

Report 86

Treaties tabled on 27 March and 9 May 2007

Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles (Geneva, 25 June 1998)

Agreement on Scientific and Technological Cooperation between the Government of Australia and the Government of the Republic of South Africa (Canberra, 18 October 2006)

Instrument amending the Constitution of the International Telecommunication Union and Instrument amending the Convention of the International Telecommunication Union (Antalya, 24 November 2006)

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) Geneva, 8 December 2005

Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State ("Supplementary Agreement"), Concluding Protocol and Implementation Arrangement (Berlin, 9 February 2007)

Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (Canberra, 6 December 2006)

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 International Convention on the Harmonized Commodity Description and Coding System (HS2007)

Protocol Amending the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Geneva, 6 December 2005)

Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields (Canberra, 13 June 2006)

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ISBN 978 0 642 78984 6 (printed version)

ISBN 978 0 642 78985 3 (HTML version)



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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

ACMA	Australian Communications and Media Authority
ADRs	Australian Design Rules
APT	Asia Pacific Telecommunity
CSIRO	Commonwealth Scientific and Industrial Research Organisation
Cth	Commonwealth
DEST	Department of Education, Science and Training
DFAT	Department of Foreign Affairs and Trade
DOTARS	Department of Transport and Regional Services
FaCSIA	Department of Families, Community Services and Indigenous Affairs
HS2007	Harmonized Commodity Description and Coding System 1 January 2007
ICRC	International Committee of the Red Cross
IFRC	International Federation of Red Cross and Red Crescent Societies
IP	Intellectual Property
ITU	International Telecommunication Union
JSCOT	Joint Standing Committee on Treaties

MDA	Magen David Adom
MSF	Médecins Sans Frontières
NGO	Non-Government Organisation
NIA	National Interest Analysis
RIS	Regulation Impact Statement
SAFTA	Singapore-Australia Free Trade Agreement
SCOT	Commonwealth and State/Territory Standing Committee on Treaties
TLG	Technical Liaison Group
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN/ECE	United Nations Economic Commission for Europe
WCO	World Customs Organization
WTO	World Trade Organization



List of recommendations

2 1998 Global Agreement concerning Wheeled Vehicles (Geneva, 28 June 1998)

Recommendation 1

The Committee supports the *Agreement concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles* and recommends:

- that binding treaty action be taken.
- that a declaration be issued advising that the Australian Government will not be bound by any of the Regulations annexed to the Agreement until further notification is given.

3 Agreement on Scientific and Technological Cooperation between Australia and the Republic of South Africa

Recommendation 2

The Committee supports the *Agreement on Scientific and Technological Cooperation between Australia and the Republic of South Africa* and recommends that binding treaty action be taken.

4 Instruments amending the International Telecommunication Union Constitution & Convention

Recommendation 3

The Committee supports the *Instrument amending the Constitution of the International Telecommunication Union (Antalya, 24 November 2006)* and the

Instrument amending the Constitution of the International Telecommunication Union (Antalya, 24 November 2006) and recommends that binding treaty action be taken in both instances.

5 The Adoption of an Additional Distinctive Emblem (Protocol III)

Recommendation 4

The Committee supports the *Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem* and recommends that binding treaty action be taken.

6 Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security

Recommendation 5

The Committee supports the *Supplementary Agreement on Social Security between Australia and Germany* and recommends that binding treaty action be taken.

7 Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea

Recommendation 6

The Committee supports the *Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (Canberra, 6 December 2006)* and recommends that binding treaty action be taken.

8 Amendments to the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the International Convention on the Harmonized Commodity Description and Coding System (HS2007)

Recommendation 7

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 International Convention on the Harmonized Commodity Description and Coding System (HS2007)* and recommends binding treaty action be taken.

9 Protocol amending the TRIPS Agreement (Geneva, 6 December 2005)

Recommendation 8

The Committee supports the *Protocol Amending the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights* and recommends that binding treaty action be taken.

10 Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields

Recommendation 9

The Committee supports the *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* 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 nine treaty actions tabled in Parliament on 27 March and 9 May 2007. These treaty actions are:

27 March 2007¹

- *Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles (Geneva, 25 June 1998)*

9 May 2007²

- *Agreement on Scientific and Technological Cooperation between the Government of Australia and the Government of the Republic of South Africa (Canberra, 18 October 2006)*
- *Instrument amending the Constitution of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002) and Instrument amending the Convention of the International Telecommunication Union (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994), by the Plenipotentiary*

1 Australia, House of Representatives 2004-05-06-07, *Votes and Proceedings*, No. 162, p. 1807; Australia, Senate 2004-07, *Journal*, No. 139, p. 3663.

2 Australia, House of Representatives 2004-05-06-07, *Votes and Proceedings*, No. 166, p. 1854; Australia, Senate 2004-07, *Journal*, No. 143, p. 3752.

Conference (Minneapolis, 1998) and by the Plenipotentiary Conference (Marrakesh, 2002) (Antalya, 24 November 2006)

- *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) Geneva, 8 December 2005*
- *Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State ("Supplementary Agreement"), Concluding Protocol and Implementation Arrangement (Berlin, 9 February 2007)*
- *Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (Canberra, 6 December 2006)*
- *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 International Convention on the Harmonized Commodity Description and Coding System (HS2007)*
- *Protocol Amending the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Geneva, 6 December 2005)*
- *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields (Canberra, 13 June 2006)*

Briefing documents

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

www.aph.gov.au/house/committee/jsct/27march2007/tor.htm

www.aph.gov.au/house/committee/jsct/9may2007/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.³ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Members of Parliament and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.
- 1.5 The Committee also received evidence at public hearings held on 18 and 22 June 2007 in Canberra. A list of witnesses who appeared before the Committee at the public hearings is at Appendix B. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- www.aph.gov.au/house/committee/jsct/9may2007/hearings.htm

3 The Committee's review of the proposed treaty action was advertised in *The Australian* on 14 February and 14 March 2007. 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.

1998 Global Agreement concerning Wheeled Vehicles (Geneva, 28 June 1998)

Introduction

- 2.1 The *Agreement concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles*,¹ referred to hereafter as the 1998 Global Agreement, was signed in Geneva on 28 June 1998 and came into force generally on 25 August 2000.²
- 2.2 The 1998 Global Agreement is designed to reduce barriers to international trade in the motor vehicle industry by harmonising national standards for motor vehicles.³ Upon accession to the 1998 Global Agreement, Australia would become a Contracting Party, and could then choose whether or not to adopt selected 'global technical regulations' established under the Agreement as part of its own national standards for vehicle design.⁴

1 [1998] ATSD 4616.

2 National Interest Analysis (NIA), para. 2.

3 NIA, para. 6.

4 NIA, para. 2.

Background

- 2.3 Most countries, including Australia, maintain mandatory national standards for motor vehicles. Standards are designed to make vehicles safer to use as well as to control the emission levels of vehicles. However, the use of different technical standards for like products imposes barriers to international trade. This effect is magnified within the automotive industry, which has become increasingly reliant on global supply chains to manufacture and distribute vehicles to consumers.⁵

The 1958 Agreement

- 2.4 The 1998 Global Agreement follows an earlier Agreement on the same subject. The 1958 Agreement⁶ was done at Geneva on 20 March 1958 and came into force generally on 20 June 1959, with effect for Australia from 25 April 2000.⁷
- 2.5 The 1958 Agreement was first developed by the United Nations Economic Commission for Europe (UN/ECE) after the Second World War. It was intended to enhance technical uniformity for motor vehicles, equipment and parts between European countries, although it was also open to non-European countries.

The need for two separate Agreements

- 2.6 According to the Regulation Impact Statement (RIS) tabled with the NIA, the 1958 Agreement is still needed as
- it provides today's international standards. However, the 1998 Global Agreement is the mechanism to provide tomorrow's harmonised global standards.⁸
- 2.7 The 1958 Agreement and the 1998 Global Agreement operate simultaneously,⁹ with many countries Contracting Parties to both

5 Regulation Impact Statement (RIS), p. 2.

6 Full title: *Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or used on Wheeled Vehicles and the conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, as amended to 16 October 1995* [2000] ATS 11. See JSCOT Report 25.

7 NIA, para. 14.

8 RIS, p. 11.

9 Article 1.2.

agreements.¹⁰ The two Agreements are necessary as they reflect the different governmental compliance systems used to regulate vehicles. The earlier 1958 Agreement is based on the European system of compliance, the most commonly used around the world, including in Japan and Australia. The system is known as “type approval”: vehicles and their constituent components are approved as meeting standards by government regulators prior to the vehicle entering the market.¹¹

2.8 Some countries use regulatory systems that are incompatible with the European approach. For instance, the US is unable to recognise the approvals of other countries because vehicles or components in the US are not “approved” as such. The US uses a system based on “self-certification”, whereby the manufacturer or importer “self-certifies” that the vehicle meets the standards. After the vehicle is introduced into the market, the government regulator selectively purchases and tests sample vehicles, with those vehicles that fail being recalled.¹²

2.9 A small number of other countries also adopt incompatible regulatory systems. Canada’s regulatory system is closely aligned with that of the US, while China has its own “China Compulsory Certification” system. These countries are unable to join the 1958 Agreement as they lack the “type approval” scheme.¹³ Hence, the 1998 Global Agreement was negotiated to cater for these economies.

2.10 Representatives from the Department of Transport and Regional Services (DOTARS) informed the Committee that:

This new treaty brings the United States of America, Canada and China into the fold. Previously they were prevented from acceding to the older 1958 agreement, as it contained an element that was not acceptable to them – namely, the mutual recognition of conformity assessment activities.¹⁴

...

The United States and Canada have their own arrangements for certifying or approving vehicles, which is to say that the government does not intervene at the pre-market stage.

10 For instance, Japan, the Republic of Korea, New Zealand, the E.C., France, Germany, Italy, Spain, Sweden and the U.K.: NIA, para 15.

11 RIS, p. 8.

12 RIS, p. 8.

13 RIS, p. 8.

14 Mr Allan Jonas, *Transcript of Evidence*, 22 June 2007, p. 1.

Manufacturers are fully aware of the standards that apply and they are expected to make sure they comply. Having entered the market, they need to be cognisant of the fact that, if they do not comply and are found to be non-compliant at a later stage, there are severe penalties involved and the governments do not feel the necessity to get involved in pre-market evaluations. This new treaty does not include a mutual recognition component, so the United States and Canada are quite comfortable entering into this agreement. In fact, they are founding members and the agreement would not have got off the ground if it were not for their good offices.¹⁵

Operation of the two Agreements

- 2.11 The Agreements are designed to harmonise member countries' national standards, whilst at once achieving the world-wide performance goals of enhancing vehicle safety, environmental protection, energy efficiency and anti-theft performance.¹⁶ The Agreements do this by allowing Contracting Parties to develop international "technical regulations" to govern the design and performance of motor vehicles. These regulations are developed via consultation between Contracting Parties. Once established, the regulations are then available for "adoption" by Contracting Parties. For the 1958 Agreement, the regulations are known as "UN/ECE Regulations". For the 1998 Global Agreement, the regulations are known as "global technical regulations".¹⁷
- 2.12 There are 125 UN/ECE Regulations annexed to the 1958 Agreement, many dating back as far as the 1960s. The Regulations are widely adopted, with 90 Regulations having been adopted by three-quarters of Contracting Parties.¹⁸
- 2.13 The intention is to harmonise the UN/ECE Regulations and the global technical regulations, so that they eventually cover the same content, specify the same technical standards and mandate the same

15 Mr Allan Jonas, *Transcript of Evidence*, 22 June 2007, p. 2.

16 NIA, para. 6.

17 RIS, p. 9.

18 NIA, para. 18; RIS, p. 9.

performance.¹⁹ The 1998 Global Agreement provides the longer-term solution of a single set of harmonised global standards. The US, Canada and China will be progressively brought into the same system for vehicle standards as the rest of the world.²⁰

Establishment of global technical regulations

- 2.14 Global technical regulations are a much more recent development than the UN-ECE Regulations, and are only just beginning to have an impact. Only five global technical regulations have been established for the 1998 Global Agreement, all covering minor topics.²¹ The number of global technical regulations is expected to increase in the future.²²
- 2.15 Once established, global technical regulations are listed in a “Global Registry”.²³ A regulation may become listed in the Global Registry in one of two ways:
- harmonisation of an existing regulation;²⁴ or
 - development of a new global technical regulation.²⁵
- 2.16 There are two forms of existing regulations that may be harmonised and become global technical regulations:
1. The **UN/ECE Regulations** are automatic “candidates” to be established as global technical regulations.
 2. Any Contracting Party may nominate **pre-existing national standards** to be established as global technical regulations.²⁶
- 2.17 In both cases, the candidate regulation must meet the criteria for regulations set out in the Agreement²⁷ and be adopted by a consensus vote of the Executive Committee²⁸ in favour of the regulation.²⁹ In

19 RIS, p. 10.

20 RIS, p. 10.

21 NIA, para. 18; RIS, p. 9.

22 NIA, para. 18.

23 NIA, para. 9. See Article 6: Registry of global technical regulations.

24 Article 6.2.

25 Article 6.3.

26 NIA, para. 20.

27 See Article 4: Criteria for technical regulations.

28 The Executive Committee is constituted by the representatives of all Contracting Parties: Article 3.1.

29 NIA, para. 20.

addition, any pre-existing national standards must be listed on the “Compendium of Candidates”.³⁰ A standard is only listed on the Compendium if it is supported by a one-third vote of Contracting Parties, including the vote of Japan, the European Community or the US.³¹ The US has proposed a number of its own national standards as candidates for global technical regulations with nine candidate regulations currently registered.³²

2.18 Where elements of performance or design characteristics are not addressed by the UN/ECE Regulations or technical regulations in the Compendium of Candidates, any Contracting Party may submit a proposal to develop a new global technical regulation.³³ The process of determining whether the proposal is established as a global technical regulation includes an assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative standards.³⁴

2.19 The Committee was informed by representatives from DOTARS that:

the two treaties will continue to operate simultaneously and from here on they will keep close pace with each other. As soon as a regulation is ratified under the new agreement, there will be concerted efforts to align the regulations applying under the old treaty. So, looking forward to a point in time, we will reach a stage where the regulations would be identical except ... the older agreement will still provide for the mutual recognition of conformity assessment.³⁵

Adoption of global technical regulations

2.20 Once a global technical regulation is registered in the Global Register, Contracting Parties may choose to “adopt” the regulation into their domestic law. The establishment of a global technical regulation does not obligate a Contracting Party to adopt the regulation. Contracting Parties retain the right to choose whether or not to adopt a regulation:³⁶

30 See Article 5: Compendium of Candidate global technical regulations.

31 NIA, para. 21. See Article 5.2.2. and paragraph 7.1 or Article 7 of Annex B.

32 NIA, para. 18.

33 Article 6.3.

34 NIA, para. 22.

35 Mr Allan Jonas, *Transcript of Evidence*, 22 June 2007, p. 2.

36 NIA, para. 26.

any contracting party can basically veto a technical regulation. What that means for individual parties is that they are not likely to be exposed to any technical regulations that are not going to be acceptable to them simply because the rest of the contracting parties decided to go that way.³⁷

2.21 Each Contracting Party must notify the UN Secretary-General within 60 days of its decision whether or not to adopt a global technical regulation.³⁸ The Party must also notify the Secretary-General within 60 days if it decides to:

- Rescind or amend its decision to adopt a regulation;³⁹
- Accept products (i.e. components of vehicles), including to enter the market, that comply with a global technical regulation, without adopting the regulation itself;
- Cease accepting such products.⁴⁰

2.22 If a Contracting Party has not made a decision whether or not to adopt a global technical regulation within one year of its establishment in the Global Registry, the Party must provide a status report to the Secretary-General.⁴¹

Reasons for Australia to accede to the 1998 Global Agreement

2.23 According to the RIS:

The automotive industry has become Australia's single largest exporter of manufactured products (now leading other manufacturing industries such as pharmaceuticals, IT, telecommunications and textiles). During 2004, exports in automotive products totalled \$4.67 billion; comprising 3 per cent of Australia's total exports in goods and services. Automotive products now exceed a number of more traditional Australian exports such as wheat, wool and wine.

