VIII. International Economic Law

Convention on the Settlement of Investment Disputes between States and Nationals of Other States - Australian designation of constituent subdivisions for purposes of article 25(1) of Convention

On 15 October 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, provided an answer (provided by the Minister for Foreign Affairs and Trade) to a question upon notice from Mr Melham (HR Deb 1992, Vol 186, p 2355). The question and answer were as follows:

(Q1) Which nations have become parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [ICSID] which was adopted on 18 March 1965 and entered into force on 14 October 1966 and on what date did each become party?

(Q2) Did Australia sign the Convention on 24 March 1975 and ratify it on 2 May 1991?

(Q3) In ratifying the Convention, did Australia designate both mainland Territories and all States except Western Australia as constituent subdivisions for the purposes of Article 25(3) of the Convention?

(Q4) Has any other party to the Convention excluded a portion of its metropolitan territory?

(Q5) Has Australia excluded a State from any other Convention?

(Q6) Since ratifying the Convention, has the Government sought to secure the West Australian Government's agreement to be designated under Article 25(3); if so, (a) on what dates, (b) in what circumstances and (c) with what results?

(A1) The list of 102 States party to the Convention, together with the date of entry into force for each State, has been forwarded to the honourable member.

(A2) Yes.

(A3) Yes, except the relevant designation was for the purposes of Article 25(1) of the Convention, rather than Article 25(3).

The following answers draw upon information provided by the Attorney-General's Department.

(A4) The question assumes that, by not designating Western Australia as a constituent subdivision for the purposes of Article 25 of the Convention, Australia has thereby "excluded a portion of its metropolitan territory". This assumption reflects a mistaken understanding of the operation of the Convention.

In ratifying the Convention, the Australian Government did so on behalf of all of the Australian States and Territories. While Article 70 provides a mechanism for excluding particular territory from the application of the Convention, the Government did not rely on this provision for Western

Australia or any other part of our territory. Thus, residents of Western Australia, like those of the other States and Territories, remain "Nationals of a Contracting Party" for the purposes of establishing the jurisdiction of the International Centre for the Settlement of Investment Disputes (the Centre) under Article 25(1) of the Convention. Similarly, the Supreme Court of Western Australia, like the Supreme Courts of the other States and Territories, was designated as a court competent for recognising and enforcing arbitral awards made under the Convention.

Designation of constituent subdivisions for the purposes of Article 25 is optional for Contracting Parties, and has the effect of enlarging the potential jurisdiction of the Centre to include not only disputes between nationals of one Contracting Party and another Contracting Party, but also disputes between such nationals and the constituent subdivisions of a Contracting Party. In practical terms, designation of particular States or Territories affords to those Governments an option they would not otherwise have; that is, the ability to offer potential investors in their State or Territory the additional assurance of access to an internationally recognised specialist dispute resolution procedure. Even when so designated, however, the jurisdiction of the Centre requires the consent of both parties to the dispute.

The option of designating constituent subdivisions appears to have been pursued by only one other Contracting Party – the United Kingdom in respect of certain offshore territories including Bermuda, Hong Kong, Guernsey and Jersey. By contrast, countries such as the United States of America, Switzerland and the Federal Republic of Germany, which have federal structures in some ways analogous to that of Australia, have not pursued designation of their sub-national levels of government.

(A5) This question appears to proceed on the same misunderstanding as Question 4. Most international agreements do not give Australia the option of applying the relevant obligations to only some of the States and mainland Territories. Nor would Australia seek to exclude from the application of an international Convention any of the States or mainland Territories. Nevertheless, situations may arise where different levels of participation are expressly provided for in a Convention. Australia might take advantage of these different levels as between the constituent elements of mainland Australia provided that no overriding national interest is offended. The ICSID Convention provides one such example.

(A6) The Government consulted closely with the States in considering its attitude to the designation of constituent subdivisions for the purposes of the ICSID Convention. The Government was of the view that while such designation was primarily a matter for the States and Territories concerned, designation of all such Governments could offer the advantage of presenting a uniform dispute settlement regime for potential investors in Australia. The Western Australian Government expressed a preference for not being so designated when this issue was first canvassed with it in 1976, and adhered to that position in subsequent approaches made by the Government in 1978 and 1984. This matter was again raised with the Western Australian Government in early 1991 when the Government was finalising arrangements for Australia's ratification of the Convention. While Western Australia confirmed its previous

position, the Government indicated its preparedness to designate Western Australia at some later stage should there be a change in its position.

Since Australia lodged its instrument of ratification to the Convention in May 1991 – when it also designated Australia's relevant constituent subdivisions and courts for the purposes of the Convention – the Government has not further pursued this question with Western Australia.

[A list of contracting States and signatories of the Convention as at 10 July 1992 appears at HR Deb 1992, Vol 186, pp 2357–59.]

Economic sanctions – Libya – United Nations Security Council Resolution 748

On 16 April 1992 the Department of Foreign Affairs and Trade issued a news release which read as follows:

The Department of Foreign Affairs and Trade today announced that UN sanctions against Libya came into effect on 15 April 1992 in accordance with the terms of UNSC Resolution 748. The major elements of that resolution are the imposition of an air and arms embargo against Libya as well as a reduction in the levels of diplomatic representation between Libya and UN member States.

This follows the Libyan Government's failure to comply with United Nations Security Council Resolutions 731 and 748 which called for a full and effective response to requests for cooperation with the legal procedures related to terrorist attacks on civilian airliners.

Decisions of the United Nations Security Council are binding on all UN Member States. Therefore Australia has taken specific action pursuant to both existing Regulations as well as newly promulgated Air Navigation and Customs (Prohibited Exports) Regulations in order to comply with the terms of Resolution 748, namely:

- prohibiting the export of all military, paramilitary and dual use equipment, as well as aircraft and aircraft components, to Libya; and
- severing all air links with Libya (including flights to and from Libya, and the servicing, airworthiness certification and insuring of, any Libyan aircraft).

Neither Australia nor Libya maintain diplomatic or consulate missions in each other's countries.

No other forms of sanctions (such as a specific trade embargo) have been imposed on Libya by UNSC Resolution 748.

Economic sanctions – Serbia

On 28 May 1992 the Prime Minister, Mr Paul Keating, said in the course of an answer to a question without notice (HR Deb 1992, Vol 184, p 3091):

I am sure that all Australians will join me in expressing horror and outrage at the senseless violence that continues to engulf this small country. Australia recognised Bosnia–Herzegovina as an independent State on 1 May. Overnight we have heard accounts of a callous attack by mortars on innocent civilians in Sarajevo as they queued for bread in an outdoor market. We are told that

16 people were killed and over 150 were injured in another example of cruelty and ethnic conflict.

It appears that even the International Committee of the Red Cross, whose staff have maintained operations in some of the most bloody conflicts in the world, has announced that it is withdrawing its workers from Sarajevo. All sides must bear some responsibility in this, obviously. But it is clear that the Yugoslav National Army and its allies who are pursuing Serbian interests must shoulder the overwhelming responsibility.

Australia supports the immediate imposition of sanctions against Serbia by the UN Security Council and also it supports similar moves by the European Community. If, however, international sanctions are not imposed soon, Australia is prepared to consider action itself against Serbia, in concert with other like minded countries. The Government has already taken some measures against Serbia, including the exclusion from our program of assistance for eastern Europe, and access to our system of tariff preferences for Serbia. Senator Evans has also announced that the Australian Ambassador in Belgrade will not be replaced when he completes his assignment this week. Australia will continue to reserve its position on the Federal Republic's claims to be the legitimate successor state.

On 1 June 1992 the Prime Minister, Mr Paul Keating, issued a news release which read as follows:

Australia welcomes the decision by the United Nations Security Council in Resolution 757 to impose a range of mandatory sanctions against Serbia and Montenegro. These sanctions include a trade embargo excluding food and humanitarian items but including oil, restrictions on the movement of financial assets, a ban on cultural, sporting and scientific cooperation, a ban on air links and a reduction in Belgrade's diplomatic representation.

