COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Reference: Treaties tabled in May and June 2003

MONDAY, 26 JULY 2004

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

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JOINT COMMITTEE ON TREATIES

Monday, 26 July 2004

Members: Dr Southcott *(Chair)*, Mr Wilkie *(Deputy Chair)*, Senators Bartlett, Kirk, Marshall, Mason, Santoro, Stephens and Tchen and Mr Adams, Mr Bartlett, Mr Ciobo, Mr Martyn Evans, Mr Hunt, Mr King and Mr Bruce Scott

Senators and members in attendance: Senators Tchen and Kirk and Dr Southcott and Mr Wilkie

Terms of reference for the inquiry:

Treaties tabled in May and June 2004

WITNESSES

Committee met at 10.09 a.m.

CHAIR—I declare open this meeting of the Joint Standing Committee on Treaties. Apologies have been received from Senator Andrew Bartlett, Senator Gavin Marshall, Senator Brett Mason, Senator Santo Santoro, Senator Ursula Stephens, the Hon. Dick Adams, Martyn Evans, Kerry Bartlett, Steven Ciobo, Greg Hunt, Peter King and the Hon. Bruce Scott. Letters have been received from Mr Adil Safwan Zabalawi and also from Tony von Brandenstein, Acting Executive Director of DFAT, which advise of the intention not to proceed with the proposed amendment to the Australia-New Zealand Closer Economic Relations Trade Agreement rules of origin, tabled on 12 May 2004. Australian and New Zealand ministers have agreed to negotiate a different option, so the committee should note the correspondence.

Is it the wish of the committee that the submission received from the Department of Health and Ageing, which will be submission No. 6, relating to treaties tabled on 30 March 2004, be received as evidence and be authorised for publication? There being no objection, it is so ordered. Is it the wish of the committee that submissions Nos 9 to 12, relating to treaties tabled in May and June 2004, be received as evidence and be authorised for publication? There being no objection, it is so ordered. Is there any other business that members wish to raise? There being none, we shall proceed.

As part of the committee's ongoing review of Australia's international treaty obligations, the committee will review four treaties tabled in parliament in May and June 2004, including the Thailand-Australia free trade agreement. This is the first opportunity for the committee to take evidence for this inquiry. I understand that witnesses from the Department of Foreign Affairs and Trade and the Attorney-General's Department will be with us for today's proceedings, with witnesses from other departments joining us for discussion of the specific treaties for which they are responsible. I also understand that non-government witnesses will present evidence on the proposed Thailand-Australia free trade agreement. I should remind witnesses that today's proceedings are being broadcast by the Department of Parliamentary Services. Should this present any problem for witnesses, it would be helpful if they would raise the issue now.

[10.12 a.m.]

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

ADAMSON, Ms Margaret Anne, Assistant Secretary, European Union and Western Europe Branch, Department of Foreign Affairs and Trade

FRENCH, Dr Greg, Assistant Secretary, Legal Branch, Department of Foreign Affairs and Trade

PANAYI, Mr Paul, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

SMITH, Ms Leanne, Executive Officer, Sea Law, Environment Law and Antarctic Policy Section, Legal Branch, International Organisations and Legal Division, Department of Foreign Affairs and Trade

Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern Antarctic Territories (TAAF), Heard Island and the McDonald Islands (Canberra, 24 November 2003)

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make any introductory remarks before we proceed to questions?

Dr French—Yes. The Australian government proposes to bring into force, via an exchange of notes, a treaty between the government of Australia and the government of the French Republic on cooperation in the maritime areas adjacent to the French southern and Antarctic territories, Heard Island and McDonald Islands, which was signed in Canberra on 24 November 2003. Australia and France have neighbouring exclusive economic zones in the Southern Ocean and share a common interest to protect the valuable fisheries resources within it. The treaty is intended to create a framework for cooperation between Australia and France to tackle illegal, unreported and unregulated—that is, IUU—fishing activity within Australian and French waters covered by the treaty.

The Australian government considers it is an appropriate time to take binding treaty action, as IUU fishing activity within Australian and French waters in the Southern Ocean continues to be a serious threat to the marine environment and the sustainability of valuable fish stocks that are currently harvested legitimately by Australian fishing operators.

A map was then shown—

Dr French—This map will help me to describe graphically the geographical scope of the area of cooperation. The actual zones involved are not terribly large on a map of that scale and I might get my colleague to point them out. The area covered by the treaty and referred to in the text of the treaty as the area of cooperation is the territorial sea and exclusive economic zones surrounding the Australian territory of Heard Island and the McDonald Islands and those of the French territories of Kerguelen Islands, Crozet Islands, St Paul Island and Amsterdam Island. There you see the areas within which the cooperative surveillance activities may be undertaken. The particular and core area is in fact of course the area where we have exclusive economic zones abutting between Australia and France—that being between Heard Island and the McDonald Islands on the one hand and Kerguelen Islands on the other hand. But it is possible in all of these areas to conduct cooperative surveillance operations.

I will now address Australia's commitments under the treaty. The treaty requires that France and Australia exchange information on the location, movements and licensing of fishing vessels within the area of cooperation. In addition to information exchange on legal fishing operations, the treaty provides the basis for sharing information and intelligence on illegal fishing vessel activity that could be used to cue surveillance or response vessels. It also allows for logistical support for a country's hot pursuit of a vessel travelling through the other's waters to be requested by the pursuing country. This is important in one particular instance—for example, where under the law of the sea convention, if a vessel enters into the territorial sea of a third country while conducting hot pursuit, that hot pursuit must be broken off unless the consent of the coastal state is received. So this treaty actually provides for an automatic mechanism for such consent to be received to ensure that hot pursuit may be maintained.

The treaty also provides for cooperative scientific research on marine living resources and provides for Australia and France to make further agreements for the undertaking of cooperative surveillance and enforcement missions. The Department of Agriculture, Fisheries and Forestry consulted with industry representatives from those sectors of the fishing industry that operate within Australia's territorial seas and the EEZ around Heard Island and the McDonald Islands. Non-government organisations that participate in the CCAMLR Consultative Forum and that have an interest in Antarctic living marine resources have also been consulted. State and territory governments have been advised of this proposed action.

With regard to implementation and the costs, the treaty will be implemented within the framework of Australia's existing laws and policies relating to IUU fishing. It does not seek to change the Australian regulatory framework and no new legislation is required to give effect to its obligations.

There will only be minor additional costs resulting from the implementation of the treaty; for example, through holding periodic government-to-government consultations to examine the implementation of the treaty. These additional costs would be incurred even without the treaty, as Australia would expect to consult with France on IUU fishing issues in the normal course of events; however, with the treaty in place this will create a much more focused framework and forward strategy for more effectively utilising the cooperation and the consultation which does already exist between Australia and France.

One issue which I would raise which is not a substantive issue is that of a minor rectification to the text of the treaty. It was discovered in the course of producing official versions of the

treaty in both English and French that there was a discrepancy in the two language texts. The French version included the additional words 'and/or any other means' in subparagraphs A and B of article 1, paragraph 5 of the treaty text. The effect of this additional text would be to extend the definition of cooperative surveillance missions to include newly developed technologies such as remote sensing. I can assure the committee that that was the original intention of both sides—that in looking at all possible means of conducting cooperative surveillance we will be looking not just at the so-called classical means of surveillance by vessels or aircraft but also at the emerging technologies, including remote sensing through satellites, as well as pilotless aerial vehicles. So this additional wording was certainly foreseen by both sides but, through a technical slip, was missed out in one of the language versions. As is normal under international law, a rectification does not require a separate treaty action because it is merely reflecting the agreement of both parties at the end of negotiations. We very shortly expect confirmation from the French side that the text will be acceptable to the French as well as to us. We have sent a note to France to that effect and are expecting a note in reply shortly.

With regard to entry into force and future treaty action, the treaty will enter into force via a separate exchange of notes as soon as practicable following consideration by the Joint Standing Committee on Treaties. In line with the treaty, Australia and France are now negotiating a related treaty that would extend bilateral cooperation in the area of operation to include cooperative law enforcement operations as a second stage. So the initial stage encompassed within this treaty is cooperative surveillance operations. It is certainly foreseen that in the future we will have an additional agreement covering actual enforcement operations where Australian vessels could conduct enforcement operations against illegal vessels within the French zone, and French vessels within the Australian zone.

CHAIR—Thank you. I would like to ask you about the hot pursuit involving the *Viarsa* in August 2003. Do you have an estimate of what the costs of the pursuit were to Australia?

Dr French—I would not have an exact number with me. I would have to go to Customs. Customs is the operating agency for that and it would have the numbers. What I can say is that significant recouping of the costs is possible, not just in the *Viarsa* incident but also in other incidents, through the auction and sale of the fish that have been within the hold of the vessel. As I understand it, the net cost of the operation should not be very high at all when we take into account the recouping of costs through sale of the catch.

CHAIR—Do you have figures for the anticipated annual cost of enforcement against IUU fishing activity in the area of cooperation?

Dr French—We do have figures. I do not have them to hand right now, but we can certainly get that information for you.

CHAIR—Have there been any sightings of illegal fishing vessels which have not resulted in a hot pursuit because of the jurisdictional problems that you mentioned in your opening remarks?

Dr French—In general, there are instances where Australia and/or France have been aware of illegal fishing activities where it has not been possible, because of the lack of suitable vessels on hand at the time, to undertake an apprehension. That would be true.

CHAIR—Are you able to advise the committee what sorts of resources were used to monitor the area of cooperation?

Dr French—Yes. There are regular surveillance missions conducted in the area by Australia. Basically two kinds of operations are conducted. One is through civilian patrol with a leased vessel. The government has decided to devote additional resources to these patrols, particularly in terms of their capability and their capacity to undertake enforcement operations. In the past, you will be aware—the *Viarsa* incident was an example of this—we had a civilian patrol vessel which was, of itself, not in a position to undertake an actual apprehension, but was able to successfully result in an apprehension through cooperation with, in this instance, South Africa and the UK. In future it is intended that the civilian patrol vessels will be capable of undertaking apprehensions. A decision to that end has been made, and additional resources are being devoted to those surveillance and enforcement activities.

In addition to that, for a number of years the Royal Australian Navy has been in a position to provide enforcement capacity through Anzac class frigates, in particular, and FFG frigates to engage in apprehension when we have a reasonable idea that illegal vessels are in the area. Quite a number of successful apprehensions have occurred over the last several years.

Senator TCHEN—Dr French, I apologise that I was called out of the room when you came to this point, but I take it that the discrepancy in the original text is in article 3?

