International economic law

New International Economic Order. Australian position. Legal status

On 9 May 1978 in the course of a major statement to the House of Representatives on foreign policy the Minister for Foreign Affairs, Mr Peacock, said on the subject of the New International Economic Order (HR Deb 1978, Vol 109, 2131):

> The Government believes that a fundamental re-appraisal of present thinking is required on the grounds of justice to the Third World and in the interests of the developed countries. Unless the developed countries reassess their policies we cannot expect to arrest the present drift in international negotiations. This does not mean all the demands of the developing countries can be met, nor that we support all their claims.

Nationalisation of alien property. Charter of Economic Rights and Duties of States. Australian position

On 22 June 1979, officers of the Department of Foreign Affairs gave evidence before the Senate Standing Committee on Foreign Affairs and Defence on its reference on the New International Economic Order. The Chairman of the Committee, Senator Sim, asked why Australia had abstained from voting on Article 2, paragraphs 2(a) and 2(c) of the Charter of Economic Rights and Duties of States, which relates to a state's rights to regulate and exercise authority over foreign investment and to nationalise foreign property. Mr John Piper, Assistant Secretary, Economic Organisations Branch of the Department, answered as follows (Official Transcript of Proceedings, 1357–8):

> Mr PIPER — We have a general reservation about the claims of developing countries to be able to nationalise property without regard for international law or international practice. Unquestionably every nation has the sovereign right and the capacity to take such nationalisation measures but it has always been a practice in the international community that nationalisation should not be carried out without compensation and that compensation should be liable to international arbitration or resolution of some kind or other. The philosophy in the Third World is that they should be able to nationalise and resolve *any* dispute under their own laws. No doubt they have done so and will continue to do so. It is an area that causes Australia difficulty and we enter reservations on that point when we have to. The Charter of Economic Rights and Duties of States is one area, as is the NIEO on some occasions too, when we have had to do this. We understand their motives and their conviction that they should be able to do what they want to do with their own property but we see it as a principle of international law worth holding on to. I think that is also the position of the legal division.
>
> Senator McINTOSH — Would you contend that the law regarding

nationalisation would hold good when it comes to having 100 per cent control over your own energy resources?
Mr PIPER — We would regard it as sensible for any national government to set its own guidelines to control foreign investment. Any government, either of a developing country or a country such as Australia, which is indifferent to the controls imposed on foreign enterprises would be well advised to have another look at its policies. A developing country has every right to set its own guidelines but where there are disputes and arbitral issues we feel there should be regard for international practice and international settlement procedures. That is an established Australian view.

Foreign investment policy. "Naturalisation" of foreign-owned companies

On 8 June 1978 the Treasurer, Mr Howard, announced a new foreign investment policy in the House of Representatives (HR Deb 1978, Vol 109, 3258–9):

It is now just over two years since my predecessor announced the Government's foreign investment policy in a statement to this House dated 1 April 1976. In the light of experience gained in that period, it is timely that the policy be reviewed. The Government recognises that, despite Australia's high level of domestic savings, we will continue to require overseas capital to assist in the development of our industries and resources. A primary objective of the Government's policy remains therefore to encourage foreign investment in Australia. It is against this central consideration that the Government has undertaken a review of foreign investment policy. The Government has decided that there should be no fundamental changes to the basic objectives of the policy, as announced by my predecessor . . .
Nevertheless the Government wishes to relax procedural requirements wherever experience has shown this to be possible. Accordingly, the Government has decided that forthwith: Firstly, proposals for foreign investment in new projects will not require government approval under the foreign investment guidelines unless the project involves an investment of $5m or more — this does not apply to investment in the financial sector and uranium; secondly, in the case of investments coming within the scope of the Foreign Takeovers Act, the Government will not normally seek to intervene if the assets of the company being taken over are less than $2m, unless there are special circumstances or the business is in the financial sector or some other area where special considerations apply; and, thirdly, individual real estate acquisitions of less than $250,000 will no longer require approval . . .
I turn now to another aspect of the foreign investment guidelines which the Government has had under examination . . .
A concern which has arisen under the present policy is that, short of a company becoming majority Australian owned and Australian controlled, it remains unable to develop a new mining project on its own

within the Government's guidelines so far as the mining area is concerned . . .