37 Mr Allan Jonas, *Transcript of Evidence*, 22 June 2007, p. 2.

38 Articles 7.2 and 7.3.

39 Article 7.6.

40 NIA, para. 28.

41 NIA, para. 29.

Automotive exports have been more than tripled in value over the decade from 1994 to 2004.⁴²

These trends have continued in 2005 ... Automotive exports totalled \$5.14 billion, an increase of 9 per cent over 2004.⁴³

Benefits for Australia's automotive industry

2.24 By reducing barriers to international trade and maximising trade facilitation, the proposed treaty action is intended to reduce costs and increase flexibility for Australia's automotive manufacturing industry.⁴⁴ In particular, the proposal will boost export market opportunities, especially for low volume "niche" products:⁴⁵

A particular example would be stretch limousine vehicles for Korea. We would normally have to jump through all sorts of hoops to get into the Korean market ... Korea has already acceded to this particular agreement. Under those agreements, at least the standards will be aligned. You can perhaps expect there will be some administrative arrangements that might be a further hurdle, but at least we have removed one of the hurdles.⁴⁶

2.25 Variations in standards represent an impediment to locally manufactured models being distributed overseas. For Australian exporters, the costs involved in re-designing, re-tooling and re-certifying to meet different international standards can be prohibitive. Costs for exporters will be lowered by reducing the need for unique Australian standards and by minimising the need for Australian products to be redesigned for global markets.⁴⁷

2.26 For locally made vehicles, variations between Australian standards and international standards represent an impediment to the use of overseas components. The choice of suppliers becomes limited to those that are able to comply with the Australian standards.⁴⁸ For imported vehicles, variations in standards represent an impediment

42 RIS, p. 4.

43 RIS, p. 5. See also NIA, para 13.

44 RIS, p. 14.

45 NIA, para. 7.

46 Mr Allan Jonas, *Transcript of Evidence*, 22 June 2007, p. 4.

47 NIA, para. 12.

48 RIS, p. 5.

to overseas models being distributed in Australia, as overseas vehicles would need to be manufactured specially for the Australian market.⁴⁹

- 2.27 All these variations in standards add to the costs of manufacture,⁵⁰ which can be prohibitive to Australian importers and exporters.⁵¹ By minimising differences in vehicle standards between countries, unnecessary costs from Australia's automotive industry would be removed.

Benefits for consumers

- 2.28 Globalisation of the automotive industry is good for the Australian consumer in that it is likely to provide earlier access to innovative products,⁵² more attractive products⁵³ and more affordable vehicles.⁵⁴ Members of the general public are likely to derive benefit from safer roads and cleaner air.⁵⁵

Benefits for Australia's international trade relations

- 2.29 By acceding to the Agreement, Australia will become an integral part of the global automotive community. Australia will have the opportunity to harmonise standards with those key industry players who are unable to participate in the 1958 Agreement, namely the US, Canada and China.⁵⁶
- 2.30 Further, the proposed treaty action will allow Australia to gain a voice in the development of vehicle standards at a global level. As a Contracting Party, Australia will have the right to vote on proposed global technical regulations and to submit its own proposals for the development and amendment of regulations.⁵⁷ Australian conditions

49 RIS, p. 5.

50 Variations in standards alone are estimated to add up to 5-10 per cent to the overall cost of producing a vehicle: RIS, p. 6.

51 RIS, p. 5.

52 A recently adopted feature is side and curtain passenger airbags: RIS, p. 5.

53 RIS, p. 3.

54 Real vehicle prices have declined by some 13 per cent over the decade 1994-2004. An "affordability index" developed by industry shows that Australian vehicles on average have become 75 per cent more affordable over the same period: RIS, p. 5.

55 RIS, p. 14.

56 RIS, p. 16.

57 NIA, para. 11.

and requirements would be able to be reflected in the evolution of international standards.⁵⁸

- 2.31 Accession to the Agreement is also consistent with Australia's trade liberalisation objective that national rules should not create unnecessary obstacles to international trade. Accession reflects the trade liberalisation goals of APEC generally, and its Bogor Declaration in particular, for free and open trade for Asia Pacific economies.⁵⁹

Implementation

- 2.32 As outlined above, the establishment of a global technical regulation does not obligate a Contracting Party to adopt the regulation. DOTARS proposes that Australia would initially not be subject to any specific global technical regulations.

Australian Design Rules

- 2.33 Australia maintains a federal scheme of safety and emission standards for motor vehicles, overseen by the Australian Transport Council. These uniform, national standards for vehicle design are known as Australian Design Rules (ADRs). ADRs are adopted under a joint Commonwealth, State and Territory decision-making process following industry and public scrutiny.⁶⁰ The Australian Government has already taken major steps towards harmonisation by aligning ADRs with existing international standards under the 1958 Agreement.
- 2.34 When Australia acceded to the 1958 Agreement, it did so subject to a reservation that it would not be bound by any of the Regulations annexed to the Agreement until further notice was given. The intention was for the individual Regulations to be first subject to thorough and public review by the Australia, State and Territory Governments, known as the ADR Review. To date, Australia has not formally adopted any of the UN/ECE Regulations, as it is still in the process of a detailed economic assessment of each vehicle standard. This approach was previously approved by the Committee:

58 RIS, p. 6.

59 RIS, p. 16.

60 NIA, para. 32.

It is ... a prudent step not to adopt all ECE Regulations at the outset. It is important that the Australian community be allowed to review all existing Australian Design Rules and all proposed ECE Regulations to ensure that our safety and emission rules are not diluted and that individual ECE Regulations are appropriate to Australian conditions.

The proposal that Australian Design Rules be aligned with ECE Regulations progressively and only after thorough and public review is sensible. It is important that this review process involve not just the relevant Commonwealth, State and Territory ministers but also involve as many motoring, consumer and industry related organisations as possible. Only by wide public involvement will community confidence in the outcome be engendered.⁶¹

- 2.35 The ADR Review involves a range of stakeholders and highlights the costs and benefits of aligning Australian standards with international standards. The ADR Review is expected to be completed in mid-2007. Around 33 ADRs out of a total of 61 will be aligned with the UN/ECE Regulations.⁶²

Retain unique Australian standards in certain conditions

- 2.36 At this stage, the remaining Australian ADRs will not be aligned with international regulations. This is because strict observance of harmonisation could actually impair local vehicle performance or produce unsafe conditions. Harmonisation must be balanced with situations in which unique Australian standards need to be maintained where they reflect real-world requirements and characteristics, such as driving conditions, operating constraints and customer preferences. In certain instances it is sensible for Australian standards to deviate from international standards if it is of net benefit to the Australian community.⁶³ For example, Australian highways are markedly different to European autobahns, and some international standards, such as extreme cold weather testing required by European conditions, are not applicable to Australian conditions.⁶⁴

61 JSCOT Report 25, paras 7.24-7.25.

62 RIS, p. 15.

63 RIS, p. 6.

64 RIS, p. 7.

- 2.37 Upon the 1998 Global Agreement entering into force, Australia would be able to choose whether or not to adopt one or more global technical regulations, either by implementing the regulation in a new ADR or amending an existing ADR.⁶⁵ The assessment of each global technical regulation would take the form of a Regulation Impact Statement. Assessment would also involve consultation with a range of stakeholders, such as industry members, peak bodies, motoring, consumer and industry associations and the Australian community, an extension of the current ADR Review.⁶⁶

Future Treaty Action

- 2.38 Any future amendment or addition to the text of the 1998 Global Agreement would constitute a separate treaty action and would be subject to the usual domestic treaty making process.⁶⁷

Adoption or amendment of global technical regulations

- 2.39 A question arises as to whether or not the adoption or amendment of a global technical regulation would constitute a separate treaty action which should be tabled in the Australian Parliament. The global technical regulations are legally discrete from the text of the 1998 Global Agreement, so their particular adoption or amendment would not constitute an amendment of the Agreement itself.⁶⁸
- 2.40 In early 2007, the Committee considered the issue of tabling tacit acceptance amendments in the Australian Parliament. It was decided that amendments to technical standards such as those made under the 1958 Agreement and the 1998 Global Agreement would not be captured by the tacit acceptance amendment proposal, meaning such amendments would not be required to be tabled in Parliament. This was because:
- Australia is free to accept or not accept variations to regulations,
 - such variations would not amend the Agreement itself, and

65 NIA, para. 33.

66 RIS, p. 19.

67 NIA, para. 42.

68 NIA, para. 38.

- tabling could be a potential administrative burden for both DOTARS and this Committee.

2.41 The Committee previously considered whether the UN/ECE Regulations under the 1958 Agreement would need to be tabled in Parliament as separate treaty actions:

We accept the Minister's proposition that each action to adopt an ECE Regulation should be considered to be implementation action within the overall framework of the treaty, rather than a separate treaty action. This acceptance is given on the proviso that community participation in the regulation review process is wide and effective and that the usual Regulation Impact Statement and parliamentary scrutiny opportunities are available for each regulatory action.

We also accept the Minister's offer to advise this Committee on each occasion that regulatory action is taken to align the Australian Design Rules with ECE Regulations.⁶⁹

2.42 DOTARS hence contends that global technical regulations should be treated in the same way as UN/ECE Regulations.⁷⁰ DOTARS also undertakes to advise the Committee whenever a global technical regulation is adopted by Australia.⁷¹ The Committee accepts both these statements and notes that, although not tabled as separate treaty actions, any changes made to the ADRs to bring them into line with the global technical regulations will still be subject to parliamentary scrutiny, as they will be tabled as disallowable instruments.

Entry into force and withdrawal

2.43 The treaty action is proposed to be undertaken as soon as practicable after the completion of domestic processes. The Agreement would enter into force for Australia 60 days from the date Australia deposits its instrument of accession with the UN Secretary-General.⁷²

69 JSCOT Report 25, paras 7.27 - 7.28.

70 NIA, paras 40-41.

71 NIA, para. 41.

72 NIA, para. 5. See Article 11: Entry into force.

- 2.44 The obligations under the Agreement will not apply to any of Australia's external territories, such as Norfolk Island, and Australia will lodge a reservation to this effect upon accession.⁷³
- 2.45 A Contracting Party may withdraw from the Agreement by notifying the UN Secretary-General.⁷⁴ Withdrawal takes effect twelve months after receipt of notification.⁷⁵

Costs

- 2.46 The only costs arising from acceding to the 1998 Global Agreement are those relating to the administration of Australia's role within the Agreement. This primarily covers attendance at regular meetings of the administering body – attendance by DOTARS officials would be met from the Department's existing budget.⁷⁶

Consultation

- 2.47 Australia's scheme for motor vehicles is oversighted by a Ministerial Council, the Australian Transport Council. The relevant consultative forum is the Technical Liaison Group (TLG), which holds regular consultations between Australian jurisdictions, industry and consumer bodies on the development of motor vehicle standards. TLG members strongly supported the original decision to accede to the 1958 Agreement, and also strongly support the proposed treaty action.⁷⁷
- 2.48 Representatives from DOTARS informed the Committee that:
industry is fully supportive of this proposal, as it opens up a whole new raft of possibilities.⁷⁸

73 NIA, para. 4. See Article 15: Extension of Agreement to territories.

74 Article 12.1.

75 Article 12.2.

76 NIA, para. 34.

77 RIS, p. 17; NIA (Consultation), paras 1-7.

78 Mr Allan Jonas, *Transcript of Evidence*, 22 June 2007, p. 2.

Conclusion and Recommendation

- 2.49 The Committee recognises the advantages for both the Australian automotive industry and Australian consumers to be gained from accession to the 1998 Global Agreement. Accession to the Agreement would also enhance Australia's capacity to influence the development and adoption of global technical regulations.
- 2.50 The Committee considers it sensible that Australia continue to align its standards with currently available international standards under the 1958 Agreement in accordance with the ADR Review. Similar arrangements should apply for the 1998 Global Agreement. The processes for adopting ADRs provide an open and transparent means of ensuring that international standards are appropriate to Australian conditions and expectations, including public and Parliamentary scrutiny.

Recommendation 1

The Committee supports the Agreement concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and recommends:

- **that binding treaty action be taken.**
- **that a declaration be issued advising that the Australian Government will not be bound by any of the Regulations annexed to the Agreement until further notification is given.**

- 2.51 The Committee accepts the proposition by DOTARS that each action to adopt a global technical regulation should be considered to be an implementation action with the overall framework of the treaty, rather than a separate treaty action. On this basis, adoptions or amendments to global technical regulations would not require tabling in the Australian Parliament as separate treaty actions. However, regulatory amendments to implement global technical regulations would still be subject to parliamentary scrutiny when they are tabled as disallowable instruments.

- 2.52 We also accept the offer by DOTARS to advise this Committee on each occasion that a global technical regulation is adopted by Australia and made an Australian Design Rule.

Agreement on Scientific and Technological Cooperation between Australia and the Republic of South Africa

Introduction

- 3.1 On 18 October 2006 Australia signed the *Agreement on Scientific and Technological Cooperation between the Government of Australia and the Government of the Republic of South Africa* (the Agreement).¹ Australia has the same type of agreement with a number of other countries.²
- 3.2 Australia and South Africa have had a good long term collaborative research relationship participated in by government agencies, universities and their industry sectors.³
- 3.3 The purpose of this Agreement is to further support, strengthen and encourage the long standing scientific and technological relationship that exists between Australia and the Republic of South Africa by providing a more formal framework in which this cooperation can operate.⁴

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

2 Australia has similar agreements with China, the European Community, the Federal Republic of Germany, Japan, the Republic of Korea, the Government of Russia, the Republic of Indonesia, and the United States of America.

3 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 17.