Dr French—It is in article 1, paragraph 5, subparagraphs (a) and (b)—on the second page of the text of the treaty—the paragraph commencing, ‘ “Cooperative surveillance” means fisheries surveillance activities.’

Senator TCHEN—So the text has now changed according to the original English version rather than the French version?

Dr French—In fact, the French version contained the addition. For some reason—we are not sure why; a technical glitch, effectively—it was not in the original English version. It should have been. The clear common intent of both sides was that it should be.

Senator TCHEN—The French version?

Dr French—Yes.

Senator TCHEN—Can you explain why we changed back to the English version, which seems to provide less availability for future venues?

Dr French—I am sorry; it is the French version which we are changing to, which includes ‘and/or other means’. For some technical reason—we are not sure exactly why or how it happened—the English version did not end up including the words ‘and/or other means’. But it was the clear intent. For example, when rectified, the text in subparagraph (a) will read:

“Cooperative surveillance” means … within the area defined in paragraph 1(a) above - by French surveillance vessels and/or aircraft and/or any other means.

Once the rectification has gone through, it will include remote sensing, satellite surveillance and other modern means of detection—and similarly in paragraph (b).

Senator TCHEN—So the version we have has not been changed yet?

Dr French—That is correct. That rectification will change that.

Senator KIRK—Just on that point, you said that you are expecting or waiting for confirmation from the French in relation to that. Is that correct?

Dr French—Yes.

Senator KIRK—What exactly are you waiting for confirmation on? It is clear that their version is correct. You are just awaiting confirmation that they are happy for the English version to be changed. Is that right?

Dr French—Exactly; it is a pure formality. But the formalities, of course, must be followed. Our note has been conveyed to the French, and we are simply waiting for that note from them in confirmation.

Senator KIRK—How long do you expect to wait?

Dr French—It should be very soon—a matter of days or weeks. It will not be long at all.

Senator KIRK—I am just aware of the fact that we are looking at this treaty and attempting to make a recommendation in relation to it, yet we do not have the final text.

Dr French—We expect it very shortly.

Senator KIRK—Before we are likely to report?

Dr French—That is certainly our aim. In fact, we were hoping that it would be available by now, but we are sure it will be available very soon.

CHAIR—In paragraph 20 of the NIA you talk about minor additional costs. You say that some of them might be incurred through consultation between governments. That is used as an example. Are there any other examples of minor additional costs under the treaty?

Dr French—Not that we are aware of at the moment. I think it is fair to say that both countries are ramping up their overall investments in seeking to ensure the integrity of our respective jurisdictions in this region, recognising that there are great benefits to be gained from doing that. This treaty will certainly enable more efficient utilisation of those resources for the benefit of both countries.

CHAIR—I suppose we should ask: what sort of fish are we looking at? Patagonian toothfish?

Dr French—It is primarily patagonian toothfish.

Senator KIRK—Going back to the question of enforcement and hot pursuits, do you anticipate that the number of hot pursuits will increase as a consequence of this treaty being entered into?

Dr French—It is very difficult to look into the future. Firstly, if for some reason it is not possible to apprehend within one zone or the other, the likelihood of a successful hot pursuit would be increased. Secondly, to the extent that we are empowering one another to act on one another's behalf to engage in surveillance, our aim is also to work towards cooperative enforcement in the future. More apprehensions will occur within our zones, obviating a requirement for hot pursuit, which of course only commences once you have left your own jurisdiction.

Senator KIRK—But this is really only step 1, isn't it, setting up cooperative surveillance? We are probably unlikely to see much of an effect until the cooperative enforcement treaty is entered into. Is it fair to say that?

Dr French—Pooling surveillance resources in itself should increase the likelihood of being able to enforce or apprehend and so already we would expect that it should increase efficiency and the likelihood of engaging in successful apprehensions. As you say, of course it is part of the process which we are engaged in now to go that step further towards cooperative enforcement as well.

Senator KIRK—By whom is this monitored? Is it Customs who monitor the number of successes, if that is what you want to call them?

Dr French—Customs is the operating agency with regard to the civilian surveillance activities. Of course Defence also does play a role and, as I mentioned, there are activities conducted by Defence for apprehension and these have been used successfully on a number of occasions. But within government there is also DAFF as the overarching agency responsible for fisheries, and we and Attorney-General's work together in an administrative sense in monitoring the trends and developments with regard to illegal fishing activities within the Australian jurisdiction. So we are all drawing on information from a range of sources to get a view of what is happening and working out strategies for the best ways to prevent and deter illegal fishing in the area.

Senator KIRK—Finally, how far down the track are we in terms of the cooperative law enforcement treaty? Have negotiations commenced? Where is the process up to?

Dr French—We have developed a text and we are already in consultation with the French Republic with a view to concluding such an agreement. We would hope to be able to bring that forward fairly quickly. But, as with any treaty negotiation, as you are aware, it does take time.

Senator KIRK—How long did this one take to be concluded?

Dr French—It has been a few years in the coming. I could not give you an exact date but certainly it has been since the late 1990s that we have been involved in negotiations on this.

Senator KIRK—But the enforcement one should be coming around sooner rather than later?

Dr French—Many of the conceptual issues were difficult and new. It is quite an unusual thing for two sovereign states to agree to conduct surveillance in their respective zones. Many of the conceptual issues have been dealt with satisfactorily through to a surveillance treaty, so we would hope and expect that many of those concepts will not need to be discussed again.

CHAIR—Thank you very much for your evidence today.

[10.34 a.m.]

BOGIATZIS, Mr Nicholas Con, Assistant Secretary, Transport Markets, Policy and Research Group, Department of Transport and Regional Services

KELLY, Mr Wayne Ronald, Assistant Director, International Aviation, Department of Transport and Regional Services

LUMSDEN, Mr Iain Alexander, Director, International Aviation, Department of Transport and Regional Services

HOOTON, Mr Peter, Director, Middle East Section, Department of Foreign Affairs and Trade

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

PANAYI, Mr Paul, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

Agreement between the Government of Australia and the Government of the United Arab Emirates relating to Air Services (Dubai, 8 September 2002)

CHAIR—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Bogiatzis—I would like to make an introductory statement. The treaty action proposes to bring into force the agreement between the government of Australia and the government of the United Arab Emirates relating to air services, hereafter called 'the agreement', that was signed for Australia by Mr Vaile on 8 September 2002. Article 22 specifies that the agreement will enter into force when the parties have notified each other in writing that their respective requirements for its entry into force have been satisfied. The government proposes this to be done as soon as practicable, following the conclusion of 15 sitting days from the date the agreement is tabled in both houses of parliament. The UAE advised the Australian Embassy in Abu Dhabi in a note dated 22 February 2004 that it had adhered to the requirement regarding constitutional procedures to implement the agreement.

Aviation arrangements with less than treaty status dating from December 1995 have preceded the agreement. Emirates Airline operates services under these arrangements and currently flies 31 services a week between Dubai and Australia. No Australian carrier operates between Australia and the United Arab Emirates. The purpose of the treaty is to provide legal certainty for air services operating between Australia and the United Arab Emirates, to facilitate trade and tourism between the two countries through freight and passenger transportation, and to provide

greater air travel options for Australian consumers. The agreement provides a legal framework for the operation of scheduled air services between Australia and the UAE. It provides for access by Australian airlines to Middle East aviation markets, and for the development of air services between Australia and the UAE based on capacity levels decided between the aeronautical authorities of the contracting parties.

The agreement also increases the opportunities for the Australian community—in particular the tourism and export industries—to access Middle East markets. The agreement also obliges Australia and the UAE to allow the designated airlines of each country to operate levels of capacity for scheduled air services between the two countries as decided between the respective aeronautical authorities. To facilitate these services, the agreement also includes reciprocal provisions on a range of aviation related matters, such as security, safety, capacity, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other party and to sell fares to the public.

Australia has a standard draft air services agreement that has been developed in consultation with aviation stakeholders. The agreement does not differ in substance from the standard Australian draft at the time the agreement was negotiated. The agreement is to be implemented through existing legislation, including the Air Navigation Act 1920 and the Civil Aviation Act 1988. No financial costs to the Australian government are anticipated in the implementation of the agreement. Consultations were undertaken with relevant state and Australian government departments and agencies and with members of the Australian aviation and tourism industries prior to the negotiations with aeronautical authorities of the UAE on the agreement. Information on the agreement has been provided to the states and territories through the Commonwealth-State-Territory Standing Committee on Treaties. Further details are contained in annex 1 to the national interest analysis. All major stakeholders support the agreement. No regulation impact statement is required for the proposed treaty action.

In relation to future treaty action, article 18 of the agreement provides for amendment or revision, by agreement of the parties. Any amendment to the agreement, including the annex, will be subject to Australia's domestic treaty action procedures. If a multilateral convention concerning air transport comes into force in respect of both parties, the agreement is deemed to be amended as far as necessary to conform with the provisions of that convention. Any future amendments to the agreement are likely to involve further deregulation of air services arrangements between the parties. Article 20 of the agreement provides arrangements to be followed for termination. Either party may give notice in writing at any time through the diplomatic channel to the other party of its decision to terminate the agreement. The agreement terminates one year after the date of receipt of the notice by the other party. Any notification of withdrawal from the treaty by Australia is subject to Australia's domestic treaty action procedures.

By way of background, the UAE is rapidly growing in importance for Australia as a bilateral aviation partner. Emirates Airline, a designated airline of the UAE, currently operates air services to and from Australia under less than treaty status arrangements. A new UAE airline, Etihad Airways, has recently been established as a national airline of Abu Dhabi and the UAE authorities are expected to request air services consultations later this year to discuss, among other things, possible services to Australia by this airline. Gulf Air, which operates services

between Bahrain and Sydney under Australia's air services agreement with Bahrain, is also interested in operating between Abu Dhabi and Sydney under the Australia-UAE agreement.

Over the past 10 years the Australia-UAE yearly origin destination passenger market has grown from a base of just over 8,000 in 1993 to nearly 65,000 in 2003, an average annual growth rate of 23 per cent. Australian residents made up over 46 per cent of the total in 2003. Emirates was the dominant airline of the market, carrying 67.7 per cent of origin destination passengers. Singapore Airlines was the next major airline of the market in the year ended April 2004, with 10 per cent of the total, followed by Malaysia Airlines with 4.6 per cent. Qantas does not operate own-aircraft services to the UAE. The only airline operating between the UAE and Australia, Emirates, is also a major player in the Australia-United Kingdom market. Emirates is the fourth-largest airline in this market, with 9.2 per cent of the over two million strong passenger market in the year ended April 2004. This is up from 2.6 per cent in the year ended April 2000. Emirates has grown similarly in the Australia-Europe and former USSR market—about 8.4 per cent of this market in the year ended April 2004, compared with 2.1 per cent in the year ended April 2000.

