VIII INTERNATIONAL ECONOMIC LAW

International commodity agreements – International Tin Agreements – dissolution of the International Tin Council – legal obligations relating to the Council's debts

On 17 October 1990 the Minister for Resources, Mr Griffiths, provided the following written answer to a question on notice (HR Deb 1990, Vol 173, pp 3119–20):

> The International Tin Council operated from 1956 under a series of International Tin Agreements, the last of which was the Sixth Agreement which was operative from 1982 until the ITC was formally dissolved on 31 July 1990.
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> ... Within six months of the collapse of the ITC's buffer stock operations, world tin prices had fallen by around 50%. This brought about a major rationalisation of Australia's tin industry, which at the time of the collapse comprised in excess of 120, mostly small scale, producers concentrated in North Queensland. The effect was to cause the closure of almost all small scale mines and to concentrate tin production in the hands of one large producer, Renison Goldfields Consolidated. The impact on Australia's total tin output, however, was not large, as Renison, then free of ITC production quota restrictions, expanded its production.
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> The collapse of the ITC's buffer stock operations did not leave the Australian Government with any formal obligations. A series of court cases mounted by the ITC's creditors determined that the ITC's members had no legal obligations for the ITC's debts. Australia, however, joined with all other ITC members in agreeing to an out of court settlement with the ITC's creditors. Australia contributed an amount of 7.34 million pounds sterling ($A15.6m) towards the settlement of 182.5 million pounds sterling.

International maritime law – limitation of liability for maritime claims

On 15 October 1991 the Minister for Land Transport, Mr Brown, introduced the Carriage of Goods by Sea Bill 1991 into Parliament (HR Deb 1991, pp 1924–2201), and explained the purpose of the Bill, in part, as follows:

> The purpose of this Bill is to reform Australia's marine cargo liability legislation, which is concerned with legal responsibility for loss or damage occurring to seaborne cargo. This new Bill replaces the Carriage of Goods by Sea Bill 1990, which was introduced into the House of Representatives on 12 September 1990 following a review of Australia's marine cargo liability regime.
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> The 1990 Bill resulted in a number of representations being received from shippers, ocean carriers and the legal profession expressing concern about certain technical aspects of the proposed legislation. These concerns focused on the use of modern language instead of the original texts of international conventions, the need to clarify the Bill's application to

contracts of carriage other than those evidenced by documents of title such as bills of lading, and the scope of coverage of Australian law.

The complex legal issues raised by these representations were addressed in consultations between Commonwealth officials and the parties concerned. The revised provisions of the replacement Bill, which I will detail later, satisfactorily resolve those issues and there is broad industry support for the approach now adopted.

Australia's current marine cargo liability regime is embodied in the Sea-Carriage of Goods Act 1924. The Carriage of Goods by Sea Bill 1991 will repeal that Act. However, a "savings clause" will allow the Sea-Carriage of Goods Act 1924 to continue to operate in relation to contracts of carriage entered into prior to the commencement of the Bill. The objectives of the Bill are to provide Australia with a marine cargo liability regime that is up to date, equitable and efficient; is compatible with arrangements adopted by our major trading partners; and takes account of developments in this area within the United Nations.

The Sea-Carriage of Goods Act 1924 is based on the 1924 International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading - commonly known as the Hague Rules. It is the basis of marine cargo liability regimes generally included in national legislation in force in the world today. The main thrust of the Hague Rules is to limit the extent to which shipowners are liable for loss or damage to cargo while it is in their keeping. The relevant circumstances of such liability are defined in the Rules and an upper monetary limit is imposed on any claims made by cargo owners or shippers.

The Hague Rules have been amended by two international protocols: the Visby Protocol of 1968 and the SDR - Special Drawing Right - Protocol of 1979. These protocols update the Hague Rules by increasing the liability limit for shipowners, replacing the gold standard with the International Monetary Fund's modern currency unit - the special drawing right - and redefining the term "package or unit" of cargo to take account of the modern use of containers in shipping. These two protocols are gaining acceptance among maritime trading nations and this Bill provides for their incorporation into Australian law. Schedule 1 to the Bill sets out the provisions of the Hague Rules as amended by the Visby and the SDR protocols. Australia will also formally accede to these two protocols.

Shippers have argued that a deficiency of the Hague Rules, which these protocols do not substantially alter, is that shippers bear the major burden of risk for loss or damage to seaborne cargo, even though the shipowner has care of the cargo. As a result, shippers generally have to make separate arrangements to fully insure their cargo against this risk.

