

Report 77

Treaties tabled on 20 June and 8 August 2006

Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America

Amendments to the Convention on the Physical Protection of Nuclear Material

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore to Amend Annex 2C and Annex 2D of the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007

Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to Amend Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007

The International Health Regulations (2005)

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Membership of the Committee

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Resolution of appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report upon:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

AHMAC	Australian Health Ministers' Advisory Council
AHPC	Australian Health Protection Committee
AONM	Australian Obligated Nuclear Material
ASNO	Australian Safeguards and Non-Proliferation Office
AUSFTA	Australia-United States Free Trade Agreement
Cth	Commonwealth
DEST	Department of Education, Science and Training
DFAT	Department of Foreign Affairs and Trade
FTA	Free Trade Agreement
HS	Harmonized Commodity Description and Coding System
IAEA	International Atomic Energy Agency
IDC	Interdepartmental Committee
IHR	International Health Regulation
IP	Intellectual Property
JSCOT	Joint Standing Committee on Treaties
MOX	Mixed Oxide
NIA	National Interest Analysis
SAFTA	Singapore-Australia Free Trade Agreement

SCOT Commonwealth-State/Territory Standing Committee on Treaties

US United States of America

WCO World Customs Organization

WHO World Health Organisation



List of recommendations

2 Agreement relating to Scientific and Technical Cooperation with the United States of America

Recommendation 1

The Committee supports the *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America* (Canberra, 28 February 2006) and recommends that binding treaty action be taken.

3 Amendments to the Convention on the Physical Protection of Nuclear Material

Recommendation 2

The Committee supports the *Amendments to the Convention on the Physical Protection of Nuclear Material* and recommends that binding treaty action be taken.

4 Exchange of Notes constituting an Agreement between Australia and Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program

Recommendation 3

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program* and recommends that binding treaty action be taken.

5 Amendments to the Singapore-Australia and the Australia-United States Free Trade Agreements to ensure compliance with changes to the Harmonized Commodity Description and Coding System

Recommendation 4

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore to amend Annex 2C and Annex 2D of the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (SAFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007* and recommends that binding treaty action be taken.

6 International Health Regulations

Recommendation 6

The Committee supports the *International Health Regulations (2005)* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of six treaty actions tabled in Parliament on 20 June¹ and 8 August 2006.² These treaty actions are:

20 June 2006

- *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America (Canberra, 28 February 2006)*
- *Amendments to the Convention on the Physical Protection of Nuclear Material (Vienna on 8 July 2005)*

8 August 2006³

- *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program*

1 Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 109, p. 1236; Australia, Senate 2004-06, *Journal*, No. 88, p. 2297.

2 Australia, House of Representatives 2004-05-06, *Votes and Proceedings*, No. 112, p. 1268; Senate 2004-06, *Journal*, No. 91, p. 2379.

3 Also tabled on 8 August, the *Agreement between the Government of Australia and the Government of the People's Republic of China on the Transfer of Nuclear Material* and the *Agreement between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy* are not included in this report.

- *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore to Amend Annex 2C and Annex 2D of the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007*
- *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to Amend Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007*
- *The International Health Regulations (2005) (Geneva, 23 May 2005)*

Briefing documents

- 1.2 The advice in this Report refers to the National Interest Analyses (NIAs) prepared for the proposed treaty actions. These documents are prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of the NIAs may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/20june2006/tor.htm

www.aph.gov.au/house/committee/jsct/8august2006/tor.htm

- 1.3 Copies of treaty actions and NIAs may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

1.4 The Review contained in this report was advertised in the national press and on the Committee's website.⁴ Letters were also sent inviting comment from all State Premiers, Chief Ministers, Presiding Members of Parliament and from individuals who have expressed an interest in being kept informed of proposed treaty actions. A list of submissions and their authors is at Appendix A.

1.5 The Committee also received evidence at a public hearing held on 14 August 2006. A list of witnesses who appeared before the Committee at this public hearing is at Appendix B. A transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/20june2006/hearings.htm

www.aph.gov.au/house/committee/jsct/8august2006/hearings.htm

4 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 28 June, 16 and 23 August 2006. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

Agreement relating to Scientific and Technical Cooperation with the United States of America

Background

- 2.1 Through the 1968 *Agreement with the Government of the United States of America for Cooperation in Scientific Research and Technological Development* (the 1968 Agreement), Australia affirmed the importance of its commitment to cooperation in science and technology with the United States of America (US). However, the 1968 Agreement was limited to affirming the broad Australia-US science and technology relationship with no provision for the equitable collaboration and sharing of costs and benefits.¹
- 2.2 In 1991, following the expiration of the 1968 Agreement, Australia, and the US commenced negotiating a more detailed instrument outlining clearer commitments in areas such as intellectual property (IP) rights.²
- 2.3 The 2006 *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America* (the Agreement) will build upon and strengthen the science and technology relationship between Australia and the US, established under the 1968 Agreement. The Agreement, by

1 National Interest Analysis (NIA), para. 6.

2 NIA, para. 6.

establishing guiding principles will provide for shared responsibility in collaborative activities and the equitable sharing of costs and benefits. The Agreement will also expand opportunities for collaboration between agencies and so serve to enhance research links between Australia and the US.³