4 NIA, para. 3.

Background

- 3.4 South Africa is Australia's most important trading partner on the African continent with a two-way merchandise trade (almost A\$3.9 billion in 2006) accounting for almost 75% of Australia's two way trade with sub-Saharan Africa.⁵ The total value of Australian mining investment in Africa is estimated at \$14 billion and involves over 1400 companies in various capacities.⁶
- 3.5 The focus of scientific and technological cooperation between Australia and South Africa has, in recent years, been in the areas of mining exploration and processing and associated environmental management; natural resource management, especially water; catchment management; biological control of invasive species; and agriculture.⁷
- 3.6 Current Australian collaboration with South Africa includes activities in the areas of astronomy, natural resource management, minerals and mining. The range of fields in which there are existing scientific interactions between the two countries suggests that there is potential to expand the relationship and increase scientific benefits and linkages between both countries. Currently, the CSIRO, which has strong linkages with research institutions in South Africa, is interested in cooperation in radio astronomy and, within the energy domain, in areas such as coal liquefaction.⁸

The purpose of the agreement

- 3.7 A more formal agreement on scientific and technological cooperation with South Africa is required to enable South Africa's National Research Foundation to provide greater resources to support collaborative activities. At the present time, only limited resources are able to be committed by South Africa.⁹

5 Australia's merchandise exports to South Africa are dominated by raw materials (alumina, coal and crude petroleum). Australia's investment in South Africa, and Southern Africa more broadly, is predominantly in mining.

6 NIA, para. 8.

7 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

8 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

9 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

3.8 The Australian Government has been advised by Australian research institutions

that although the South African Government had money they could make available for their researchers ...it was locked up until the governments had a treaty level instrument that gave legitimacy to subsequent research relationships.¹⁰

3.9 The Agreement between Australia and South Africa should resolve this impediment, potentially allowing agencies to undertake new collaborative research.¹¹

3.10 The Committee was also informed by the Department of Education, Science and Training (DEST) that the Agreement will provide:

Guidance on the type of collaborative activities that the Australian and South African governments may wish to encourage, such as the exchange of scientists, research workers, specialists and scholars, the organisation of bilateral scientific and technological seminars and courses, and the formulation, implementation and application of joint research.¹²

3.11 It will also allow for dialogue between the governments of Australia and South Africa to ensure the cooperation is directed towards the areas of greatest mutual benefit.¹³

Obligations

3.12 The main obligations of Parties as outlined in the NIA to the agreement will be:

- Article 1(1) and 1(2) obliges the Parties to promote the development of cooperation in the fields of science and technology on the basis of equality and mutual advantages and to promote scientific and technological cooperation between their respective government agencies, enterprises, research institutions, universities and other research and development organisations.

10 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19

11 NIA, Consultation, para. 6.

12 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

13 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

- Article 2 obliges the Parties to conduct their scientific and technological cooperation subject to the domestic law of the countries of the Parties, and effected by the:
 - ⇒ exchange of scientists, research workers, specialists, and scholars;
 - ⇒ exchange of scientific and technological information and documentation;
 - ⇒ organisation of bilateral scientific and technological seminars and courses in areas of mutual interest; and
 - ⇒ joint identification of scientific and technological problems, the formulation and implementation of joint research programmes, the application of the results of such research in industry, agriculture and other fields, and the exchange of experience and know-how resulting from this work.
- Article 3 obliges the Parties to facilitate the entry and stay of the other Party's citizens in its country for the purposes of this Agreement.
- Article 4 provides that the Parties may negotiate and conclude arrangements for the effective implementation or operation of any aspect of the Agreement.
- Article 4(4) obliges the Parties to take into account the applicable domestic law of the country of the Party in whose jurisdiction the particular cooperative activities are to be undertaken.
- Article 4(5) obliges the Parties, unless they otherwise agree, to conclude programs of cooperation, compiled biennially or in another agreed period, setting out the details of cooperative activities.
- Article 6 obliges the Parties to agree upon the terms and delivery of the equipment and apparatus required for joint research and pilot plant studies.
- Article 7 obliges the Parties to promote cooperation in the exchange of information.
- Article 8 obliges a Party not to divulge confidential information obtained from the other Party unless the other Party consents to disclosure or requires its disclosure under its domestic law and has informed the other party in writing of this obligation.

- Article 9 obliges the Parties to settle financial arrangements involved in the implementation of this Agreement, in respect of the programmes of cooperation.
- Article 10 obliges the Parties to afford to the citizens of the other Party all reasonable assistance and facilities in carrying out activities under this Agreement.
- Article 11 obliges the Parties to settle any disputes between them arising out of the interpretation or implementation of the Agreement amicably through consultation or negotiation.¹⁴

Entry into force and withdrawal

3.13 Article 12 of the Agreement provides that the Parties shall notify each other when their domestic requirements for entry into force of the Agreement have been fulfilled.¹⁵

3.14 The NIA states that no new domestic legislation or amendments to existing legislation are required to allow Australia to meet its obligations under the Agreement. In addition:

- under Article 13 of the Agreement, amendments can be made by an exchange of notes between both Parties through diplomatic channels; and,¹⁶
- once in force, Article 12(3) of the Agreement allows either Party to terminate the Agreement upon six weeks' written notice. Cooperative activities under the Agreement which had commenced as at the date of receipt of a notification to terminate the Agreement would be allowed to be fully executed after the termination has taken effect. Termination by Australia would be subject to our domestic treaty-making process.¹⁷

14 NIA, paras. 11-22.

15 NIA, para. 2.

16 Any amendment to the Agreement would be subject to Australia's domestic treaty-making process, NIA, para. 26.

17 NIA, para. 27.

Consultation

3.15 The NIA states that:

- the Federal Government Departments were consulted and all agencies were broadly supportive of the Agreement;
- during 2005, the views of stakeholder agencies were also sought on the suitability of the text agreed with South Africa at an officials level;¹⁸
- State and Territory Governments were consulted through the Commonwealth and State/Territory Standing Committee on Treaties (SCOT) and indicated no objections or concerns;
- approval for Australia to sign the Agreement in October 2006 was received from the Prime Minister and relevant Government Ministers; and,
- the Australian scientific community was consulted, specifically through the Australian Research Council (ARC), the National Health and Medical Research Council (NHMRC), Australian Nuclear Science and Technology Organisation (ANSTO), Defence Science Technology Organisation (DSTO) and the CSIRO. All agencies indicated their support for the provisions.¹⁹

3.16 The Committee questioned DEST in regards to the use of the term 'broadly supportive' in relation to the consultative process. DEST stated that:

I think it is a rare case where you will find every agency has a complete 100 per cent endorsement of the text in its first iteration. So 'broadly supportive' is intended to encompass the situation where we did speak to all agencies and through a process of discussion and some modification of the text we picked up on their initial reservations and they were subsequently happy with the text and signed it off.²⁰

18 A number of agencies raised matters concerning treaty language which then became the subject of further consideration and negotiation with South Africa. The draft text was subsequently amended to satisfy these concerns. NIA, Consultation, para. 3.

19 NIA, Consultation, paras. 1-8.

20 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 20.

Costs

3.17 The NIA states that while there will be some costs associated with implementation and management of the proposed Agreement, these costs will be absorbed by DEST. No additional costs are anticipated as a consequence of this treaty action.

3.18 On the issue of funding DEST explained that:

There is no dedicated Australian government funding that will foster research collaborations, particularly under this relationship. We expect the Australian research entities who are interested in collaborations to identify funding through available resources and then set up collaborative dialogue with their South African partners, who will now have a greater ability to access funding to support their researchers.²¹

Other matters

3.19 The Committee was interested in opportunities that may be presented for collaboration between Australia and South Africa in cereals and plant biotechnology. A DEST representative stated that although he could not provide specifics on this:

The purpose of the agreement is to set up an enabling framework that will allow collaborations where there is mutual potential benefit between Australian research institutions and South African institutions to then set up collaborative dialogue and subsequently research engagement.²²

3.20 The Committee questioned DEST in relation to intellectual property (IP) protection. The Committee was told:

[t]his treaty was developed with the intention of opening up a mechanism that allowed....access to unrealised South African research funding. As a result of that, there was no set of pressing issues that needed to be addressed by either party in terms of setting up detailed prescriptive frameworks for the

21 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

22 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 18.

management of IP relationships in the research collaborations that take place under the treaty.²³

- 3.21 There is no clear expectation on how much research is likely to be conducted in Australia or in South Africa.²⁴ The CSIRO stated that :

In some cases a project may be done primarily in one country or the other depending on what it is that the projects team is looking to investigate and what facilities and infrastructure it needs to do that. Equally, there are some projects where it is split between them, and the Australian researchers, for example, may do the majority of their work in Australia and the South African or whoever may do the majority of their work in their country.²⁵

- 3.22 The Committee questioned representatives from DEST whether South African funding would be specifically linked to research located in South Africa. A representative from DEST stated that he was not '100 per cent clear in terms of the details of how the funding would be allocated to each project'²⁶ The representative from DEST further stated:

What generally happens though with research collaborations is that the Australian funding source we use supports the activities of the Australian researchers... The other country would pick up the cost of their own nationals, typically, and over the course of the entire project you would usually find a good split where Australia's nationals are supported by Australian dollars and, in this instance, South African nationals would be supported by South African funding support.²⁷

Conclusion and recommendations

- 3.23 The Committee accepts that the Agreement between Australia and the Republic of South Africa would further support, strengthen and encourage the long standing scientific and technological relationship

23 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

24 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 19.

25 Miss Kimberly Shriver, *Transcript of Evidence*, 18 June 2007, p. 19-20.

26 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 20.

27 Mr David Smith, *Transcript of Evidence*, 18 June 2007, p. 20.

that exists between Australia and the Republic of South Africa by providing a more formal framework in which this arrangement can operate.

Recommendation 2

The Committee supports the *Agreement on Scientific and Technological Cooperation between Australia and the Republic of South Africa* and recommends that binding treaty action be taken.

Instruments amending the International Telecommunication Union Constitution & Convention

Introduction

- 4.1 The proposed treaty action is the ratification of two instruments (“the amending instruments”) that respectively amend:
- the *Constitution of the International Telecommunication Union* (ITU Constitution); and
 - the *Convention of the International Telecommunication Union* (ITU Convention).¹

Background

- 4.2 The International Telecommunication Union (ITU) is a United Nations specialised agency with 191 members. The ITU provides an international framework for the operations of the communications industries. It is an important international forum through which

¹ [1994] ATS 28.

Australian and regional perspectives on broadcasting, radiocommunications and telecommunications may be put forward.²

- 4.3 The ITU Constitution and the ITU Convention are the primary instruments of the ITU, setting out the rights and obligations of Member States. Australia has been a Member State of the ITU since Federation.³
- 4.4 The amending instruments were adopted as part of the Final Acts of the Plenipotentiary Conference of the International Telecommunication Union, held in Antalya, Turkey in 2006 (PP-06). Australia contributed to the discussion and development of the amending instruments, and supported the amendments by signing the Final Acts on 24 November 2006.⁴

Obligations

- 4.5 The changes contained in the amending instruments to the ITU Constitution and Convention are minor and administrative in nature.⁵ The changes include:

- A reduction in the frequency of World Radiocommunication Conferences from every two-three years to every three-four years (Article 13, ITU Constitution). This is a cost reduction measure.⁶
- Provision of additional flexibility for Member States in deciding their level of financial contribution to the ITU (Article 28, ITU Constitution):

the ITU is relatively unusual ... among UN agencies with a voluntary contribution system. In other words, it is not set by formula based on GDP and the like ... The ITU has a voluntary system that is framed in terms of member states adopting to pay a certain number of contributory units, so there is a scale in the convention ... setting out the number of contributory units.⁷

2 National Interest Analysis (NIA), para. 3.

3 NIA, para. 6

4 NIA, paras 1 and 8.

5 NIA, para. 7.

6 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

7 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, pp 13-14.

- Clarification of arrangements related to observers and elected officials within the ITU. For instance, elected officials will only be eligible to serve two terms in the same post regardless of whether or not the terms are consecutive (Article 2, ITU Convention).⁸
- The changing of references to official and working languages of the ITU to refer to official languages alone:

This revision removes any implied differences between the six languages used within the ITU to establish them on an equal footing in line with the general United Nations practice.⁹

- 4.6 The conference also adopted a number of resolutions and decisions on communications and administrative issues which do not amend the treaty.¹⁰

Effect of failure to ratify the amending instruments

- 4.7 There are no disadvantages for Australia in ratifying the amending instruments,¹¹ and ratification would be consistent with Australia's position at the Conference.¹² The NIA states that failure to ratify these minor amendments is likely to reflect poorly on Australia's standing within the ITU,¹³ and failure to ratify either amending instrument prior to the date of their general entry into force could lead to Australia being denied voting rights within the ITU:¹⁴

This is a longstanding rule in the ITU ... Members are required to ratify changes to treaties which include not only the constitution and convention of the ITU but also the administrative regulations ... It is part of the structure of the ITU that members who fail to commit to those treaties lose the right to vote in the sense that they are no longer committed to the kinds of obligations that may be established.¹⁵

8 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

9 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

10 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

11 NIA, para. 7.

12 NIA, para. 8.

13 NIA, para. 8.

14 NIA, para. 9.

15 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 14.

Implementation

- 4.8 The proposed changes to the ITU Constitution and Convention will not require any change to the *Telecommunications Act 1997* (the Act) or related primary legislation. However, the following will need to be updated:
- the *Telecommunications (Compliance with International Conventions) Declaration No. 1 of 1997* (the Declaration). Under the Act, telecommunications carriers and carriage service providers must comply with conventions specified in the Declaration, including the ITU Constitution and Convention.
 - the *Telecommunications (International Conventions) Notification No. 1 of 1997* (the Notification). Under the Act, the Australian Communications and Media Authority (ACMA) must have regard to Australia's obligations under conventions specified in the Notification, including the ITU Constitution and Convention.¹⁶
- 4.9 Updating the Declaration and the Notification will ensure that carriers and carriage service providers and the ACMA are aware of the latest treaty action with which they must comply.¹⁷

Costs

- 4.10 Ratification of the amending instruments will not impose any extra costs on the Australian Government, the States and Territories, or the Australian telecommunication industry.¹⁸

Consultation

- 4.11 The Department of Communications, Information Technology and the Arts was responsible for the consultation process:

As part of the preparatory process for the 2006 plenipotentiary conference, consultation began a year and a

16 NIA, paras 13 and 14.

17 NIA, para. 14.

18 NIA, para. 16.

half prior to the event. A series of meetings was held with key Australian government agencies and Australian industry. The key participants in this process were the Department of Communications, Information Technology and the Arts, the Australian Communications and Media Authority, the Department of Foreign Affairs and Trade, the Department of Defence, Telstra, Optus, Boeing Australia and Ericsson.¹⁹

- 4.12 Follow-up correspondence outlining Australia's proposed policy approach was provided to key industry stakeholders.²⁰
- 4.13 The Asia Pacific Telecommunity (APT) conducted three regional preparatory meetings, with strong encouragement from Australia. Participants included representatives of APT member countries, the communications and information technology industry, and international organisations. Six correspondence groups were created and these formed the organisational basis for the development of common regional positions. As a result of the process, nineteen common and joint proposals were submitted to PP-06 for consideration.²¹

Entry into force and withdrawal

- 4.14 Both of the amending instruments will enter into force generally on 1 January 2008, and it is desirable that Australia ratifies the instruments prior to this date.²²
- 4.15 Australia may denounce both the ITU Constitution and the ITU Convention by notification addressed to the Secretary-General. The two treaties must be denounced simultaneously and in a single instrument – it is not possible to denounce one only.²³

19 Mr Colin Oliver, *Transcript of Evidence*, 18 June 2007, p. 13.

20 NIA, Consultations, paras 1-7.

21 NIA, Consultations, paras 8-10.

22 NIA, para. 2.

23 NIA, para. 20.

Future treaty action

- 4.16 Any proposed modification to the Constitution needs to be approved at a Plenipotentiary Conference by at least a two-third vote. Any proposed modification to the Convention needs to be approved at a Plenipotentiary Conference by at least half the vote. The Plenipotentiary Conference is held every four years, with the next one scheduled for 2010.²⁴

Recommendation

Recommendation 3

The Committee supports the *Instrument amending the Constitution of the International Telecommunication Union (Antalya, 24 November 2006)* and the *Instrument amending the Constitution of the International Telecommunication Union (Antalya, 24 November 2006)* and recommends that binding treaty action be taken in both instances.