This criticism is addressed in the 1978 United Nations Convention on the Carriage of Goods by Sea, commonly known as the Hamburg Rules. The main feature of the Hamburg Rules is the transfer of much of the burden of

liability from shipper to shipowner during the time that the shipowner has care of the cargo. The text of the of the Hamburg Rules is set out in schedule 2 to the Bill. The Hamburg Rules will not come into force internationally until 1 November 1992. Few of the signatories to the convention are significant maritime trading nations and so far none of Australia's major trading partners has acceded. Nevertheless, the Government does recognise the argument of the greater equity of the Hamburg Rules and the potential benefits for shippers that may accrue from a general international acceptance of the Hamburg Rules.

Australia remains essentially a shipper nation and the Bill will ensure that the Hamburg Rules will be kept under review to determine the optimum time for them to eventually replace the Hague-Visby-SDR regime. This does not mean that the Hamburg Rules will be left to languish indefinitely. In an endeavour to specify a more definite "trigger" mechanism than originally provided for in the Bill, the Government moved an amendment which was passed in the Senate. The Bill now provides that if the Hamburg Rules provisions have not been proclaimed within three years of the Act receiving the royal assent, they automatically come into effect unless, before the expiration of the three year period, both Houses of Parliament have passed a resolution that the provisions be repealed or that the question of the repeal be deferred for a further three year period.

The inclusion of the Hamburg Rules in the Bill is a signal that Australia intends to accept this Convention when its international standing is such that it can demonstrably provide a viable basis for new cargo liability arrangements for international seaborne trade between Australia and its trading partners. As long as the Hamburg Rules have not come into force internationally it is inappropriate to seek proclamation of the parts of the Bill that deal with the implementation of this Convention, and the Government will not be moving to implement the Hamburg Rules until it is in the commercial interests of Australia to do so. In other words, there will be no moves towards implementation until the Hamburg Rules have come into force internationally and a sufficient number of our major trading partners have adopted, or expressed an intention to adopt, the Hamburg Rules as the basis for their marine cargo liability regimes. Any decision on the timing for implementation will also be made on the basis of a broad and comprehensive consultative process with representatives of shippers, cargo owners, carriers and ship owners.

The 1990 Bill sought to reproduce the texts of the amended Hague Rules and the Hamburg Rules in a modernised "plain English" version. However, concern was expressed that the changes, though intended only to be stylistic, could inadvertently change the meaning of the rules as established by the extensive interpretation of courts internationally. In order to avoid possible increased litigation under the amended versions, it was decided to retain the internationally accepted tests.

In the case of the Hague Rules, there is no official English translation of the original French version of the convention agreed to in 1924. It was decided after extensive consultation to use the Australian Treaty Series translation of the Hague Rules as the basis for schedule 1 of the Bill, as this is the version most commonly used in the English speaking world.

The coverage of the Bill also extends, on a voluntary basis, to contracts of carriage evidenced by non-negotiable transport documents. These non-negotiable transport documents fulfil similar functions to bills of lading - that is, they are evidence of the contract of carriage of the goods between the carrier and the shipper - with the exception that they do not convey title to the cargo. The extension of the Bill's coverage in this regard recognises the increasing use of non-negotiable transport documents in Australia's interstate and international sea trades and resolves the question as to whether the Hague-Visby-SDR regime can be applied where such documents are used.

A provision has been included in the Bill along the lines of sections 9(1) and (2) of the existing Sea-Carriage of Goods Act 1924 which applies Australian law to the resolution of liability disputes arising from the sea carriage of goods in our export trades. This avoids the potential delays, increased costs and language difficulties which may be involved with the resolution of disputes under foreign laws. A provision has also been included to preserve the effect of the jurisdiction and arbitration articles of the Hamburg Rules which permit the complainant to choose under which jurisdiction disputes are arbitrated.

Rather than producing an amending Bill, which would require users to make continuous reference to the 1990 Bill, it was decided that it would be better to have a self-standing Bill which incorporated all the agreed amendments. For this reason it was decided that the existing Bill will be withdrawn from the House of Representatives at the earliest opportunity and replaced with the Bill being introduced today - the Carriage of Goods by Sea Bill 1991.

International trading agreements and arrangements - Soviet Union, Papua New Guinea

On 21 February 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

The Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Papua New Guinean Minister for Foreign Affairs, Sir Michael Somare, today signed the revised Papua New Guinea - Australian Trade and Commercial Relations Agreement (PATCRA) in Canberra.

The signing took place during the first day of the Australia-Papua New Guinea Ministerial Forum.

PATCRA will provide Papua New Guinea with duty-free access for most goods to the Australian market. It also provides a framework for Papua

New Guinea to seek assistance in quality control, market research and the development of small businesses.

Senator Evans said that the new PATCRA would be a good basis for the further development of the important commercial relationship between Australia and Papua New Guinea. He said that Australia was the major supplier of goods to Papua New Guinea and was, in turn, Papua New Guinea's fourth biggest export market and by far the largest source of investment funds.