- 2.4 Currently, almost 25 per cent of all Australian Government funded international science and technology collaborations occur with the US. Funds provided by US organisations account for almost 50 per cent of total overseas funding received by Australian research agencies and universities.⁴

Purpose of the Agreement

- 2.5 The Agreement establishes an enabling framework that expands opportunities for mutually determined agency-to-agency collaboration for peaceful purposes in science and technology between Australia and the US.⁵
- 2.6 The Agreement provides for cooperative activities including: joint research projects, task forces, studies, organisation of scientific seminars, conferences, symposia and workshops, training of scientists and technical experts, visits and exchanges of individual scientists, engineers and other appropriate personnel, exchanges of information on activities, policies, practices, laws and regulations concerning research and development and other forms of cooperative activities as may be agreed.⁶
- 2.7 The Agreement also provides protection for Australian researchers when negotiating IP issues in the US market.⁷
- 2.8 In relation to intellectual property under the Agreement a representative from the Department of Education, Science and Training (DEST) stated:

The IP provisions of the agreement recognise the growing value of intellectual property and the increasing importance of science and innovation in the global economy. The

3 NIA, paras 3, 4 and 7.

4 NIA, para. 5.

5 NIA, paras 7 and 8.

6 NIA, para. 8; Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 8.

7 NIA, paras 9 and 21.

agreement makes provisions that protect IP brought to a research activity by each research partner and for allocating the rights to exploit IP created during an activity. The key feature of these IP provisions is that the rights to exploit IP are allocated on the basis of the relative contributions of each research partner. In doing so, the agreement will minimise any uncertainty about the treatment of IP – uncertainty which may in the past have impeded collaboration between Australian and US researchers.⁸

2.9 In addition, the Agreement provides that each Party appoint an Executive Agent to coordinate and facilitate cooperative activities under the Agreement. The Executive Agent is charged with discussion and regular review of the implementation of the Agreement on matters of importance in the field of science and technology including policy issues in relation to the overall science and technology relationship between Parties.⁹

2.10 DEST commented on how the Agreement would benefit Australia:

... this agreement has been held up as a fairly important agreement by the US Department of State as guided by the Office of Science and Technology Policy. The US does have a strong science and technology relationship with Australia. ... by providing greater certainty for researchers in how to manage the treatment of IP and by providing a framework under which cooperative activities can take place, the US sees a similar benefit to what Australia sees, in that we have removed some uncertainties for researchers and provided a greater level of surety about how technology management plans and research relationships can take place, so that should increase the level of cooperation.¹⁰

Consultation

2.11 Approval for ratification of the Agreement was received from: the Treasurer; the Attorney-General; the Ministers for Foreign Affairs; Agriculture, Fisheries and Forestry; Trade; Communications,

8 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 8.

9 NIA, paras 16 and 17.

10 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 12.

Information Technology and the Arts; Transport and Regional Services; Immigration and Multicultural and Indigenous Affairs; Finance and Administration; Industry, Tourism and Resources; Environment and Heritage; Defence; Health and Ageing; and Justice and Customs. The Prime Minister has also been informed of the process to bring the Agreement into force.¹¹

- 2.12 State and Territory governments were advised of the Agreement through the Commonwealth-State/Territory Standing Committee on Treaties. The Agreement has been on the list of current and forthcoming negotiations since November 2000. State and Territory Governments raised no objections or concerns as result of this notification.¹²
- 2.13 In 1999, prior to the commencement of negotiations with the US, the Australian Government undertook consultation regarding the level and extent of its collaborative activity with the US, with: science portfolio and funding agencies, major universities and science and industry stakeholder representative bodies. Their views were also sought on problems they had encountered in collaboration with the US, specifically in the allocation of IP rights.¹³
- 2.14 In early 2005, nearing the conclusion of the drafting process, the benefits of the Agreement were again discussed with key Australian agencies for science and technology research.¹⁴ All agencies supported the provisions proposed under the Agreement.¹⁵
- 2.15 In addition, DEST has stated that it will communicate the Agreement to all science and technology research agencies and researchers with a potential interest in using the treaty. Further, they will be informed of how the Agreement can benefit their prospective research interests.¹⁶

11 NIA, Consultation Annex, para. 5.

12 NIA, Consultation Annex, para. 6.

13 NIA, Consultation Annex, para. 7.

14 These were: the Australian Research Council, the National Health and Medical Research Council, the Australian Nuclear Science and Technology Organisation, the Defence Science and Technology Organisation and the Commonwealth Scientific and Industrial Research Organisation, Consultation Annex, para. 8.

15 NIA, Consultation Annex, para. 8.

16 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 11.

Costs

- 2.16 Costs associated with the appointment and employment of an Executive Agent will be absorbed by the Department of Education, Science and Training.¹⁷ Costs and resources attached to duties undertaken will account for approximately 20 per cent of the work undertaken by the Executive Agent.¹⁸

Legislation

- 2.17 No new domestic legislation will be required as a result of the Agreement's entry into force.¹⁹

Entry into force and withdrawal

- 2.18 The Agreement will enter into force one day after an exchange of notes between Parties.²⁰ The Agreement may be terminated by either Party six months after formal notification is exchanged between Parties.²¹ The Agreement may be amended at any time by mutual written agreement between Parties.²²

Conclusion and recommendation

- 2.19 The Committee believes that the Agreement will strengthen Australia-US ties and enable Australian scientists and researchers to benefit from the formalisation of a framework to support research collaboration.