²⁴ NIA, para. 19.

The Adoption of an Additional Distinctive Emblem (Protocol III)

Introduction

- 5.1 On the 8 March 2006 Australia signed the *Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem for the Red Cross/Red Crescent Movement* (Protocol III).¹
- 5.2 Protocol III entered into force generally on 14 January 2007 in accordance with Article 11(1). As at March 2007, seventy-five states had signed Protocol III, with nine states having ratified or acceded.²

Background

- 5.3 The International Red Cross and Red Crescent Movement (the Movement) is an international humanitarian movement with the stated mission to protect human life and health, and to prevent and alleviate human suffering, without any discrimination based on nationality, race, religious beliefs, class or political opinions.³

1 National Interest Analysis (NIA), para. 2.

2 NIA, para. 2.

3 See the International Red Cross and Red Crescent Movement website: <www.redcross.int>

- 5.4 The Movement consists of several distinct organizations that are legally independent from each other, but are united through common basic principles, objectives, symbols, statutes, and governing organs. The Movement comprises:
- The International Committee of the Red Cross (ICRC) is a private humanitarian institution founded in 1863 in Geneva, Switzerland. Its 25-member committee has a unique authority under international humanitarian law to protect the life and dignity of the victims of international and internal armed conflicts.⁴
 - The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 and today coordinates activities between the 185 National Red Cross and Red Crescent Societies within the Movement. On an international level, the Federation leads and organises, in close cooperation with the National Societies, relief assistance missions responding to large-scale emergencies. The International Federation Secretariat is based in Geneva, Switzerland.⁵
 - National Red Cross and Red Crescent Societies exist in nearly every country in the world. Currently 185 National Societies are recognized by the ICRC and admitted as full members of the Federation. Each National Society works in its home country according to the principles of international humanitarian law and the statutes of the international Movement.⁶
- 5.5 Since its inception, the Movement has utilized the Red Cross and Red Crescent emblems as devices to protect its medical services. The use of these emblems is explicitly mandated by the Geneva Conventions.⁷

4 See the International Committee of the Red Cross website: <www.icrc.org>

5 See the International Committee of the Red Cross website: <www.ifrc.org>

6 A listing of Red Cross and Red Crescent Society websites can be found at <www.ifrc.org/address/rclinks.asp>

7 The Red Cross on white background was the original protection symbol declared at the 1864 Geneva Convention. It is, in terms of its color, a reversal of the Swiss national flag, a design adopted to honor the Swiss founder of the Red Cross, Henry Dunant, and his home country.

During the Russo-Turkish War of 1876-1878, the Ottoman Empire used a Red Crescent instead of the Red Cross because its government believed that the cross would alienate its Muslim soldiers. When asked by the ICRC in 1877, Russia and the Ottoman Empires committed to fully respect the sanctity of all persons and facilities bearing the Red Cross and Red Crescent symbols. After this de facto assessment of equal validity to both symbols, the ICRC declared in 1878 that it should be possible in principle to adopt an additional official protection symbol for non-Christian countries. The Red Crescent was

- 5.6 The symbols employed by the Movement have two distinctively different purposes. On one hand, the symbols serve as protection markings in armed conflicts, a denotation which is derived from and defined in the Geneva Conventions. As a protection symbol, they are used in armed conflicts to mark persons and objects (buildings, vehicles, etc.) which are working in compliance with the rules of the Geneva Conventions. In this function, they can also be used by organisations and objects which are not part of the International Red Cross and Red Crescent Movement, for example the medical services of the armed forces, civilian hospitals, and civil defense units. As protection symbols, these emblems are to be used without any additional specification (textual or otherwise) and in a prominent manner that makes them as visible and observable as possible, for example by using large white flags bearing the symbol.⁸
- 5.7 When used as an organisational logo, the Red Cross and Red Crescent symbols only indicate that persons, vehicles, buildings, etc. which bear the symbols belong to a specific organisation which is part of the International Red Cross and Red Crescent Movement (like the ICRC, the International Federation or the national Red Cross and Red Crescent societies). In this case, they are to be used with an additional specification (for example "Australian Red Cross") and not be displayed as prominently as when used as protection symbols.⁹
- 5.8 Today, the symbols of the Red Cross and the Red Crescent are used by more than 190 countries worldwide for the protection of medical personnel, buildings and equipment in times of armed conflict, and to identify national Red Cross and Red Crescent societies, the International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies.¹⁰

formally recognized in 1929 when the Geneva Conventions were amended.

From 1924 to 1980, Iran used a "Red Lion with Sun" symbol for its national society, based on the flag and emblem of the Qajar Dynasty. The Red Lion with Sun was formally recognized as a protection symbol in 1929, together with the Red Crescent. Despite the country's shift to the Red Crescent in 1980, Iran explicitly maintains the right to use the symbol. See <http://en.wikipedia.org/wiki/Emblems_of_the_Red_Cross>

8 See Commentary on Article 39 of the Geneva Convention I of 1949, <www.icrc.org/ihl.nsf/COM/365-570048?OpenDocument>

9 See Commentary on Article 44, paragraph 2 of the Geneva Convention I of 1949, <www.icrc.org/ihl.nsf/COM/365-570053?OpenDocument>

10 Submission by Australian Red Cross, *Submission 3*, p. 1.

- 5.9 The emblems are recognised by the Geneva Conventions and the Additional Protocols of 1977 and 2005. These protocols constitute part of the fundamental law protecting human life and dignity in time of armed conflict.¹¹

The purpose of the protocol

- 5.10 Under international law, those displaying the symbols of the Red Cross and Red Crescent must be granted free access to people who are victims of armed conflicts or natural disasters.¹² Commentary on Article 38 of the First Geneva Convention of 1949 clearly states that these emblems are intended “to signify one thing only – something which is, however, of immense importance: respect for the individual who suffers and is defenceless, who must be aided, whether friend or enemy, without distinction of nationality, race, religion, class or opinion.”¹³ Despite this assertion, however, the emblems have not always been granted the recognition and respect to which they are entitled as “signs of the strict neutrality of humanitarian work.”¹⁴
- 5.11 The Department of Foreign Affairs and Trade (DFAT) when asked why a symbol devoid of political, religious or ethnic connotations such as the Red Crystal had not been adopted sooner, stated:

In 1949 when the Geneva Conventions were adopted, it was thought that the Red Cross and the Red Crescent would provide sufficient coverage, if you like, or were sufficiently broad to be adopted by all national societies. In the almost 60 years since, in the Middle East, in the Horn of Africa and in Ethiopia and Eritrea the use of the emblems was also an issue because of the connotations of some sort of religious affiliation. That is incorrect. Nevertheless, if that perception is there, it is a problem in ensuring protection for the humanitarian workers we are seeking to protect.¹⁵

11 Submission by Australian Red Cross, *Submission 3*, p. 1.

12 ICRC, “The emblems of the International Red Cross and Red Crescent Movement,” <www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem?OpenDocument>

13 See Commentary on Article 38 of the Geneva Convention I of 1949, <www.icrc.org/ihl.nsf/COM/365-570047?OpenDocument>

14 ICRC, “The emblems of the International Red Cross and Red Crescent Movement,” <www.icrc.org/Web/eng/siteeng0.nsf/htmlall/emblem?OpenDocument>.

15 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, pp. 22-23.

- 5.12 The Australian Red Cross also stated in their evidence that:
- Despite the Red Cross and Red Crescent emblems being exclusively universal and humanitarian symbols, they have been wrongly perceived as having religious, cultural and political considerations. This has affected respect for the emblems and has diminished the protection they offer both to victims and to the humanitarian aid providers operating in areas of conflict.¹⁶
- 5.13 Some countries have found it difficult to identify with one or the other symbol and have not wished to make use of either of these emblems, arguing that they have religious connotations. Israel's national society, Magen David Adom, (MDA) is one such society which up until now has been precluded from becoming a member of the Movement, by virtue of the fact that it has used the Red Shield of David as its emblem.¹⁷
- 5.14 Because of the controversy over MDA and a number of other disputes, the introduction of an additional neutral protection symbol had been under discussion for a number of years, with the "Red Crystal" being the most popular proposal. This is a red diamond shape on white foreground (attached at the end of the chapter).
- 5.15 Amending the Geneva Conventions to add a new protection symbol required a diplomatic conference of all 192 signatory states to the Conventions. The Swiss government organised such a conference to take place on 5-6 December 2005, to adopt a third additional protocol to the Geneva Conventions to establish the Red Crystal as an additional symbol with equal status to the Red Cross or Red Crescent. The Australian Government participated in the conference and the DFAT told the Committee that there was "very little discussion about discarding the existing emblems".¹⁸ The Department went on to comment that "trying to come up with something that was not in wide use already but was sufficiently neutral in meaning was a bit of a challenge and ... the Red Crystal was what everyone was able to settle on."¹⁹
- 5.16 Additional Protocol III to the Geneva Conventions was adopted by the conference after a vote successfully achieved the required two-

16 Mr Dale Cleaver, *Transcript of Evidence*, 22 June 2007, p 23.

17 The MDA's national symbol is known as the Red Star (or Shield) of David. NIA, para. 3.

18 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 25.

19 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 26.

thirds majority. From the countries which attended the conference, 98 voted in favour and 27 against the protocol, while 10 countries abstained from voting.²⁰ The chairman of the conference, Mohammed Al Hadid, declared that: "This is an historical moment for the International Red Cross and Red Crescent Movement. We urge all governments to respect the red crystal, in addition to the red cross and the red crescent."²¹

5.17 The new symbol is referred to as "the third Protocol emblem in Additional Protocol III". The rules for the use of this symbol are the following:

- *Within its own national territory*, a national society can use either of the recognised symbols alone, or incorporate any of these symbols or a combination of them with the Red Crystal. Furthermore, a national society can choose to display a previously and effectively used symbol, after officially communicating this symbol to the state parties of the Geneva Conventions through Switzerland as the depositary state.
- *For indicative use on foreign territory*, a national society which does not use one of the recognised symbols as its emblem has to incorporate its unique symbol into the Red Crystal, based on the previously mentioned condition about communicating its unique symbol to the state parties of the Geneva Conventions.
- *For protective use*, only the symbols recognised by the Geneva Conventions can be used. Specifically, those national societies which do not use one of the recognised symbols as their emblem have to use the Red Crystal without incorporation of any additional symbol.²²

5.18 The Protocol has already received considerable international support.²³

20 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 26.

21 ICRC Press Release, 22 June 2006, see:
<www.icrc.org/Web/Eng/siteeng0.nsf/html/geneva-news-220606!OpenDocument>

22 See "ICRC Notes" About the adoption of an additional emblem: questions and answers" at <www.icrc.org/Web/Eng/siteeng0.nsf/html/emblem-questions-answers-281005>

23 Some of the countries which have ratified the Protocol early include Switzerland, Norway, the Netherlands and Philippines. The United States, the United Kingdom, Canada, New Zealand, and many European Union states are among those countries which have signed the Protocol and are moving towards ratification. Israel signed the Protocol in December 2005

- 5.19 Adoption of Protocol III was accompanied by agreement to the admission to the Movement of the Palestine Red Crescent Society and the Israeli national society (MDA).²⁴

Australian policy

- 5.20 Australia has been a strong supporter of the need for an additional, protective emblem for the Red Cross/Red Crescent Movement that would be devoid of any religious, ethnic or political connotations as this would increase the universality of the Movement²⁵ and be of very significant benefit in combat zones in helping secure the safety of eligible humanitarian workers from all countries, regardless of their location or political situation.²⁶
- 5.21 Ratification of Protocol III would be consistent with Australia's longstanding support for the Geneva Conventions and their Additional Protocols I and II. Ratification would further enhance our credentials in international humanitarian law. It would enable Australia to encourage states not yet party to the Protocol to ratify it, both within our region and beyond.²⁷
- 5.22 The Committee questioned a representative from the Defence Department and DFAT in relation to where Australia might use the Red Crystal symbol and under what circumstances. The Department of Defence advised that to date the Australian Army has used the Red Cross, and only the Red Cross as a protective symbol and that there would be no immediate move to employ the Red Crystal because there was not yet widespread recognition of the new symbol: "Not enough countries have signed up or ratified it, let alone enough people in the international community and domestic population of some of these countries recognise it."²⁸ That said, the Defence Department advised that an Australian Defence Force commander "would certainly reserve the right to use that if he thought it would be useful for an indicative or a protective purpose."²⁹

24 NIA, para. 8.

25 NIA, para. 5.

26 NIA, para. 4.

27 NIA, para. 6.

28 Lieutenant Colonel David Bishop, *Transcript of Evidence*, 18 June 2007, p. 26.

29 Lieutenant Colonel David Bishop, *Transcript of Evidence*, 18 June 2007, p. 23.

5.23 The DFAT noted that there was a very high level of recognition for the Red Cross and the Red Crescent and that use of the new symbol would be inclusive rather than exclusive: "There is certainly no requirement that parties to a conflict restrict themselves to one or even two emblems."³⁰ The Department further observed: "Dissemination of this third emblem and educating people as to its meaning will be essential but, yes, there may well be situations in which all three emblems will be used and the key will be making sure that everyone recognises the equal validity of each of those three."³¹

5.24 The Committee had some concern in relation to how the Red Crystal would acquire the desired degree of recognition and respect to be as effective as the Red Cross and Crescent. The Committee was told:

Upon becoming party to the third additional protocol we will have an obligation to protect use of the protocol to prevent misuse and also to educate people within Australian territory about the meaning of the emblem. We do that, in a practical sense, through our close engagement with both the International Committee of the Red Cross and the Australian National Society for the Australian Red Cross in a range of ways to ensure dissemination, and I think I can confidently predict that this will be part of our dissemination activities into the future upon ratification.³²

5.25 The Department of Defence also emphasised the challenges of securing recognition from organisations, such as armed militias not necessarily under the direct control of governments:

Unfortunately, use of particular emblems can sometimes only be worthwhile if there is actually recognition of them by the belligerent parties. While you can get states to sign up to treaties and states can enforce their international legal obligations on their armed forces, that is not always the case with some parties to some conflicts. So, whenever you are looking at using an emblem like the Red Crystal, you can only use it if it will get recognised and be respected.³³

30 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 23.