Emirates provides significant competition in the Australia-United Kingdom market for the other main airlines—Qantas, Singapore Airlines, British Airways and Malaysia Airlines—as well as providing consumers with connections to many cities in Africa, the Middle East and Europe. The emergence of Etihad as the national airline of Abu Dhabi and Gulf Air's interest in operating between Abu Dhabi and Sydney are likely to add to pressure for expanded air services arrangements with the UAE. There are clear competition, consumer and national interest considerations for Australia in developing a number of alternative routes and services to the United Kingdom and continental Europe in case some of those routes become unavailable or are less attractive to air travellers due, for example, to security fears or disease outbreaks. However, these need to be balanced against the interests of Australian airlines that are competing with sixth freedom airlines for passengers travelling between the United Kingdom and Australia and between continental Europe and Australia.

I will briefly refer to air freight. Total air freight exports destined for the UAE in the year ended March 2004 were valued at $110 million. The main categories by value were 'other commodities and transactions', around $21 million; 'meat and meat preparations', $14 million; and 'telecommunications and sound-recording equipment', $11 million. The value of air freight exports has declined from nearly $200 million in the year ended March 2003, mainly due to the decline in the 'gold, non-monetary' category. Total air freight imports originating from the UAE in the year ended March 2003 were valued at $17 million. The main categories by value were 'miscellaneous—manufactured articles', 'telecommunications and sound-recording equipment' and 'photographic equipment'.

CHAIR—Thank you very much. You mention in the NIA that stakeholder comments were taken into account in developing the negotiating position. To what extent were stakeholders' concerns and suggestions incorporated in the final text?

Mr Bogiatzis—They were quite substantially and almost fully incorporated. There is a standard procedure by which we consult quite fully with stakeholders and then we work quite closely with key stakeholders on both developing the text and agreeing on the text during the negotiations.

CHAIR—I will ask you about specific ones. The South Australian state development agency supported rights being granted to UAE for services between Adelaide and New Zealand. Were those rights granted?

Mr Bogiatzis—Rights were granted in an open way between the UAE and South Australia. In terms of rights beyond South Australia to New Zealand, my understanding is that they were granted, although they are not currently being utilised.

CHAIR—Perth International Airport supported formalising existing arrangements and rights to allow daily service to Perth by Emirates. Does the agreement enable this?

Mr Bogiatzis—It does, and there are daily services currently between the UAE and Perth.

CHAIR—I wish to ask you about articles 2 and 4 as to agreement about what is a designated airline. Is that something that is determined by the government of each country?

Mr Bogiatzis—It is a quite complex process and it goes to the core of the agreements. When an airline is designated by a particular country, it becomes the airline of that country and therefore it has access to all the rights negotiated through the treaty, so there are quite complex international procedures in relation to designation which currently hinge on the extent of ownership and control of that airline. Provided both parties are satisfied that ownership and control rests with the other party, both parties can then agree to the designation of that airline.

CHAIR—So it would not necessarily be one Australian designated airline. Is that the case?

Mr Bogiatzis—With the old agreements it may be a single designation. This is actually a multiple designation agreement, which enables a number of airlines to be designated.

CHAIR—You mentioned, from the UAE side, that it is not just Emirates; it may be Gulf Air, and you mentioned another as well.

Mr Bogiatzis—Etihad; that is correct.

Senator KIRK—The NIA states that during consultations the Department of Industry, Tourism and Resources proposed that consideration be given to an open skies agreement with the UAE. Would you be able to advise the committee whether any action has been taken on this proposal?

Mr Bogiatzis—Open skies should be considered as a process, whereby open skies is the end point, which means there is a fully liberalised arrangement between two countries which enables any aircraft to fly as it wishes in relation to commercial decisions. That means not only between the countries but beyond the countries and servicing intermediate points between the countries. That is not currently the case with the UAE; in fact, Australia has only one fully open skies agreement, and that is with New Zealand. We have a close to open skies arrangement with Singapore. But those are the only countries with which Australia has open skies. I should also add that the term ‘open skies’ is open to wide and creative interpretation. So some treaties that are called open skies, Australia would see as possibly quite restrictive.

The treaty between Australia and the UAE has a number of core elements that we would consider normally belong to an open skies arrangement—such as the right to multiple designation—but there are restrictions in relation to capacity rights between the two countries, to enable the market to sensibly adjust to the changes and grow. Might I say that while we do not have an open skies agreement from the first arrangement in 1995, where we permitted about three flights between the UAE and Australia, we have now got an arrangement where, by November 2004, some 43 flights between Australia and the UAE will be allowable. So there is considerable growth in the market.

Senator KIRK—I know it is not strictly relevant to this agreement, but are we negotiating any open skies, or are we moving in the process, as you describe it, of open skies with any other countries?

Mr Bogiatzis—If I may use the term 'liberalisation', yes, the Australian policy is to move to an increasingly liberalised arrangement with a range of countries, but it must be an arrangement which is in the national interest; and often, where another country is restrictive in its arrangements, Australia imposes equivalent restrictions. So yes, we do work towards liberalisation in a concerted manner. In the last 12 months we have had major liberalisation arrangements with China, which are of great significance to us, and with Hong Kong, Malaysia, Poland and a range of other key countries—none of which Australia would call open skies.

Senator KIRK—In the annexure to the NIA, it lists Australia's air services agreements with other countries, but it does not list any multilateral agreements. I wonder how many multilateral air service conventions are currently in force worldwide and whether Australia is party to any of those agreements.

Mr Bogiatzis—The major multilateral agreements tend to stem from ICAO arrangements, which largely commenced from about 1945. There are a number of critical multilateral air services arrangements that are based through the ICAO arrangements. For example, they have Montreal and Rome conventions, which underpin aviation internationally. Australia is certainly a party to those major agreements and currently keeps changes to those multilateral arrangements under review. Similarly, through fora such as the World Trade Organisation, Australia is involved in both participating in and promoting liberalisation and more open trade.

Senator TCHEN—Both the NIA and your submission refer to an aviation arrangement of less than treaty status which has been in force since 1995 between Australia and the UAE. Can you explain briefly the difference between an arrangement that is of less than treaty status and a treaty?

Mr Bogiatzis—Sure. Most of Australia's air services arrangements have two mechanisms that are utilised. The umbrella mechanism is the treaty, which has full treaty status, but below the treaty and usually also utilised is a memorandum of understanding. The memorandum of understanding often spells out the day-to-day commercial arrangements which could change quite rapidly. That enables those commercial arrangements to be changed without constantly having to modify the treaty. The treaty will set out the umbrella arrangements and put into place the larger issues around safety, security and border rights. The memorandum of understanding, which has less than treaty status, will usually spell out the more commercial arrangements.

Senator TCHEN—In this particular case, is there anything in the treaty proposed now that differs from the memorandum of understanding that has supported the air services between Australia and the UAE so far?

Mr Bogiatzis—Yes, in two ways. The memorandum of understanding will generally spell out commercial rights which are not specified in the treaty—but they are complementary, not contradictory. Also, through an MOU changes can be reflected that may one day need to be picked up into the treaty itself. I could say that again, to simplify it.

Senator TCHEN—I understand that part. I am asking: does this treaty introduce anything new that is not currently operating?

Mr Bogiatzis—Yes. The memorandum of understanding is much more limited than the treaty, so the treaty will introduce broader provisions. But, again, they are standard provisions that we utilise. This is very close to our standard treaties.

Senator TCHEN—Can you give us some examples of how it is different?

Mr Bogiatzis—Issues such as our security provisions, for example, are not spelt out in detail in a memorandum of understanding. The treaty would cover those provisions. The treaty covers a range of issues around customs duties and the broader range of interests that we would need to express in a treaty that an MOU would not normally address.

Senator TCHEN—You have created in my mind some questions about how a memorandum of understanding actually operates, but that is probably not relevant to this particular discussion. One other issue is that the NIA said the consultation process was carried out in about 2002. There is a list of participants. I notice that some of these stakeholders have either changed status or no longer exist. For example, Ansett airlines obviously no longer exists, and Sydney airport is now privatised; I do not think it was privatised at that time. Has the department followed up any of those consultation processes to see whether there have been any changes in positions?

Mr Bogiatzis—We remain in regular contact, both formally and informally, with our stakeholders. We do that through things like stakeholder conferences, whereby we twice a year, if not more regularly, formally address our range of stakeholders. We run through a range of issues and allow them to raise issues of concern in relation to our treaties. Similarly, there is regular and constant informal contact with our stakeholders in relation to each of our treaties, MOUs and commercial arrangements. There have been no concerns expressed whatsoever in relation to the treaty arrangements in this particular case.

CHAIR—Thank you very much for your evidence this morning.

[10.54 a.m.]

CRICK, Ms Gabrielle, Deputy Director, Department of Communications, Information Technology and the Arts

MOYNIHAN, Mr Michael, Assistant Director, Department of Communications, Information Technology and the Arts

O'BRIEN, Mr Philip, Policy Officer, Department of Communications, Information Technology and the Arts

SCOTT, Mr Bill, Director, Trade Policy Section, Department of Communications, Information Technology and the Arts

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

PANAYI, Mr Paul, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

Amendments to the Constitution of the Asia-Pacific Telecommunity (APT), Signed at the APT General Assembly in New Delhi, 23 October 2002)

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr O'Brien—I am from the international branch of the telecommunications division.

Mr Moynihan—I am the assistant manager, trade policy, in the international branch.

Ms Crick—I am the deputy director, regional cooperation.

Mr Scott—I am the manager, trade policy, in the international branch.

CHAIR—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make introductory remarks before we proceed to questions?

Mr Scott—I do. The Australian government proposes to accede to amendments made at New Delhi in 2002 to the constitution of the Asia-Pacific Telecommunity. The Asia-Pacific Telecommunity is a regional communications development organisation that promotes the expansion of telecommunications and information services in a cooperative manner to the benefit of its members. It also provides a forum through which regional governments build

consensus on communications issues for coordinated input to meetings of the International Telecommunication Union.

The APT was established in July 1979 as a joint initiative by the United Nations Economic and Social Commission for Asia and the Pacific and the International Telecommunication Union. It currently has 32 members, four associate members and 93 affiliate members and covers most of the governments of Asia, Oceania and the Pacific islands. Australia has been a member of the APT since its inception. Our participation in APT activities is focused on promoting access to telecommunications and information services throughout the region and encouraging countries to adopt open and modern policy frameworks and regulatory arrangements.