17 NIA, para. 32.

18 Mr David Smith, *Transcript of Evidence*, 14 August 2006, p. 13.

19 NIA, para. 31.

20 NIA, para. 2.

21 NIA, para. 35.

22 NIA, para. 34.

Recommendation 1

The Committee supports the *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America* (Canberra, 28 February 2006) and recommends that binding treaty action be taken.

Amendments to the Convention on the Physical Protection of Nuclear Material

Introduction

- 3.1 The *Amendments to the Convention on the Physical Protection of Nuclear Material* (the Amendments) amend the *Convention on the Physical Protection of Nuclear Material* (the Physical Protection Convention). The Physical Protection Convention is intended to ensure that nuclear material is adequately protected when transported internationally.¹ The Amendments strengthen these objectives and broaden the scope of the Physical Protection Convention to protect nuclear facilities and material in peaceful domestic use, storage and transport.² The Amendments also provide for cooperation between and among States to assist in the detection and recovery of any stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences.³

1 National Interest Analysis (NIA), para. 3; International Atomic Energy Agency, viewed 15 August 2006, <www.iaea.org/Publications/Documents/Conventions/cppnm.html>

2 NIA, para. 4; International Atomic Energy Agency, viewed 15 August 2006, <www.iaea.org/Publications/Documents/Conventions/cppnm.html>

3 NIA, paras 4, 5 and 9; International Atomic Energy Agency, viewed 15 August 2006, <www.iaea.org/Publications/Documents/Conventions/cppnm.html>

Background

- 3.2 The Physical Protection Convention is the only legally binding undertaking in the area of physical protection of nuclear material.⁴
- 3.3 The Amendments result from a recognition that:
- ... the convention needed strengthening to change its focus from international to domestic.⁵
- 3.4 Australia played an active role in negotiating the Amendments, forming a core group with States including Canada, the United States, France and the United Kingdom to forward a draft text. Australia also chaired the main committee at the July 2005 diplomatic conference which agreed to the Amendments.⁶
- 3.5 In reaching an agreement on the Amendments, States Parties put aside concerns relating to
- ...the sharing of security information and how we should craft that. One certainly related to concern over the Law of the Sea and transit access for shipping routes. Another related to specific concern about the phrase in the amendment which talked about 'without lawful authority', exactly what that meant and to whom it would apply. Another referred to article 2A and whether or not they should be binding 'shalls' in the convention or whether, as they are now, as far as is 'reasonable and practicable'.⁷

The Amendments

- 3.6 Broadly speaking, the Amendments provide Australia with new obligations relating to nuclear material, including:
- ...establishing a formal national regime to protect nuclear materials and nuclear facilities in domestic use, storage and transport, which is in place already; and the criminalisation of sabotage of a nuclear facility, trafficking, conspiracy – that is,

4 International Atomic Energy Agency, viewed 15 August 2006, <www.iaea.org/Publications/Documents/Conventions/cppnm.html>

5 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 16.

6 NIA, para. 7; Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 17.

7 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 16.

organising, directing and commissioning an offence – and damage to the environment.⁸

- 3.7 As a result of the Amendments, the Convention on the Physical Protection of Nuclear Material is now the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities.
- 3.8 The Amendments add ‘nuclear facility’ and ‘sabotage’ to the list of terms defined in Article 1.
- 3.9 New Article 1A states that the purpose of the Physical Protection Convention is:
- ...to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate cooperation among States Parties to those ends.
- 3.10 New Article 2A relates to the protection of nuclear material against theft and the rapid recovery of any missing or stolen nuclear material, as well as the protection of nuclear material against sabotage and the mitigation or minimisation of the radiological consequences of any such sabotage. It requires States to establish, implement and maintain an appropriate physical protection regime for nuclear materials and facilities in its jurisdiction. This Article includes a series of fundamental principles to be applied in establishing such protection.⁹
- 3.11 Amended Article 5 strengthens cooperation between States where nuclear material is stolen or sabotaged, or is threatened to be stolen or sabotaged. Among other things, this requires States to inform any other State(s) if it has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in that other State. Where an act of sabotage involving nuclear material or a nuclear facility has

8 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 15.

9 Fundamental Principle A: Responsibility of the State; Fundamental Principle B: Responsibilities during international transport; Fundamental Principle C: Legislative and regulatory framework; Fundamental Principle D: Competent authority; Fundamental Principle E: Responsibility of the license holders; Fundamental Principle F: Security culture; Fundamental Principle G: Threat; Fundamental Principle H: Graded approach; Fundamental Principle I: Defence in depth; Fundamental Principle J: Quality assurances; Fundamental Principle K: Contingency plan; Fundamental Principle L: Confidentiality. See Article 2A for more detail.

occurred in a State, that State is required to inform any other State which is likely to be radiologically affected.