The UN has taken this decision in view of the failure of Serbia and Montenegro to abide by earlier Security Council demands to cease interference in the internal affairs of Bosnia–Herzegovina. The international community has been appalled at the senseless loss of life and suffering resulting from those actions.

The Government is moving expeditiously to implement the UN decision. Ministers and departments are now working on the details of implementation, with decisions to go before the Executive Council tomorrow.

The Yugoslav national airline, JAT, which flies out of Australia twice a week, will have its services suspended from this week. Australia has already downgraded its own diplomatic representation in Belgrade. Cuts to the Yugoslav diplomatic and consular presence in Australia will be introduced.

Since the beginning of the break–up of the old Yugoslav federation last year, Australia has consistently called for all the disputing parties to exercise maximum restraint and work towards a negotiated settlement. Regrettably, the fighting has continued. The attacks on civilians in Sarajevo have led to the further tragic loss of innocent life.

The imposition of sanctions is intended to make Belgrade and its allies ... modify their behaviour. We hope this will open the way to a resolution of

territorial and communal differences, thereby bringing to an end the suffering of all involved in the conflict, including the Serbian people themselves.

The Government is aware of the anguish and uncertainty felt by all those in Australia who have relatives and friends in the areas affected by the fighting. The Government commends the restraint shown by local communities in Australia, and urges them to maintain their patience. I assure these communities that Australia will continue to work with other countries towards a lasting and just resolution of the Balkan conflict.

Proposed international arms embargo - Burma

On 7 December 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 157, p 4230):

> We have made it clear on many occasions that the Australian Government would support the implementation of an international embargo on the sale of arms to Burma. However, our soundings – and we have taken many of them – indicate that there is simply not sufficiently wide support for such an embargo to be successful, particularly one administered through the United Nations, which would require Security Council endorsement. It could not be expected to get that, given that China, unhappily, is a major continuing arms supplier. We have instituted our own unilateral ban, however, on the sale of arms and defence-related goods.

Export controls - Co-ordinating Committee for Strategic Multilateral Export Controls - Missile Technology Control Regime

Following are extracts from a report of the Senate Standing Committee on Transport, Communications and Infrastructure entitled *Developing Satellite Launching Facilities in Australia and the Role of Government*, which was published in April 1992:

> **Co-ordinating Committee for Strategic Multilateral Export Controls (COCOM)**
>
> 5.27 The Committee was informed by the Department of Foreign Affairs and Trade that international export controls apply to the transfer of Western technology and equipment to the former Soviet Union, China and the countries of Eastern Europe. These controls are implemented and coordinated by an international organisation called the Co-ordinating Committee for Strategic Multilateral Export Controls. It was formed in 1949 and is an informal, non-treaty group of representatives of North Atlantic Treaty Organisation countries (excluding Iceland), Japan and Australia. The purpose of COCOM is to co-ordinate controls on exports of Western technology (known as dual use technology) that might assist the military ambitions of States whose interests may be inimical to those of the Western community as a whole. Dual use technology comprises technology; goods and services which have been developed to meet commercial needs and which can be used either as military components or for the development and production of military systems.

5.28 Since the 1970's Australia has adhered informally to the COCOM export guidelines and in June 1987, the Government formalised this by amending the Customs (Prohibited Exports) Regulations to require permission by the Minister for Defence for export of dual use technology to the 13 original COCOM proscribed countries. Further amendments were made to Regulation 13E in May 1989 to control the export of dual use goods to all destinations. Compliance is enforced under the national security provisions [of] the Official Secrets Act. Separate provisions will need to apply to technology leakage occurring from a commercial activity.

5.29 The export of Western payloads for launch on a Chinese or a Russian rocket is currently prohibited under COCOM export controls. United States companies wishing to export a satellite to Australia require a licence under United States regulations.

5.30 The Committee recognises the role of these export control mechanisms, but questions whether the time required to obtain COCOM approval is conducive to the operation of a commercial launch service.

Missile Technology Control Regime (MTCR)

5.33 The Missile Technology Control Regime (MTCR) was established in 1987 by the seven major Western suppliers of missile technology (United States, Japan, United Kingdom, West Germany, Italy, France and Canada). Its aim is to limit nuclear weapons proliferation by controlling the transfer of equipment which could be used for nuclear weapons delivery systems. Australia became a member of the MTCR in July 1990. As a member, Australia is subject to an export control on all missiles with a range in excess of a joint limit of 300km/450kg as well as on all missile-related and space-launcher technology, fuel and guidance control systems.

5.34 According to the Department of Defence some foreign governments will not release or grant export licences for dual use technology goods being exported to Australia until the Australian Government certifies to them that the disposition of those goods will be subject to export controls. Such certification is usually in the form of an International Import Certificate. In addition, they may require certification that the goods have actually entered Australia and are subject to Australia's export controls.

Export controls - Cultural material - Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property - Australian reservation

On 27 May 1992 the Minister for Arts and Territories, Ms Wendy Fatin, answered a question upon notice from Mr Hollis (HR Deb 1992, Vol 184, p 3020). The question and answer were as follows:

(Q) Since the answers to questions Nos 158 (*Hansard*, 15 October 1990, page 2909) and 535 (*Hansard*, 5 March 1991, page 1346) were provided, what progress has been made with federal, State or Territory legislation required to permit the withdrawal of the reservation to Australia's acceptance of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property?

(A) As part of a Ministerial review on the operation of the Protection of Movable Cultural Heritage Act 1986 and Regulations, referred to in Question No 535 (*Hansard*, 5 March 1991, page 1346), all State and Territory Governments were consulted on how the requirements of Article 10 of the Convention might be met. In relation to State and Territory legislation, there have been no amendments which would enable Australia's reservation to be withdrawn. The report resulting from the Ministerial review, which was completed in July 1991, is under consideration.

Economic boycotts - Arab economic boycott of Israel - Australian opposition

On 4 March 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 151, p 681):

For a great many years the Australian Government has consistently opposed the Arab economic boycott of Israel. The boycott has been applied by member states of the Arab League, with varying degrees of intensity for some 40 years, to limit international trade relations with Israel. The existence of the boycott, quite apart from its inherent obnoxiousness, is obviously detrimental to promoting an atmosphere conducive to finding a solution to the Arab–Israel conflict. Several times I have urged Arab governments to dismantle the boycott as a gesture of goodwill, which I would expect Israel to reciprocate in other ways. ...

Last year the Zionist Federation of Australia presented me with a very detailed submission urging the enactment of Australian legislation similar to United States legislation which does outlaw compliance with the boycott. ...

While I am not yet quite persuaded that legislation on this subject is appropriate, I have decided to keep under active review that possibility.

Convention for the Protection of Cultural Property in the Event of Armed Conflict - Parties - Australian position

On 26 May 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Barry Jones (HR Deb 1992, Vol 184, p 2855). The question and answer were as follows:

(Q1) Which States have become parties to the Protocol for the Protection of Cultural Property in the Event of Armed Conflict agreed at The Hague in May 1954?

(Q2) What steps has Australia taken to accede to the Protocol?

MR KERIN: The Minister for Foreign Affairs and Trade has provided the following answer to the honourable member's question:

(A1) The UN members parties to the Protocol are Albania, Austria, Belgium, Brazil, Bulgaria, Burkina Faso, Byelorussian SSR, Cambodia, Cameroon, Cuba, Cyprus, Czechoslovakia, Yemen, Ecuador, Egypt, France, Gabon, Germany, Ghana, Greece, Guinea, Holy See, Hungary, India, Indonesia, Iran, Iraq, Israel, Italy, Jordan, Kuwait, Lebanon, Libya, Liechtenstein,

Luxembourg, Madagascar, Malaysia, Mali, Mexico, Monaco, Myanmar, Morocco, Netherlands, Nicaragua, Niger, Nigeria, Norway, Pakistan, Peru, Poland, Romania, San Marino, Senegal, Sweden, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukrainian SSR, USSR, Yugoslavia and Zaire.