DCITA coordinates Australia's participation in the APT. As part of the preparatory process for the 2002 general assembly, a series of meetings was held with key Australian government agencies and Australian industry. Consultations were held with the Department of Foreign Affairs and Trade, Prime Minister and Cabinet, Attorney-General's and the Australian Communications Authority. Industry consultations were held with Telstra Corporation, Macquarie Corporate Telecommunications and Reach Communications.

The 2002 general assembly in New Delhi introduced amendments to the constitution of the APT. The constitution is a multilateral treaty-level document that sets out the rights and obligations of members. The changes to the constitution do not alter these basic rights but would assist in making the APT a stronger, more effective and influential regional telecommunications body. The amendments propose to strengthen the APT's development of telecommunications information infrastructure and the region's international position, simplify and broaden the statement of objectives for the APT from the current set of technical objectives, expand the category of affiliate membership to include any telecommunications or information technology organisation, and rename the positions of director-general and deputy director-general to secretary-general and deputy secretary-general. The amendments propose that these positions be elected and the terms of employment be determined by the general assembly rather than the management committee.

Where issues cannot be resolved by consensus the amendments propose to introduce simple majority rather than two-thirds majority voting of members. Decisions on financial matters will still require a two-thirds majority to pass. The amendments also require the management committee to act on behalf of the general assembly between meetings and within the powers delegated to it and also to create two categories of budget—general and special—within the APT.

Entry into force of the revised constitution is subject to subsequent ratification or acceptance by the governments of a majority of member countries. The proposed changes to the constitution would not require any changes to the Telecommunications Act 1997 or related primary legislation. However the Telecommunications (Compliance with International Conventions) Declaration No. 1 1997 and the Telecommunications (International Conventions) Notification No. 1 1997 would need to be updated after ratification to refer to the revisions. This updating would ensure that carriers and carriage service providers and the Australian Communications Authority are aware of the latest version of the treaty. In summary, there are no disadvantages to Australia in taking the proposed treaty action and there are benefits both to Australia and the

region from strengthening the multilateral apparatus for regional communications cooperation. Thank you.

CHAIR—You mentioned expanding the number of APT affiliate members in the industry consultation. Are there only three APT affiliate members in Australia?

Mr Scott—At this time, yes.

CHAIR—I was wondering because it seems a limited number of stakeholders to be consulted, but they are the only affiliate members so far. Do you know the reason why other telecommunications stakeholders are not members of the APT?

Mr Scott—When you look at the structure of the telecommunications industry in Australia you see that there are only a small number with an international focus or which are not subsidiaries of another international organisation.

CHAIR—So Hutchison, which has an overseas ownership structure, has a parent company which would be an APT affiliate member, for example?

Mr Scott—Yes.

Senator KIRK—Article 21 states:

The Amendments shall enter into force on the thirtieth day after the deposit with the Depositary of instruments of ratification or acceptance of such amendments by two-thirds of the Members.

Could you tell us how many members have so far ratified or accepted this treaty?

Mr Scott—This was as of a couple of weeks ago so there may have been some action in the last couple of days that we were not notified of. There are 10 members thus far.

Senator KIRK—Ten members out of—

Mr Scott—Ten out of 32.

Senator KIRK—And this was entered into in the 2002—is that correct?

Mr Scott—November 2002.

Senator KIRK—So it is almost two years later and only 10 countries have ratified. Is that correct? What is the likelihood of getting to the two-thirds and in what period of time?

Mr Scott—I think the likelihood is strong. I will say upfront that I think we have been a little bit slower than we would have wanted to be. I do not think that it is a lack of commitment but simply that processes move rather slowly in many member countries.

Senator KIRK—So it still could be a few more years before this actually enters into force because if two-thirds of countries do not ratify then it will not enter into force. Is that correct?

Mr Scott—There will be meeting of the management committee of the APT later this year, which is the yearly meeting between general assemblies, and I imagine that a high priority would be members committing before they go to that meeting or pressure from the organisation itself to move to ratification.

Senator TCHEN—Mr Scott, I wonder whether you can clarify something in the NIA for me. In annexure A 'Consultations', it says:

As part of the drafting process, a Preparatory Group of APT Members … met in Bangkok from November 25 to 27 and then in Kuala Lumpur on 13 and 14 May 2002 …

That would have been November 2001, wouldn't it? Or was it 2000?

Ms Crick—No, November refers to the actual meeting. However, the preparatory group would have just met in Bangkok prior to that to discuss what changes should have been made to the constitution before it went to the rest of the members.

Senator TCHEN—What year was it?

Ms Crick—2002.

Senator TCHEN—So the preparatory committee actually met in Kuala Lumpur first in May 2002 and then in Bangkok again in November 2002.

Ms Crick—No, 2001. Sorry.

Senator TCHEN—Because in the next paragraph you say 'then' a further meeting occurred in July 2002.

Ms Crick—Sorry; yes.

Senator TCHEN—So it is 2001. Did you carry out the consultation with the domestic stakeholders before or after all those meetings? I take it the department represented the government at these APT meetings; then you refer to domestic consultations. Did that occur before or after your meeting with the APT members?

Mr Moynihan—That was after the preparatory meetings and before the general assembly meetings.

Senator TCHEN—Is that the usual practice?

Mr Moynihan—In fact, there are two stages to the consultation. There was consultation at the start of the process where we sat down and talked to the carriers. Then we spoke to them again to be sure that they were satisfied with the way things were going with the amendments.

Senator TCHEN—So there were consultations before the negotiation and afterwards.

Mr Moynihan—Yes; indeed.

Senator TCHEN—Article 11 creates two budget categories for the telecommunity—the general budget and the special budget. Can you explain why it was necessary to have two categories?

Mr Scott—Certainly we were very careful about this particular aspect of things because we want both flexibility and transparency in budgeting. The reason for having the special budget is that there are special contributions made between the times that the budget is put in place and they needed the flexibility for the organisation to expend that money on worthwhile projects. At the moment, through its arrangements, it has some difficulty in expending money that comes in through special payments.

Senator TCHEN—You listed 10 APT members who had deposited their instrument of ratification with the UN Secretary-General. Have there been no additional ones to those 10 since June?

Mr Scott—Not that we are aware of. I believe that list was compiled a couple of weeks ago.

Senator TCHEN—I note that the 10 includes DPR Korea—I take it that is North Korea—and Myanmar. I suppose we should always be pleased that North Korea and Myanmar support openness and competitiveness in some respects.

CHAIR—What response have you received from industry stakeholders regarding the final text of the agreement?

Mr Scott—As Mr Moynihan said, industry was consulted along the way and the nature of the final text was no surprise to them. Perhaps we have not stated this before but Australia was instrumental in the development of the text and officers from our department were very involved in drafting the words so that, yes, industry approves of the final text.

CHAIR—So they wanted to go ahead?

Mr Scott—Yes.

CHAIR—Thank you very much.

[11.14 a.m.]

BOUWHUIS, Mr Stephen, Principal Legal Officer, Office of International Law, Attorney-General's Department

ARNDELL, Mr John Peter, Acting National Manager, Trade Branch, Australian Customs Service

MILWARD-BASON, Ms Lyndall Maria, Manager, Origin, Trade Branch, Australian Customs Service

WITHERS, Mr William John, Manager, Asia and APEC Section, Trade Policy Branch, Market Access and Biosecurity Business Group, Department of Agriculture, Fisheries and Forestry

BROWN, Mr Justin, Ambassador for the Environment, Department of Foreign Affairs and Trade

KLUGMAN, Ms Kathy, Assistant Secretary, Mainland South-East Asia and South Asia Branch, South and South-East Asia Division, Department of Foreign Affairs and Trade

PANAYI, Mr Paul, Executive Director, Treaties Secretariat, Department of Foreign Affairs and Trade

PATERSON, Mr Bill, First Assistant Secretary, South-East Asia Division, Department of Foreign Affairs and Trade

TWISK, Dr Simon, Director, Industrials and Market Access Section, Department of Foreign Affairs and Trade

GALLAGHER, Ms Ruth Michelle, Manager, Tariff and Trade Policy, Trade and International Branch, Department of Industry, Tourism and Resources

Australia-Thailand Free Trade Agreement

CHAIR—Welcome. Since this proposed treaty action was tabled in parliament on 12 May 2004 the committee has received 11 submissions. The latest of these were authorised this morning and are available from the secretariat. Witnesses from the Department of Foreign Affairs and Trade will appear initially, and after the lunch adjournment we will hear from representatives of the Federal Chamber of Automotive Industries. Do any of the witnesses before us have any comments to make on the capacity in which you appear?

Mr Brown—I am the former lead negotiator, and Head of the Asia Trade Task Force.

Mr Twisk—I was formerly a negotiator in the Asia Trade Task Force.

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

Mr Brown—The treaty action proposed would be Thailand's first comprehensive free trade agreement with a developed economy, and Australia's second free trade agreement with an ASEAN member nation. The agreement would result in the complete liberalisation over time of two-way trade in goods between the two countries, and the liberalisation of services, trade and investment conditions. The agreement would also create improved conditions for broad commercial and regulatory cooperation between the two countries.

As regards the tariff commitments enshrined in the agreement, it provides for over a half of all Thailand's tariffs to be eliminated immediately the agreement enters into force, and this accounts for over three-quarters of Australia's current exports to Thailand. Tariffs not eliminated immediately will be phased down, and virtually all Thai tariffs and other restrictions on trading goods will be scrapped by 2010. There are longer phase-out periods and other special quota arrangements to apply to a number of agricultural goods as regards Thai imports.

Australia already grants tariff-free access for many Thai products, and as a result our tariff commitments in the agreement are far more modest than those made by Thailand. Of particular note is that under the terms of the agreement Australia has agreed to grant improved access for Thai imports of automotive products, textile, clothing and footwear products, steel and plastics and chemicals, subject to tariff-phasing arrangements. These phasing arrangements in all cases were developed following extensive consultations with Australian firms and industry groups.

The agreement also includes product-specific rules of origin which were modelled on those in the Australia-US free trade agreement. These rules define substantial transformation on the basis of a change in tariff classification, supplemented in some cases by a defined local content requirement. Unlike the Australia-United States FTA, one calculation method is used in this agreement. The rules of origin agreed in the TCF sector differ from those in the Australia-US FTA and provide Thailand with scope to count imports from other developing countries as content towards the regional value content.

