than those that you describe.

Senator ABETZ—I hope you advise your clients of that!

Mr McCLELLAND—But there is a lot of work to get it up to the stage where it could be registered.

Senator ABETZ—Yes.

Ms Bennett—There may be, yes. But, of course, it would be quite inappropriate for us to have an application filed with us and then decide that we were going to renounce our accession to the treaty and say that things that had been filed quite appropriately under the earlier provisions were now not meeting our requirements.

Senator COONEY—The idea is to cut down the paperwork. What happens now if you fill out an Australian form but if you want to also get your trade mark registered in Japan? When you say you can use the same documents, I take it that you would have to have them translated or what? It is not possible to fill out a number of documents and fax them around the world under this, is it?

Ms Farquhar—It is my understanding that you would have to comply with some of the local requirements as to language but, apart from that, the intention of the treaty is that the maximum requirements are as set out in the treaty. For example, Japan cannot require an Australian trade mark owner to provide more details than are required in Australia.

Senator COONEY—The content is the same?

Ms Farquhar—Yes.

Mr Lamb—Can I make another point that might be relevant and which distinguishes this treaty from some of the others that we have looked at. This is a

multilateral treaty completed fairly recently, which Australia did not sign at the time it was completed. Very frequently we sign the treaty and then subsequently ratify it, and we would come to the committee in the period between signature and ratification.

But, as I understand it, this treaty was completed in 1994 and open for signature. At that time, our own domestic consultation about the shape of the new legislation was not complete. The government at the time felt that, as that consultation was not complete, it would be unwise to pre-empt the outcome of those consultations by even signing. So the treaty was done in 1994; our legislation went through the parliament in 1995. Had that orders been reversed, we probably would have signed at the time and would have then placed ourselves in the position of being a member of the extended family, if you like, of the treaty by signing it.

But at the moment we are not in that extended family membership category because we have not signed the treaty. We have to go straight to accession because of our inability to sign it when the treaty was completed in 1994. Speaking from my vantage point in the Department of Foreign Affairs and Trade, that makes it all the more important that we do accede to it so that we become a member of the family of the convention, and other countries then deal with Australian trade marks as they would with a member of that grouping.

Had we been a signatory and been coming to you now for scrutiny before going ahead to ratify the treaty, I would have felt a little less compelled than I do right now. In these circumstances, I think it is more important for us to take the formal steps quicker than they might have been taken otherwise. It is a rather rare case where we have not signed a treaty and need to know—

Mr TRUSS—But it is not a very extended family. The thing has been around for almost three years and only eight have bothered to sign it—

Mr Lamb—No, eight have ratified it. I think the number of signatories is much larger, but I would have to check that.

Mr TRUSS—But, even so, it is nearly three years and only eight have ratified it; so the world has hardly clambering over themselves to—

Mr Lamb—Mr Truss, I do not feel too apologetic about that. After all, we are a country with a well-developed system of national consultation on these issues, and it still took us six years to go through the process of replacing the 1955 act. I would expect other countries to take that kind of time. I would be surprised if you see a lot of countries ratifying within a five- or six-year period from entry into force of the convention. That would be normal.

But in our particular case of having done the legislation early, we are now in a

position to go forward, become a member of the convention and use our legislative record as a model for other countries. We need to look—in that extended family sense that I just mentioned—at the number of countries that have signed and not just those that have ratified it.

Mr TRUSS—I hope you might be able to come back to the committee with some information on whether countries like the United States and major industrialised economies of Europe in particular are likely to become a party to it, because those are obviously the areas where the most interest is in registering a trade mark, particularly by Australian companies. To register in the United States at the present time can cost Australian companies tens of thousands of dollars just to do the searches and all that sort of thing. There are potentially some benefits, but it will have to be very much dependent upon those major industrialised countries coming on board.

CHAIRMAN—I think if you could take on notice the number of countries and some assessment, particularly in terms of DFAT.

Mr Lamb—Sure, we can get the information. But if we could leave it on your record that we would regard our ability to accede as giving us the legitimacy to go out and pursue those other countries even if we were to judge that they were not about to go ahead and ratify it but, having acceded, we would then work them. It is very much in our interests to see the world on board.

CHAIRMAN—We need some further comments on that. Are there any other comments on this treaty? Thank you very much for appearing before the committee today.

Resolved (on motion by Mr McClelland):

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

Committee adjourned at 11.50 a.m.