(A2) The position in relation to the Government's consideration of Australia becoming a party to the Protocol has not changed since the Minister for the Arts, Tourism and Territories replied to a similar question from Mr Hollis (Question No 159, *Hansard*, page 3118 of 17 October 1990).

On 3 November 1992 the Minister representing the Minister for Foreign Affairs and Trade, Mr John Kerin, answered a question upon notice from Mr Barry Jones (HR Deb 1992, Vol 186, p 2503). The question and answer were as follows:

(Q1) Did a former acting Minister for External Affairs state in an answer to a question on notice (*Hansard*, 17 November 1959, page 2784) that Australia had not taken action towards ratifying the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) pending its ratification?

(Q2) Did Australia ratify the Convention on 19 September 1984 despite the USA, UK and China, nuclear powers and permanent members of the Security Council, not having ratified it?

(Q3) Was ratification of the Protocol for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954) considered by Commonwealth departments in 1985; if so, by which departments?

(Q4) Did the Executive Board of UNESCO at its 125th session (September–October 1986) and, in the context of the war between Iran and Iraq, at its 129th session (May–June 1988) urge member States to become parties to the Convention and Protocol?

(Q5) Are 15 Arab and Middle Eastern States parties to both the Convention and the Protocol and three similar States parties to the Convention alone?

(Q6) Are 15 states which had forces in and around the Persian Gulf in 1991, other than those referred to in part (5), parties to both the Convention and the Protocol and three similar States parties to the Convention alone?

(Q7) Did the Parliament enact the (a) Protection of Movable Cultural Heritage Act 1986, (b) Copyright Amendment Act 1989 and (c) Customs Tariff Amendment Act 1991 preparatory to Australia respectively (i) accepting the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970) on 30 October 1989, (ii) acceding to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 26 October 1961) in June 1992 and (iii) accepting the Agreement on the Importation of Educational, Scientific and Cultural Materials (Florence, 17 June 1950) and acceding to the Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (Nairobi, 26 November 1976) on 5 March 1992?

(Q8) Is legislation necessary to enable Australia to meet its obligations if it were to ratify the 1954 Protocol; if so, (a) when did any department or departments last consider such legislation, (b) which department considered it

and (c) what was the outcome; if not, (i) what impediments are there to ratification, (ii) when were they last considered by departments, (iii) which departments considered them and (iv) what was the outcome?

(Q9) Is the 1954 Protocol the only current and relevant UNESCO convention, other than the Convention on Technical and Vocational Education (Paris, 10 November 1989), to which Australia has not yet become a party?

(Q10) What is the timetable for Australia to ratify the 1954 Protocol?

(A1) Yes.

(A2) An Instrument of Ratification of the Convention was deposited for Australia on 19 September 1984. The Convention entered into force for Australia on 19 December 1984. As at 20 January 1992 the United States of America, the United Kingdom of Britain and Northern Ireland, and China, had not ratified the Convention.

(A3) Yes. The then Departments of Arts, Heritage and Environment; Foreign Affairs; and Attorney-General's.

(A4) At its 125th session the Executive Board urged Member States who had not yet done so to examine the possibility of ratifying the Convention and Protocol or of acceding to them; and, at its 129th session the Executive Board invited States that were not yet parties to The Hague Convention and Protocol of 1954 to examine the possibility of becoming parties to it.

(A5) As at 20 January 1992 the following 12 Arab and Middle Eastern States were parties to both the Convention and the Protocol: Egypt, Islamic Republic of Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Syrian Arab Republic, Tunisia and Yemen (unification of the People's Democratic Republic of Yemen and the Yemen Arab Republic occurred on 19 May 1990). And as at 20 January 1992 the following four Arab and Middle Eastern States were parties to the Convention alone: Oman, Qatar and Saudi Arabia, and Sudan.

(A6) As at 20 January 1992 the following States – other than those referred to in (5), above – which were participants in the multi-national force that operated in and around the Persian Gulf in 1991 under UN auspices to liberate Kuwait were parties to both the Convention and the Protocol: Belgium, Bulgaria, Czechoslovakia, France, Germany, Greece, Italy, Netherlands, Niger, Norway, Pakistan, Poland, Romania, Senegal, Sweden and Turkey. As at 20 January 1992 Australia, Argentina and Spain are three similar States which are parties to the Convention alone.

(A7)(a) Yes. (b) Yes. (c) Yes.

(A8) Yes. (a) 1985. (b) As for (3) above. (c) Further research and extensive consultation would be required on the complex issues which this Protocol raises. The Department of Arts, Sport the Environment and Territories has advised that necessary resources have been committed to other priorities.

(A9) No.

(A10) A timetable has not been prepared. The International Council on Monuments and Sites and the Dutch Government will start a review shortly on ways to improve the effectiveness of the Hague Convention and its relationship to the Convention concerning the Protection of the World Cultural and Natural

Heritage. It is likely that Australia will respond positively to an invitation to contribute to this review.

International economic law - General Agreement on Tariffs and Trade - Agreement on Technical Barriers to Trade ("Standards Code") - Australian acceptance

On 16 January 1992 the Minister for Trade and Overseas Development, Mr John Kerin, issued a news release which read in part:

> The Minister for Trade and Overseas Development, John Kerin, announced today that Australia is to accept the GATT Agreement on Technical Barriers to Trade, generally known as the Standards Code. ...
>
> "The Standards Code is aimed at ensuring that procedures and systems relating to standards testing and certification of products do not create unnecessary barriers to trade. Signatories are required to notify draft technical regulations which may be covered by the provisions of the Agreement. Some thirty seven countries are now members of the Agreement", Mr Kerin said.
>
> "Membership of the Code will assist our efforts to improve access to world markets for Australian exports facing unreasonably restrictive discriminatory standards".
>
> The Code, which came into force on 1 January 1980, is one of the agreements on non-tariff measures which were negotiated during the Tokyo Round of GATT Multilateral Trade Negotiations.
>
> The Government's decision on the Code follows the conclusion of an Agreement on Standards, Accreditation and Quality (ASAQ) between the Commonwealth, State and Territory Governments and the Government of New Zealand.
>
> "In negotiation of ASAQ, it was widely recognised that it would be in Australia's interests to join the Code", Mr Kerin said.
>
> "Because of the Code's significance for the Government's trade policy Australia intends to join the existing Code now rather than waiting for the emergence of a new revised Code from the Uruguay Round".
>
> "In particular, it will assist Australia's negotiations with the EC on 'mutual recognition agreements'. These agreements concern the testing of products' compliance with particular standards and the certification of such compliance."

More detail concerning the requirements of the Standards Code may be found in a short item in the Department of Foreign Affairs and Trade publication *Backgrounder* of 10 April 1992 (Vol 3 No 6, p 17).

International economic law - General Agreement on Tariffs and Trade - Uruguay Round - Intellectual property rights - Australian approach

The following is extracted from the *Review of Developments in International Trade Law* prepared by the Commonwealth Attorney-General's Department in November 1992 (pp 31-32):

Australia's Interest

Australia supported the inclusion of intellectual property rights in the Uruguay Round on the grounds that better defined and enforced multilateral disciplines in the area could contribute to the growth of international trade and lead to benefits for both importers and exporters of products with an IPR [intellectual property rights] component. A multilateral approach is considered to be the most effective way to improve the international protection of intellectual property for the benefit of all countries.

Australia is seeking a TRIPS [Trade-Related Aspects of Intellectual Property Rights] outcome which deals effectively and fairly with trade distortions arising from inadequate or excessive protection of IPRs. An important Australian objective in the negotiations is for any new multilateral system to embody the key GATT principles of non-discrimination, national treatment and transparency. The inclusion of these principles would serve to ensure that small to medium-sized countries are not discriminated against in any new system which is elaborated.

Australia is also aiming to ensure that solutions elaborated in the GATT do not prejudice progress achieved in other international fora. We consider that WIPO [World Intellectual Property Organisation] should remain the primary organisation for establishing detailed international standards for the protection of IPRs. Our approach to the TRIPS negotiations is therefore based on encouraging greater membership and improved adherence to the existing major international IP conventions, while seeking to augment existing standards where necessary.