The Government has therefore decided to modify the existing guidelines in a manner which will enable partly Australian-owned foreign companies to proceed more easily with their investment plans, by providing an incentive to them to increase Australian ownership . . .

A company wishing to take advantage of the benefits available under the arrangements will be required to meet certain preconditions: Firstly, a minimum 25 per cent Australian equity; secondly, amendment of its articles of association to provide for a board a majority of which are Australian citizens; and thirdly, a public commitment to increase Australian equity to 51 per cent subject to agreed understandings between the company, major shareholder interests and the Government, and regular discussions with the Foreign Investment Review Board on progress towards achieving 51 per cent Australian ownership. A company as outlined above which achieves 51 per cent Australian ownership and has an Australian board would be classified as a naturalised company. It would be able to proceed with new projects in its own right, in partnership with an Australian company, a naturalised company or a naturalising company, within the Government's guidelines for new projects. However, a naturalised company would, in the absence of special circumstances, be precluded from undertaking a project as a joint venture with a wholly overseas-owned company, as this would involve a departure from the 50 per cent guidelines . . .

On 19 August 1980 the Leader of the Government in the Senate, Senator Carrick, wrote in answer to a question concerning Australian ownership of new mineral projects (Sen Deb 1980, Vol 86, 104–5):

As a basic objective, the Government welcomes foreign investment in Australia because of the contribution it makes to the development of Australia's resources and the benefits that are associated with such development. At the same time, the Government considers that, where practicable, Australians should have opportunities to participate in the development of new natural resource projects. Accordingly, the objective of the Government's foreign investment policy is that, as a general rule, new natural resource development projects (excluding uranium) should have at least 50 per cent Australian equity and joint Australian/foreign control. New uranium developments are expected to have at least 75 per cent Australian equity and should be Australian controlled. In cases where 75 per cent Australian equity is clearly unobtainable, alternative proposals will be considered where there is a minimum of at least 50 per cent Australian equity and Australian participants have a major role in determining the policy of the project. Arrangements may be required to increase the level of Australian participation over an agreed period.

The Government's policy also provides incentives to encourage and facilitate arrangements by companies wishing to 'naturalise' their Australian operations by moving to majority Australian ownership and adopting a predominantly Australian board.

Loans from foreign banks. Mortgage of Australian property in favour of non-resident

On 21 February 1980 the Treasurer, Mr Howard, wrote in answer to question (HR Deb 1980, Vol 117, 324–5):

> Any mortgage of real estate in Australia in favour of a non-resident would require the prior authority of the Reserve Bank under the Banking (Foreign Exchange) Regulations. Current exchange control policy does not preclude such a transaction to support an overseas borrowing by an Australian resident. However, it is not the practice of the Reserve Bank publicly to disclose information on individual exchange control applications as this would be a breach of confidentiality accorded to such transactions.
>
> The Foreign Takeovers Act does not prevent the acquisition of property by way of enforcement of a security held solely for the purposes of a money lending agreement. Similarly the Government in the administration of its foreign investment policy would not normally attempt to intervene to frustrate a lender from taking action to enforce his security for a loan transaction. To do so could seriously affect the ability of Australians to borrow abroad on the security of assets in Australia. The Government would, however, expect a lender who has exercised such rights to sell the property to Australians or other eligible purchasers as soon as possible.

General Agreement on Tariffs and Trade. International commodity arrangements. Australia's position

On 6 June 1978 the Minister for Special Trade Representations, Mr Garland, spoke at a Trade Policy Research Centre dinner in London. Extracts from the Minister's speech are as follows (Comm Rec 1978, 723–5):

> **General Agreement on Tariffs and Trade**
>
> Since its ratification in 1947 the international trading system has operated largely on the basis of the fundamental principles enshrined in the GATT. The basic principle is the most favoured nation principle or the principle of multilateralism. Under this principle the discrimination against Japan that had existed at the start of the 1950s was gradually removed.
>
> The principle of multilateralism is not just of importance to Japan, but to all medium and smaller sized economic powers including Australia. It guarantees that as comparative advantage shifts, the countries developing new lines of advantage are able to exploit them. A vital characteristic of an efficently operating world trading system is that it should allow such adjustments to take place.
>
> The other basic principle is the notion of the rule of law governing trading relationships. Problems are to be resolved by consultation within an established framework rather than by recourse to economic power outside the framework of established rules. Except in the special case of clothing and textiles, special rules have not been developed for any other

industrial sectors. The basic rules apply across the board.
The system must be judged a considerable success, at least as far as trade in industrial products is concerned. The system has however worked less well for trade in agricultural products.