31 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 23.

32 Mr Michael Bliss, *Transcript of Evidence*, 18 June 2007, p. 24.

33 Lieutenant Colonel David Bishop, *Transcript of Evidence*, 18 June 2007, p. 26.

- 5.26 In evidence to the Committee, the Australian Red Cross similarly emphasised the importance of efforts to secure the widest possible recognition and respect for all symbols:

Obviously, developing that awareness in domestic peacetime increases their protective power in conflict.³⁴

- 5.27 The Australian Red Cross also highlighted the importance of measures to prevent the misuse of the distinctive emblems:

It is essential that the Australian government take effective steps to promote knowledge of, respect for, and protection of the distinctive emblems. Misuse of the distinctive emblems in peacetime and in conflict significantly reduces the protective power of the emblems, endangering the lives of those who depend upon the emblems' protection in situations of armed conflict.

Despite unauthorised use of the Red Cross emblem being a criminal offence in Australia, there have been no prosecutions and the Australian Red Cross is notified of a significant number of instances of misuse each month. Given continuing domestic misuse of the distinctive emblems by hospitals, medical centres, pharmacies and the producers of medical related products, Australian Red Cross would welcome the Australian government taking additional steps to ensure enhanced protection of the distinctive emblems from misuse, and continued support for promoting awareness of the need to respect the emblems at all times.³⁵

- 5.28 Asked by the Committee about action taken in response to alleged domestic misuse of the Red Cross symbol, the Australian Red Cross advised that usual protocol was to contact the person who misuses the Red Cross symbol and "to inform them that it is a protected emblem under domestic legislation and that misuse incurs strict liability for that misuse".³⁶

Obligations

- 5.29 Ratifying Protocol III would require Australia to:
-

34 Ms Pia Riley, *Transcript of Evidence*, 22 June 2007, p. 25.

35 Australian Red Cross, *Submission 3*, p. 3-4.

36 Ms Pia Riley, *Transcript of Evidence*, 22 June 2007, p. 25.

- respect, and ensure respect for, the Protocol in all circumstances (Article 1);
 - recognise the additional distinctive emblem – the Red Crystal – in the same fashion as we currently recognise the Red Cross, Crescent and related emblems (Article 2);
 - take steps to prevent and repress misuse of the new emblem (Article 6); and,
 - to disseminate the Protocol as broadly as possible within its territory (Article 7).³⁷
- 5.30 The remaining substantive provisions of the Protocol give national societies of states parties, societies forming part of the Movement, and missions under United Nations auspices the option of using the new emblem for indicative purposes (Articles 3, 4 and 5).³⁸
- 5.31 These provisions would not give rise to any obligations on the part of the Government were Australia to become a party to the Protocol.³⁹

Entry into force and withdrawal

- 5.32 Australia signed Protocol III on 8 March 2006. Pursuant to Article 11(2), Protocol III would enter into force for Australia six months after the deposit of our instrument of ratification with the Swiss Federal Council, the depositary of the 1949 Geneva Conventions and the 1977 Additional Protocols.⁴⁰
- 5.33 Should Australia ratify Protocol III, it would be necessary to amend the *Geneva Conventions Act 1957 (Cth)* ('the Act'), and make minor consequential amendments to the Criminal Code, as follows.⁴¹
- Section 15 of the Act currently prohibits the use of Red Cross emblems and other insignia for any purpose, save when authorised by the Attorney-General or his delegate, this would need to be amended so as to specifically incorporate a reference to (and description of) the red crystal emblem and Protocol III. Protocol III would also need to be annexed in a schedule to the Act;

37 NIA, para. 9.

38 NIA, para. 10.

39 NIA, para. 10.

40 NIA, para. 2.

41 NIA, para. 11.

- Minor amendments would also be required to the Criminal Code to include reference to the emblem created by Protocol III in section 268.44 of the Code, such that the new emblem was covered by the offence of “improper use of the emblems of the Geneva Conventions” and it would also be necessary to incorporate in the Dictionary to the Code a definition of 'Third Additional Protocol' and to include Protocol III as part of the definition of 'Protocols to the Geneva Conventions'.⁴²
- 5.34 In order to give effect to the obligation on dissemination contained in Article 7 of Protocol III, Australia would be required to disseminate the proposed Protocol as widely as possible, in particular through including it in military instruction programs and through encouraging its study in the civilian education sector.⁴³
- 5.35 No State or Territory legislation is necessary for Australia to give effect to this instrument.⁴⁴
- 5.36 The new emblem is unlikely to be used in Australia given the long-standing recognition accorded to the symbol of the Red Cross. The emblem could however be used by Australian medical personnel (or other Australian personnel protected under the Geneva Conventions), who are associated with the Movement and who are engaged in humanitarian operations in certain regions overseas.⁴⁵
- 5.37 A state party may withdraw from Protocol III by giving written notification to the depositary. Such denunciation would take effect one year after the date of receipt of the instrument of denunciation, unless the state party is engaged in armed conflict or occupation at that time, in which case the denunciation would take effect at the conclusion of that armed conflict or occupation (Article 14). Should Australia wish in the future to withdraw from the Protocol, any such withdrawal action would be subject to our domestic treaty process.⁴⁶

42 NIA, para. 12.

43 NIA, para. 14.

44 NIA, para. 15.

45 NIA, para. 16.

46 NIA, para. 20.

Consultation

- 5.38 The Commonwealth Government and the Australian Red Cross will have carriage of the obligation to disseminate the Protocol in accordance with Article 7.⁴⁷
- 5.39 Protocol III has been on the agenda of the Commonwealth and State/Territory Standing Committee on Treaties (SCOT) for some time which has alerted States and Territories to this issue.⁴⁸
- 5.40 In February 2006, The Minister for Foreign Affairs, Mr Downer wrote to the Prime Minister and the relevant ministers seeking their approval for signature of the Protocol, which was granted. Relevant Commonwealth Government agencies were consulted throughout the negotiation of Protocol III and support Australian ratification.⁴⁹

Costs

- 5.41 Ratification of Protocol III would have no financial implications at the Commonwealth or State/Territory levels.

Recommendation

Recommendation 4

The Committee supports the *Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem* and recommends that binding treaty action be taken.

47 The International Committee of the Red Cross and the Australian Red Cross strongly support Australian ratification of Protocol III, NIA, Consultation, paras. 1 and 3.

48 Updates have been provided on the SCOT Schedules twice a year to the States and Territories, and they have not raised any concerns. NIA, Consultation, para. 2.

49 NIA, Consultation, para. 4.

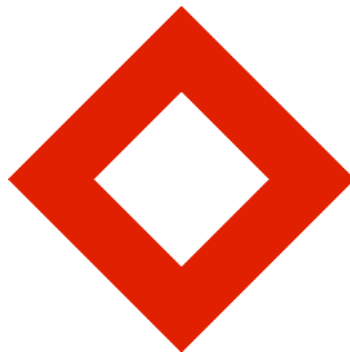
Distinctive Emblems of the Geneva Conventions



Red Cross



Red Crescent



Red Crystal

Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security

Introduction

- 6.1 The Supplementary Agreement between Australia and Germany on Social Security¹ ('the Supplementary Agreement') adds superannuation provisions to the existing social security agreement² to avoid 'double coverage'. Double coverage can occur when an employer sends an employee from one country to work temporarily in another and compulsory superannuation contributions are required in both countries.³

1 Full title: *Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State ("Supplementary Agreement")*, Concluding Protocol and Implementation Arrangement (Berlin, 9 February 2007)

2 Full title of the existing agreement: *Agreement on Social Security with the Federal Republic of Germany, and Concluding Protocol [2003] ATS 7.*

3 Department of Families, Community Services and Indigenous Affairs (FaCSIA), *Information Sheet on the Supplementary Agreement on Social Security between Australia and Germany*, available on the FaCSIA website, accessed 26 June 2007:
<[www.facsia.gov.au/internet/facsinternet.nsf/VIA/international_ssa/\\$File/InfoGermany.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/international_ssa/$File/InfoGermany.pdf)>

Background

- 6.2 Social security agreements require both countries to share responsibility for providing social security coverage for people who move between these countries.⁴
- 6.3 Australia has 18 bilateral social security agreements with other countries: Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain and the United States of America.⁵ Australia has also signed social security agreements with Korea, Japan and Switzerland but these have not entered into force.⁶
- 6.4 The social security agreements with Belgium, Chile, Croatia, Ireland, the Netherlands, Norway, Portugal and the United States already incorporate provisions to avoid the double payment of superannuation.⁷ The Committee was informed by representatives from the Department of Families, Community Services and Indigenous Affairs that:

We are endeavouring to include double coverage provisions in all new agreements and in renegotiations, but we are trying to prioritise that at the moment.⁸

The Supplementary Agreement

- 6.5 The Supplementary Agreement adds superannuation provisions in order to avoid 'double coverage'. Double coverage can occur when an employer sends an employee from one country to work in another and compulsory superannuation contributions are required in both countries.⁹

4 National Interest Analysis (NIA), para. 3.

5 See the Department of Families, Community Services and Indigenous Affairs website for further information relating to these agreements:
<www.facsia.gov.au/internet/facsinternet.nsf/international/agreements-current.htm>

6 NIA, para. 6.

7 NIA, para. 6.

8 Mr Peter Hutchinson, *Transcript of Evidence*, 18 June 2007, p. 9.

9 Department of Families, Community Services and Indigenous Affairs, *Information Sheet on the Supplementary Agreement on Social Security between Australia and Germany*, available on the FaCSIA website, accessed 26 June 2007:
<[www.facsia.gov.au/internet/facsinternet.nsf/VIA/international_ssa/\\$File/InfoGermany.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/international_ssa/$File/InfoGermany.pdf)>

- 6.6 Under the current agreement, Australian or German employers who send an employee to work temporarily in the other country are required to make superannuation contributions under both Australian and German legislation.
- 6.7 The Supplementary Agreement states that, as a general rule and unless otherwise provided, employees will be subject to the legislation of the country in which they are working.¹⁰
- 6.8 The new provisions provide that employees who are sent temporarily from one country to the other to work will remain subject only to the legislation of the sending country.¹¹ This rule will apply for a maximum of four years from the time the employee takes up employment in the territory of the other country.¹²
- 6.9 The Competent Authority in each country, which in Australia is the Commissioner of Taxation or his authorised representative, shall issue a certificate upon request stating the applicability of the relevant legislation.¹³
- 6.10 The Supplementary Agreement also contains provisions on the privacy of personal information.¹⁴

Benefits of the Supplementary Agreement

- 6.11 The Supplementary Agreement is expected to promote closer economic relations by reducing costs for business.¹⁵ The new provisions will ensure that employers, and employees where compulsory contributions are required, need to contribute only to the relevant superannuation scheme in their home country.¹⁶

10 NIA, para. 7; Article 4 of the Supplementary Agreement.

11 NIA, para. 8; Article 5 of the Supplementary Agreement.

12 NIA, para. 8; Article 5 of the Supplementary Agreement.

13 NIA, para. 9; Article 4 of the Supplementary Agreement.

14 Article 11 of the Supplementary Agreement.

15 *Information Sheet on the Supplementary Agreement on Social Security between Australia and Germany*, see note 9 above.

16 NIA, para. 5.

Consultation

- 6.12 The Department of Families, Community Services and Indigenous Affairs (FaCSIA) and the Department of the Treasury consulted with German community groups, welfare organisations, State/Territory governments and employer groups.¹⁷ Three responses were received from the New South Wales and Queensland governments and the Sunshine Coast German Club but no concerns were raised.¹⁸

Costs and implementation

- 6.13 The Supplementary Agreement is expected to cost \$0.1 million for the period 2008-2011.¹⁹
- 6.14 Social security agreements are implemented through the *Social Security (International Agreements) Act 1999* (Cth) ('the Act'). A new schedule containing the full text of the Supplementary Agreement will be added to the Act.²⁰

Conclusion and recommendation

- 6.15 The Committee welcomes measures which are consistent with established social security principles and which facilitate comprehensive social security agreements.

Recommendation 5

The Committee supports the *Supplementary Agreement on Social Security between Australia and Germany* and recommends that binding treaty action be taken.

17 NIA Consultation, para. 1. A complete list of these organisations is listed in the NIA.

18 NIA Consultation, para. 2.

19 NIA, para. 19.

20 NIA, para. 17.

Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea

Introduction

- 7.1 The *Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (Canberra, 6 December 2006)* (the Social Security Agreement with Korea') coordinates the social security systems of Australia and Korea to provide improved access to pensions for people who have moved between the two countries. The Social Security Agreement with Korea also provides provisions to prevent 'double coverage'. Double coverage can occur when an employer sends an employee from one country to work temporarily in another and compulsory superannuation contributions are required in both countries.

Background

- 7.2 Australia has bilateral social security agreements with 18 other countries: Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain and the United States of

America.¹ In addition to the Social Security Agreement with Korea, Australia has also signed social security agreements with Japan and Switzerland but these have not entered into force.²

The Social Security Agreement with Korea

7.3 The Social Security Agreement with Korea improves the portability of benefits, provides avenues for mutual administrative assistance to facilitate the determination of correct entitlements³, and provides for the lump sum refunds of Korean pension contributions:

This means that Australian citizens who have worked in Korea and paid contributions into the Korean national pension scheme will be able to receive a refund under the same conditions as Korean nationals.⁴

7.4 To qualify for an Australian age pension people normally have to be Australian residents and in Australia on the day a claim for pension is lodged, and they must also have at least 10 years Australian residence.⁵

7.5 Under the Social Security Agreement with Korea, people who live in Australia but do not have ten years of residence in Australia can count their Korean periods of contributions to qualify for an Australian pension, subject to the means test.⁶ Until they have ten years of residence in Australia, they will be paid the normal income-tested pension rate less the amount of any Korean pension, that is:

1 See the Department of Families, Community Services and Indigenous Affairs website for further information relating to these agreements:

<www.facsia.gov.au/internet/facsinternet.nsf/international/agreements-current.htm>

2 NIA, para. 6.

3 Ms Michalina Stawyskyj, *Transcript of Evidence*, 18 June 2007, p. 8.

4 Ms Michalina Stawyskyj, *Transcript of Evidence*, 18 June 2007, p. 8.

5 Department of Families, Community Services and Indigenous Affairs (FaCSIA), *Information Sheet on the Social Security Agreement between Australia and Korea*, available on the FaCSIA website, accessed 27 June 2007:

<[www.facsia.gov.au/internet/facsinternet.nsf/VIA/international_ssa/\\$File/InfoKorea.pdf](http://www.facsia.gov.au/internet/facsinternet.nsf/VIA/international_ssa/$File/InfoKorea.pdf)>

6 *Information Sheet on the Social Security Agreement between Australia and Korea*, see note 5 above.