PATCRA contained consultative provisions which could ensure continuing access for Australian exports.

Senator Evans said that the aim of both countries was to pursue the long-term liberalisation of trade.

The revised PATCRA Agreement updates the existing Agreement signed in 1977.

Also today, the Minister for Shipping and Aviation Support, Senator Bob Collins, and Sir Michael signed a Memorandum of Understanding on Shipping Cooperation which encourages both countries to consult on policy changes in shipping regulations, to exchange technical information, and to cooperate on safety, environmental and legal aspects of shipping.

On 5 December 1990 Senator Cook, the Minister representing the Minister for Primary Industries and Energy, said in part in answer to a question without notice (Sen Deb 1990, pp 5012–13):

The signing on 23 November of a memorandum of understanding between the USSR and Australia, aimed at expanding mutually beneficial trade and economic co-operation between the two countries, and the subsequent signing of a credit agreement totalling $400m between Austrade EFIC and the Soviet Foreign Economic Bank, Vnesheconombank, for the purchase of wool and other Australian commodities by trade organisations in the Soviet Union represents a watershed in our relationship with the USSR and is good news for our embattled wool industry.

The Australian offer to provide credit to facilitate trade was made in response to a request from the Soviet Prime Minister, Mr Ryzhkov, to Mr Hawke and was designed to permit the resumption of normal levels of trade. It is expected that the wool industry will be the largest beneficiary as traditionally it accounts for three-quarters of the trade concerned.

Foreign investment – settlement of investment disputes – Convention on the Settlement of International Investment Disputes – legislation

On 22 August 1990 the Attorney-General, Mr Duffy, introduced the ICSID Implementation Bill 1990 (HR Deb 1990, Vol 172, pp 1309–10), and explained the purpose of the Bill, in part, as follows:

The purpose of the Bill I am introducing today is to set the legislative framework in place for Australia to ratify the Convention on the Settlement of Investment Disputes between States and Nationals of other States.

The Convention provides a mechanism for settlement, by means of conciliation and arbitration, of investment disputes between a state party to the Convention, or any constitutent subdivision or agency of that state, and investors from other States parties. To this end the Convention established the International Centre for Settlement of Investment Disputes, better known as ICSID. Hence, the Convention is often referred to as the ICSID Convention.

The Convention, which is the outcome of the work of the International Bank for Reconstruction and Development, the World Bank, was opened for signature on 18 March 1965 and entered into force on 14 October 1966. There are currently 91 parties to the Convention including nearly all Australia's major trading partners. Australia signed the Convention on 24 March 1975.

The ratification of the Convention by Australia will be a further important step in advancing the Government's objective of developing Australia's role in international commercial dispute resolution. Honourable members will recall that in 1989 this Government introduced legislation to implement the model law on commercial arbitration, which had been developed by the United Nations Commission on International Trade Law (UNCITRAL).

The adoption of the model law was a major step towards enhancing Australia's position as a centre for international commercial arbitration. Ratification of the ICSID Convention will further enhance this position.

Australia already has two centres for international arbitration in Sydney and Melbourne, which have been operating for some time. The ratification of the ICSID Convention will enable Australia to build on the expertise developed in those two centres.

There are also significant advantages which flow from ratifying the Convention from which Australian investors could benefit. In particular, the facilities provided under the Convention for conciliation and arbitration are an appropriate means for settlement of claims by investors arising out of expropriation of private assets in overseas countries. Ratification may also help to promote foreign investment in Australia.

Content of the Bill

I refer now to some of the more salient features of the Bill. The Bill will implement the ICSID Convention by amending the International Arbitration Act 1974 and the International Organisations (Privileges and Immunities) Act 1963.

The International Arbitration Act currently gives effect to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitration Awards – the so–called New York Convention – which establishes rules governing the recognition and enforcement in Australia of international arbitral awards and agreements.

The Act also implements the UNCITRAL model law. The Bill will amend that Act by inserting a new part and a new schedule to that Act. Thus all Commonwealth legislation relating to international arbitration will be contained in the one Act. The Bill will amend the International Organisations (Privileges and Immunities) Act to enable effect to be given to certain privileges and immunities provisions of the Convention by extending the regulation–making power under that Act.

The Bill gives the force of law to the key provisions of the Convention. It also provides that arbitral awards will be binding and enforceable in the Supreme Courts of the States and Territories.

ICSID Convention

I now turn to the principal features of the Convention. The Convention established the Centre which incorporates an administrative council, a secretariat, a panel of arbitrators and a panel of conciliators. The administrative council comprises a representative from each contracting state. The President of the World Bank is ex–officio chairman of the council. The panels of conciliators and of arbitrators are made up of persons designated by the contracting states and by the chairman of the council.