International Commodity Arrangements

Australia considers that improved access conditions for agricultural products is a basic requirement for fundamental improvement in commodity trade. It is pursuing this objective multilaterally in the MTN and bilaterally in the negotiations I am engaged in with the EEC and in ongoing discussions with Japan and the U.S.
Australia also considers international commodity arrangements are a key factor in improving commodity trade to the advantage of both consuming and producing nations. Australia is a party to all the international commodity arrangements at present in operation. We have built up a considerable experience in this area, not the least of which has flowed from the successful operation of Australia's reserve price scheme for wool.

General Agreement on Tariffs and Trade. Alleged breach by European Economic Community of its obligations. Sugar-dumping

In the House of Representatives on 26 October 1978, the Acting Minister for Trade and Resources, Mr Garland, was asked without notice what the basis was for the complaint by Australia at the GATT Council in Geneva in October 1978 concerning the practice of subsidised exports of sugar by the European Economic Community. He answered (HR Deb 1978, Vol 111, 2340):

> The General Agreement on Tariffs and Trade does not prohibit the use of subsidies on agricultural exports but, consistent with the fundamental principle of GATT, the Agreement stipulates that subsidies should not be used to gain more than an equitable share of the world market. In respect of sugar the Government believes it is quite clear that the European Economic Community has committed a breach of its contractual obligations under GATT. Consistent with Article 16, Australia has asked the contracting parties to undertake an urgent examination of the matter and to make prompt recommendations.
> The facts are simply stated: The Community is expected to export some 3.6 million tonnes of sugar this year at a subsidised expenditure of approximately $US830m. The Community's share of the world free sugar market has gone up from about 7.8 per cent in 1975 to not less than 22.4 per cent this year. In other words, it has nearly trebled its share of exports to the world free market. At the GATT Council meeting which took place in Geneva about 10 days ago — I was present in Geneva at the time — the Australian request received overwhelming support. A number of other countries have fully associated themselves with the Australian complaint. I hope there will be speedy action in GATT to resolve our complaint.

On 21 September 1978 the Deputy Prime Minister and Minister for Trade and Resources, Mr Anthony, issued a statement which read in part (Comm Rec 1978, 1262):

> Australia has decided to take direct and formal action against the EEC for dumping heavily subsidised and increased volumes of sugar on world markets.
>
> They are now preparing a formal notification to the General Agreement on Tariffs and Trade challenging the legality under Article 16 of the GATT of the sugar export policies being pursued by the EEC.

Restrictive business practices. Principles and rules for the control of

The Australian representative at the United Nations Conference on Restrictive Business Practices held during April 1980 is recorded as having made the following statements at the closing meeting on 22 April 1980 (TD/RBP/CONF/11, 10):

> Australia fully supports the objective of an acceptable Set of Principles and Rules for the Control of Restrictive Business Practices and welcomes the achievement of this Conference . . .

On 5 December 1980 Australia's Permanent Representative to the United Nations, Mr Anderson, said in the General Assembly (A/35/PV.84, 8):

> Australia welcomes the set of multilaterally agreed equitable principles and rules for the control of restrictive business practices and the objectives they are designed to achieve.
>
> Australia welcomes international voluntary measures for the control of restrictive business practices, believing it to be important that restrictive business practices should not impede or negate the growth and development of world trade.