- 3.12 Extended Article 7 adds to the list of offences that States must make punishable under domestic law.¹⁰ This includes new offences for trafficking of nuclear material; the sabotage of nuclear facilities with intent to cause death, injury or damage by exposure to radiation or radioactive substances; acts organising or directing others to commit an offence specified in Article 7; and acts contributing to the commission of other offences specified in Article 7.
- 3.13 New Article 11A provides that none of the offences in Article 7 should be regarded as political offences for the purposes of extradition or mutual legal assistance. This would prevent a State from refusing to extradite or provide mutual legal assistance for an offence under Article 7 on the sole ground that it is characterised as a 'political offence' under the domestic law of the requested State.
- 3.14 New Article 11B ensures that there is no obligation to extradite or to provide mutual legal assistance if the requested State believes that the request either to extradite or provide assistance for an offence under Article 7 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion.
- 3.15 The Committee heard evidence that new Article 11A was considered necessary because:

There is a general provision in the law of extradition, and you will find it in Australian national law on extradition, that you should not be extradited for political offences; in other words, if you were an Iranian who is being prosecuted for dissent, there is no extradition obligation in Australian law to extradite a person who has been prosecuted for that purpose.

10 Currently the offences include: (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property; (b) a theft or robbery of nuclear material; (c) an embezzlement or fraudulent obtaining of nuclear material; (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation; (e)(i) a threat to use nuclear material to cause death or serious injury to any person or substantial property damage; (e)(ii) a threat to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act; (f) an attempt to commit any offence described in paragraphs (a), (b) or (c); and (g) an act which constitutes participation in any offence described in paragraphs (a) to (f).

The purpose of article 11A is to say that if you are doing something with nuclear material that cannot be treated as a political offence. It is not a defence to the extradition.¹¹

Implementation

- 3.16 Changes to the Physical Protection Convention will be implemented in Australia through the Non-Proliferation Legislation Amendment Bill 2006, amendments to the *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth) and regulations made under the *Nuclear Non-Proliferation (Safeguards) Act 1987* (Cth). Additional regulations will also be made under the *Extradition Act 1988* (Cth) and the *Mutual Assistance in Criminal Matters Act 1987* (Cth) to incorporate obligations under Articles 11A and 11B.¹²
- 3.17 Development of policy to implement these arrangements will be developed by the Australian Safeguards and Non-Proliferation Office (ASNO).¹³

Costs

- 3.18 ASNO will apply the Amendments as part of its existing regulation of physical protection arrangements for nuclear material and nuclear facilities.¹⁴ As a result, the Amendments are not expected to impose any additional costs and will be managed within ASNO's existing resources.¹⁵

Consultation

- 3.19 The Amendments were first listed on the schedule of the Commonwealth-States and Territories Standing Committee on

11 Mr Steven McIntosh, *Transcript of Evidence*, 14 August 2006, p. 16.

12 NIA, paras 12 and 13.

13 NIA, para. 12.

14 NIA, para. 15.

15 NIA, para. 15.

Treaties (SCOT) in 2002. Updates were provided to SCOT through the schedule twice a year.¹⁶

3.20 Relevant Commonwealth agencies were briefed through the Nuclear Agencies Consultative Committee on 4 May 2006.¹⁷

3.21 Commonwealth agencies that will be most affected by the Amendments have been key contributors during negotiations.¹⁸

Conclusion and recommendation

3.22 The Committee recognises the importance of protecting nuclear material, not only in the international domain but also within the domestic jurisdiction of States Parties. The Committee further supports the Amendments as a framework to facilitate the increased cooperation between States in the protection of nuclear materials.

Recommendation 2

The Committee supports the *Amendments to the Convention on the Physical Protection of Nuclear Material* and recommends that binding treaty action be taken.

16 NIA, Consultation Annex, para. 2.

17 NIA, Consultation Annex, para. 3.

18 NIA, Consultation Annex, para. 4.

Exchange of Notes constituting an Agreement between Australia and Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program

Introduction

- 4.1 The *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program* (the Agreement) involves the addition of two facilities at which Japan may undertake mixed oxide (MOX) fuel fabrication. These are Sellafield MOX Plant (located in the United Kingdom) and Rokkasho MOX Fuel Fabrication Plant (to be located in Japan).¹

Background

- 4.2 The Delineated and Recorded Japanese Nuclear Fuel Cycle Program, referred to as 'the Capsule' at the working level, is attached to a treaty level Implementing Arrangement between the Government of Australia and the Government of Japan.² The Implementing

1 National Interest Analysis (NIA), para. 5.

2 NIA, para. 1.

Arrangement was entered into as part of the Australia-Japan Nuclear Safeguards Agreement 1982³ and sets out how the Australia-Japan Nuclear Safeguards Agreement is to operate in practice.⁴ The Australia-Japan Nuclear Safeguards Agreement commits Japan to using Australian Obligated Nuclear Material (AONM) only for peaceful, non-military purposes.