Australia considers the GATT is capable of making a valuable contribution in the areas of enforcement and dispute settlement and in relation to IPR standards affecting trade.

International economic law - General Agreement on Tariffs and Trade - Australian tariff reductions and concessions on Anti-Dumping and Countervailing Codes

On 28 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, answered a question upon notice from Senator Boswell (Sen Deb 1992, Vol 152, p 1741). The question and answer were as follows:

(Q1) Has Australia given or offered bindings in respect of the tariff reductions set out in the Prime Minister's statement to Parliament on 12 March 1991, Building a Better Australia; if so, what, in particular, is the nature of the bindings given or offered in relation to the general reduction in agricultural assistance in Australia?

(Q2) What concessions has Australia given or offered in respect of GATT Anti-Dumping and Countervailing Codes?

(Q3) What concessions has Australia given or offered on the proposed GATT Code on sanitary and phytosanitary measures?

(Q4) What concessions has Australia given or offered in the working group on technical trade barriers including in the area of quarantine policies and procedures?

(Q5) Will the Parliament be given the opportunity to examine and debate the texts of all undertakings and proposed bindings in relation to the GATT Uruguay Round before commitments are given by Australia?

(A1) No. Except for several agricultural products outlined below, Australia's tariff offer in the Uruguay Round, which is in accord with the agreed target for a one third reduction on a trade weighted basis, is based on the binding of tariffs at the end rates announced in the May 1988 Economic Statement.

For agriculture, target reductions in the the draft Framework Agreement in respect of market access commitments are tougher than for non-agricultural products in three respects:

(i) They provide for a 36 per cent simple average cut for agriculture as a whole.

(ii) They require all agricultural tariff levels to be cut by a minimum of 15 per cent.

(iii) They require all agricultural tariffs to be bound.

In respect of the second requirement it has been necessary for a number of agricultural items (around 20 per cent of the total) to draw on the March 1991 cuts, either wholly or in part, to meet the minimum 15 per cent cut.

The concessions and commitments on both agriculture and non-agriculture items offered in the draft schedules tabled at the beginning of March in Geneva are conditional on comparable concessions and commitments being lodged and confirmed by our major trading partners in areas of export interest to us.

(A2) Australia has not given or offered any concessions as such in respect of the new draft arrangements for anti-dumping and countervailing duties. The draft texts, which are part of the Draft Final Act of the Uruguay Round tabled by the Director-General of the GATT on 20 December 1991, are elaborations of the current GATT Codes. They have been the subject of negotiations during the period of the Round.

The text aims to balance the interests of importers and exporters aimed at maintaining the effectiveness of these remedies against injurious dumped and subsidized imports, while reducing the scope for trade harassment.

Overall, the draft texts are more detailed in their requirements, in an effort to make them clearer and more transparent for all users.

(A3) Australia is one of the countries seeking to reduce all forms of agricultural protectionism in the Round, and this includes constraining the ability of countries to use sanitary and phytosanitary measures as disguised and scientifically unjustified barriers to trade.

There is also a need to prevent commitments on reductions in border protection for agricultural products being undermined by arbitrary or unjustified use of national regulations purporting to protect human, animal or plant life or health.

The draft agreement on sanitary and phytosanitary measures does not involve concessions by Australia. Indeed, Australia's current practices already largely conform with the requirements of the draft. In particular, Australian quarantine controls are based on objective scientific risk evaluation and involve

a process of open consultation with affected parties. Australian food standards follow a similar approach.

(A4) The new draft text on Technical Barriers to Trade is an elaboration of the current Code of which Australia is a member. Quarantine matters are to be covered by the agreement on sanitary and phytosanitary measures and not the Technical Barriers to Trade agreement.

(A5) Parliament has been kept informed throughout the negotiations about progress in the Uruguay Round. The Government will be reporting to the Parliament on the final outcome to the negotiations and its decision on the final package.

International economic law - General Agreement on Tariffs and Trade - Australian action against United States and European Community export subsidy practices

On 3 September 1992, the Acting Minister for Foreign Affairs and Trade, Neal Blewett, issued a news release which read in part:

In a statement in the early hours of Thursday September 3 the Prime Minister announced our strong objection to the new United States Export Enhancement Program (EEP) for wheat. He also foreshadowed Australian action under the General Agreement on Tariffs and Trade (GATT) against the export subsidy practices of the United States and the European Community.

I have today instructed the Department of Foreign Affairs and Trade to commence this action under the relevant GATT procedures.

Provisions of the GATT set out standards of behaviour on the use of export subsidies in agriculture and procedures for settling disputes where these standards are not being observed.

The current provisions of the GATT on export subsidies are inadequate. This is one reason why the Australian government places so much importance on a successful conclusion to the Uruguay Round, which can deliver effective relief from the agricultural export subsidies of the US and the EC.

However, the Australian Government believes it should pursue every avenue open to it to redress the problems caused by export subsidies.

The following item appeared in the Department of Foreign Affairs and Trade publication *Insight* of 21 September 1992 (Vol 1 No 5, p 4):

Australia has asked that the following (edited) document be placed on the GATT Council agenda in Geneva on 29 September.

"The Australian delegation wishes to draw the attention of the GATT contracting parties to the wheat export subsidy policies and practices of the US and the EC.

"The US Administration recently announced changes to the way its Export Enhancement Program (EEP) is to be administered for the 1992–93 international marketing year and an extension of EEP subsidies to additional markets. The administration, in making this announcement, said that it was introducing these changes to made the EEP program more effective in challenging the EC's agricultural policies.

"The EEP was introduced in 1985 and is now available for 28 markets. EEP subsidies will be available for 29.1 million tonnes of wheat production in 1992–93. This compares to an estimated 18.6 million tonnes of US wheat sold to EEP–targeted markets in 1991–92. The EC has maintained wheat export subsidy policies for about 25 years. There are no quantitative limits on EC exports eligible for subsidy. EC export subsidies are available for virtually all markets on a zonal basis, with the option of fine–tuning subsidies for individual markets.

"The Australian delegation considers there is a need for the GATT Council to address urgently the actual and potentially adverse consequences of US and EC wheat export subsidies for the GATT multilateral trade system and to confirm the role of the GATT in seeking a resolution of this problem. The US and EC are engaged in intense competition on world wheat markets through the use of direct export subsides. This bilateral competition for global market share between the two major GATT contracting parties casts doubts over their respective commitment to multilateral trade liberalisation and to multilaterally advantageous trading arrangements which form the rationale of the GATT.

"Many GATT contracting parties are wheat producers and engaged in international trade in this basic food commodity. The US and the EC are dominant world wheat producers and traders. Their globally targeted actions have the capacity to affect the wheat production and trade of almost all other contracting parties and to impact on the security which smaller contracting parties have the right to expect from their membership of the GATT multilateral trading system.

"The GATT recognises that export subsidies may have harmful effects for other contracting parties, that they may cause undue disturbance to their normal commercial interests and may hinder the achievement of the objectives of the GATT. The GATT states that all contracting parties have an obligation to seek to avoid the use of subsidies on the export of primary products.

"A key aspect of the agriculture text of the Uruguay Round draft final Act is to reduce the scope for subsidising exporters, such as the US and the EC, to enter into this type of trade–damaging subsidy competition, with the countries whose farmers are injured being principally the non–subsidisers, such as Australia. Such unfettered use of predatory trade instruments such as EEP and the EC's export restitutions is potentially damaging to a successful outcome on agriculture and the adoption of a more rational approach to international trade in wheat and other agricultural commodities.

"In Australia's view, the facts outlined above indicate an escalation of anti–competitive behaviour outside the GATT system. This is occurring at a particularly sensitive time in the achievement of more effective disciplines on export subsidies through the conclusion of the Uruguay Round. An escalation of a subsidy war between the US and the EC at this critical stage could put the whole global endeavour of the Uruguay Round taken over six years at risk.

"Contracting parties may follow individual action in the GATT when their interests are affected, but the issues arising here are ones that suggest collective action by the contracting parties if the integrity of the GATT is to be assured.