Use of natural resources. Uranium. Responsibility to export. Honouring of contracts. Policy governing export. Non-Proliferation Treaty Obligations. Export Guidelines of Nuclear Suppliers Group. Bilateral nuclear safeguards agreement

In the House of Representatives on 10 April 1978, the Minister for Trade and Resources, Mr Anthony, made a statement on the export of Australia's uranium resources. In the course of his statement, he said (HR Deb 1978, Vol 108, 1301) that a

> major consideration in regard to the development of Australia's uranium resources is our international responsibility as a country rich in energy resources to make those resources available to countries less endowed than ourselves.

Further, on 1 June 1978 the Minister, who was also at that time the Acting Prime Minister, said (HR Deb 1978, Vol 109, 2907):

> Australia's policy is based squarely on our recognition of Australia's obligations as a country well endowed with energy resources to make those resources available to other countries, many of which have no real alternative, in the wake of the world energy crisis, than to turn to nuclear energy as a means of supplying electricity to their peoples.

On 6 November 1980 Australia's Permanent Representative to the United Nations, Mr Anderson, said in the General Assembly in the course of debate on the Report of the International Atomic Energy Agency (A/35/PV.53, 8):

> Australia has very large reserves of natural uranium and is entering the international uranium market as a major supplier. In deciding policies to govern the export of uranium, Australia paid particular attention to what it considered to be its obligations under articles III and IV of the NPT. The Australian Government decided accordingly, in 1977, that it would export uranium to non-nuclear-weapon States only if they were parties to the NPT. Australia also decided that exports of uranium for peaceful purposes to nuclear-weapon States would be made subject to undertakings that the uranium would not be diverted to military or explosive purposes and would be covered by IAEA safeguards. In addition, Australia pursues a policy of giving preference to NPT parties in the provision of nuclear technical assistance outside the regular programme of the IAEA.

On 2 October 1978 the Acting Minister for Foreign Affairs, Mr Sinclair, wrote in answer to a question concerning "sanctions" for breach of the Nuclear Suppliers Group export guidelines (HR Deb 1978, Vol 111, 1886):

> The Guidelines were voluntarily adopted by the fifteen leading suppliers of nuclear equipment and technology including the United States, Canada, major member states of Euratom, Japan, the Soviet Union and other east and west European countries. The participating states have jointly informed the International Atomic Energy Agency of their intention to act in accordance with the principles contained in the Guidelines. The Guidelines represent a statement of the points in the nulcear export policies of the countries concerned which are common to all of them. Adherence to the Guidelines does not involve a binding legal commitment.
>
> For this reason the Guidelines do not provide for sanctions against breaches by members of the Nuclear Suppliers Group nor for conditions under which countries could be 'permitted' to withdraw from the Nuclear Suppliers Group.

On 20 August 1980 the Minister for Foreign Affairs, Mr Peacock, wrote in answer to a question concerning Australia's bilateral nuclear safeguards agreements (HR Deb 1980, Vol 119, 561):

> The requirements of Australia's comprehensive nuclear safeguards policy were set out in the Prime Minister's statement in the House of 24 May 1977 (*Hansard* pp 1700–1705).
>
> Australia has signed five nuclear safeguards agreements. All of the agreements fulfil the stringent requirements of Australia's nuclear safeguards policy, including the obligation to make any nuclear material supplied under the agreements subject to International Atomic Energy Agency (IAEA) safeguards.
>
> Bilateral nuclear safeguards agreements have been negotiated with nuclear weapon states and non-nuclear weapon states. Nuclear weapon states are not obliged under the Treaty on the Non-Proliferation of

Nuclear Weapons (NPT) to renounce nuclear weapons or accept international safeguards. The two agreements so far negotiated with nuclear weapon states (the United States and the United Kingdom), do not therefore require the application of IAEA safeguards to all nuclear material in these countries. Nonetheless Australia's agreements with the United States and the United Kingdom require that nuclear material of Australian origin supplied under these agreements will not be used for military or explosive purposes, and that such material will be covered by IAEA safeguards.

The three agreements signed so far with non-nuclear weapon states are with Finland, the Philippines and the Republic of Korea, all of which are parties of the NPT and have placed their entire civil nuclear industries under IAEA safeguards pursuant to their obligations under the NPT.

The text of all five of these agreements have been presented to Parliament. It is necessary to read each agreement as a whole in order to see the way in which Australia's requirements, including the application of IAEA safeguards, are fulfilled.