- 4.3 Australia ensures that Japan meets its obligations under the Australia-Japan Nuclear Safeguards Agreement through an established system of safeguards, including a permanent office of between 20 and 30 International Atomic Energy Agency inspectors in Japan who are able to conduct inspections of nuclear facilities with only two hours notice⁵, and through the reconciliation of accounts:

... whereby we check the data that they give to us concerning the use of material and we also hold at least annual bilateral consultations with our equivalent agency.⁶

- 4.4 Representatives from the Australian Safeguards and Non-Proliferation Office (ASNO) informed the Committee that:

We are satisfied that the agreements give Australia the appropriate level of confidence that Australian obligated nuclear material is used solely for peaceful purposes and remains exclusively in peaceful use.⁷

- 4.5 In 2005, Japan was Australia's second largest uranium export market, accounting for 25% of the total uranium exported from Australia.⁸ The Committee was also informed that 'Japan operates 55 nuclear power reactors, providing approximately 30 per cent of its electricity needs.'⁹

3 *Agreement between the Government of Australia and the Government of Japan for Cooperation in the Peaceful Uses of Nuclear Energy 1982.*

4 NIA, para. 1.

5 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, pp. 21 and 22.

6 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 21.

7 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 22.

8 NIA, para. 10; Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 20.

9 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 20.

The Agreement

- 4.6 The Capsule lists those facilities at which Japan may process, use, or reprocess AONM in connection with Japan's peaceful uses of nuclear energy. The facilities listed in the Capsule include power plants and conversion, enrichment, fuel fabrication and reprocessing plants.
- 4.7 ASNO informed the Committee that:
- At present the capsule lists 121 facilities, including conversion enrichment, fuel fabrication and reprocessing facilities both in Japan and around the world, as well as 70 Japanese nuclear power reactors.¹⁰
- 4.8 The addition of two facilities at which Japan may undertake MOX fuel fabrication would be specified in sub-paragraph 1(a)(i) of the Implementing Arrangement.
- 4.9 The Agreement will allow Japan to use AONM in these facilities without seeking the Government of Australia's approval on a case by case basis.¹¹
- 4.10 MOX fuel is an integral part of Japan's nuclear fuel program.¹² The Committee heard evidence that the use of MOX fuel can increase the energy derived from the original uranium by 10 to 20 per cent, 'essentially increasing the useful life of the original uranium'.¹³ There are currently four MOX fuel fabrication plants listed in the Capsule.¹⁴
- 4.11 Japan would be obliged to notify Australia of transfers of AONM to the Sellafield MOX facility. Any such transfers, once within the jurisdiction of the United Kingdom, would be subject to the Australia-United Kingdom Safeguards Agreement.¹⁵
- 4.12 The addition and deletion of facilities to the Capsule are a necessary element of updating the Australia-Japan Nuclear Safeguards

10 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 21.

11 NIA, para. 5.

12 NIA, para. 5.

13 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, p. 21.

14 NIA, para. 5.

15 *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Nuclear Transfers between Australia and the United Kingdom*, done at London 1979.

Agreement to reflect changes in the operation of Japan's nuclear fuel cycle program.¹⁶

- 4.13 The Committee was informed that some amendments to the Capsule require a treaty-level agreement while others do not:

While additions and deletions to the facility list are purely mechanical in nature and are made from time to time to reflect changes in Japan's contracts and arrangements supporting its nuclear power industry, the types of facilities new to a listed country, including Japan, must be affected through a treaty level exchange of notes.¹⁷

- 4.14 Pursuant to the amendment provisions of the Implementing Arrangement, several of these previous changes have not required a treaty-level amendment while others have (such as amendments in 1990, 1999 and 2000 to add facilities to the Capsule).¹⁸ The two additions to the Capsule which are contemplated by the proposed replacement Capsule are of a nature which, according to the Implementing Arrangement, must be made by a treaty-level agreement between the Government of Australia and the Government of Japan.¹⁹

Entry into force

- 4.15 The Agreement will enter into force on the date on which the Government of Australia advises the Government of Japan through the diplomatic channel that Australia's constitutional and domestic requirements for entry into force have been satisfied.²⁰

16 NIA, para. 11.

17 Mr Andrew Leask, *Transcript of Evidence*, 14 August 2006, pp. 20-21.

18 NIA, para. 12.

19 NIA, para. 12.

20 NIA, para. 2.

Implementation and costs

- 4.16 No new legislation is required to give effect to the Agreement and there are no additional costs to ASNO associated with the Agreement.²¹

Consultation

- 4.17 The Agreement was discussed at the Commonwealth-State/Territory Standing Committee on Treaties meeting on 17 May 2006. No other consultations were thought to be necessary given the administrative nature of the Agreement.²²

Recommendation 3

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program* and recommends that binding treaty action be taken.

21 NIA, paras 17 and 18.

22 NIA, Consultation Annex, paras 1 and 2.

Amendments to the Singapore-Australia and the Australia-United States Free Trade Agreements to ensure compliance with changes to the Harmonized Commodity Description and Coding System

Background

The Harmonised Commodity Description and Coding System

- 5.1 The Harmonized Commodity Description and Coding System (HS) is an international system for classifying goods traded internationally. The World Customs Organization¹ (WCO) of which Australia and its free trade partners are members, oversees HS. Revision and amendment to HS occurs every five years to reflect changes in commodities traded.²
- 5.2 The most recent changes to HS will come into effect on 1 January 2007 (HS2007). HS2007 creates new HS tariff line numbers to reflect a new

1 The WCO was established in 1952 as the Customs Cooperation Council and consists of 169 member countries. The WCO is an independent intergovernmental body whose mission is to enhance the effectiveness and the efficiency of customs administrations. World Customs Organization, viewed 15 August 2006, <www.wcoomd.org>.