"Australia's purpose in putting this matter on the Council agenda is to highlight the magnitude of the damage that this careless and indifferent

approach to agricultural subsidisation by major economies has brought to medium-sized developed and developing countries. It is also to provide an opportunity for many of the 104 GATT members to express not only a view on these practices but to debate ways that by collective action the GATT is able to address problems of this kind."

On 30 September 1992 the Minister for Trade and Overseas Development, John Kerin, issued a news release which read in part:

The Minister for Trade and Overseas Development, John Kerin, announced today that Australia has succeeded in its bid to have the GATT Council in Geneva examine the adverse effects of US and EC wheat export subsidies.

At its meeting in Geneva yesterday the GATT Council took up Australia's request that the GATT Council Chairman, Ambassador BK Zutshi, discuss and investigate with interested parties avenues of addressing problems arising from export subsidisation of wheat.

"This is a welcome response to our concerns", Mr Kerin said, adding that the Chairman would report back to the Council on the outcome of his discussions which in turn would allow the Council to further consider the matter.

International economic law - Anti-dumping legislation - Amendments

The second reading speech for the Customs Legislation (Anti-Dumping Amendments) Bill 1992, tabled by the Minister for Defence, Senator Ray, on 12 November 1992, reads in part as follows (Sen Deb 1992, Vol 156, p 2851):

This Bill proposes to amend the Customs Act 1901 and the Anti-Dumping Authority Act 1988 as part of the legislative package announced by the Government in December 1991 to introduce a new system for the imposition and collection of dumping and countervailing duties. This Bill provides the mechanism for the determination of interim and final duties, as well as introducing the two means by which subsequent adjustments of duty liability can be effected. The other Bill in the package, the Customs Tariff (Anti-Dumping) Bill, introduces the new taxing regime for the imposition and collection of both interim and final dumping and countervailing duties.

The proposed amendments contained in this package represent the final change to Australia's anti-dumping and countervailing provisions which were announced by the Government on 5 December 1991 following a review of anti-dumping policy and administrative arrangements.

Last sittings, as part of Act No 89 of 1992 this Parliament passed legislation which:

- reduced the total time allowed for the processing of anti-dumping and countervailing applications to the preliminary finding stage to a maximum of 125 days, or for more complex cases, a maximum of 145 days;
- extended, to five years, the period for which anti-dumping and countervailing measures remain in place;

- made provision for a review to be undertaken by the Anti-Dumping Authority following a request by an interested party as to whether measures should continue after the five year expiry date;
- extended the life of the Anti-Dumping Authority to August 2001; and
- introduced a number of technical changes to facilitate the processing of applications.

Goods are said to be dumped if the export price of the product is less than the "normal value", that is, the comparable price for the like product in the domestic market of the exporting country.

Anti-dumping action is taken only if it is established as a result of inquiries undertaken by Customs and the Anti-Dumping Authority that goods have been dumped and that the dumping is causing or threatening material injury to an Australian industry.

The Government strongly believes that effective and timely anti-dumping and countervailing measures are necessary to protect Australian industry from material injury caused by dumped or subsidised imports.

At the same time, the Government is determined not to allow the anti-dumping and countervailing system to be used as a de facto means of industry protection.

Australia's anti-dumping system is now one of the fastest and fairest in the world. There is scope, however, to improve its effectiveness by altering the manner in which duties are imposed and collected.

In broad terms the present legislation imposes a dumping duty which represents the difference between the export price and the normal value of the goods, or where the Minister so directs, a lesser amount sufficient to remove the injury.

Under the present regime, duty is not payable where the dumping margin is purportedly eliminated by raising the actual export price to the level of the normal value determined at the inquiry. The Government considers that a more effective way to apply duties and strengthen the overall operation of the anti-dumping and countervailing system can be achieved with an approach similar to that used by the US and the European Community.

The proposals put forward in this package provide a mechanism whereby an interim duty will be imposed on each importation of goods subject to anti-dumping or countervailing measures.

The other Bill in this package, the Customs Tariff (Anti-Dumping) Bill provides that interim dumping duty will be based initially on the difference between the normal value and the export price as determined by the inquiries. Important additional features of that Bill are that the Minister will be able to determine the duty on an ad valorem or specific rate basis, and, where the export price falls below the export price ascertained by the inquiry, the difference between these prices will also be collected.

That Bill also provides that the interim countervailing duty will be determined on the basis of the amount of the subsidy identified by the inquiries.

In either case, and consistent with both our current law and Australia's obligations as a signatory to the General Agreement on Tariffs and Trade (the GATT), the new taxing regime will continue to require the Minister to consider the desirability of imposing a lesser rate of duty where this is sufficient to remove injury.

With the introduction of an interim duty system in the Customs Tariff (Anti-Dumping) Bill, this Bill proposes two means by which subsequent adjustments of duty liability can be effected.

The first such mechanism is a repayment or reimbursement facility, whereby interim duty collected in excess of the actual dumping margin (in the case of dumping duties) or the actual subsidy (in the case of countervailing duties) can be repaid.

To reduce the possibility of applications being lodged on a selective basis for those consignments where it is known that a repayment is likely, this Bill requires that any application cover all consignments during a 6 month period. Duty will not be repaid unless the total interim duty paid exceeds the total actual duty liability for the period.

If no application has been received within 6 months of the end of the relevant importation period the interim duty paid will be taken to be the final duty payable.

The second mechanism to enable subsequent adjustments of the duty liability on goods the subject of a dumping or countervailing notice is introduced in the Bill via a review facility under which interested parties may seek a review of the interim duty to be paid on future shipments.

The Bill proposes that a request for such a review may only be made 12 months after the interim duty has been imposed or 12 months after the last review of the rate. However, the Minister may, where it is considered appropriate, request at any other time that a review of the duty rate be undertaken.

The Bill details the type of information required in support of a request for a review together with provisions allowing interested parties to make submissions. It also places strict time limits on the review consistent with the other time limits applying throughout the dumping process.

The Government is confident that the proposed new system strikes an equitable balance between the interests of importers and local industry, while conforming with Australia's obligations under the General Agreement on Tariffs and Trade (GATT).

The second reading speech for the Customs Legislation (Anti-Dumping Amendments) Bill 1 (No 2) 1992, tabled by the Minister for Defence, Senator Ray, on 12 November 1992, reads in part as follows (Sen Deb 1992, Vol 156, p 2851):

This Bill proposes to amend the Customs Tariff (Anti-Dumping) Act 1975 as the second Bill of the legislative package to introduce a new system for dumping and countervailing duties. This Bill introduces the new taxing regime for the imposition and collection of both interim and final dumping and countervailing duties, while the other Bill in the package which I have just introduced, the Customs Legislation (Anti-Dumping) Bill, provides the

mechanism for the determination of interim and final duties, as well as introducing the two means by which subsequent adjustments of duty liability can be effected.

As I noted in the second reading speech for the Customs Legislation (Anti-Dumping) Bill, interim dumping duty imposed under this Bill will be based initially on the difference between the normal value and the export price as determined by the inquiries. Important additional features of the new regime are that the Minister will be able to determine the duty on an ad valorem or specific rate basis, and, where the export price falls below the export price ascertained by the inquiry, the difference between these prices will also be collected.

Interim countervailing duty will be imposed on the basis of the amount of the subsidy identified by the inquiries.

In either case, and consistent with Australia's obligations as a signatory to the General Agreement on Tariffs and Trade (the GATT), the Minister will continue to consider the desirability of imposing a lesser rate of duty where this is sufficient to remove injury.

Financial Impact Statement: The proposed amendments contained in this Bill have no direct financial implications.

I commend the Bill to the Senate and present its explanatory memorandum.

International economic law – United States claims of Australian unfair trade barriers against United States products

On 2 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 151, p 1552):

The US trade representative is required by US legislation to furnish reports each year to Congress identifying practices in specific economic sectors which it regards as preventing US companies from receiving fair access to the markets of its trading partners. These reports are designed essentially to assist the US Administration in developing its trade negotiating priorities over the coming year. The report claims, as Senator Teague has said, that Australia maintains unfair trade barriers against US products, particularly in the areas of broadcasting, which was the subject of Senator Richardson's earlier discussion, intellectual property and government procurement.