The Korean pension would be 'topped up to the rate of Australian pension they would receive if they had no Korean pension.'⁷

7.6 Under the Social Security Agreement with Korea, Korean pensions will be based on the period of contributions the person has completed in Korea, unless the person has already received a refund.⁸

7.7 The National Interest Analysis estimated that 57 people will benefit from the Social Security Agreement with Korea in the first full year. However, at the public hearing, the Committee was informed that this number was only based on the Australian payments:

I should clarify that the national interest assessment states at paragraph 10 that it is estimated that 57 people will benefit in the first full year; however, that is just the estimated number who will get an Australian payment. We estimate the total who will benefit from both countries at 126 people.⁹

7.8 The Social Security Agreement with Korea also contains 'double coverage' provisions. Double coverage provisions ensure that Australian and Korean employers do not have to make compulsory superannuation contribution into both countries' systems when an employee is seconded to work in the other country temporarily.¹⁰

Implementation and costs

7.9 The Social Security Agreement with Korea will be implemented through the *Social Security (International Agreements) Act 1999* (Cth) ('the Act').¹¹

7.10 The Social Security Agreement with Korea is expected to cost approximately \$1 million over the period 2008-2011 in administrative

7 *Information Sheet on the Social Security Agreement between Australia and Korea*, see note 5 above.

8 *Information Sheet on the Social Security Agreement between Australia and Korea*, see note 5 above.

9 Ms Michalina Stawyskyj, *Transcript of Evidence*, 18 June 2007, p. 8.

10 NIA, para. 12; Articles 6 to 12 of the Social Security Agreement with Korea.

11 NIA, para. 19.

outlays. The cost of implementing the Agreement over the same period is approximately \$1.996 million.¹²

Consultation

- 7.11 Extensive consultation was undertaken during the negotiation with Korean community groups, welfare organisations, State and Territory Governments, and organisations consulted by Treasury.¹³ A complete list of these organisations is provided in the National Interest Analysis (NIA).¹⁴

Benefits of the Agreement

- 7.12 The Social Security Agreement with Korea will allow residents of Australia and Korea to move between Australia and Korea knowing that their right to benefits is recognised in both countries.¹⁵
- 7.13 The Social Security Agreement with Korea will also allow Australians who have worked in Korea and paid contributions into the Korean system to receive a refund under the same conditions as Korean nationals:

...Korea provides for lump sum refunds of contributions to certain foreign nationals, and one of the reasons we entered into this agreement was there was a lot of pressure on the Australian embassy in Seoul from Australians working in Korea – a lot of English language teachers and those sorts of people – who are paying relatively significant contributions into the Korean system and were leaving the country to come back to Australia and could not get access to their money. So most systems do not provide for refunds at all, but the Korean system does and so the Koreans have agreed to treat Australian citizens equally.¹⁶

12 NIA, para. 21.

13 NIA, Consultation section.

14 The NIA is available from the Committee Secretariat or on the Committee's website: <www.aph.gov.au/house/committee/jsct/9may2007/tor.htm>

15 NIA, para. 8.

16 Mr Peter Hutchinson, *Transcript of Evidence*, 18 June 2007, p. 9.

- 7.14 Business is also expected to benefit from the double coverage provisions as these ensure that the employer need only contribute to the relevant superannuation scheme in their home country.¹⁷

Recommendation

Recommendation 6

The Committee supports the *Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (Canberra, 6 December 2006)* and recommends that binding treaty action be taken.

¹⁷ NIA, para. 12.

Amendments to the Singapore-Australia Free Trade Agreement (SAFTA) to ensure compliance with changes to the International Convention on the Harmonized Commodity Description and Coding System (HS2007)

Background

The Harmonized Commodity Description and Coding System

- 8.1 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. The HS is amended every five years to reflect changes in the commodities traded.
- 8.2 The most recent changes to HS came into effect on 1 January 2007 (HS2007). HS2007 creates new HS tariff line numbers to reflect new products entering the market; the deletion of a number where a commodity is no longer traded; or the movement of a tariff line

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. www.wcoomd.org

number from one sub-heading (or category of goods) to another to account for changes in the use of the good.

Purpose of the Amending Agreement

8.3 SAFTA includes annexes that detail how specific goods will be treated when they are traded between Australia and Singapore. The HS numbers identify these goods. The Amending Agreement will ensure SAFTA continues to reflect the internationally agreed HS as amended by HS2007. The amendments to SAFTA seek to avoid possible confusion and subsequent delays in processing by customs authorities.²

8.4 The proposed changes affect Annexes 2C and 2D of SAFTA which specify how rules of origin are applied under the free trade agreement. The proposed changes will not impose any additional obligations on Australia.

Annex 2C lists goods that are partly manufactured in Singapore and may also be partly manufactured in another country on behalf of the principal manufacturer, and have the final process of manufacture undertaken in Singapore. Annex 2D lists certain electrical and electronic products that are partly manufactured in Singapore and have a minimum Singapore content of 30 per cent, and have the final process in their manufacture performed in Singapore.³

8.5 Amendments to Annexes 2C and 2D of SAFTA were tabled in Parliament on 8 August 2006 and considered by JSCOT which recommended binding treaty action in *Report 77*. However, subsequent to JSCOT consideration of these SAFTA Annex amendments, further changes were identified to Australia's Customs Tariff necessitating additional changes to the SAFTA Annexes which required Singapore's agreement.⁴

The HS2007 amendments presented today follow the same principles as those presented to parliament on 8 August. They do not affect the rules of origin that were negotiated under

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

3 Ms Pauline Bygraves, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 June 2007, p. 2.

4 NIA, para. 2.

the SAFTA and they are administrative or technical amendments only.⁵

Reasons for Australia to take up the proposed treaty action

- 8.6 The purpose of the proposed action is to ensure that the tariff line numbers identifying goods in SAFTA accurately reflect internationally agreed descriptions of goods as defined in the HS, and conform with the tariff classifications in the *Australian Customs Tariff Act 1995*, amended to reflect HS2007 changes.⁶
- 8.7 The proposed amendments to SAFTA have been agreed to by the Government of Singapore.⁷

Entry into force, withdrawal and future treaty action

- 8.8 As HS2007 came into effect on 1 January 2007, it is proposed that the Amending Agreements should also come into effect as soon as possible after Australia and Singapore's internal processes are completed.

Costs

- 8.9 The costs to the Australian Customs Service and to Australian Business are negligible.⁸

Consultation

- 8.10 The changes contained in HS2007 have been under discussion by the WCO since 2002. In this time period, consultation occurred with the Department of Industry, Tourism and Resources, and other relevant

5 Ms Pauline Bygraves, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 June 2007, p. 2.

6 NIA, para. 6.

7 NIA, para. 7.

8 NIA, paras. 12-13.

government agencies if and when issues pertaining to particular industries have been raised for consideration by members of the WCO. Outcomes from these consultations have then fed into Australia's input into decisions taken in the WCO regarding HS changes. No specific consultation took place with States and Territories because the impact of the changes is negligible.⁹

Implementation

- 8.11 Amendments to the *Customs Tariff Act 1995* to reflect HS2007 changes were included in the Customs Tariff Amendment (2007 Harmonized System Changes) Bill 2006 that was tabled in Parliament on 7 September 2006. The Bill was passed on 19 October 2006 and assented to on 4 November 2006.¹⁰
- 8.12 The amendments to SAFTA Annexes 2C and 2D could not enter into force on 1 January 2007 because Singapore had not agreed to the additional technical amendments until 5 January 2007. Practical measures were implemented to ensure that trade between Australia and Singapore was not impeded when the HS2007 came into effect on 1 January 2007.¹¹

We are not aware of any SAFTA related problems resulting from the delay in amending the agreement to bring it into line with HS2007, which was implemented domestically on 1 January 2007.¹²

9 Ms Pauline Bygraves, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 June 2007, p. 2.

10 NIA, para. 10.

11 NIA, para. 11.

12 Ms Pauline Bygraves, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 June 2007, p. 2.

Recommendation

Recommendation 7

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 International Convention on the Harmonized Commodity Description and Coding System (HS2007)* and recommends binding treaty action be taken.

Protocol amending the TRIPS Agreement (Geneva, 6 December 2005)

Introduction

- 9.1 The proposed treaty action is that Australia accept the Protocol Amending the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (hereafter known as “the Protocol”). The Protocol amends the Agreement on Trade-Related Aspects of Intellectual Property (“the TRIPS Agreement”), one of the World Trade Organization (WTO) agreements constituting the integrated WTO system of trade rules. As a WTO member, Australia is a party to the TRIPS Agreement.¹

Background

- 9.2 The TRIPS Agreement came into force for Australia and generally on 1 January 1995 as Annex 1C of the *Marrakesh Agreement Establishing the World Trade Organization*² (“the WTO Agreement”). At the WTO Ministerial Conference in Doha in November 2001, Ministers of WTO Member States made a declaration on the TRIPS Agreement and

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

2 [1995] ATS 8.

public health.³ Paragraph 6 of that declaration recognised that Members with insufficient or no manufacturing capacity in the pharmaceutical sector could not make effective use of compulsory licensing⁴ under the TRIPS Agreement, and instructed the Council for TRIPS to find a solution to the problem.

- 9.3 On 30 August 2003, the WTO General Council agreed to the terms of an interim waiver allowing Member countries with limited or no manufacturing capacity to access patented pharmaceuticals made under compulsory licence in another WTO Member country.⁵
- 9.4 In the lead-up to the WTO Ministerial Conference in Hong Kong in December 2005, the Member States endorsed the proposal to transform the 2003 Decision into a permanent amendment to the TRIPS Agreement. On 6 December 2005, the WTO General Council agreed to the text of an amendment to the TRIPS Agreement – the TRIPS Protocol.⁶ The Protocol amends Article 31 of the TRIPS Agreement by inserting Article 31*bis* after Article 31 and by inserting the Annex to the TRIPS Agreement after Article 73.

The Protocol

- 9.5 The key objective of the Protocol is to provide the world's poorest people with better access to medicines. Under the Protocol WTO Members with insufficient manufacturing capacity will be able to import patented pharmaceuticals made under a compulsory licence from other Member countries in certain circumstances.
- 9.6 The Protocol is intended to facilitate access for least-developed and developing countries to cheaper versions of patented medicines needed to address public health problems, including HIV/AIDS, malaria and other epidemics, by establishing an exception to Article 31(f) of the TRIPS Agreement. Article 31(f) currently provides that the production of pharmaceutical products under compulsory licence

3 *Doha Declaration on the TRIPS Agreement and Public Health* 2001 (“the Doha Declaration”).

4 Compulsory licensing is a process by which a patent holder can be compelled to provide access to a patented invention in return for a royalty. A compulsory licence is granted by a Government to allow the use of a patent without the patent owner's permission. The patent owner is paid adequate remuneration, taking into account the economic value of the licence: Article 31(h), TRIPS Agreement.

5 *WTO General Council Decision* 2003, known as “the 2003 Decision” or “the waiver”.

6 Also known as “the Hong Kong Amendment”.

must be predominantly for the supply of the domestic market of the Member country in which the licence was issued. Accordingly, Article 31(f) would hinder the importation of pharmaceuticals manufactured under compulsory licence by countries that are unable to produce them:

The flexibilities afforded by compulsory licensing have always existed in the TRIPS agreement but with the stipulation that the use of the patent under the compulsory licence must be predominantly for the supply of a domestic market, thereby precluding export to countries without the ability to manufacture pharmaceuticals themselves.⁷

- 9.7 Article 31*bis* of the Protocol will allow a Member State to grant a compulsory licence over a pharmaceutical patent without complying with the condition in Article 31(f). This means the supply does not have to be predominantly for the domestic market, allowing for the exportation of generic drugs.

Obligations

- 9.8 Acceptance of the Protocol would not of itself establish any new obligations for Australia. Rather, the Protocol sets out the mechanisms that WTO Members must comply with if they are either:

- an eligible importing Member or
- an exporting Member

under the new system established by Article 31*bis* and the Annex to the TRIPS Agreement.

- 9.9 An 'eligible importing Member' is any least-developed country Member, and any other Member that has made a notification to the TRIPS Council of its intention to use the system. Under paragraph 2(a) of the Annex to the TRIPS Agreement, an eligible importing Member must:

- Notify the TRIPS Council that it intends to use the system as an importer;

⁷ Ms Jane Madden, *Transcript of Evidence*, 22 June 2007, p. 6.

- Specify the names and expected quantities of the product(s) needed; and
 - Establish that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the product(s) in question.
- 9.10 Australia has indicated that it will not use the system to import drugs produced in another Member country under a compulsory licence.⁸
- 9.11 An 'exporting Member' is a Member using the system to manufacture pharmaceutical products under compulsory licence for export to an eligible importing Member. Under paragraph 2(b) of the Annex, exporting Members issuing a compulsory licence under the new system must comply with the following conditions:
- Only the amount of the product(s) necessary to meet the needs of the eligible importing Member(s) may be manufactured under the licence, and the entirety of this production shall be exported to those Member(s);
 - Products produced under the licence shall be clearly identified as produced under the system, through specific labelling or marketing;
 - Prior to shipment, the licensee shall post on a website information detailing the quantities being supplied to each destination and the distinguishing features of the product(s); and
 - The exporting Member shall notify the TRIPS Council of the grant of the licence and certain details (such as name of licensee, quantity of product, duration of licence, etc).
- 9.12 The Committee notes that, under paragraph 4 of the Annex, all Members to the Protocol are obliged to prevent the importation and sale of generic drugs in unauthorised markets. The obligation to prevent importation and sale will apply to Australia irrespective of whether it chooses to export drugs itself under Article 31*bis*. However, this obligation is similar to other obligations in the TRIPS Agreement generally and is already adequately covered in Australian legislation.