2 National Interest Analysis (NIA), paras 1-3.

product entering the market; the deletion of a tariff line number where a commodity is no longer traded; or the movement of a tariff line number from one sub-heading (or category of goods) to another to account for changes in the use of the good.³

5.3 As HS2007 comes into effect on 1 January 2007, the Australian Government has proposed that the Amending Agreements⁴ also come into force on 1 January 2007.⁵

5.4 The Department of Foreign Affairs and Trade (DFAT) informed the Committee of the reason for HS2007:

The key point we would like emphasise in this statement is that the negotiations undertaken with our FTA partners ensured that the harmonised system changes – the 2007 changes – would not substantively change in any way Australia's or our FTA partners' obligations under the respective FTAs.⁶

Purpose of the Amending Agreements

5.5 The Singapore-Australia Free Trade Agreement (SAFTA) and the Australia-United States Free Trade Agreement (AUSFTA) include annexes that detail the treatment of specific goods traded between Australia and Singapore and Australia and the United States of America (US) respectively. The HS number assigned to a good or commodity is its identifier. Amendment to SAFTA and AUSFTA seek to avoid possible confusion and subsequent delays in processing of goods by customs authorities.⁷

3 NIA, para. 3.

4 The full titles of the treaty actions are: *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore to Amend Annex 2C and Annex 2D of the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007* and the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to Amend Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the Harmonised Commodity Description and Coding System to come into effect on 1 January 2007*.

5 NIA, para. 7.

6 Ms Prudence Gordon, *Transcript of Evidence*, 14 August 2006, p. 25.

7 NIA, para. 5.

5.6 Specifically, the Amending Agreements replace the following SAFTA and AUSFTA annexes with annexes that have tariff line numbers that comply with HS2007. These are:

- **SAFTA Annex 2C** (List of Goods Which Must be Subject to the Last Process of Manufacture Within the Territory of a Party)
- **SAFTA Annex 2D** (List of Goods Subject to 30% threshold)
- **AUSFTA Annex 4-A** (Textile and Apparel Specific Rules of Origin for Chapters 42, 50 – 63, 70 and 94) and
- **AUSFTA Annex 5-A** (Specific Rules of Origin).⁸

5.7 The Amending Agreements will ensure SAFTA and AUSFTA continue to reflect internationally agreed HS as amended by HS2007.⁹

5.8 In relation to the scenario of a manufacturer objecting to the harmonisation of its product, the Australian Customs Service stated:

It depends on the country that they are trading with, but many customs administrations have an advance ruling mechanism under which you can apply to that country for an advanced ruling on that classification. That gives you certainty about how your goods will be treated. I do not know every country's policy on that. The World Customs Organisation has guidelines for all customs administrations to use that mechanism. Then it is up to the individual country whether or not they want to put that in legislation or leave it as an administrative procedure. But it is laid down to provide that certainty for exporters and importers.¹⁰

5.9 DFAT added:

Originally the descriptions are not agreed by the manufacturers, as I understand it; they are agreed by the World Customs Organisation. So it is simply a description given to a good. I do not think there has been any instance of a manufacturer objecting to a particular description for a good, but they would object to a tariff change. This exercise

8 NIA, para. 1.

9 NIA, para. 5.

10 Mr Matthew Bannon, *Transcript of Evidence*, 14 August 2006, p. 26.

does not involve changes to the tariffs; it simply relates to changes to the description of a good.¹¹

Consultation

- 5.10 The changes contained in HS2007 have been under discussion by the WCO since 2002. In this period, the Australian Government consulted with the Department of Industry, Tourism and Resources, and other relevant government agencies when members of the WCO have raised issues pertaining to particular industries for consideration. Outcomes from these consultations then contributed to Australia's input into decisions taken in the WCO regarding HS changes.
- 5.11 No specific consultation took place with State and Territory Governments because the impact of changes is expected to be negligible.
- 5.12 The Australian Government consulted Australian industry early in the evaluation processes for changes to the annexes. In particular, consultation was undertaken with the chemicals and automotive parts industries, to ensure the required changes to the relevant tariff line numbers remained practical. No negative responses were received during consultations.¹²

Costs

- 5.13 The costs associated with implementation of the Amending Agreements are expected to be negligible.¹³

Implementation

- 5.14 The Australian Customs Service will formally notify affected parties of the changes to SAFTA and AUSFTA before the Agreements come into force. Those importers and exporters who have sought formal advance rulings as to the correct tariff line number in respect to their

11 Ms Prudence Gordon, *Transcript of Evidence*, 14 August 2006, p. 27.

12 NIA, Consultation Annex, paras 1-3.

13 NIA, paras 11 and 12.

particular good will be advised of relevant amended tariff line numbers that will apply after 1 January 2007.¹⁴

Entry into force and withdrawal

5.15 The Amending Agreements will enter into force on 1 January 2007 through an exchange of diplomatic notes. Withdrawal from SAFTA and AUSFTA is provided for in the treaty text of each free trade agreement.¹⁵

Conclusion and recommendation

5.16 The Committee understands the importance of complying with changes to the International Harmonized Commodity Description and Coding System and believes the amendments to the free trade agreements will help to avoid confusion and delays for importers, exporters and customs authorities.