These are claims that we have contested, and contested vigorously. ... We will continue to contest these claims vigorously at all available opportunities.

It is a matter of concern to us that Australia, with our strong record of trade reform, to which I have already referred, should be targeted by the United States, a country which enjoys enormous trading opportunities in Australia with a bilateral trade surplus of 2:1 running in its favour, and a country many of whose own trade practices in areas of crucial importance to this country – particularly in agriculture, where the entry of beef, sugar and dairy products to the United States market is subject to restrictions – are unquestionably unfair.

There is only so much that we can put up with by way of double standards from the United States. We do not accept these kinds of allegations lying

down. I have made that clear, Senator Richardson has made it clear, Mr Kerin has made it clear, the Prime Minister has made it clear – and I do not think that anyone in the United States will be in any doubt about that.

International economic law – Effect of United States unilateral trade policies upon Australian exports

The Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade entitled *Implications of United States Policies for Australia*, of December 1992, included the following reference to United States trade policies:

> 4.29 United States unilateral trade policies have an impact on Australian agricultural exports in two ways. First there is the question of access to US markets for Australian commodities such as beef, sugar and dairy products. Second is the impact of US policies on third markets through the use of export subsidies (eg. the Export Enhancement Program (EEP)). Such subsidies can depress world commodity prices and reduce access for and returns to Australian agricultural producers. Programs such as EEP have been of concern to Australia since first introduced in 1985; their continuing significance has been highlighted by the impasse in United States negotiations with the EC on agricultural policies and the announcement by President Bush of an EEP wheat initiative of 29.1 million tonnes covering 28 markets for 1992/93 during the course of the election campaign.
>
> 4.30 The major damaging effect of EEP has been on the Australian wheat industry. Other Australian commodities affected are rice and canned peaches.
>
> 4.31 Australian commodities most affected by restrictive import measures imposed by the United States are beef, sugar and dairy products.
>
> 4.32 There is little expectation of any change to United States policies on agriculture in the absence of a breakthrough in the Uruguay Round of the GATT negotiations.

International economic law – Mutual assistance in business regulation – Australian legislation

In the course of the second reading speech for the Mutual Assistance in Business Regulation Bill 1992 on 26 February 1992, the Parliamentary Secretary to the Attorney-General, Mr Peter Duncan, said (HR Deb 1992, Vol 182, p 188):

> Integral to the maintenance of investor confidence in, and the efficiency of, national financial markets must be the development of effective international cooperation between the national business regulatory agencies responsible for administering and monitoring those markets. This cooperation involves the capacity to seek from, and provide to, such agencies in other countries flexible, speedy and effective assistance.
>
> This need for increased cooperation and assistance has been recognised in a number of international forums. The International Organisation of Securities Commissions has called upon its member organisations to provide reciprocal

assistance in obtaining information in respect of market oversight and prevention of fraud.

At the Commonwealth Law Ministers meeting in Auckland in 1990, Ministers identified the need for mutual assistance in the area of business regulation. That meeting noted that voluntary cooperation between agencies needed to be reinforced by legislative provisions to enable powers of compulsion to be exercised in the fulfilment of requests in appropriate cases.

Similarly, the OECD, in its review of the impact of internationalisation on financial markets, noted the need to achieve worldwide regulatory coverage of international conglomerates. The OECD recommended the development of arrangements for exchanges of information between national regulators which supervise different parts of financial conglomerates as one way of ensuring appropriate regulation of these bodies.

In answer to these international calls for closer cooperation, this Bill sets up the framework for Australian agencies, such as the Australian Securities Commission and the Trade Practices Commission, to provide assistance to their overseas counterparts. As a result of the legislation, these agencies will be better placed to seek assistance in their own investigations from their foreign counterparts. In short, the proposed legislation would enable prescribed Australian agencies, with the Attorney-General's consent, to compel the provision of information documents and sworn testimony in aid of requests from foreign agencies.

The scheme established by this Bill will complement the obtaining and exchange of information between countries for the purposes of criminal prosecutions which is established by the Mutual Assistance in Criminal Matters Act.

Under the proposed scheme for mutual assistance between business regulators, applications by the foreign agency will be made to the Australian agency in the first instance, which will make an initial assessment of the application and either reject or pass it on to the Attorney-General. In making this initial decision, the prescribed agency will take into account amongst other things:

- the resource cost to the Australian agency;
- the availability of the same information to the foreign agency from other sources;
- the likelihood of the Australian agency successfully obtaining the information sought in the application;
- the extent to which the foreign agency has corresponding functions and responds to or is likely to respond to a similar request from an Australian agency, including the existence of any memorandum of understanding between the applicant and the prescribed agency relating to mutual assistance.

If the Australian agency does not reject the application, the Attorney-General may decide whether to authorise the collection of the information sought by taking the following matters into account:

- national interest considerations;

- international law and comity including whether the overseas agency has a corresponding facility to provide mutual assistance;
- whether the information sought is likely to be used for the purpose of punishing a person for an offence of a political nature or punishing or prejudicing a person on account of a person's race, sex, religion, nationality or political characteristics;
- whether the information is sought for the purposes of the administration or enforcement of business regulatory laws as opposed to an investigation of indictable criminal offences such as organised crime, in which case recourse should ordinarily be had to the Mutual Assistance in Criminal Matters Act.

Where the Attorney-General has authorised the Australian agency to act on a request, the agency will be able to require a person to:

- provide specified information, evidence or documents relating to the subject of a request contained in the application;
- attend before the agency or a member of the agency to provide information on oath or affirmation;
- otherwise assist the Australian agency in responding to the request contained in the application.

The Bill will also contain extensive safeguards to ensure that persons who are required to provide assistance are appropriately protected.

International economic law - European Energy Charter negotiations

In the course of an address on 7 May 1992 to the Australian Mining Industry Council's Annual Minerals Seminar, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said:

> Another post-Cold War policy area where we have needed to maintain our footwork is the European Energy Charter, a process designed to achieve freer trade and investment in energy products within Europe. Australia fought long, hard and successfully for the right to participate in the process as the world's largest exporter of coal. Participation will enable us to protect our interest in the European energy market and to provide Australian companies with the opportunity to compete on equal terms in the energy projects envisaged for eastern Europe and the Commonwealth of Independent States.

The following is extracted from the *Review of Developments in International Trade Law* prepared by the Commonwealth Attorney-General's Department in November 1992 (p 39):

> The European Energy Charter, based upon a proposal of Dutch Prime Minister Lubbers, is intended to create a new trade and investment regime for the energy sector. As originally conceived, the Charter was intended to extend this regime only as between the EC and the countries of Eastern Europe and the Commonwealth of Independent States (CIS) - hence the reference to a "European" Charter. The EC's primary concerns were to obtain greater and more secure access to gas reserves in the CIS, and also to extend assistance to

the East while encouraging the development of a market economy in those countries.

After substantial lobbying in Brussels, the US, Japan, Canada and Australia were permitted to join in the deliberations, first on achieving a statement of political goals etc (the non-binding Charter instrument itself - which we signed on 18 December 1991) and then, on a multilateral treaty giving legal effect to many of the key principles of the Charter instrument (the Basic Agreement and its subsequent Protocols); the key principles are trade, investment, transit and the environment. Australia has since played a significant role in the development of the text.

A slightly more detailed description of the European Energy Charter negotiations, and of Australia's role in them, may be found in an article in the Department of Foreign Affairs and Trade publication *Backgrounder* of 8 May 1992 (Vol 3 No 8, p 7).