Also relevant to the tariff element of the negotiations and the agreement, the agreement includes a range of safeguard provisions which allow for the temporary withdrawal of tariff preferences on specific products. There are two specific categories of safeguard action under the terms of the agreement: transitional safeguards, which are available subject to injury being demonstrated; and so-called special safeguards, which are volume triggered and which apply to around 50 agriculture and fisheries products. While not of the same magnitude as the tariff commitments in the agreement, there are also a number of important improvements provided for Australian services exporters and investors in the Thai market. In particular, Thailand will relax a number of its restrictive conditions relating to visas and work permits for Australian businesspeople. The agreement will also guarantee non-discriminatory treatment of Australian investment in Thailand. Thailand's minority foreign equity limits have been lifted in a number of sectors of importance to Australian industry—notably in mining, some distribution, management consultancy and tourism services.

In the area of sanitary and phytosanitary measures, the agreement reiterates both countries' WTO commitments and creates a new officials-level committee to regularise consultations. Importantly, there is nothing in the text of the agreement that will compromise the scientific basis of Australia's quarantine regime. In addition to these core provisions, the agreement also includes a number of steps aimed at promoting cooperation and improving the commercial climate in a wide range of areas, such as intellectual property rights, competition policy, e-commerce and industrial standards.

I would also like to draw the committee's attention to the monitoring and review mechanisms that have been built into the agreement. These are intended to provide opportunities to revisit and review various parts of the agreement as circumstances change. These reflect the intention of both countries that the agreement should not be static and that modification should be considered where that would be consistent with the aim of the agreement to boost trade and investment linkages. In conclusion, the department considers that the proposed treaty action has political and commercial significance for Australia. It represents an ambitious free trade agreement with a major regional developing country, one that should enhance economic linkages with Thailand and with the ASEAN region as a whole.

CHAIR—As we know, the outcome of the negotiations was announced in October 2003 but the text was not released until 12 May 2004. What was the reason for that?

Mr Brown—The announcement in October by the two prime ministers was essentially that the core outstanding differences between the two parties had been resolved, but at that time a number of the fine details, including the text in some cases, had not been fully drafted. The period between October and the release of the text in May was taken up with finalising the text and committing some of the agreements that had been reached to formal legal text, ensuring that they were checked and scrubbed between the two sides. In addition, there were some substantive negotiations on safeguards issues which were discussed but were not fully and finally committed to paper at the time of the October announcement.

CHAIR—When does the government intend to introduce the implementing legislation into parliament?

Mr Brown—As an ex-negotiator, my knowledge of this particular point may be slightly incorrect, but the government's intention is to introduce this legislation as soon as possible. I assume that would mean in the forthcoming session or as soon as possible after that.

CHAIR—Do you have a proposed date of entry into force of the agreement?

Mr Brown—The intention of the two sides would be for the agreement to enter into force on 1 January 2005.

CHAIR—What is the latest date that the legislation can be introduced so that the 1 January 2005 time line would be met?

Ms Klugman—I am not sure of the answer to that, Dr Southcott. The JSCOT report will be the final trigger for the finalisation of the legislation and the introduction of that legislation, but I am not sure of the details of the timetable at the moment.

Mr Arndell—Just on that, Dr Southcott, my understanding is that the legislation would need to be enacted 30 days before entry into force of the FTA.

CHAIR—That is what I have got really. Article 1910 states that the FTA shall enter into force the FTA went into force 30 days after written notice is provided by both sides that their respective internal processes for the entry into force of the FTA have been fulfilled. That would mean domestic processes completed by 1 December. On the Thai side, what are the domestic requirements in Thailand for the agreement to enter into force?

Mr Brown—The Thais have advised that they do not need to take any legislative action; the only requirement is to take administrative action, and that is very well advanced, if not complete.

Senator KIRK—I have some questions in relation to the impact of this treaty on Australian industry. The RIS details some concerns expressed to the department by various industry groups. In particular, grave concerns were said to be expressed by the textiles, clothing and footwear industry as well as by the automotive parts, canned tuna, canned pineapple, and plastics and chemicals industries. Could you elaborate for the committee on the nature of those concerns, whether or not they were taken into account during the course of the negotiations and, finally, whether or not these industry stakeholders were satisfied with the outcome of the negotiations?

Mr Brown—I will just read back that list of sectors. They were: the TCF, automotive parts, plastics and chemicals, and canned tuna.

Senator KIRK—Yes, and canned pineapple.

Mr Brown—There were extensive consultations with a very wide range of firms and industry groups throughout the negotiating process. The sectors that you have mentioned raised concerns to varying degrees concerning the possible impact of tariff-free access for Thailand. The intensity of the consultations that we and other agencies held with those industries therefore reflected that fact.

As a general comment, we sought to deal with those concerns primarily by negotiating tariff-phasing arrangements as part of the tariff elimination package that reflected the view of those industries that they would need some time to adjust to a tariff-free environment with Thailand. I think it is fair to say that, in virtually all cases, there was not implacable opposition to tariff-free trade between Australia and Thailand, but there was a view put by some of those sectors that they would need time to adjust to that. Our principal objective was therefore to negotiate tariff-phasing arrangements which reflected that.

You will see from the details of the agreement that in TCF, automotive parts and a range of plastics and chemicals products there were tariff-phasing arrangements agreed. They reflected that close consultation with those industries. In the case of canned tuna and canned pineapple, they are two products where Thai imports already have a very high share of the Australian import market. The tariff in both cases, from memory, was very low—five per cent. So, again reflecting the fact that the margins in these particular products are quite small, we were able to incorporate in the agreement tariff-phasing on those two products as well as safeguards provisions, which gave those particular industries—which are, effectively, two particular companies—some time to adjust to tariff-free trade between Australia and Thailand.

In addition, I mentioned in my opening statement that the agreement includes safeguards provisions. There are two categories of safeguards provisions which are available. The first are the so-called transitional safeguards, which enable firms that believe they are being damaged by imports as a result of the tariff preference being provided to Thailand to seek recourse and to seek an increase in the tariff back to the MFN rate if damage can be demonstrated. There are also special volume-triggered safeguards which are available for some agricultural and fisheries products. The two products that I have just mentioned, canned tuna and canned pineapple, do have specific access to those safeguards provisions, which again reflects the fact that in those cases there is already very high penetration by Thai imports.

In summary, we have tried to address the concerns of those industries by providing for lengthier tariff phase-out arrangements in the agreement. I think you also asked to what extent the final arrangements were accepted or agreed by the industry. Certainly there is always a desire on the part of some industry sectors for those tariff arrangements to provide for longer phase-out periods. My sense is that some of the TCF industries would have preferred the phase-out periods to be longer. I think in an overall sense the final arrangements are very close, if not identical, to proposals that were put forward during the consultation phase by those industry groups.

Senator KIRK—Have the industry groups that I referred to seen the final text of the treaty now?

Mr Brown—Yes, it has been publicly available since early May.

Senator KIRK—But there has not been any further consultation with them post the completion of the words of the treaty?

Mr Brown—Not that I am aware of. I think there will be a need for final consultation with those industry groups on some of the specific implementation issues that are in the agreement. That will be the responsibility not only of DFAT but also of other relevant agencies.

Senator KIRK—There is not a full list in the NIA of the organisations that made submissions or that were consulted. Are you able to provide the committee with a full list of those organisations?

Mr Brown—Absolutely. We will take that on notice.

Senator KIRK—In relation to the dispute resolution process that is provided for in the treaty, could you inform the committee of the international arbitral body that is referred to in the guide to the provisions of the TAFTA?

Mr Bouwhuis—It refers to using the arbitral rules put together by UNCITRAL—the UN commission on international trade law—but it is using their rules rather than being under that body. I think that is what your question is getting at.

Senator KIRK—You are saying that the rules are those of the UN commission on international trade law?

Mr Bouwhuis—Yes.

Senator KIRK—But the arbitral body will be a separate body established specifically to determine disputes in relation to this treaty. Is that correct?

Mr Bouwhuis—All states would determine the arbitration procedures. They just follow those rules, if they elect to follow that course.

Senator KIRK—So the rules may be applied to a dispute resolution process in, perhaps, the courts of the relevant country?

Mr Bouwhuis—If you decided to go for an arbitration, you would need to set it up between you and the other state, and establish the procedures and the kinds of arbitrators. It would not necessarily be under a body; it would be something established between the two states.

Senator KIRK—So it is not an established arbitral tribunal that exists and continues; it is just an ad hoc tribunal that is established if and when there is a dispute? Is that correct?

Mr Bouwhuis—There are various centres for arbitration established and running, such as the International Centre for the Settlement of Investment Disputes—ICSID. That has facilities up and running, so if you wanted you could just go to that body and it would provide the secretariat services, or you could negotiate with the other party and establish your own secretariat services. That could be worked out in the particular case, depending on the costs involved and where you wanted the arbitration to be held.

Senator KIRK—In any given dispute, there could well be a different body looking at the matter and making a determination in relation to it? Is that fair to say?

Mr Bouwhuis—It would not so much be the body; rather, you would set up a panel of arbitrators. You would pick one arbitrator and the other state would pick the other arbitrator. Usually, between you, you would arrive at the third arbitrator, unless the states object. That is how your dispute panel is established.

Senator KIRK—How do these panels make their decisions? Do they work on the basis of earlier cases? Do they look at precedents?

Mr Bouwhuis—They would look primarily at the provisions of the agreement and any kind of clarifying statements the government has put out with regard to the agreement. They may have regard to general international law and there may be cases which they take into account. That would be fairly common practice.

Senator KIRK—They would take into account earlier decisions made by earlier arbitral panels?

Mr Bouwhuis—Earlier arbitral panels or other cases under international law. They would look at the body of jurisprudence which may exist in relation to the various articles. I should stress that, primarily, they would be looking at the text of the agreement and the kinds of comments which governments have put out interpreting those various provisions.

Senator KIRK—Finally, are the reasons for these tribunal decisions generally made public?

Mr Bouwhuis—It would be general practice that there would be some decision or announcement at the end of a proceeding, so I imagine the end result would be a public judgment, which would be widely available.

Senator KIRK—The end result is a different thing to the reasons for the tribunal's decision?

Mr Bouwhuis—The decision, I imagine, would set out the reasons why they arrived at the particular decision in that case.

Senator KIRK—Are those decisions reported or are they just made available to the parties?

Mr Bouwhuis—I imagine they would be widely publicly available, and they would be reported in some series or at least on the Internet. There are a number of journals which pick them up, such as international legal materials or international law reports, so I imagine they would become publicly available that way.