International trade. Relevance of trade relations to political attitudes of government

On 10 June 1978 the Minister for Foreign Affairs, Mr Peacock, provided the following written answer in part to a question concerning trade between African states and South Africa and Rhodesia (Sen Deb 1978, Vol 77, 2806):

> The Government does not regard trade as the sole or even the major indicator of a country's attitude to political questions.

Trade Sanctions. Rhodesia

On 8 June 1979 the Acting Minister for Foreign Affairs provided the following written answer to a question concerning allegations of breaches by the Soviet Union of United Nations Security Council sanctions on trade with Rhodesia (Sen Deb 1978, Vol 81, 3022–3):

> I have seen a press report alleging that the Soviet Union has been trading in Rhodesian chrome and tobacco.
>
> Any such transaction would be in breach of mandatory sanctions imposed by the United Nations Security Council. Member states of the United Nations are obliged to respect mandatory resolutions adopted by the Security Council.

Trade relations. Taiwan. South Africa. Rhodesia

On 27 November 1980 the Minister for Trade and Resources, Mr Anthony, provided the following written answer to a question concerning Government support of trade with Taiwan (Sen Deb 1980, Vol 87, 203):

> The arrangements establishing diplomatic relations between Australia and China in December 1972 preclude any possibility of the Australian Government establishing a trade office or any official presence in the province of Taiwan. We recognise the People's Republic of China as the

sole legal Government of China, and acknowledge the position of the Chinese Government that Taiwan is a part of China.
However this does not preclude private organisations from doing business with the province of Taiwan or establishing offices to assist such activities. The Government has indicated on a number of occasions that it would be prepared to provide appropriate guidance to a private sector body wishing to establish a non-official office in the province of Taiwan to support and facilitate trade.

On 18 September 1980 the Minister for Foreign Affairs, Mr Peacock, wrote in answer to a question on South Africa (HR Deb 1980, Vol 119, 1603):

The Australian Government has followed the policy of maintaining diplomatic relations with South Africa without allowing this to derogate from its total opposition to apartheid, which it has on many occasions made known to the South African Government.
Consistent with this policy, normal economic relations with South Africa have been allowed to continue but without avoidable official assistance. Accordingly,

(a) All government promotion of trade and investments in South Africa has ceased.
(b) Neither export insurance cover under 'national interest' provision of the Export Finance and Insurance Corporation (EFIC) Act, nor investment insurance, is available; further, EFIC has been advised that the provision of funds on concessional terms to support exports to South Africa would be against Government policy.
(c) Trade Commissioner activities at the Johannesburg Post are limited to the provision of basic marketing information and to the normal servicing of Australian exporters.

On 5 April 1979 Mr Peacock wrote in answer to an earlier question on trade in nuclear materials with South Africa (HR Deb 1979, Vol 113, 1668):

The Government is opposed to the transfer of nuclear material or technology between Australia and South Africa. The Communique of the 1977 Commonwealth Heads of Government Meeting, in which Australia participated, urged, that inter alia any Government which collaborates with South Africa in the development of its nuclear industry should desist from doing so. Australia has also supported United Nations resolutions along these lines.

On 7 February 1980 the Acting Prime Minister and Minister for Trade and Resources, Mr Anthony, issued the following statement (Comm Rec 1980, 135–6):

Australian firms are free to trade with Rhodesia on the same basis as with other countries. Since the lifting of sanctions on 21 December 1979 the full range of services provided by the Department of Trade and Resources has been available to facilitate trade with Rhodesia . . .
The Australian Trade Commissioner in Nairobi, Mr GB Zegelin, is currently visiting Rhodesia to conduct a preliminary assessment of the market for Australian products and to obtain basic market information.

International trade. Trade embargo. Suspension of grain shipments to the Soviet Union

On 17 April 1980 the Acting Prime Minister, Mr Anthony said in answer to a question concerning the Government's restrictions on trade with the Soviet Union (HR Deb 1980, Vol 118, 1864):

> We reached an understanding with other grain exporting countries, including the United States, that if the United States were able to freeze the 17 million tonnes of grain, basically feed grain, we would co-operate so as not to undermine its efforts in its embargo on the Union of Soviet Socialist Republics. So far we have played our part by stopping some exports of grain, including a load of maize from New South Wales and a consignment of sorghum from Queensland. We have fully accepted our obligations and honoured them and I would want to see the United States do likewise.