8 NIA, para. 10.

Issues

- 9.13 While the goal of the Protocol, to provide cheaper versions of patented medicines to least-developed and developing countries to address public health problems, seems to be universally supported, one submission to this inquiry was particularly critical of the TRIPS Protocol and its ability to achieve this goal. According to Dr Matthew Rimmer, a Senior Lecturer at the Australian National University College of Law:

The Hong Kong amendment to the TRIPS agreement is a very controversial amendment. The WTO General Council decision is highly problematic. It is highly problematic because only a few countries have actually implemented the decision.⁹

- 9.14 Dr Rimmer notes that there has been “much disappointment that the *WTO General Council Decision 2003* has failed to realise its promise of enabling the export of pharmaceutical drugs to developing countries”.¹⁰ He suggests that it may not be wise, given this systematic failure to facilitate the export of pharmaceutical drugs, to entrench this decision into the TRIPS Agreement via the TRIPS Protocol:¹¹

The key point that you really need to pick up is that there have been no notifications whatsoever in the last four years that any of those export schemes have actually been used. There have been no drugs whatsoever exported under the WTO General Council decision, despite the best of intentions. That is a critical thing to understand. I think the talk that we heard earlier was a little bit naive in suggesting that merely adopting this protocol will of itself lead to the greater export of pharmaceutical drugs. The experience thus far has been that those mechanisms have not been working.¹²

- 9.15 The view that the waiver has proven too complex and ineffective has been echoed by Members of the European Parliament, who recently voted to delay approval of the Protocol pending European Union

9 Dr Matthew Rimmer, *Transcript of Evidence*, 22 June 2007, p. 10.

10 Dr Matthew Rimmer, *Submission 2*, p. 3.

11 Dr Matthew Rimmer, *Submission 2*, p. 3.

12 Dr Matthew Rimmer, *Transcript of Evidence*, 22 June 2007, p. 10.

governments giving greater political and financial support to poor countries seeking to boost the supply of affordable drugs.¹³

- 9.16 The Department of Foreign Affairs and Trade (DFAT) responded to Dr Rimmer's claims that the lack of export schemes established under the 2003 Decision indicates that the Protocol is unworkable:

An issue raised during the hearing was that there have been no compulsory licence notifications under the TRIPS waiver since it was adopted in 2003. This does not, however, mean that the TRIPS waiver or Protocol are flawed. There are several good reasons for the absence of notifications. One of these is that least-developed countries have a transition period (until 2016) where they are not bound by TRIPS. As they don't have to protect patents, they have no need to use the waiver. Need for recourse to the TRIPS waiver may also have been substantially reduced by the option of parallel importation, particularly from India where many drugs are not covered by patent. Governance and capacity issues within developing and least-developed countries also impact on the use of the waiver.¹⁴

- 9.17 Dr Rimmer points to numerous authorities, including Médecins Sans Frontières (MSF), who believe the amendments contained in the TRIPS Protocol are complicated, overly cumbersome and inefficient. The main argument is that the proposal to codify the 2003 Decision in the TRIPS Protocol disregards the fact that there is no proof of the efficacy of the 2003 Decision.¹⁵ MSF asserts that the WTO has decided to amend the TRIPS Agreement based on a mechanism that has failed to prove it can increase access to medicines. To date only one importing country has notified the TRIPS Council that it intends to use the 2003 Decision mechanism to import cheaper life-saving medicines.¹⁶ According to Dr Rimmer, this lack of uptake illustrates the hurdles which make it difficult for countries with little or no manufacturing capacity to import a generic under a compulsory licence, and difficult for generic manufacturers to export a drug under compulsory licence:

13 Exhibit No 3.

14 Department of Foreign Affairs and Trade, *Submission 5*, p. 1.

15 Dr Matthew Rimmer, *Submission 2*, pp 10-11.

16 On 19 July 2007, Rwanda became the first country to inform the WTO that it is using the 30 August 2003 decision:

http://www.wto.org/english/news_e/news07_e/public_health_july07_e.htm

Doctors Without Borders, MSF, who have been very active on this issue, have been very upset that several years on from the 30 August decision 'not a single drug has reached a single patient under the WTO mechanism'. They have been very critical of the fact that the mechanism that has been put in place is 'overly cumbersome and inefficient' and fails to take into account the realities and the economics of drug production. Essentially, their criticism is that there is no incentive for generic drug manufacturers to participate in such a process, especially because they have to do a country-by-country, drug-by-drug application to obtain compulsory licences to obtain exports.¹⁷

9.18 Some of the problems MSF perceives there to be with the mechanism are discussed on their Campaign for Access to Essential Medicines website:¹⁸

- Before a generic drug company can apply to a government to issue a compulsory licence allowing the firm to begin exporting a drug under the 2003 Decision, it has to engage in negotiations with the patent holder for a voluntary licence. Negotiations for a voluntary licence are protracted and complex, and a source of considerable delays. Prolonged prior negotiations are a disincentive to manufacturers to make use of the system.
- The 2003 Decision imposes conditions that the drugs must be clearly identified through specific labelling and marketing to ensure that they will only be exported to the destination stated in the compulsory licence. These anti-diversion measures are onerous and are further disincentives to the participation of generic companies in the process.
- A potential importing country must send a notification in writing to the WTO TRIPS Council declaring its intention to import pharmaceutical products according to the provisions set out in the 2003 Decision. The notification must include the specific names and expected quantities of the product needed. Such precise requirements may deter importing countries from making use of the system.

17 Dr Matthew Rimmer, *Transcript of Evidence*, 22 June 2007, p. 12.

18 The Médecins Sans Frontières Campaign for Access to Essential Medicines website: www.accessmed-msf.org/documents/WTOaugustreport.pdf

- The compulsory licence must stipulate the destination and quantity of drugs that are to be purchased and exported under the licence. Drug needs must therefore be determined with extreme precision beforehand, and are binding. If medical needs increase, the only way to purchase more drugs is to begin the process again, starting with the voluntary licence negotiations between brand-name and generic manufacturers. This is not practical; flexibility and rapidity of response to ever-changing circumstances are vital in managing a health programme.

9.19 Dr Rimmer highlights Canadian attempts to implement the 2003 Decision as evidence of the unworkable nature of the TRIPS Protocol. According to Dr Rimmer, all the conditions for successfully implementing the 2003 Decision were present in Canada – Canadian authorities stated their commitment to making it work, a generic drug company was interested in producing, and an NGO ready to place and pay for the order of the medicines was involved. Despite these conditions, no drug ever left the country. The main problem was the restrictive and time-consuming steps in the licensing process. There were endless negotiations between the brand-name and generic companies over voluntary licences, and the government refused to step in.

The key thing we can learn from the experience of the other regimes that have put their system into practice is that you need a regime that is much more flexible, that allows applications to be made for batches of drugs and perhaps more than one particular country. I guess there is a necessity for intermediaries to play a role.¹⁹

9.20 Both Dr Rimmer and MSF believe that delaying the TRIPS Protocol would have been a better option, as it would allow for the possibility of testing and improving the mechanism in practice. Dr Rimmer believes Australia should lobby for the inclusion of a more effective mechanism than the cumbersome TRIPS Protocol. He wants the WTO to review the implementation of the TRIPS amendments, and particularly assess the efficacy of the amendments. He also wants the WTO to explore automatic solutions that do not necessitate complex, time-consuming procedural steps.

9.21 DFAT claims that the steps required by the Protocol are necessary.

¹⁹ Dr Matthew Rimmer, *Transcript of Evidence*, 22 June 2007, p. 15.

In the department's view, the requirements stipulated within the Protocol are not overly burdensome, but rather comprise important steps to prevent leakage of pharmaceutical products made under the Protocol into developed country markets. We regard the case-by-case basis upon which the amendment will operate to be an important measure to ensure that the system operates appropriate to the needs of each country. In this way, the Protocol maintains an appropriate balance of rights in the TRIPS Agreement between the innovators and the users of technology.²⁰

Implementation

- 9.22 Mere acceptance of the Protocol would not require Australia to amend any law. The obligation to avoid trade diversion of generic drugs is similar to other obligations in the TRIPS Agreement generally and is already adequately covered in Australian legislation.
- 9.23 Under the *Patents Act 1990* (Cth), pharmaceutical products made under compulsory licence must be primarily for supply of the domestic market, i.e. not for export. A decision to accept the Protocol would in no way prejudice any decision as to whether or not Australia should amend the patents legislation in order to be able to export pharmaceuticals made under the new system. If Australia wishes to export drugs made under compulsory licence, amendments to the patents legislation would be required, consistent with the provisions of Article 31*bis* and the Annex. A decision to make such changes is separate from a decision to accept the Protocol.

Amendments to Australia's patent legislation are not required upon acceptance. Should Australia wish to export pharmaceuticals made under compulsory licence, amendments to the patent legislation would then be required. In that event, the process would be coordinated by IP Australia, which is the government agency responsible for the administration of Australia's patent legislation.²¹

20 Department of Foreign Affairs and Trade, *Submission 5*, p. 1.

21 Ms Jane Madden, *Transcript of Evidence*, 22 June 2007, p. 6.

- 9.24 Consultation on this aspect would be coordinated by IP Australia, and it is expected that such a consultation process will begin later in 2007.²²

IP Australia will be starting consultations later this year with regard to whether the Patents Act should be amended to allow for compulsory licensing under these circumstances.²³

- 9.25 When asked whether the Australian Government intends to make use of the TRIPS Protocol to export patented pharmaceuticals and make them available for developing countries, DFAT responded:

At this stage Australia has taken the decision to undertake consultation in relation to acceptance of the protocol, and that it is why we are here today before you, having undertaken the comprehensive treaty-making processes. The decision to arrange for exportation, as flagged, will require some legislative change. We had determined that it would be more appropriate for the protocol to be accepted as a first step and then, if and when that is agreed, we could embark – and it would be IP Australia – on some further consultation in terms of amending legislation with regard to exportation ... we did note the future possibility of changes in DFAT's consultation proposals and called for submissions on the IP website. So we have certainly not precluded that option but, as I mentioned, we are embarking on this as a two-step process: first to consider acceptance with your permission and then, as a second phase, coordinated by IP Australia, the possible legislative amendments towards export.²⁴

- 9.26 The Committee agrees that acceptance of the Protocol by Australia would demonstrate our support for the ability of developing countries and least developed countries to respond effectively to public health emergencies. However, the Committee is concerned about the efficacy of the Protocol in achieving its stated objectives.

Australia's support for the Hong Kong Amendment to encode the *WTO General Council Decision 2003* in the *TRIPS Agreement 1994* will be nothing more than an empty, symbolic

22 NIA, para. 12.

23 Ms Caroline McCarthy, *Transcript of Evidence*, 22 June 2007, p. 8.

24 Ms Jane Madden, *Transcript of Evidence*, 22 June 2007, p. 8.

gesture, unless it establishes an effective domestic mechanism for the export of pharmaceutical drugs.²⁵

- 9.27 Dr Rimmer also expressed concern that “the Australian Government has not yet implemented the *Doha Declaration on Public Health and the TRIPS Agreement 2001* or the *WTO General Council Decision 2003*, nor even established a policy process to consider such issues.”²⁶
- 9.28 The Committee notes the parallel debate taking place in the European Union regarding the TRIPS Protocol. On 12 July 2007, the 785-strong European Parliament voted to delay acceptance of the Protocol,²⁷ and adopted a resolution setting out its position.²⁸ The European Parliament is not seeking a renegotiation of the Protocol, but rather is asking the Member States to “provide financial support for pharmaceutical-related transfer of technology and capacity building and local production of pharmaceuticals in developing countries, especially in least developed countries”.²⁹
- 9.29 For Australia, acceptance of the Protocol should be followed with legislative and administrative measures to facilitate access to essential patented medicines for export. The Committee supports IP Australia’s consultation process due to begin later this year and encourages amendment of the *Patents Act 1990* (Cth) to allow for the export of pharmaceutical drugs to developing countries in an efficient and timely fashion.

Entry into force and withdrawal

- 9.30 The Protocol is open for acceptance by WTO members until 1 December 2007. Upon acceptance by two-thirds of WTO Members, the Protocol will enter into force for the Members that have accepted it and “thereafter for each Member upon acceptance by it”.³⁰ This

25 Dr Matthew Rimmer, *Submission 2*, p. 40.

26 Dr Matthew Rimmer, *Submission 2*, p. 28.

27 Exhibit No 3, p. 1.

28 <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B6-2007-0288&language=EN>

29 From the European Parliament website:

http://www.europarl.europa.eu/news/expert/infopress_page/026-9059-190-07-28-903-20070710IPR09047-09-07-2007-2007-false/default_en.htm

30 Paragraph 3, Article X, *Marrakesh Agreement establishing the World Trade Organization* [1995] ATS 8.

means Australia will not be bound by the Protocol if it does not accept it.

- 9.31 However, Australia is already a party to the 2003 Decision, and that Decision will only terminate for each Member “on the date on which an amendment to the TRIPS Agreement takes effect for that Member”.³¹ This means that, unless Australia accepts the Protocol, the 2003 Decision would not terminate for Australia:

Australia is already a party to the TRIPS Waiver, just as it might become a party to the Protocol, and the existing TRIPS waiver operates in essentially the same way as the Protocol that may replace it.³²

- 9.32 The proposed Protocol contains no withdrawal or denunciation clause. Accession to the TRIPS Agreement is a mandatory element of WTO membership, so withdrawal from the TRIPS Agreement or the Protocol would require the withdrawal from or denunciation of the entire WTO system.³³

Consultation

- 9.33 The NIA states that DFAT consulted with numerous interested Government agencies about acceptance of the Protocol.³⁴

DFAT put on its website a paper seeking submissions regarding the Protocol. Copies of this paper were provided to interested agencies to forward to stakeholders and to put links on their websites. DoHA provided the paper to peak industry bodies, Medicines Australia and the Generic Medicines Association, and directly to companies which may be exporting pharmaceuticals from Australia under existing arrangements.³⁵

Over many months the department has consulted with key stakeholders, including Commonwealth agencies ... state and territory governments, pharmaceutical industry groups and

31 Paragraph 11, *Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health* (30 August 2003).

32 Department of Foreign Affairs and Trade, *Submission 5*, p. 1.

33 NIA, para. 18.

34 NIA, para. 1.

35 NIA, Consultation, para. 1.

the general public. No objections to Australia accepting the protocol have been raised. Indeed, the responses that we have received indicate that the protocol enjoys widespread community support.³⁶

- 9.34 However, Dr Rimmer claimed that there had been inadequate consultation in relation to the TRIPS Protocol.

For a topic of such complexity and importance, it would have been helpful to have had many more submissions both from lawyers and economists and from health specialists and specialists in relation to infectious diseases. The topic also demands greater consideration than what has taken place thus far.

I have been very frustrated with the consultations that have been undertaken in relation to this particular issue. I put in a submission to the Department of Foreign Affairs and Trade. They did not alert me that they were sending off the protocol here, to the Joint Standing Committee on Treaties. I found that out by accident. Many of my colleagues who also heard very recently about this just said they did not really have enough time, in the very short time frame, to make a submission to you.³⁷

- 9.35 Consultation and public involvement is an important part of the treaty-making process. Committee inquiries serve a key purpose in allowing the community to participate directly in the parliamentary process, a key feature of democracy. Inadequate facilitation of community involvement by Government departments and agencies undermines this democratic function. Consultation is most effective when it occurs at an appropriate time. The Committee is concerned that the consultation undertaken by the Department of Foreign Affairs and Trade in relation to the TRIPS Agreement may not have been as thorough as it could or should have been.
- 9.36 The Committee is able to perform its function best when it has a comprehensive understanding of a treaty action. To this end, it would be helpful if witnesses, particularly from Government departments, are prepared to address all questions relating to a treaty action, including any criticisms raised in other submissions received in the course of the inquiry. In this instance, the Committee is disappointed

36 Ms Jane Madden, *Transcript of Evidence*, 22 June 2007, p. 6.

37 Dr Matthew Rimmer, *Transcript of Evidence*, 22 June 2007, p. 14.

that the Government representatives at the public hearing on Friday 22 June 2007 did not seem to have come prepared to directly address the issues raised in Dr Rimmer's submission.