Senator TCHEN—I would like to quickly follow up on this investor and state dispute mechanism. First, there is the issue which has been criticised at previous hearings of this committee and those on other free trade agreements—that the agreements allow the investor to directly challenge the laws of another country. The Australian Fair Trade and Investment Network was one of the few groups who submitted to this inquiry. They claim that this mechanism gives the corporations 'unreasonable legal powers to challenge government law and policy'. Can you tell the committee to what extent, in the department's view and analysis, TAFTA would be likely to threaten Australian laws? Is there any possibility?

Mr Bouwhuis—Investor-state provisions have been common in all of the investment agreements which Australia has entered into. I think there are 19 as of the last date available on the treaties database. They are also a common feature of the some 2,000 bilateral investment treaties concluded worldwide. They basically provide investors with an alternative to relying on domestic courts where there is some sort of question about the procedures in the domestic courts. Generally, it is common to include these sorts of provisions when a developed state is concluding an agreement with a developing state. There is nothing at all uncommon about including them here. To date, there has not been a single action brought against Australia under any of those 19 investment agreements or under the Singapore-Australia free trade agreement, which contains similar provisions. I think the kinds of comments made in some of the submissions are perhaps a little overstated in relation to investor-state provisions generally.

Senator TCHEN—What about the reverse situation? Is there any history of Australian corporations taking disputes with other governments with which we have a treaty to court?

Mr Bouwhuis—We have certainly been approached on occasions by investors in other states inquiring about the various procedures available, but as far as I am aware nobody has formally instituted proceedings or felt the need to formally institute proceedings for a formal dispute mechanism under any of our investment agreements or under the Singapore-Australia free trade agreement. That is not to say that there have not been issues, but it is more to say that those issues have been worked through via bilateral and diplomatic means rather than via formal proceedings.

Senator TCHEN—Mr Brown, paragraph 14 of the NIA states among other things that the TAFTA includes:

> ... binding commitments that go beyond Australia's existing WTO obligations and limit the Government's flexibility in adopting new regulations in some areas in the future.

Can you expand on that particular comment? In what respect might this agreement limit the government's flexibility and what sort of impact might that have?

Mr Brown—That particular reference is to our services obligations. There are, as the documents before the committee set out, some differences between the commitments we have made to Thailand and those that are currently bound by Australia in the WTO as a result of the Uruguay Round of GATT negotiations. The approach we took with Thailand was to essentially bind the services offer that has been tabled as part of the current Doha Round of WTO negotiations. That is, as you would expect, an improvement on the commitments that Australia made as part of the Uruguay Round 10 years ago. So what this sentence is saying is that the commitments we have made as part of the TAFTA do go beyond our Uruguay Round commitments but, very importantly, they are essentially identical to those commitments that we have tabled as a conditional offer as part of the Doha Round.

The other elements of the services package of the TAFTA, as you can see, are very much modelled along the lines of the GATS. It is a positive list approach and many of the provisions of the GATS have been incorporated in TAFTA by reference or by use of the same language as in the GATS. There are some differences, as set out in the documents, in the nature of our commitments to Thailand and the offer that has been tabled as part of the Doha Round; there are some sectors in our Doha Round offer that have been excluded from our commitments to Thailand; and there are some other sectors that do not appear in the Doha Round offer that are included in our commitments to Thailand. The two that I would highlight are the commitments we have made in relation to Thai massage services and Thai cooking services, which were particular issues of interest to the Thai government and which do not form part of our multilateral commitments at the moment.

Senator TCHEN—So this particular provision, given those two specific examples you have given, will not limit the government's negotiating position in future rounds of WTO discussions. I am just wondering whether providing this in the bilateral free trade agreement is going to impinge on our position in any future multilateral negotiations.

Mr Brown—It is hard to see how it would, given that what we have tabled is very much the same as what we tabled in the Doha Round. Of course, the final decisions on the shape of our commitments at the multilateral level are taken with regard to a lot of different factors, including what is happening in the agriculture and goods related parts of the negotiations. I doubt very much whether the fact that we have made commitments with Thailand that go beyond our existing multilateral commitments will somehow prejudice our position on services in the Geneva process. It is difficult for me to speculate on exactly what impact it will have, but my hunch is that it will be very minimal.

Senator TCHEN—Thailand is recognised by Australia as a developing country and it receives aid from Australia. Australia's attitude towards developing countries is that we should

assist them in reducing poverty and in their development. How does that sit with this free trade agreement? Free trade agreements notionally are between equal partners and therefore they are no holds barred and everyone looks after their own interests. How would these two different approaches sit together in this agreement?

Mr Brown—I might preface my answer by pointing out that the Thai government is very keen to promote Thailand as a developed country in the future and that Prime Minister Thaksin has spoken about his desire for OECD membership and for terminating incoming aid flows. Be that as it may, at the moment Thailand is a developing country and it is treated as such by Australia. I suppose the best way of answering that question is to say that all free trade agreements are different and certainly this agreement in many respects is very different to the FTAs we have concluded with Singapore and the United States. Those differences reflect the fact that Thailand is a developing country and it has capacity constraints and other factors which do not enable it to reach the same degree of commitment as Singapore and the United States. So in negotiating a free trade agreement we have set some boundaries, some markers, which in our view are not negotiable, such as comprehensive liberalisation of trade flows. But in other respects there is flexibility in the FTA model to take account of the developing country status of the partner.

While you say it is no holds barred, that it is a negotiation between equals, that is absolutely true; but, equally, there is scope in the agreement to make allowances where the developing country partner has some concerns or issues for which they feel they need some consideration. If you look at the provisions in this agreement on intellectual property rights and government procurement and compare them with the provisions in SAFTA, the Singapore agreement, you will see that these are two areas among others where we have made allowance for Thailand's developing country status. There is the obvious area of the tariff phasing arrangements, where Thailand in some sectors argued that, as this is its first FTA with a developed country, it needed more time to adjust to competition from imports from Australia. There is a range of mechanisms and devices that we have used in the agreement to take account of Thailand's developing country status, but I would preface that, as I said at the beginning, with the remark that Thailand sees itself graduating, in a short term, to developed country status, so I think the agreement is in a way anticipating that fact.

Senator TCHEN—Do those special allowances that Australia has made regarding TAFTA include any relaxation of Australia's requirements on sanitary and phytosanitary measures as a technical barrier to trade?

Mr Brown—The short answer to your question is no, there is nothing in this agreement that would compromise Australia's SPS quarantine regime. As I said in my opening statement, the chapter in the agreement on sanitary and phytosanitary measures essentially reiterates both countries' commitments under the WTO agreement. It does establish an officials-level committee to regularise the contacts between the relevant authorities in both countries on these issues. But it is clear from the chapter and from the terms of reference for that committee that the science based approach to quarantine in both countries remains the overall guiding principle. Therefore, we continue to maintain the position that there is no way in an FTA that countries can somehow or other create a preferential scientific track for FTA partners. It is simply not possible and it is inconsistent with the WTO agreement. That basic fact has been reflected in the SPS chapter, and the same broad comments apply to the chapter on industrial standards.

Senator TCHEN—Another two areas where TAFTA seems to differ from the US free trade agreement is that it does not include any comments on or reference to the provisions for labour nor on the environment. Can you tell the committee why those two issues were not considered? Can you also explain whether there might be any impact from this, not so much in respect of the impact on Australian labour conditions or the Australian environment but more in respect of Thailand's labour conditions and their environment. Thailand's natural resources are already fairly heavily exploited and the government seems unable to deal with it so far.

Mr Brown—As to your question as to why it is included in the US agreement but not in the Thai agreement, my response would be that this agreement is very much modelled on the Singapore example, which as you can see excludes any chapters on environment and labour. It is Australian government policy in relation to this particular FTA not to include chapters on environment and labour.

As to your question on the impact on labour standards and environmental standards and performance in Thailand of the exclusion of those from this agreement, I guess that opens up the question as to how effective trade leverage might be in improving those standards. Frankly, it is not something which I am very well qualified to comment on. Opinions vary. In the United States, for example, there is a view that they can act as a valuable mechanism for improving labour and environmental standards. The Australian government's position, particularly in relation to developing country FTA partners, is that they are counterproductive and would, in many respects, compromise some of our other core objectives in these agreements. As to their overall impact, in terms of our limited economic power with countries such as Thailand, they are some of the factors that have driven, or have been reflected in, the government's policy not to pursue these kinds of provisions in FTAs with developing countries.

Senator TCHEN—I am more concerned about some of the others. It is not exactly the aspect you are referring to. I am thinking more in terms of an Australian company engaging offshore in either labour related activities overseas—for example, in Thailand—or potentially environmentally damaging activities in Thailand and whether the Thai government is able to police it in the same way as we do in Australia.

Mr Brown—Australian companies investing in Thailand would still be subject to the same domestic standards that the Thai government applies to its indigenous companies. The only way I can answer this question is to refer to the full range of international cooperation that is taking place on labour and environment in the relevant fora—in the ILO and in the whole range of multilateral environment agreements. As I said in response to the earlier question, Thailand aspires to developed country status, so I think, over time, it is reasonable to assume that it will begin to take on commitments not only in the trade field but also in the environment and labour field which reflect those aspirations. But that will be a process that will take some time. We are seeing some progress in Thailand. There has certainly been an enhanced determination by the current Thai government to improve its performance in this area as a result of a lot of criticism that you have just referred to. At the moment, though, I think it is fair to say that their domestic regulatory regime is not yet at developed country standard, but it is improving, and Australia is working with Thailand, both bilaterally and in multilateral agreements, to try to continue that improvement.

Mr WILKIE—This might have been covered while I was not here. I apologise for being late—the midnight horrors from Perth are a bit of a pain at times. In relation to the rules of origin applying to this treaty, how do they vary from the Singapore agreement and the US agreement?

Mr Brown—The rules of origin in this case are similar to those in the United States FTA in the sense that they are product specific. The substantial transformation is defined by a change of tariff classification and, in some particular products, that change in tariff classification is supplemented by a requirement for a regional value content which varies from product to product but is generally between 40 and 45 per cent on top of the change of tariff classification requirement. As I said in my opening statement, there are then specific rules of origin that apply to textiles and clothing products as well. I am not an expert on the United States rules but, as I understand it, the main difference is that, in the US FTA, methods of calculation of the ROOs are different. In many respects, they depend on the product, and the calculation method will vary from product to product. In the case of Thailand, the calculation method is the same across all products.

Dr Twisk—For textiles and clothing in the US FTA there is what is called a yarn or fibre forward rule which effectively requires the materials right from the earliest stage of production to have been obtained from within the parties to that FTA. It would be pretty much impossible to meet a rule like that between, say, Australia and Thailand, given the reliance on importing materials that the industries in both countries would have. A rule like that would not allow trade to occur under the FTA. In fact, that type of rule was not one that was, I understand, favoured by the Australian industry in the US context. As I understand it, the product specific rules that we have used for the Thai FTA come from an Australian proposal which was initially prepared in the context of the US FTA through consultations with industry et cetera.