International economic law - Financial Action Task Force on Money Laundering

The following is extracted from the *Review of Developments in International Trade Law* prepared by the Commonwealth Attorney-General's Department in November 1992 (pp 13-14):

In July 1989, in Paris, the Heads of State or Government of the seven major industrialised countries, and the President of the Commission of the European Communities, convened a Financial Action Task Force (FATF) under French presidency, with the aim of fighting money-laundering. As a result of the first round of meetings the FATF made 40 recommendations on anti-money laundering initiatives which were endorsed by Ministers in May 1990. The recommendations deal not only with domestic legal measures against money-laundering such as prosecution and confiscation of assets, but also with measures to be taken by the financial sector to prevent and detect criminal activity as well as urging international co-operation at all levels in the fight against money-laundering.

The recommendations require financial institutions not only to refrain from dealing with customers on an anonymous basis but require the careful identification of both the person conducting a transaction and also the person on whose behalf the transaction is being conducted, (particularly domiciliary companies which do not conduct any commercial or manufacturing business or other commercial operation in the country where their registered office is located). Records of the identification and any business correspondence must be retained for 5 years, as must sufficient information to reconstruct individual transactions and provide evidence in criminal proceedings.

Financial institutions are required to pay special attention to complex or unusual transactions that have no apparent economic, or visible lawful, purpose or to transactions with persons from countries which have not fully implemented the anti money-laundering initiatives of the FATF. They should examine those transactions and record their apparent purpose to assist auditors and law enforcement.

Where a transaction is suspected of relating to criminal activity financial institutions should report this to law enforcement with immunity from suit by customers. In addition to these measures applying to the financial sector, the FATF urges consideration of requirements to report cross border currency movements and transactions involving large amounts of cash. These measures complement those set out in the UN Drug Trafficking Convention of 1988 and the 1990 Council of Europe Convention on Laundering Search Seizure and Confiscation of Proceeds of Crime.

These recommendations have now been accepted by all OECD members and by other major financial centres such as Singapore and Hong Kong.

Australia had already implemented almost all FATF recommendations as they have been taken up in the context of initiatives associated with the Proceeds of Crime Act 1987, the Mutual Assistance in Criminal Matters Act 1987 and the Cash Transaction Reports Act 1988.

In 1992 an evaluation committee, comprising representatives of FATF member countries, evaluated Australia's compliance with the 40 recommendations. The evaluation committee reported that Australia complied with 39 of the 40 recommendations. The only area of non-compliance was Australia's non-ratification of the Vienna Convention, which Australia will be in a position to ratify in the near future.

In August [1992] Australia assumed the chair of the FATF when Mr Tom Sherman, Chairman of the NCA, became chair of the group. The first meeting of the FATF outside Europe took place in Sydney in September [1992], chaired by Mr Sherman.

International economic law - Australia-New Zealand Closer Economic Relations Trade Agreement (CER) - 1992 review

On 7 October 1992 a joint statement was issued by the Minister for Trade and Overseas Development, Mr John Kerin, and the New Zealand Minister for Trade Negotiations, Mr Philip Burdon. That statement read in part as follows:

> In 1988, at the conclusion of the first major review of the Australia New Zealand Closer Economic Relations Trade Agreement (the CER Agreement), our two Governments agreed to undertake a further general review of the operation of the Agreement in 1992. We are now pleased to announce the outcome of that review.
>
> Nearly a decade after the conclusion of the Agreement in 1983, it is clear to us that CER is a resounding success. CER has brought economic and social benefits and improved the living standards of both our countries. CER is an outward-looking agreement and an important part of our wider effort to encourage export awareness and make our economies more internationally competitive. It is evidence of our commitment to a more open, *liberal* multilateral trading system. ...
>
> In relation to trade in goods, we have taken a number of practical steps to improve CER's operations. We have introduced a number of improvements to the way the CER rules of origin are administered and have made them more predictable and transparent. We have clarified the operation of the Agreed Minute on Industry Assistance, strengthened the consultative commitments and

encouraged further exchanges on industry policy. We have also removed Annex F, the only remaining margin of preference obligation in the Agreement.

In 1988, CER became the first major international trade agreement to cover services. With the exception of a limited number of inscribed areas, trade in services between our countries is free. As a result of reform in both countries, there has been a substantial liberalisation of bilateral services trade since 1988. In particular, in 1992, Australia removed its *banking* inscription and New Zealand removed its broadcasting inscriptions. The Protocol will be reviewed again in 1994.

International economic law - Harmonisation of Australian and New Zealand business law

The following is extracted from the *Review of Developments in International Trade Law* prepared by the Commonwealth Attorney-General's Department in November 1992 (p 27):

On 1 July 1988 the Australian and New Zealand Governments signed a Memorandum of Understanding on the Harmonisation of Business Law ("the MOU") as part of the 1988 review of the Australia New Zealand Closer Economic Relations (CER) Trade Agreement. The principal obligation under the MOU is to examine the scope for harmonisation of business laws and regulatory practices including the removal of impediments to trans-Tasman trade.

The first report of the Steering Committee, established to co-ordinate this examination of business law under the MOU, was released in 1990. It surveyed the scope for the two countries to facilitate trans-Tasman commerce by bringing relevant business laws and regulatory practices more closely into line. The second report, released in September 1992, records progress to date and identifies prospects for further harmonisation.

Among the developments noted in the second report were:

- enactment of the Foreign Judgments Act 1991 in Australia and the Reciprocal Enforcement of Judgments Act 1992 in New Zealand, providing for more extensive arrangements for reciprocal enforcement of judgments and orders;
- recent enactment of the Australian Mutual Assistance in Business Regulation Act, which broadly parallels similar provisions in the New Zealand Securities Act;
- the New Zealand Consumer Guarantees Bill, which will bring New Zealand law on consumer sales into alignment with Part V of the Australian Trade Practices Act;
- the New Zealand Financial Reporting Bill, which parallels fundamental Australian reforms in the area of company accounting standards;
- Australia's ratification of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, to which New Zealand was already a party; and

- New Zealand's passage of legislation to allow it to accede to the Patent Cooperation Treaty, to which Australia is already a party.

Harmonising matters which the report identified as being in prospect included a proposal for a new scheme for the cross-recognition of Australian and New Zealand companies.

International economic law - Convention Establishing an International Organisation of Legal Metrology - Amendments to Australian legislation - Mutual recognition agreements

In the course of a second reading speech on the Industry, Technology and Commerce Legislation Amendment Bill 1992 on 13 October 1992, the Minister for Science and Technology, Mr Free, said (HR Deb 1992, Vol 186, p 2019):

> In 1959 Australia acceded to the international Convention Establishing an International Organisation of Legal Metrology. The organisation was vested with responsibility for determining international requirements for legal measuring instruments and member States were morally obliged to implement these decisions as far as possible. With the globalisation of trade the Convention has gained increasing importance and is in harmony with the GATT agreement on technical barriers to trade. The amendment clarifies Australia's measurement requirements under this Convention and will be an essential component of mutual recognition agreements with Australia's trading partners. The Bill will extend the traceability provision of the Act to include legal measuring instruments and analytical measurements using certified reference.

International development assistance - Relevance of human rights situation in recipient States - China, Burma and Indonesia

In the course of an answer to a question without notice on 28 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said (Sen Deb 1992, Vol 152, p 1629):

> There is a very obvious difference, for example, between the Tiananmen situation, which was a deliberate act of State policy which justified a withdrawal of Australian aid; the situation in Burma, which represents, again, a deliberate act of State policy at the highest levels and which again justified a withdrawal of aid; and the situation of the Dili massacre last November which on nobody's analysis involved a deliberate act of high State policy directed from Jakarta. That is the kind of case by case judgment we make. There are many other examples that one can offer.
>
> Of course it is the case that in other aspects of aid delivery we do take human rights questions very closely into account. In the design and the construction of particular programs and projects we take human rights issues, like the role of women, into account in the formulation of policy. We take very much into account the effectiveness of aid in aiding and abetting the victims of human rights discrimination in the way in which aid is delivered.
>
> So there are many ways in which human rights principles, foreign policy and the policy of aid do intersect.