On the same day the Minister for Primary Industry, Mr Nixon, wrote in answer to a question on the Government's position on grain sale restrictions to the Soviet Union (HR Deb 1980, Vol 118, 1961–2):

> (1) The Australian Government's position is that of supporting the US decision of 5 January 1980 to suspend shipments of 17 million tonnes of grain to USSR. Australia will not pick up any of the shortfall in USSR imports created by that action. This is one of a number of decisions taken to demonstrate Australia's concern at and to register opposition to the Soviet Union's invasion of Afghanistan.
>
> (2) All sales of grain are not embargoed. Consistent with the position the US have taken, normal sales from Australia to the USSR are not affected.
>
> Australia's existing wheat contracts, which all predate the US action, will be honoured but the Australian Wheat Board will not initiate substantive negotiations for further sales to USSR pending a further meeting of grain exporting countries tentatively scheduled for May.

Compensation. Claim by Dillingham Corporation following suspension of mineral exports from Fraser Island, Queensland. Espousal of claim by United States

On 30 March 1979, the Acting Minister for Trade and Resouces, Mr Nixon, issued the following statement (Comm Rec 1979, 376–7):

> The Government has been informed by the Dillingham Corporation that DM Minerals, a partnership of Dillingham Australia Ltd and Murphyores Incorporated Pty Ltd, would not accept the *ex gratia* offer of compensation made to it by the Australian Government, following the Government's decision in 1976 in relation to Fraser Island.
>
> The Government's decision on Fraser Island was made following consideration of a report of a full and public environmental inquiry conducted by a commission of inquiry set up under environmental legislation . . .
>
> The commission of inquiry recommended a prohibition of export of

minerals extracted from Fraser Island except for those extracted from an area of beach below high water mark.

The Government recognised the place of Fraser Island as part of the national and international heritage. It recommended that it needed to act to ensure that the special features of Fraser Island are preserved for future generations as well as for the present community. The Government decided that Fraser Island would be regarded as part of the National Estate, recognising its place as part of Australia's national heritage. The Government also decided that exports of minerals extracted from Fraser Island, except those from a section of beach below the mean high water mark, should be phased out and that exports should not be permitted for minerals mined after 31 December 1976.

It is accepted internationally that activities, particularly in the mining area, have to take account of environmental considerations. There are successful sandmining operations continuing in Australia but the areas involved do not have the special environmental features of Fraser Island.

A claim for compensation for about $23m was made by DM Minerals following the cessation of that partnership's mining activities on Fraser Island. On the basis of legal advice, the Government denied that it was under any legal liability to DM Minerals. Nevertheless, the Government made an *ex gratia* offer of $4m determined on an after tax basis, to the partnership. The offer had regard to the loss of expected profits for the year 1977, and extraordinary costs incurred by the partnership in the closure of the enterprise. An offer on the same basis to another company engaged in mining on Fraser Island was accepted.

Dillingham has now informed the Government that DM Minerals will not accept the *ex gratia* offer and has asserted that the Australian Government is liable at international law to compensate the partnership. Dillingham is now considering the steps necessary for the case to be resolved in an international judicial forum, but has expressed the hope that the matter can be resolved by negotiation or arbitration. The Government remains of the view that it is not liable to pay compensation under either Australian law or international law . . .

The Government has been informed by the US Government that it is prepared to espouse the Dillingham Corporation's claim for compensation. The US Government has also asked the Australian Government to consider certain processes which would enable Dillingham's case to be expeditiously resolved under international law.

On 8 June 1979 the Minister for Foreign Affairs, Mr Peacock, provided the following written answer to a question concerning the Dillingham claim (Sen Deb 1979, Vol 81, 3016):

The Australian Government received a communication from the United States Government in March 1979 in which the United States Government advised that it was prepared to espouse the Dillingham Corporation's claim for compensation and that, if the different views existing between the two Governments could not be resolved, it was willing to have the matter decided in an international forum.