Mr WILKIE—I suppose you believe that the agreement is sufficiently tight to prevent them from sourcing a lot of components from neighbouring countries at a lower rate, putting them together as a product and selling it here?

Dr Twisk—The level of substantial transformation required to meet the rule is set out on a product-by-product basis. It will vary. As well as the specific change of classification requirement for each product, there is the regional value content requirement which, as Mr Brown stated earlier, involves 55 per cent regional value content requirement with, however, up to 25 per cent of that being able to be based on materials obtained from other developing countries. This was in reflection of Thailand's position that they would be unable to source materials domestically or from Australia in order to meet a higher content requirement.

Mr Arndell—There is also the requirement that companies that are going to be trading with each other have to be registered. Exporters have to go through a registration process. They also have to go through a certificate of origin process to ensure that the goods qualify, that they meet the applicable rule of origin and therefore qualify for preference into the other country as well.

CHAIR—The ACT government has made a submission to us. They have said that the level of consultation on this agreement was much less substantial than that undertaken in relation to both the Australia-Singapore free trade agreement and the Australia-United States free trade agreement. Would you care to comment on that?

Mr Brown—We consulted with the state and territory governments throughout the negotiations and none of the other state and territory governments have raised these kinds of concerns. I am not altogether sure of the basis for those concerns as raised by the ACT government. An important difference between the Singapore FTA and the Thai FTA is that, in respect of Singapore, many of the consultations with the states and territories were over issues such as government procurement and services. In that case a negative list approach was adopted and therefore the potential implications for state and territory regulatory flexibility were quite significant. In this case, those concerns simply do not arise. The substance, if you like, of the negotiations was not as relevant to the states and territories. I can only assume that the reservations or concerns that have been raised by the ACT government reflect a misunderstanding of the differences between the two agreements and perhaps they have not yet studied the fine print on government procurement and services in TAFTA as yet.

CHAIR—It also states in the NIA that TAFTA does include some binding commitments that go beyond Australia's existing WTO obligations and limit the government's flexibility in adopting new regulations in some areas in the future. Would you care to expand on that?

Mr Brown—I think that is the same question that Senator Tchen asked. The answer to that question is that Australia's commitments to Thailand on services are essentially the same as those that we have tabled as a conditional offer in the Doha Round. They do exceed in a number of respects the commitments made 10 years ago in the Uruguay Round. The difference between the two is simply that more sectors have been added. I do not have to hand a complete list of the differences between those sectors in the TAFTA and those in our existing Uruguay Round commitments. I would be happy to provide that, if you are interested.

Very importantly, the commitment that we have made to Thailand is, again, a so-called standstill commitment. It does not represent any undertakings by Australia to liberalise or to roll back existing levels of regulation. The differences are essentially that, as part of our final range of commitments to Thailand, some sectors and subsectors have been added that were not included in our Uruguay Round commitments on services.

CHAIR—We have received 13 submissions, including from the ACTU, the Queensland government, the ACT government, the Federal Chamber of Automotive Industries and Holden. We also have a submission from the Victorian government, which we will authorise shortly. In the annex, you talk about the consultations and the concerns raised during the negotiations. Now that the outcome of the negotiations is known, do you have any feedback on the stances of different stakeholders?

Ms Klugman—Our department has been working in close cooperation with Austrade. We have drawn on the Australian Ambassador to Thailand, whom we brought out for these purposes. We have been undertaking a series of joint presentations. All the capital cities have now been done. The turnout from business has been quite strong. I think we had about 150 representatives in Sydney; in Melbourne about 100; and in Hobart about 30. We are taking that process and expanding it over September to key regional centres outside the capital cities. The tone of those outreach sessions has been mostly in the nature of the company representatives listening. We have produced some documents for them. I am not sure if you have seen our guide.

CHAIR—Yes.

Ms Klugman—That has formed the basis of those outreach sessions. People are interested. They are wondering how it will affect their companies and how they can best take advantage of the agreement.

CHAIR—As you know, last month the committee concluded its inquiry into the Australia-US free trade agreement. We received a lot more submissions for that inquiry, obviously. As there are no further questions, I thank you very much for your evidence today.

Before we conclude, is it the wish of the committee that the Victorian government submission on the Australia-Thailand free trade agreement be authorised as submission No. 13? There being no objection, it is so ordered.

Proceedings suspended from 12.03 p.m. to 1.42 p.m.

McKELLAR, Mr Andrew, Director, Government Policy, Federal Chamber of Automotive Industries

STURROCK, Mr Peter, Chief Executive, Federal Chamber of Automotive Industries

CHAIR—Welcome. I remind the witnesses that today's proceedings are being broadcast by the Department of Parliamentary Services. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Do you wish to make some introductory remarks before we proceed to questions?

Mr Sturrock—Yes, if I may. Thank you for the opportunity to meet with you this afternoon. As I have noted in our written submission to the committee, the FCAI is the peak industry organisation representing vehicle manufacturers and major importers of passenger cars, four-wheel drives, light commercial vehicles and motorcycles in Australia.

I would like to open my comments today by saying that the finalisation of this agreement with Thailand comes at a time when the Australian automotive industry is enjoying a period of unrivalled success. Over recent years the industry has enjoyed strong growth in sales, boosted by the underlying strength of the Australian economy, strong vehicle affordability and a supportive policy environment. Last year the Australian industry achieved record sales of just under 910,000 units. We are on track to break this record again this year. The industry has also become one of Australia's outstanding export successes over the past decade. Last year, industry exports of vehicles amounted to more than 118,000 units, with total automotive exports hovering around the $A5 billion mark for the third year in a row.

I will turn now to the Australian free trade agreement with Thailand and trade in automotive products. In considering the potential impact of a Thailand-Australia free trade agreement on the Australian automotive industry, it is worth considering the extent of the existing trade between our two economies. Our submission noted that Thailand has been a significant and growing source of imports of vehicles and automotive components in recent years. In 2003, total automotive imports from Thailand were worth more than $1 billion, with imports of built-up vehicles accounting for almost $900 million of this. Thailand now rates as Australia's fourth largest source of automotive products overall. Indeed, it is interesting to note that over the past two years Thailand has overtaken South Korea in terms of value of vehicles imported to Australia. In particular, Thailand accounts for a significant volume of imports of light commercial vehicles to Australia, principally pick-up cab chassis variants.

In contrast, the overall level of Australian automotive exports is negligible and, if anything, has declined in recent years. Until 2001, Australia was exporting a modest quantity of medium sized cars in completely knockdown, or CKD, form. However, in the past couple of years this trait has been supplanted by an expansion in the capacity of the Thai domestic industry. Whilst it has been frequently observed that the Australian and Thai automotive industries offer a degree of complementarity, it is also clear that this has not been fully reflected in the growth of two-way trade in automotive products. In large part, this can be attributed to the extent of tariff and non-

tariff barriers which, until now, Australian exporters have faced in securing access to the Thai market.

The proposed FTA offers Australian exporters significant opportunities for improved access to the Thai market as a result of the reduction and removal of tariffs on automotive components and vehicles. Under the terms of the agreement Thailand has agreed that tariffs on passenger cars with an engine capacity exceeding 3,000 cc and other types of vehicles will be eliminated on entry into force. Tariffs on many types of automotive components will also be significantly reduced, with most being eliminated by 2010.

The one major area of disappointment for us relates to the treatment of passenger cars with an engine capacity of less than 3,000 ccs. For these vehicles, the existing tariff of 80 per cent will not be fully eliminated on entry into force. Rather, it will be reduced to 30 per cent initially and then progressively reduced to zero by 2010. In return, the Australian government has agreed that tariffs on all types of vehicles will be eliminated on entry into force. In addition, tariffs on most automotive components currently applied at either 10 per cent or 15 per cent will be reduced to five per cent on entry into force and then eliminated by 2010.

It is noted that, while the concessions achieved in the agreement significantly reduce the existing tariff barriers faced by Australian automotive exporters, other obstacles do remain. In particular, Thailand continues to levy significant domestic excise taxes on vehicles at varying rates based on engine capacity. Given that most Australian cars are in the upper medium and large size range, future exports of such vehicles to Thailand will continue to incur excise at rates of 41 to 48 per cent. By comparison, excise on passenger cars with smaller engine capacities and light commercial vehicles is levied at lower rates—35 per cent and three to 18 per cent respectively. In addition, I should note that some vehicle importers who do not currently source product from Thailand have expressed reservations about the competitive advantage that some of their competitors may secure as a result of the preferential tariff according to imports from Thailand.

In summary, the FCAI recognises that bilateral preferential trade agreements of the kind envisaged between Australia and Thailand form a legitimate part of a balanced trade policy. For such agreements to be contemplated, they should support Australia's overall trade policy objectives and result in a proportionate strengthening of market access arrangements for Australian exporters in return for increased access to the Australian market.

As with any such preferential agreement, it has to be considered that the pattern of benefits and costs will not be evenly distributed across all participants in the industry. However, the FCAI believes that on balance the proposed agreement between Australia and Thailand is consistent with Australia's broad trade policy objectives and does secure reciprocal market access gains for Australian exporters. Accordingly, the FCAI urges the committee to support the implementation of this agreement and to recommend the passage of the necessary enabling legislation as soon as possible. I would suggest it would be useful to ask my colleague Andrew McKellar to address the issues of rules of origin, if that is your wish. Thank you.

Mr McKellar—I would like to add to what Mr Sturrock has already said with some brief comments on the rules of origin which are to be adopted in this agreement. Just as the market access arrangements relating to tariffs are important, so too are the rules of origin, which are a

key area of interest to the Australian automotive industry. The detailed rules of origin for this agreement are set out in chapter 4 and the associated annexes. As with the recently concluded Australia-United States free trade agreement, the rules of origin in this agreement represent a significant departure from those adopted in other preferential agreements into which Australia has entered. Indeed it is understood that the rules of origin adopted in this agreement were very closely modelled on those which were applied in the United States-Singapore free trade agreement. Accordingly, in most instances, there is a requirement that items undergo a change in tariff classification from one heading, or related group of tariff headings, to a different heading in order to be accorded originating status. For some items the agreement also provides that origin may be conferred if a minimum level of regional value content, calculated using a transaction or adjusted FOB value of the final product, is also met. This is calculated using a so-called build-down approach—that is to say, the value of any non-originating materials is subtracted from the adjusted FOB value of the item to determine the level of originating content.