Costs

- 9.37 There are no costs involved for Federal or State Governments in accepting the Protocol. Business and industry may incur some costs if Australia were to decide to amend its patents legislation to allow for export of pharmaceuticals under compulsory licence. The nature and extent of these costs would be determined as part of the IP Australia consultation process.³⁸

Future Treaty Action

- 9.38 Any future amendment of the Protocol or the TRIPS Agreement must be done in accordance with Article X of the WTO Agreement. Such a treaty action would be subject to Australia's normal domestic treaty processes.³⁹

Conclusion and Recommendation

- 9.39 Providing better access to medicines to the world's poorest people is a worthy subject for an international treaty. The Committee agrees with the Department of Foreign Affairs and Trade that

Acceptance of the protocol by Australia would demonstrate our support for the ability of developing countries and least developed countries to respond effectively to public health emergencies.⁴⁰

- 9.40 However, the Committee shares Dr Rimmer's concerns that the TRIPS Protocol requires intricate, time-consuming and burdensome procedures for the exportation of medicine, when what is needed is a

38 NIA, para. 14.

39 NIA, paras 16-17.

40 Ms Jane Madden, *Transcript of Evidence*, 22 June 2007, p. 6.

simple, fast and automatic mechanism. However, the Committee does not believe opposing the TRIPS Protocol will necessarily have the effect Dr Rimmer desires.

- 9.41 The Committee supports acceptance of the Protocol, followed by any necessary amendments to the *Patents Act 1990* (Cth) to allow for compulsory licensing to enable export of cheaper versions of patented medicines needed to address public health problems to least-developed and developing countries. The Committee encourages the consultations to be coordinated by IP Australia later this year and urges the Government to actively support the provision of patented medicines to least developed and developing countries.

Recommendation 8

The Committee supports the *Protocol Amending the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights* and recommends that binding treaty action be taken.

Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields

Introduction

- 10.1 The *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* ('the Agreement') formalises and enhances military cooperation between Australia and Turkey. The Agreement also clarifies the status of Australian and Turkish defence personnel and dependants when in the territory of the other.

Background

- 10.2 Representatives from the Department of Defence informed the Committee that the negotiation of the Agreement with Turkey was motivated in part by Turkey's need for a treaty-level agreement in order to cooperate on certain defence matters:

In part [the Agreement] was driven by Turkey's need to have a legally binding agreement; hence the need on our side to seek approval at the treaty level. I understand, with my limited knowledge of Turkish government processes, that the

Turkish armed forces and the Turkish ministry of defence are separate entities under their constitution. If we wish to cooperate on issues such as materiel, which both of those organisations are responsible for, then in order for them to have an arrangement with a foreign country to cover off those issues they need a treaty level agreement.¹

The Agreement

10.3 The Agreement will broadly facilitate cooperation between Australia and Turkey in the following areas:

- Training and education;
- Cooperation between land forces, naval force and air forces;
- Reciprocal high level visits;
- Conduct of military exercises and exchanges of observers for exercises;
- Intelligence
- Logistics, support services and infrastructure fields;
- Defence materiel and equipment, including development, production and industry;
- Communication, electronic and information systems;
- Peacekeeping, operations and armed conflict law training; and
- Social, sports, cultural and historical activities.²

10.4 The provision on defence materiel sharing will continue to develop Australia and Turkey's complementary defence capacities.³ The Department of Defence informed the Committee of previous cooperative efforts:

Turkey has previously sent observers to the annual Air Force exercises, known as Pitch Black. Turkish observers will also be invited to exercise Pitch Black in 2008. Australian

1 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 20.

2 National Interest Analysis (NIA), para. 7.

3 NIA, para. 9.

personnel have also attended security courses at the NATO Centre of Excellence: Defence Against Terrorism and the Partnership for Peace Training Centre in Ankara.⁴

- 10.5 Any classified information, documents or material provided under the Agreement must be protected and safeguarded.⁵ The detail of such protection is expected to be defined in future agreements or arrangements.⁶ Classified information exchanged under the Agreement may only be released to third parties if written consent is obtained from the releasing party.⁷

Defence personnel and dependants

- 10.6 One of the key provisions in the Agreement relating to the status of defence personnel provides that the Sending State has exclusive disciplinary jurisdiction over its visiting personnel who are subject to the service law of the Sending State while in the territory of the Receiving State.⁸ The Sending State also has the right to exercise that disciplinary jurisdiction within the territory of the Receiving State.⁹

We have domestic legislation, which is the Defence Force Discipline Act, that our service personnel are subject to. Also, there may be a very small civilian component covered. They are civilians who actually sign up to allow themselves to be subject to service laws, so they are not your ordinary public servants going overseas...If an alleged offence occurs that is covered by that legislation, what this agreement enables, by recognising that each country has their particular service laws, is that even though our people are stationed in Turkey the personnel will come under the jurisdiction of the Australian service laws in Turkey. The Turkish authorities will still have the ability in the initial instance, as we would in Australia in a converse situation, to maybe, if it is necessary, arrest a person. But then they have to immediately inform our authorities that this situation has occurred.¹⁰

4 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 19.

5 NIA, para. 12.

6 NIA, para. 12.

7 NIA, para. 12.

8 NIA, para. 14; Article IX, paragraph 2 of the Agreement.

9 NIA, para. 14; Article IX, paragraph 2 of the Agreement.

10 Ms Elizabeth Wilson, *Transcript of Evidence*, 22 June 2007, p. 21.

- 10.7 Under Article VIII of the Agreement, the Sending State must ensure that its defence personnel, both military and civilian, and their dependants, that are sent to visit the other country respect the laws of the Receiving State and do not undertake any activities inconsistent with the Agreement.¹¹ Article VIII also requires the Receiving State to notify the Sending State of the arrest of any personnel or dependent. The Receiving State can also request the Sending State to terminate the activities of a member of its personnel in the event of breaches by a member of the law of the Receiving State.¹²
- 10.8 Under Article XI, the Receiving State has the right to recall its personnel when it deems necessary in accordance with the law of the Receiving State.¹³
- 10.9 Under the Agreement, Australia and Turkey will waive all claims against each other for injury, death or damage to any property owned by it and used by its armed forces where the injury, death or damage occurred during the performance of official duties. This will not be the case where the damage occurred as a result of gross negligence or wilful misconduct. All other claims will be handled in accordance with the law of the receiving state.¹⁴

ANZAC Day

- 10.10 The Committee was informed that the Agreement will facilitate ongoing and enhanced engagement with the Turkish Armed Forces on ANZAC Day remembrance services.¹⁵ This is provided for through Article IV, paragraph J of the Agreement which facilitates cooperation between Australia and Turkey in areas of 'historical activities'.¹⁶
- 10.11 The ANZAC day services that take place at Gallipoli each year are one of the key features of Australia's defence relationship with Turkey:

The cooperation and support of the Turkish armed forces is integral to Australian authorities' planning for and conduct of annual commemoratives services at Gallipoli. The popularity of these services with both Turkish and Australian visitors

11 NIA, para. 13; Article VIII of the Agreement.

12 NIA, para. 13; Article VIII of the Agreement.

13 NIA, para. 16; Article XI of the Agreement.

14 NIA, para. 20; Article XV of the Agreement.

15 NIA, para. 8.

16 NIA, para. 8.

has markedly expanded in recent years, making our efficient operation with the Turkish armed forces, particularly in relation to security, all the more vital. At a practical level, the agreement provides symbolic recognition of the significance of historical cultural activities such as Anzac Day to our defence relationship.¹⁷

Benefits of the Agreement

- 10.12 The Committee was informed by representatives of the Department of Defence that the Agreement would have symbolic, as well as legal, value:

Aside from the legal value of having this agreement, it serves a symbolic purpose by showing that Australia values its defence relationship with Turkey at the highest levels of our government.¹⁸

- 10.13 The Agreement builds the growing defence cooperation relationship between Australia and Turkey:

Turkey is also a strategic operating base for Australian humanitarian operations in the Middle East. For example, Turkey provided valuable assistance during the evacuation of Australian citizens from Lebanon in 2006, both as a base for Australian personnel conducting the evacuation and as a transit point for evacuees. It is therefore important that we are able to work together by being familiar with the operating environment in Turkey and collaborating on common equipment and materiel.¹⁹

Costs and implementation

- 10.14 No new legislation is required to implement the obligations of the Agreement.²⁰ The obligations in Article IX, relating to exclusive

17 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 18.

18 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 19.

19 Ms Rachel Noble, *Transcript of Evidence*, 22 June 2007, p. 19.

20 NIA, para. 23.

disciplinary jurisdiction, are already met by the *Defence (Visiting Forces) Act 1963* (Cth), which governs the legal status of foreign military forces whilst in Australia.²¹

- 10.15 The Agreement is not expected to have any direct financial costs or benefits for Australia. However, Australia would bear the standard administrative expenses, such as salaries and allowances, for Defence personnel visiting Turkey.²²

Conclusion and recommendation

- 10.16 The Committee considers that the Agreement will formalise current defence cooperation between Australia and Turkey and will also provide important symbolic and legal value.

Recommendation 9

The Committee supports the *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

21 NIA, para. 23.

22 NIA, para. 24.



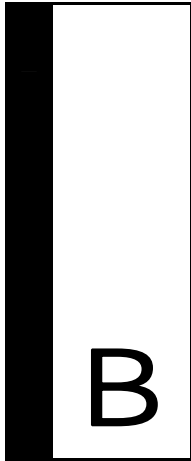
Appendix A - Submissions

Treaty tabled on 27 March 2007

- 1 Australian Patriot Movement
- 2 Mr Tim Pallas MP

Treaties tabled on 9 May 2007

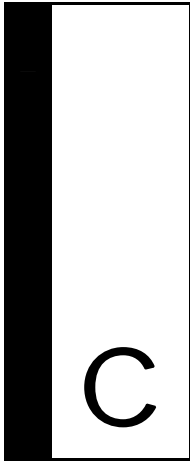
- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 1.2 Australian Patriot Movement
- 1.3 Australian Patriot Movement
- 1.4 Australian Patriot Movement
- 1.5 Australian Patriot Movement
- 1.6 Australian Patriot Movement
- 1.7 Australian Patriot Movement
- 2 Dr Matthew Rimmer
- 3 Australian Red Cross
- 4 Australian Customs Service
- 5 Department of Foreign Affairs and Trade



Appendix B - Exhibits

Treaties tabled on 9 May 2007

- 1 Dr Matthew Rimmer
International Law documents related to the TRIPS Agreement (Related to Submission No. 2)
- 2 Dr Matthew Rimmer
Documents related to the domestic implementation of the WTO General Council Decision (Related to Submission No. 2)
- 3 Dr Matthew Rimmer
European Parliament - Motion for a Resolution (Related to Submission No. 2)



Appendix C - Witnesses

Monday, 18 June 2007 - Canberra

Attorney-General's Department

Mr Geoffrey Skillen, Principal Legal Officer

Commonwealth Scientific and Industrial Research Organisation (CSIRO)

Miss Kimberley Shrives, Senior Adviser International

Department of Communications, Information Technology and the Arts

Mr Edward Harvey, Assistant Director, ITU and Treaties Section,
International Branch

Mr Colin Oliver, General Manager, International Branch

Department of Defence

Lieutenant Colonel David Bishop, Acting Director, Operations and
International Law

Department of Education, Science and Training

Mr David Smith, Director, Asia Pacific & Africa Section, International
Science Branch

Department of Family and Community Services & Indigenous Affairs

Ms Michalina Stawyskyj, Branch Manager, International Branch

Department of Family and Community Services and Indigenous Affairs

Mr Peter Hutchinson, Section Manager, International Agreements
Section, International Branch

Department of Foreign Affairs and Trade

Mr Brendan Augustin, Director, Western Europe Section, EU and
Western Europe Branch

Mr Michael Bliss, Director, International Law and Transnational
Crime Section, Legal Branch

Mr Bruce Lendon, Director, Africa Section

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

Mr Adrian Morrison, Director, Korea Section, North East Asia Branch

Ms Juliana Nam, Executive Officer, International Law and
Transnational Crime Section, International Legal Branch

Department of the Treasury

Mr Leon Latimore, Analyst, Superannuation, Retirement and Savings
Division

Mr Nigel Murray, Manager, Superannuation, Retirement and Savings
Division

Department of Transport and Regional Services

Mr John Anning, Policy, Imports and Recalls, Vehicle Safety
Standards Branch

Mr Allan Jonas, Manager, Standards and International Section,
Vehicle Safety Standards Branch

Mr Stephen Spencer, Manager, Policy, Imports and Recalls, Vehicle
Safety Standards Branch

IP Australia

Ms Helen Dawson, Assistant Director

Friday, 22 June 2007 - Canberra

Attorney-General's Department

Ms Robyn Frost, Principal Legal Officer, Office of International Law

Australian Customs Service

Mr Matthew Bannon, Director, Valuation and Origin

Australian Red Cross

Mr Dale Cleaver, Director of Operations

Ms Pia Riley, Acting Manager, International Humanitarian Law

Department of Defence

Ms Rachel Noble, Assistant Secretary, Americas, North & South Asia & Europe, International Policy Division

Mr Glenn Wahlert, Director General, Industry Strategy Branch, Defence Material Organisation

Ms Elizabeth Wilson, Senior Legal Officer, Directorate of International Agreements and Arrangements, Defence Legal

Department of Foreign Affairs and Trade

Mr Michael Bliss, Director, International Law and Transnational Crime Section, Legal Branch

Ms Pauline Bygraves, Executive Officer, WTO Regional and Free Trade Agreements Section

Mr Chris Cannan, Assistant Secretary, Northern, Southern and Eastern Europe Branch

Mr David Livingstone, Director, International Intellectual Property Section

Ms Jane Madden, Assistant Secretary, Services and Intellectual Property Branch

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

Ms Juliana Nam, Executive Officer, International Law and Transnational Crime Section, International Legal Branch

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

Ms Jessica Wyers, Executive Officer, International Intellectual Property Section

Department of Health and Ageing

Ms Jenny Hefford, Assistant Secretary, Regulatory Policy Branch

Department of Industry, Tourism and Resources

Ms Ruth Gallagher, Manager, Tariff and Trade Policy

IP Australia

Ms Caroline McCarthy, Director, International Policy Section

Mr Leo O'Keefe, Director, Domestic Policy Section

The Australian National University College of Law

Dr Matthew Rimmer, Senior Lecturer