The jurisdiction of the centre under the Convention extends to any legal dispute, arising directly out of an investment, between a contracting State and a national of another contracting State. No proceedings can be initiated under the Convention unless both the state and the investor have specifically agreed to accept the Centre's jurisdiction. However, once the parties have given their consent, it cannot be withdrawn unilaterally. This will enable investment disputes between a State and a foreign investor to be dealt with under the ICSID Convention if the parties agree.

There is provision to designate constituent subdivisions of a State party and, in the case of Australia, it is proposed to designate those Australian States that agree to such designation. The effect of designation is that a State Government involved in an investment dispute with a foreign national will be able, if the parties so agree, to avail itself of the facilities offered by the Convention. All States except Western Australia have indicated their agreement to be designated.

The dispute is to be settled in accordance with the rules of law chosen by the parties or, if they fail to agree, the law of the contracting state party to the dispute and any applicable rules of international law.

Every contracting state is required to recognise arbitral awards as binding and to enforce such awards as if they were final decisions of a domestic court.

International trade – agricultural produce – European Community subsidies – Australian protest

On 1 October 1991 the Minister for Trade and Overseas Development, Dr Blewett, issued a news release in Paris which read in part:

An Australian bipartisan Parliamentary delegation today strongly protested to the French Government about the disastrous effects on Australian farmers of the escalating trans–Atlantic trade subsidies war.

The five–member delegation, led by the Australian Minister for Trade and Overseas Development, Neal Blewett, told French Ministers and Parliamentarians that European Community grain subsidies would cost Australian farmers A$700 million (3220 million francs) this year.

The delegation said that the subsidies war had plunged world wheat prices to record low levels, contributing to savage reductions in Australian farm incomes, almost half of which would be negative this year.

The delegation is also travelling to Bonn, Brussels, The Hague and London this week to register its concerns with European leaders and to urge the EC to curtail the subsidies war and to embrace reform of domestic and international agricultural trade policies.

A similar delegation visited the United States earlier this year to protest about the effects of the US Export Enhancement Program (EEP).

International trade law – general developments in Australia

For a comprehensive account of developments in international trade law matters in Australia, see the papers prepared by the Attorney–General's Department and published by the Australian Government Publishing Service in the proceedings of the 17th and 18th International Trade Law Conferences held in Canberra in 1990 and 1991 respectively.

Export controls – cultural material – restoration of stolen object – UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property – Article 10 – Australian compliance – Australian legislation

On 31 January 1990 the Minister for the Arts, Tourism and Territories, Mr Holding, issued the following news release:

The Minister for the Arts, Tourism and Territories, Clyde Holding, announced today that Australia is now party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and transfer of Ownership of Cultural Property.

The Convention is part of a concerted international attempt by governments to stop trade in stolen and illegally exported cultural objects.

According to a recent Interpol survey, the illicit trade in cultural artifacts worldwide is second only to illegal drug traffic.

Mr Holding said "Australia is in good standing in the international community regarding the protection and restitution of cultural property. Recently we demonstrated our goodwill by returning the two thousand year old Paracus Mantle to the people of Peru. The gesture was made as soon as the object was proved to be stolen from the National Museum in Lima without a request for compensation on Australia's part or the need for litigation by Peruvian authorities."

Australia's international obligations under the treaty are enforced domestically by the Protection of Moveable Cultural Heritage Act 1986.

On 5 March 1991 the Minister for the Arts, Tourism and Territories, Mr Simmons, provided the following written answer to a question on notice (HR Deb 1991, pp 1346–7):

The Commonwealth's decision to ratify the Convention received general endorsement by State governments. Queensland and Victoria have indicated that their legislation is sufficient to meet the requirements of Article 10. New South Wales and Tasmania have indicated a willingness to consult on their legislation with a view to conforming to the requirements of that Article.

A review has recently commenced on the operation of the Protection of Movable Cultural Heritage Scheme. It is expected that, in the course of this review, there will be consultations with the States and Territories on the requirements of Article 10.

Export controls – UNESCO's 1950 Florence Agreement on the Importation of Educational, Scientific and Cultural Materials and 1976 Nairobi Protocol – legislation

On 10 April 1991 the Minister for Industry, Technology and Commerce, Senator Button, issued a news release which read as follows:

The Government announced today that amendments to the Customs Tariff Act 1987 will be introduced into the Parliament to pave the way for Australia to formally accede to the Florence Agreement. These amendments will come into effect from 1 July 1991.