> The Government gave careful consideration to this communication. In response, it advised the United States Government that, while it did not agree to a United States proposal to refer the matter to arbitration, if the matter were to be referred by the United States to the International Court of Justice, Australia would not insist on the normal requirement that Dillingham Corporation first exhaust any legal remedies in Australia. The Australian Government would not invoke the United States reservation to the compulsory jurisdiction of the International Court of Justice, as it would be entitled to, in order to challenge the Court's jurisdiction in this case.
>
> The Australian Government made it clear that it would be prepared, if it was thought that this would assist in resolving differences of opinion, to engage in discussions with the United States Government with a view to explaining the reasons for the Australian Government's position.
>
> The Government had earlier made an ex gratia offer of $4m, determined on an after-tax basis, to the DM Minerals partnership through which the Dillingham Corporation had an interest in mining on Fraser Island. The offer had regard to the loss of expected profits for the year 1977, and extraordinary costs incurred by the partnership in the closure of the enterprise. An offer on the same basis to another company engaged in mining on Fraser Island was accepted. The Government was informed in March that DM Minerals would not accept the ex gratia offer.
>
> The Australian Government remains of the view that no compensation is due to Dillingham, either under Australian law or international law.

On 23 November 1979 the Prime Minister, Mr Fraser, provided the following written answer to a further question on the subject (Sen Deb 1979, Vol 83, 3008):

> The Australian Government, in response to the US Government's indication in March that it was prepared to espouse Dillingham's claim in an international forum, invited the US Government to engage in discussion with a view to explaining the reasons for the Australian Government's position on DM Mineral's claim. The US Government accepted the Australian offer and discussions between officials were held in Canberra on 8 and 9 November 1979. The Australian delegation was led by the Solicitor-General, Mr MH Byers, QC. The American delegation was led by the Deputy Legal Adviser of the State Department, Dr SM Schwebel. At these discussions, each side presented a detailed explanation of its Government's position on DM Mineral's claim. In particular, the consequences of the operation of Australian domestic law in relation to the claim and the implications of the applicable domestic and international legal principles were discussed. The points made are now receiving careful consideration by the respective governments.
>
> No action is envisaged, as a result of the negotiations, in relation to the lifting of export restrictions on minerals mined on Fraser Island.

On the same day Mr Peacock wrote (Sen Deb 1979, Vol 83, 2982–3):

> The Government has given careful consideration to the issues involved in this matter and to the options available for settlement, including the

option of arbitration. The main question at issue is whether any liability exists in the Government, under international law, to compensate DM Minerals. There is also the question of whether the United States Government has standing to espouse the claim. The Australian Government's view has always been and remains that it is not liable to pay compensation. The view of the United States Government differs. The Australian Government took the view that, if the differing views could not be otherwise resolved and the matter is to proceed to third party settlement, the questions of liability and standing — which involve broad ranging and complex legal issues — are more appropriately dealt with by the International Courts, rather than through arbitration. Reference of such matters to the International Court of Justice is a proper and reasonable method of resolving differences between friendly countries.

Compensation. Cancellation of contract between Royal Agricultural Society of New South Wales and USSR Chamber of Commerce and Industry

On 2 April 1980 the Minster for Primary Industry, Mr Viner, wrote in answer to a question (HR Deb 1980, Vol 117, 1679):

> . . . the Royal Agricultural Society of New South Wales, at the request of the Commonwealth Government, terminated an agreement it had signed in 1978 covering a proposed major exhibition by the USSR at the 1980 Royal Easter Show. It would, of course, be quite inappropriate for Australia to host a major display from the USSR at this time.
>
> The Government has indicated its intention to compensate the Society for losses it may incur arising out of its compliance with the Government's request but it is too early at this stage to indicate what sum might finally be involved.
>
> The terms of the Memorandum of Agreement cover in extensive detail the conditions under which a licence was granted to the USSR Chamber of Commerce and Industry to mount an exhibition. The USSR Chamber has lodged a claim for damages as a result of the Society's action in terminating this Agreement. The method of handling this claim is still under consideration.