Recommendation 4

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore to amend Annex 2C and Annex 2D of the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007* and recommends that binding treaty action be taken.

14 NIA, para. 10.

15 NIA, paras 1 and 16.

Recommendation 5

The Committee supports the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America to amend Annex 4-A and Annex 5-A of the Australia-United States Free Trade Agreement (AUSFTA) to ensure compliance with changes to the Harmonized Commodity Description and Coding System to come into effect on 1 January 2007* and recommends that binding treaty action be taken.

International Health Regulations

Introduction

- 6.1 *The International Health Regulations (2005) (IHRs)* were adopted by the World Health Organisation Assembly in May 2005. The IHRs are designed to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with, and restricted to, public health risks, and which avoid unnecessary interference with international traffic and trade.¹

Background

- 6.2 Australia was not a party to the previous IHRs which were adopted by the World Health Organisation (WHO) in 1969. The 1969 IHRs were originally intended to monitor and control six serious infectious diseases: cholera, plague, yellow fever, smallpox, relapsing fever and typhus. Under the current IHRs, only cholera, plague and yellow fever are notifiable, meaning that States are required to notify WHO if and when these diseases occur within their territory.² Australia

1 Article 2; National Interest Analysis (NIA), para. 5.

2 World Health Organisation, viewed 16 August 2006, 'What is the history of the IHR?', <www.who.int/csr/ihr/howtheywork/faq/en/index.html>

advocated revising the 1969 IHRs, as among other things, they were not applicable to the spread of new or emerging diseases.³

The revision was needed to address limitations in the current IHR(1969) identified through experience in detecting and responding to disease outbreaks with international dimensions...The focus on just three diseases (cholera, plague and yellow fever) by the IHR(1969) does not address the multiple and varied public health risks that the world faces today.⁴

- 6.3 Representatives from the Department of Health and Ageing informed the Committee that Australia played a lead role in the negotiation and drafting of the new IHRs.⁵ The revised IHRs will replace the 1969 IHRs when they enter into force on 15 July 2007.⁶

The International Health Regulations

- 6.4 Under the revised IHRs, States are required to notify WHO of all events that may constitute a public health emergency of international concern.⁷ A public health emergency of international concern is intended to be a broader trigger for notification and refers to a public health event determined:
- to constitute a public health risk to other States through the international spread of disease, and
 - to potentially require a coordinated international response.⁸
- 6.5 In order to comply with the obligation to notify, States are required to develop, strengthen and maintain the capacity to assess, notify and report events in accordance with the IHRs.⁹ States are further required to develop, strengthen and maintain their capacity to

3 NIA, para. 9.

4 World Health Organisation, viewed 16 August 2006, 'Why were the IHR revised?' <www.who.int/csr/ihr/howtheywork/faq/en/index.html>

5 Ms Cath Halbert, *Transcript of Evidence*, 14 August 2006, p. 39; NIA, para. 9.

6 NIA, para. 3; World Health Organisation viewed 16 August 2006, <www.who.int/csr/ihr/howtheywork/faq/en/index.html>

7 Article 6.

8 Article 1 Definitions, 'public health emergency of international concern'.

9 Article 5.

respond promptly and effectively to public health risks and public health emergencies of international concern.¹⁰

- 6.6 To assist States in identifying a public health emergency of international concern, Annex 2 of the IHRs is a 'decisions instrument' and directs States to assess events based on the following criteria:
- the seriousness of the public health impact of the event
 - unusual or unexpected nature of the event
 - potential for the event to spread internationally and/or
 - the risk that restrictions to travel or trade may result because of the event.¹¹
- 6.7 States are required to consult with the WHO in relation to public health risks and events, including to comply promptly with requests for health information.¹² Where a State has notified the WHO of a public health emergency of international concern, the WHO will offer to collaborate with the State in assessing the potential for international disease spread, possible interference with international traffic and the adequacy of control measures.¹³
- 6.8 States are required to designate a National IHR Focal Point which will be responsible for communication with the WHO and coordination of the implementation of the IHRs.¹⁴
- 6.9 States are required to develop, within five years of entry into force, core capacities relating to surveillance, monitoring reporting, notification, verification and response, including various routine inspection and control measures for persons, goods and vessels at points of entry.¹⁵

10 Article 13.

11 World Health Organisation, viewed 16 August 2006, 'What is meant by a "public health emergency of international concern" in the IHR(2000)?' <www.who.int/csr/ihr/howtheywork/faq/en/index.html>

12 Articles 6, 7, 8, 9 and 10.

13 Article 10.

14 Article 4.

15 Parts IV to VI and Annex 1.

Implementation

6.10 The Committee was informed that Australia has until 2012 to fully implements its obligations under the IHRs:

Our legislative framework and existing administrative practices only need minor amendment to meet the requirements of the International Health Regulations. Consultations are already under way with states and territories to address any legislative and administrative reform necessary to implement the International Health Regulations.¹⁶

6.11 To ensure Australia's compliance with the IHRs, some changes to Commonwealth, State and Territory legislation will be required:

- amendments to Commonwealth, State and Territory privacy legislation to enable the exchange of health information between States and Territories, the Commonwealth and the WHO;
- amendments to State and Territory legislation (other than in Queensland and the Australian Capital Territory) to make the process of notifying relevant diseases more timely and flexible;
- possible additional legislative powers to ensure border agencies can implement obligations concerning exit-screening of people and goods, including the sanitisation of containers upon export; and;
- relatively minor, ad-hoc amendments to the *Quarantine Act 1908* and related regulations.¹⁷

Consultation

6.12 In October 2004, the IHRs Interdepartmental Committee (the IHRs IDC) was established to develop Australia's position for negotiating at the WHO's intergovernmental working group on the IHRs.¹⁸

6.13 The Australian Health Ministers' Advisory Council (AHMAC) tasked the new Australian Health Protection Committee (AHPC) to identify necessary changes to current State and Territory legislation and

16 Ms Cath Halbert, *Transcript of Evidence*, 14 August 2006, p. 39.

17 NIA, para. 13.

18 NIA, Consultation Annex, para. 2.

administrative practices to enable Australia to comply with the obligations contained in the IHRs.¹⁹

- 6.14 Consultation with the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) was initiated in November 2004, the IHRs were listed on the treaty schedule for two SCOT meetings in 2005 but were not discussed, and SCOT was provided with a further update on the IHRs on 17 May 2006.²⁰

Costs

- 6.15 Australia's obligations under the IHRs are not expected to require any significant funding increase as they will be implemented through existing surveillance and reporting mechanisms and administrative practices.²¹
- 6.16 Additional funding may be required to strengthen Commonwealth, State and Territory infrastructure to develop 'surge' capacity to respond to public health emergencies of international concern. Funding requirements are currently being evaluated.²²

Conclusion and recommendation

- 6.17 The IHRs establish mechanisms for information exchange, joint risk assessment, liaison and coordination between the WHO and States Parties. The Committee recognises that the IHRs will prepare Australia to respond to a public health emergency or to combat a global pandemic.

Recommendation 6

The Committee supports the *International Health Regulations (2005)* and recommends that binding treaty action be taken.

19 NIA, Consultation Annex, para. 6.

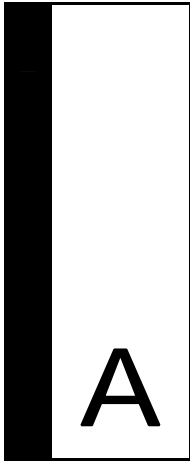
20 NIA Consultation Annex, para. 5.

21 NIA, para. 21.

22 NIA, para. 22.

Dr Andrew Southcott MP

Committee Chair



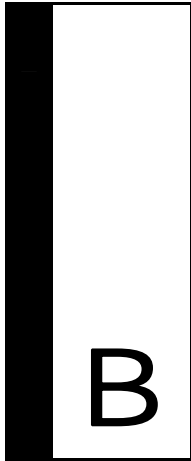
Appendix A - Submissions

Treaties tabled on 20 June 2006

- 1 Australian Patriot Movement
- 2 ACT Government
- 4 Department of Premier and Cabinet
- 5 The Hon Paul Lennon MHA

Treaties tabled on 8 August 2006

- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 1.2 Australian Patriot Movement
- 2 Australian Customs Service



Appendix B - Witnesses

Monday, 14 August 2006 – Canberra

Attorney-General's Department

Mr Stephen Bouwhuis, Principal Legal Officer, International Trade
Law & General Advising Branch, Office of International Law

Australian Customs Service

Mr Matthew Bannon, Director, Valuation and Origin

Australian Nuclear Science and Technology Organisation

Mr Steven McIntosh, Senior Adviser, Government Liaison

Bureau of Meteorology

Mr Jonathan Gill, Graphical Forecast Editor and Project Manager

Commonwealth Scientific and Industrial Research Organisation (CSIRO)

Miss Kimberley Shrives, International Relations Adviser

Department of Education, Science and Training

Mr David Smith, Director, International Science and Technology
Relations Section, Science Group

Department of Foreign Affairs and Trade

Ms Sarah De Zoeten, Executive Officer, International Law and
Transnational Crime

Ms Elizabeth Donaldson, Executive Officer, United States and Strategic Section, United States Branch, Americas Division

Mr Craig Everton, Safeguards Officer, Australian Safeguards & Non-Proliferation Office

Ms Prudence Gordon, Executive Officer, FTA Commitments and Implementation Section

Mr Andrew Leask, Assistant Secretary, Australian Safeguards & Non-Proliferation Office

Mr David Mason, Executive Director, Treaties Secretariat, Legal Branch

Ms Elizabeth Peak, Executive Officer, International Law and Transnational Crime Section, Legal Branch

Mr Peter Rayner, Director, Malaysia, Brunei, Singapore Section

Ms Charlene Watego, Executive Officer, US Trade Section

Mr Michael Wood, Director, Japan Section

IP Australia

Ms Caroline McCarthy, Director, International Policy Section

Department of Health and Ageing

Ms Cath Halbert, First Assistant Secretary, Office of Health Protection

Ms Tracy Thompson, Acting Director, Legislation Section, Surveillance Branch, Office of Health Protection

Department of Industry, Tourism and Resources

Ms Ruth Gallagher, Manager, Tariff and Trade Policy