The Minister for Industry, Technology and Commerce, Senator John Button, said Australia would then accede to the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Agreement on the Importation of Educational, Scientific and Cultural Materials, and the Nairobi Protocol to the Agreement.

Parties to this major international treaty, known as the Florence Agreement, undertake not to apply customs duties or other charges on educational, scientific or cultural goods. Internal taxes such as sales tax may be imposed provided they do not discriminate against imported goods.

Senator Button said Australia's accession would reduce the cost of scientific equipment and educational materials used in the education and training of scientists and engineers and for the conduct of generic research and development.

Accession to the Agreement would help strengthen Australia's position as a proponent of free international trade and help promote the opening of world markets to Australian products.

Senator Button said to comply with the Agreement, Australia would remove customs duties on a wide range of goods. These include certain books, catalogues, films, visual and sound recordings, computer diskettes, scientific equipment, and goods specially designed for people with disabilities.

The Minister said all visual and sound recordings and other pre-recorded magnetic media would be allowed into Australia duty free. But the existing duties on all blank magnetic recording media including tapes and formatted computer diskettes would continue.

The removal of the tariff protection to enable formal accession to the Agreement could have some limited adverse effects on Australian producers but, overall, the effects would be outweighed economically by the benefits.

Senator Button said Australia had long observed the spirit of the Florence Agreement in many areas. Many books, publications, records, compact discs and a wide range of scientific equipment were already duty free. Many other goods used within educational institutions attract tariff concessions.

Seventy-nine nations, including some of Australia's major trading partners – the United States, Japan, New Zealand and the European Community nations – have acceded to the Florence Agreement.

On the same day, the Minister for Community Services and Health, Mr Howe, said in the course of an answer to a question without notice (HR Deb 1991, p 2287):

> The significance of the Government's acceptance of the Florence Agreement for people with disabilities enabling access to a wide range of important aids and appliances at reduced costs cannot be underestimated. The major impact will be to substantially reduce the costs associated with disability which have been identified as a significant barrier to the labour force participation of people with disabilities. ...
>
> Australia's accession to the Florence Agreement to take effect as of 1 July this year complements the Industry Commission's 1990 inquiry into aids and appliances for people with disabilities, which recommended a reduction in tariffs on such goods. As a result, the Federal Government announced that tariffs on imported pacemakers, defibrillators and wheelchairs would be reduced from 15 per cent to zero as of 1 January this year.

Economic sanctions – relevance in human rights situations – Myanmar (Burma) – South Africa

On 9 May 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer, in part, to a question on notice (Sen Deb 1990, Vol 139, pp 175–6):

> Australia's policy towards Myanmar has been one of unequivocal support for democratic political and economic reform and for an improvement in the human rights situation in that country. The Government's concerns about the human rights abuses, in general terms and in relation to specific cases have been repeatedly and unambiguously made known to the Myanmar authorities.
> ...
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> Decisions on the nature, manner and timing of such representations have been based on considered judgements about the most effective means of achieving the Government's fundamental objective of improving the human rights situation in Myanmar.
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> The Australian Government does not seek to direct the manner in which Australian companies conduct their business in other countries. Such companies are free to enter into joint venture or other agreements in Myanmar on the basis of their own judgement. The Government does not accept that, because it places no constraints on Australian private commercial activity in Myanmar, its policies on the wider issues of democratic freedom and human rights can somehow be held to be modified.

On 24 May 1990 Senator Evans said, in part, in answer to a question without notice (Sen Deb 1990, Vol 139, p 993):

> Australian commercial activity in Myanmar is not great but it does exist, and Broken Hill Proprietary Co. Ltd is one such company, as Senator Newman pointed out. We have not sought to impose constraints upon companies in any country of the world so far as private commercial activity is concerned, except South Africa. Although there are many countries around the world that have been guilty of human rights deprivations of one kind or another, including Romania, at a time when Senator Newman's party was vigorously applauding the entrepreneurial vigour of Lang Hancock and others in getting barter trade and so on going, it is not a position that we adopt, except in the most exceptional circumstances, to apply government sponsored or government supported sanctions in the private sector.
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> However, South Africa is and always has been a special case. South Africa still has a constitutional system which is unique in the world, in comprehensively discriminating against people, not just providing for an electoral system as in Fiji which discriminates on the basis of race, but not even acknowledging a right to vote at all on the basis of race and treating people not merely as second class citizens but as non-citizens. We all know of the circumstances in South Africa. The fact that those circumstances have never been understood or appreciated with any sensitivity by anyone in the Opposition is no ground for Senator Newman to make any allegations of

> double standards so far as the Australian Government is concerned. South Africa remains a special case for that reason. It remains crucially important that that pressure, economic and psychological, be maintained until such time, as I said the other day, that real, genuine and irreversible progress is made in the human rights situation there.