Under this agreement, for most automotive products the minimum regional value content threshold is set at 40 per cent. This is a requirement that all current Australian manufactured vehicles would have very little difficulty in complying with. From that point of view, I think Australian industry is quite comfortable that there is no difficulty in meeting the threshold set in the rules of origin under this agreement. Indeed, by comparison with the threshold adopted in other agreements to which Australia is a party, it is a very generous threshold. If anything, I think Australian industry from a defensive standpoint would have been more comfortable with a slightly higher figure. To that end, one could compare it with the threshold that was adopted in the CERTA between Australia and New Zealand, where there is figure of 50 per cent using an ex-factory cost calculation. Similarly, in the more recent US FTA the threshold set in most instances is also a 50 per cent threshold using a net cost approach. In both cases, that is a more restrictive threshold that has to be met.

From a defensive standpoint, it is unclear how restrictive the 40 per cent threshold will be. Certainly, we would expect that most Thai-manufactured light trucks will qualify. At the moment, each of the four Australian manufacturers import vehicles in that area. The threshold may prove more challenging for some passenger car assembly operations based in Thailand, particularly where the assembly uses knockdown kits coming in from other parts of the world. It remains to be seen just how that will impact in a practical sense, and that will not be clear until we get further down the track. I conclude my brief comments there. If there are any questions, I am sure you we will be happy to answer those.

CHAIR—Is it the case at the moment that Australian vehicles of, say, greater than 3,000 cc would face an 80 per cent tariff plus an excise tax of 41 to 48 per cent?

Mr Sturrock—Yes, that is correct.

CHAIR—And is the excise tax levied on domestic cars as well?

Mr McKellar—Yes.

Mr Sturrock—Yes, it is.

CHAIR—Are there any other countries which are manufacturers of cars in the upper medium or large size which have preferential access to the Thai market?

Mr Sturrock—I do not think so.

Mr McKellar—Thailand is also, of course, a party to the AFTA agreement, so in that context any other vehicles manufactured amongst the ASEAN countries will secure preferential access under that agreement. Of course, additionally, Thailand is also currently in the early stages of negotiating an agreement with the United States. It remains to be seen how automotive products will be treated in that agreement. There are obviously some very sensitive issues there. Of course, the US is a left-hand drive market, and there are going to be all the same sorts of issues that we have had to deal with in negotiating on automotive products with the US, but it remains to be seen what will happen there. At this stage, it is possible that there may be other competitor markets that we will be up against. Thailand has had a policy of negotiating free trade agreements in a number of areas, so in the fullness of time it is quite possible that they will have an extensive range of agreements which will cover the sorts of vehicles you are referring to.

CHAIR—In the regulation impact statement that we have, it says that car manufacturers have supported the agreement, but the views of parts manufacturers are more varied. We have also received submissions from Ford and Holden expressing strong support for the agreement. Can you comment on the position of other manufacturers?

Mr Sturrock—From the vehicle manufacturer side, all four have been supportive of the FTA, as it does provide complementarity, but we have noted that it does affect the different companies in differing ways, given their individual business plans. But fundamentally there has been firm support for it since its inception and early discussion, and we have been pleased with the range of discussions we have had with trade officials in its development to this point.

Mr WILKIE—In Thailand, do they drive on the same side of the road as us?

Mr Sturrock—Yes, they do.

Mr WILKIE—I thought they did.

CHAIR—That is useful.

Mr WILKIE—It is very useful. I see only one problem where we have those sorts of useful things happening. Do Ford or Holden have manufacturing plants there at the moment?

Mr Sturrock—GM has a plant and Ford has a plant, yes, building various vehicles, mainly light commercials, pick-ups and so on. Thailand historically has been a vehicle manufacturer of that type of vehicle as well as components—that is, fundamentally pick-ups and commercial type vehicles for their domestic market—and they have expanded that over time. There is the capacity to further expand that into passenger vehicles. There are some passenger vehicles built there at the present moment, but the predominance would be in the commercial and pick-up area of the market.

Mr WILKIE—Are any of those currently imported to Australia?

Mr Sturrock—Yes, there are quite a few.

Mr WILKIE—The Courier is, isn't it?

Mr Sturrock—Yes. Ford, Mazda, Mitsubishi, General Motors through Holden, and Toyota as well are bringing in—and have done for some years—commercial vehicles built in Thailand and imported into Australia under the existing tariff arrangements, which of course are five per cent for that style of vehicle.

Mr WILKIE—I suppose where I am going with this is that the evidence we had in the US free trade agreement, for example, with General Motors was that, if they were getting orders of, say, 18,000 Monaros, they would end up manufacturing them in the United States rather than manufacturing them in Australia. If we take all these barriers away and open up the market with Thailand, what potential is there for Ford or Holden to manufacture a lot more vehicles in that country more cheaply than they would manufacture them here and then import them?

Mr Sturrock—I do not think you can predict exactly what may occur, but I think it is important to note that, presently, the Thai manufacturing sector is very much focused, as we see it, on commercial vehicles and light commercials, four-wheel drive type units. By removing the tariff barriers into Australia—today it is 15 per cent for passenger vehicles; it drops to 10 per cent in January next year—that 10 per cent would be removed upon the entry into force of this agreement, of course. In time, that tariff would be reduced further in Australia to five per cent from the 10 per cent scheduled for next year. That occurs in 2010.

Those issues are known issues, and yet we are dealing with reasonably small levels of protection in terms of those tariff numbers. We do not expect there will be any opportunities to build Australian type vehicles in Thailand in the short term. In the long term—five, 10 or 20 years—it is hard to predict what may be the case in any manufacture, including those, but we think it is unlikely that that scenario would occur over the next few years.

Senator TCHEN—Apart from the Toyota Camry, there are no motor vehicles with less than a three-litre engine capacity being manufactured in Australia, are there?

Mr Sturrock—No, that is correct. At this present moment, in terms of passengers, no; it is just the Camry.

Senator TCHEN—So basically the Australian motor vehicle manufacturing market is complementary to the Thai one. There are no large cars being manufactured in Thailand. Mainly they are imported, aren't they?

Mr Sturrock—There are a range of assembly plants in Thailand for those models, but fundamentally, as I said earlier, the predominance of manufacture is in the commercial vehicle area rather than the passenger vehicle area.

Senator TCHEN—So the two markets are actually quite complementary rather than competitive?

Mr Sturrock—That is correct. We have described it as such, as being quite complementary, for quite some time in the process of discussions. What we are dealing with today are known factors. None of us can be certain what may be the case in five or 10 years time, but at the present moment that is where we all stand.

Senator TCHEN—There are $30 million worth of parts exported from Australia. What do they mainly consist of at the moment?

Mr Sturrock—It is not for us to comment on the parts side of it as that is handled by FAPM. With respect, you would need to address those questions to the FAPM organisation for their confirmation of those matters.

Senator TCHEN—I am sorry; I thought you represented them as well.

Mr Sturrock—No, we do not.

Senator TCHEN—You only represent something that is driveable.

Mr Sturrock—That is right. Yes, we are at the completed end of the business, if you wish, as a full car.

Senator TCHEN—Thank you very much. The chair and the deputy chair have already covered the rest of the questions that I wanted to ask you.

CHAIR—Concerns about the elimination of tariffs have been stressed by some parts manufacturers. The RIS has said that these concerns have been addressed through phase-in periods for sensitive items. Can you comment on the adequacy of the phase-in items, or is that something to refer to FAPM as well?

Mr Sturrock—Again, concerns about components really need to be addressed to the FAPM. It would be inappropriate for us to comment on the specific issues of their business other than to say that the industry generally has been quite supportive of this free trade agreement concept since its inception. We do see the complementation. There is an existing trade arrangement fundamentally from Thailand to Australia already in existence. We are seeking the greater market access back into Thailand of both passenger vehicles and commercial vehicles which we build in Australia. We do see that, with the reduction of tariffs that would come into force with this agreement in Thailand, we may have much better opportunities and so we are keen to see the legislation passed and for the thing to proceed to fulfilment.

CHAIR—Again, the regulation impact statement says that, although the Thai market for large passenger vehicles is currently quite small, it is expected to expand under the FTA. What is the reason for this? Is it a consumer preference thing, or is it because tariffs have been so high that the larger vehicles have been very expensive?

Mr Sturrock—Fundamentally, that has been the first problem. But, with the Thai economy continuing to grow and improve, we do expect that there will be greater opportunities in that semi-luxury and luxury segment of the market. It is limited, as you said, in volume, but it is attractive to Australian manufacturers because it is a style of vehicle that we build. With the

luxury versions of Holden Commodore and Ford Falcon et cetera, we see an opportunity there. There may be other models further down the track, but we see an opportunity to supply the luxury versions—with Holden Commodore we are talking Statesman and Caprice, and with Ford we are talking the Fairlane and LTD type vehicles. These are the obvious alternatives to some of the luxury vehicles that are sold in the Thai market. The European brands tend to dominate and be predominantly visible in the luxury segment of the Thai market.

CHAIR—Do they have much of a domestic sector producing medium or large vehicles, or are they principally in the light commercial area?

Mr Sturrock—Not at this moment. Their production, other than for light commercial vehicles and four-wheel drives, is quite small. Industry capacity is growing there. I think it is a function of the industry generally in the region throughout South-East Asia, where the auto industry is growing and shows good prospects for growth going forward, and the Thai government have been focusing on opportunities to further grow their automotive manufacturing sector, whether it is cars, trucks, components or whatever. We see that as being the way it will go forward in the next few years.

Senator TCHEN—What is the likelihood of Thailand evolving their automotive manufacturing activity towards the production of a large luxury passenger vehicle? My understanding is that a lot of the cost of passenger vehicle manufacturing is actually in the research and design sector.

Mr Sturrock—My personal view is that there would be a reasonably slim chance of their wishing to manufacture luxury vehicles in Thailand. After all, it is quite a narrow segment of the market. Notwithstanding their economic growth and development over future years, you would have to say that the mainstream area of their automotive industry—which is smaller vehicles and commercial vehicles, particularly in the non-passenger area—would be the focus. You would expect that that would probably be where they would be putting the bulk of their investment and future activity. I would not imagine that there is much scope at the moment for the local manufacture of so-called luxury vehicles in Thailand itself.

CHAIR—On behalf of the committee, I would like to thank you for appearing to give evidence this afternoon. The secretariat will forward to you a copy of the proof transcript of evidence for your review as soon as it is available. Is it the wish of the committee that submission No. 14 from DFAT be received as evidence and authorised for publication? There being no objection, it is so ordered.

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

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

Committee adjourned at 2.08 p.m.