On 13 May 1991 the Minister for Primary Industries and Energy, Mr Kerin, provided the following written answer, in part, in answer to a question on notice (HR Deb 1991, p 3614):

> After being approached by South Africa to tender, the Australian Wheat Board sought and obtained confirmation from the Government in December 1990 that they could tender for the supply of wheat to South Africa. In late 1985, following the Nassau CHOGM, Cabinet decided that Australian Government departments and instrumentalities should not enter into contractual agreements with South Africa. Although the Australian Wheat Board is a statutory corporation, it does not trade on behalf of the Government, but on behalf of Australian wheat farmers.
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> A decision to submit a tender for the sale of wheat to South Africa is a matter of commercial judgement by the Australian Wheat Board, and not subject to Government approval. The Australian Wheat Board were successful in tendering for the supply of up to 198,000 tonnes of wheat worth approximately $24 million.

On 12 November 1991 Senator Button, the Minister representing the Minister for Foreign Affairs and Trade, said in the course of an answer to a question without notice (Sen Deb 1991, p 2898):

> The Australian Government has taken action to ensure that no Australian exports of defence related goods are sent to Burma. It is also currently advocating an international arms embargo against Burma. However, apart from military related investments or exports, the Government has not issued any official guidelines relating to trade or investment in Burma.
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> There are several reasons for that. Whether Australian companies wish to engage in commercial relationships with Burma is essentially a matter for the judgement of the companies. The fact is that Australian companies are not very active in Burma at all because of the abysmal record of the regime there. Its economic performance is not much better than its political record. Australia's trade and investment with Burma is very small and narrowly based.

Economic sanctions – Yugoslavia

On 13 November 1991 the Acting Minister for Foreign Affairs and Trade, Mr Duffy, issued a news release which read as follows:

> The Acting Minister for Foreign Affairs and Trade, Michael Duffy, announced today the economic measures Australia is taking against Yugoslavia in support of the European Community's peace efforts.

"The purpose of these measures is to encourage all the parties in Yugoslavia to cooperate with the EC so that a solution can be found that respects the democratically expressed wishes of the peoples of Yugoslavia and protects the rights of minorities", Mr Duffy said.

Mr Duffy also explained that the EC intends to exempt from the economic measures imposed by the EC those republics of Yugoslavia which cooperate in its search for a peaceful solution.

"Australia proposes to make the same distinction. This will lend maximum support to the EC's strategy and avoid disadvantage to those parties who are prepared to work with the EC in its search for a peaceful solution," Mr Duffy said.

Australia will take the following measures:

- Yugoslavia's participation in the Australian Program of Training for Eastern Europe (APTEE) has been suspended.
- Only students from cooperating republics will be allocated places in the 1992 APTEE program.
- Yugoslavia as a whole will be removed from the list of countries benefiting from the Australian System of Tariff Preferences (ASTP) and cooperating republics will be relisted among the places which can continue to enjoy this advantage.
- The Government will not sign the Agreement on the Avoidance of Double Taxation which had been negotiated between Australia and Yugoslavia.
- Australia does not currently sell any oil to Yugoslavia. However, should the United Nations Security Council take action on the EC's proposal for an oil embargo against Yugoslavia, Australia will adopt the necessary measures to ensure compliance with a UN embargo.

Mr Duffy explained that these measures should not be seen as recognition of the cooperating republics. The Prime Minister has previously made clear that once the relevant conditions under international law are met, Australia will be among the first countries to recognise Croatia and Slovenia.

Economic sanctions – mandatory sanctions imposed by the UN Security Council – Iraq – implementation in Australia – wheat sales – compensation

On 8 November 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following answer, in part, to a question on notice (Sen Deb 1990, p 3841):

The Government acted quickly to implement the comprehensive mandatory sanctions on Iraq applied by UN Security Council Resolution 661. Relevant Government departments and authorities are alert to the need for strict enforcement of these measures to ensure adherence to the UN sanctions and are acting accordingly.

(A) 7 August, the Minister for Defence withdrew his permissions under the Customs (Prohibited Exports) Regulations, effectively blocking all exports of military related equipment to Iraq.

(B) The Australian Customs (Prohibited Exports) and (Prohibited Imports) Regulations were amended on 8 August to prohibit the import of goods from, and export of goods to, Iraq and Kuwait:

(i) if there is an attempted import of export of goods in breach of these regulations, the relevant goods are subject under the Customs Act to forfeiture to the Crown;

(ii) Austrade has directed its staff not to engage in any activity in relation to the expansion or promotion of Australian trade to Iraq.

(C) The banking (foreign exchange) regulations were also amended to stop the movement of funds in and out of Australia to or from the Governments of Iraq and Kuwait, their agencies or nationals, without specific approval from the Reserve Bank.

(D) Migration regulations effective from 31 August ensure that prospective visitors to Australia who would be likely to engage in commercial or other activities involving Iraq or Kuwait in breach of Resolution 661 will be precluded from obtaining visas.

In 1989–90 Kuwait was the source of some 5.5% of Australia's refined petroleum product imports. In 1989–90 Gulf States provided 21 per cent of total crude oil refinery input in Australia. Consistent with its obligations to abide by UN economic sanctions against Iraq, Australia has ceased importing petroleum from Iraq and Kuwait. Several shiploads of Kuwaiti oil which had been paid before Iraq's invasion of Kuwait and were loaded or on the high seas have been allowed to be landed in Australia after the necessary exemptions were granted under the Australian Customs (Prohibited Imports) Regulations. These shipments were fully consistent with Australia's obligations in relation to UN sanctions against Iraq.

On 13 February 1991 the Minister for Finance, Mr Willis, said in answer to a question without notice (HR Deb 1991, pp 471–2):

> It is a fact that earlier this financial year authorisation was given by the Iraq Government for a payment to be made to the Australian Wheat Board of about $US2.3m in part payment for credit sales of wheat to that country. With the imposition of the United Nations trade sanctions after Iraq's invasion of Kuwait, the United States Government froze all Iraq's assets in that country. I understand the Wheat Board has sought, nevertheless, to have the payment of that $US2.3m made to it, for the funds to be released. So far, the US Treasury has stuck to the position that this money comes under the general freezing of such assets and the efforts of the Wheat Board and other authorities of the Australian Government to achieve release of that money have not been successful.

I should say, however, that in respect of the position of wheat growers and the Wheat Board's credit sales to Iraq, to which there is a substantial exposure on the national interest account of around half a billion dollars, the Government has recently agreed to the payment to the Wheat Board under the national interest account of approximately $210m for the exposure for this year. There will of course be another $280m forthcoming in the next couple of years if Iraq continues to default on its obligations, and I guess there is a substantial likelihood of that happening.

On 17 April 1991 the Prime Minister, Mr Hawke, said in the course of an answer to a question without notice (HR Deb 1991, pp 2826–7):

Our farmers have been disadvantaged in three ways since sanctions were applied by the international community against Iraq. First, Iraq ceased to meet its outstanding debts on wheat already purchased. Second, shipments for which there were signed contracts could not be made and alternative buyers had to be found. Third, alternative markets had to be found for that proportion of the harvest that would have gone to Iraq in the absence of the sanctions.

I had a meeting with the Grains Council of Australia in August last year, when I said that no industry could be expected to carry the financial burden of the sanctions single handed, and that commitment has been met in a number of ways. First, under the Government's national interest insurance cover we will have paid out up to $181m by the end of June and $475m by the end of 1992, if Iraq does not honour its commitments to the Australian Wheat Board. Of course, at this stage one cannot be certain that that will not happen.

Second, the Government has itself purchased one of the outstanding shipments of wheat contracted by Iraq. The wheat on the ship *Ever Advantage* has been used for humanitarian aid purposes in Egypt. Third, in November last year the Government decided to increase the number of countries that would be subject to national insurance cover for wheat sales, to enable the Australian Wheat Board to broaden its market base and thereby sell the wheat that would otherwise have been sold to Iraq. Finally, after considering a claim by the Grains Council of Australia, the Government has now decided it will meet claims of up to $35.1m for lost profits and related expenses.

On 9 October 1991 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer to a question on notice (Sen Deb 1991, pp 1718–9):

The overriding concern of the international community remains to secure Iraqi compliance with Security Council Resolution 687 which, among other things, demands Iraqi cooperation in the removal or rendering harmless of Iraq's weapons of mass destruction. President Bush first referred to the threat of military action to enforce compliance in July 1991, though he said on 28 July that it would be preferable not to use force if other methods could be

employed. There is, however, continuing international concern over Iraq's lack of cooperation with visiting UN inspection teams, most recently demonstrated in the detention of a team in Baghdad. Security Council Resolution 707 of 15 August condemned Iraq for serious violations of a number of its obligations under Resolution 687, which Iraq has unconditionally accepted. In September, the Security Council and President Bush again called on Iraq to comply with the UN Resolutions. United States Government representatives said that the United States had not ruled out any options to ensure compliance. The international community hopes that, in order to avoid the risk of further military confrontation, Iraq will start complying fully with the UN Resolutions.

Resolution 687 provides for the periodic review of economic sanctions by the Security Council "in the light of the policies and practices of the Government of Iraq, including the implementation of all relevant resolutions of the Security Council". Australia does not separately stipulate conditions for the lifting of sanctions. Foodstuffs and materials for essential civilian needs are specifically exempted from sanctions. With the approval of the UN Sanctions Committee, Australian entities and companies have made sales to Iraq of wheat and other materials which meet the UN criteria. Security Council Resolution 706, adopted on 15 August 1991, allows Iraq to export up to US$1.6bn worth of oil over a six-month period in order to purchase food and humanitarian items. Resolution 712, adopted on 19 September, approves the Secretary General's detailed plan for implementing Resolution 706.

On 14 October 1991 the Minister for Primary Industries and Energy, Mr Crean, issued a news release which read in part:

"The Federal Government has made ex-gratia payments of A$32.9 million to the grains industry for losses arising from the imposition of the United Nations trade sanctions on Iraq", the Minister for Primary Industries and Energy, Simon Crean, said today.

In April this year, the Government announced it would pay the grains industry up to $A35.1 million for losses incurred on sales for which contracts were written prior to the imposition of UN sanctions.

...

Each of the claimants accepted the payment as full and final settlement with the Government for their losses.

International development assistance - Australian contributions to international financial institutions

On 12 September 1990 Mr Crean, the Minister assisting the Treasurer, introduced the European Bank for Reconstruction and Development Bill 1990 into Parliament (HR Deb 1990, Vol 172, pp 1705-7), and explained the purpose of the Bill in part as follows:

At a meeting of heads of government of the European Community held in Strasbourg in December last year, an agreement was reached in principle to

establish as soon as possible a new bank to assist in the reconstruction and development of Central and Eastern Europe. Preparatory work began immediately, with participation by not only European countries but also a number of others from outside the region, including the United States of America, Japan, Canada, the Republic of Korea, Australia and New Zealand. After intensive effort, on 29 May last 42 prospective members, including Australia, signed the Articles of Agreement to found a new European Bank for Reconstruction and Development to be located in London.

Under the agreement, the purpose of the bank is to foster the transition towards open market oriented economies and to promote private entrepreneurial initiative in central and eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economies. The bank will assist recipient member countries to implement structural and sectoral economic reforms, including demonopolisation, decentralisation and privatisation, to help their economies become more fully integrated into the international economy. The bulk of the bank's activities will be directed to the private sector and to assist the privatisation of state-owned enterprises. The articles provide that not more than 40 per cent of the bank's financing shall be provided to the state sector. ...

Australia has been allocated one per cent of the total shares. The paid-in cost of Australian membership will be ECU30m - approximately $A45m - payable in equal instalments of approximately $A9m a year over a five-year period. This Bill will provide authority for the payment of Australia's subscription to the initial authorised capital stock of the bank. Its passage will allow Australia to proceed with its membership and ratify the agreement. The detailed articles of agreement are set out as a schedule to the Bill.

On 18 October 1990 the Minister for Trade Negotiations, Dr Blewett, introduced the International Development Association (Further Payment) Bill 1990 into Parliament (HR Deb 1990, Vol 173, pp 3207-8), and explained the purpose of the Bill in part as follows:

The purpose of this Bill is to authorise a contribution by Australia to the Ninth Replenishment of the International Development Association.

I would like to begin by giving honourable members a brief outline of the International Development Association and its activities.

The International Development Association, or IDA as it is commonly known, is part of the World Bank group. It was established in 1960. It now has a membership of 138 countries. The IDA provides loans to its poorest member countries for development activities.

Traditionally, the terms on which IDA loans have been made are very favourable. Borrowing countries pay no interest on their loans; repayment begins only after a period of 10 years and loans are repaid over a long period of 35 or 40 years.

International development assistance – suspension and resumption of assistance – Vietnam

On 7 November 1990 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (HR Deb 1990, Vol 173, pp 3505–6):

> Australia, Belgium, Canada, Japan, the Federal Republic of Germany, the Netherlands and the United Kingdom suspended their direct bilateral aid in 1979.
>
> Denmark suspended its direct bilateral aid in 1982.
>
> None of these countries, nor the European Commission and the United States of America, currently provide direct bilateral aid to Vietnam.
>
> The resumption of direct bilateral aid by Australia to Vietnam cannot be considered in isolation to other elements of the Government's approach to the complex issue of Cambodia.
>
> There has been a withdrawal of Vietnamese military troops from Cambodia. In the absence, however, of effective verification of that withdrawal, a long-standing Australian precondition for the resumption of direct bilateral aid to Vietnam cannot be judged to have been met.
>
> Given the role Vietnam can still play in advancing a comprehensive settlement in Cambodia, a resumption of aid to Vietnam is also contingent on circumstances evolving in which a settlement of the Cambodian conflict is in place, or at least in prospect.