International development assistance - Relevance of human rights situation in recipient States - Vietnam

On 7 May 1992, the Minister for Foreign Affairs and Trade said in the course of consideration of a report of Estimates Committee B (Sen Deb 1992, Vol 152, p 2421):

> The reason for acting as we have done in spelling out the resumption of the bilateral program is simply a sense of humanitarian compassion about doing something for a country that is manifestly towards the bottom end of the scale in terms of poverty and terms of living conditions.
>
> The kinds of programs that we are focusing our attention on – education and training in the areas of English language, sponsor training programs, technical and vocational projects, health, in particular malaria control, infrastructure, including in particular water supply projects, natural resources development in the forestry area, commodities supply, fertiliser, pharmaceuticals, medicines associated with a malaria control program – are aimed directly and immediately at improving the lot of ordinary Vietnamese human beings; improving their human rights, if you like. Human rights are not just civil and political rights, human rights are economic and social rights. The reality of the situation on the ground in Vietnam is that the condition and development of that country and its people is manifestly lagging way behind what it could and should be, in the interests of civilised decency.
>
> I make no apology whatsoever, under those circumstances, for going down this particular path. The sooner the international community as a whole, and not just individual countries, moves down that path, restores significant amounts of aid, and removes remaining impediments to trade, the sooner the human rights of the overwhelming majority of the Vietnamese people, in that sense, will be able to be improved.

International development assistance - Use of aid to enhance human rights - Papua New Guinea

On 7 May 1992 the Minster for Foreign Affairs and Trade, Senator Gareth Evans, tabled the Government's response to the report of the Joint Committee on Foreign Affairs, Defence and Trade on Australia's relations with Papua New Guinea (Sen Deb 1992, Vol 152, p 2524). Recommendations 48 and 49 of the Committee's report and the Government's response to those recommendations were as follows:

> RECOMMENDATION 48
>
> The Committee recommends, despite the inhibitions on Australia's actions caused by our past colonial and present commercial ties with Papua New Guinea, that the Australian Government should do more to encourage Papua New Guinea to investigate human rights abuses.

RECOMMENDATION 49

In addition, in consultation with the Papua New Guinea Government, the Australian Government should explore ways in which Australian aid to Papua New Guinea might be used to enhance safeguards for human rights protection.

RESPONSE...

Human Rights

As the Committee has noted, Australia enjoys a very close relationship with Papua New Guinea, but the Government has made it clear that this does not exempt Papua New Guinea from Australia's universal human rights policy, which is to deplore human rights abuses wherever they occur. The Government has therefore taken every opportunity to raise, at the highest level, allegations of human rights abuses in Papua New Guinea. In response, Prime Minister Namaliu has affirmed that the PNG Government does not condone human rights abuses and that Bougainville is no exception to that policy. The Government continues to encourage the PNG Government in its investigations of human rights abuses.

It should not be forgotten that allegations of abuses on Bougainville have also been made against the Bougainville Revolutionary Army (BRA). The Government understands that the BRA would not agree to a proposal, made by the PNG Government during the "Endeavour" talks, that the International Commission of Jurists be asked to assist with investigations into allegations of human rights abuses by both sides.

Australia and Papua New Guinea continue to explore ways in which Australian aid can be used to enhance the protection of human rights in Papua New Guinea. For example, components designed to strengthen soldiers' awareness of humanitarian law and to provide guidance concerning the proper treatment of civilians during military operations have been included in military training programs funded under the Defence Cooperation Program. The AIDAB Police Project will also contribute to the protection of human rights by helping to ensure that fundamental human rights issues are adequately addressed in the police force's training programs. Both governments intend to ensure that, wherever possible, Australian assistance supports the further development of human rights in Papua New Guinea.

International development assistance - Defence expenditure in recipient States - Australian Development Cooperation program safeguards

On 2 April 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, in partial answer to a question upon notice from Senator Jones, provided a list of all recipients of Australian aid and a list of major recipients and their expenditure on defence as a percentage of total GDP (Sen Deb 1992, Vol 151, p 1616). Part of the question and answer was as follows:

(Q3) What safeguards are in place to ensure that countries which receive aid and assistance from Australia do not use this money for military purposes?

(A3) Australia's position on this issue is clear. Australia does not provide assistance to developing countries through the Development Cooperation program for military purposes.

The Development Cooperation program has effective mechanisms in place to ensure that Australian ODA [overseas development aid] is used for development, and not military, purposes.

Except for Papua New Guinea, all bilateral program aid is tied to discrete development activities. ODA is not supplied in the form of unconditional cash grants, which could be diverted for military expenditure.

The composition of activities of individual bilateral programs is agreed between the Australian and recipient governments. For most countries this takes place at annual high level consultations.

All activities under bilateral programs are subject to Memoranda of Understanding which incorporate agreement on activity and/or program monitoring procedures. Prior to implementation all bilateral program activities are appraised by AIDAB. Following implementation, financial and progress monitoring is undertaken through a variety of mechanisms both in AIDAB central office and by posts in-country. AIDAB also undertakes activity audits and ex-post evaluations.

Papua New Guinea Budget Support: As noted, Papua New Guinea is an exception to tied aid. Since independence Australia has provided most of its assistance to Papua New Guinea in the form of untied budget support grants. It should be noted, however, that it has been agreed by both governments that budget support should be phased out by the year 2000.

A proportion of Papua New Guinea's overall budget is spent on security, but the Australian government recognises Papua New Guinea's need for security forces and in fact supports the development of these forces through the Defence Department's Defence Cooperation program.

International development assistance - Australia's aid program

The following item is extracted from the Department of Foreign Affairs and Trade publication *Insight* of 30 November 1992 (Vol 1 No 10, p 15):

A ministerial policy paper tabled in Parliament on 9 November outlines the challenges for Australia's Overseas Development Program in the 1990s and the directions that the program can take to meet these challenges.

The Minister for Trade and Overseas Development, John Kerin, said the paper, *Changing Aid for a Changing World*, canvasses the new directions already undertaken by Australia's aid program and opens an informed debate in other areas where changes must be made to maintain the efficiency and equity of the program.

"It is a comprehensive and forward-looking document which seeks practical, coherent input from all interested parties. I intend that this debate will be an important part of the process of reshaping Australia's aid program", Mr Kerin said.

"As the problems of the developing world change, this process is necessary so that we provide the best development assistance with the broadest Australian support."

Key issues identified in the statement are:

- the need for greater coordination of international development assistance and emergency relief efforts;
- economically and ecologically sustainable development which integrates social and cultural factors and recognises the need for economic growth and sound macroeconomic management for development to occur;
- the full participation of women in the development process;
- human rights and good governance;
- the social and economic consequences of the HIV–AIDS epidemic for developing countries;
- the need for closer cooperation between AIDAB and NGOs;
- population growth, with world population growth of around one billion this decade, most of which will be in developing countries.

International agreements for the avoidance of double taxation – Agreements with Indonesia, Vietnam and Spain

The second reading speech of 4 November 1992 for the Income Tax (International Agreements) Amendment Bill 1992 by the Minister for Justice, Senator Tate, reads in part as follows (Sen Deb 1992, Vol 155, p 2219):

This Bill will provide legislative authority for the entry into force of comprehensive double taxation agreements between Australia and Indonesia, Australia and Vietnam and Australia and Spain.

The Bill will insert the texts of the agreements into the Income Tax (International Agreements) Act 1953 as schedules to that Act.

The agreement with Indonesia was signed on 22 April 1992; the agreement with Vietnam was signed on 13 April 1992 and that with Spain was signed on 24 March 1992. The agreements allocate taxing rights over all substantial forms of income flowing between Australia and those countries. Details of each agreement were announced and copies made publicly available at the time of signature.

The agreements generally accord with the other comprehensive taxation agreements concluded by Australia in recent years.

A feature of the agreement with Vietnam is that it provides for "tax sparing" credit relief to be extended by Australia for tax forgone by Vietnam under specified development incentives for the encouragement of foreign investment.

Where income derived by an Australian resident taxpayer has benefited from the development incentives to be nominated under the agreement, a tax credit will be allowed by Australia for the Vietnamese tax forgone under those incentive measures. By this means, the development incentives will retain their

attractions for Australian firms and allow them to compete for business in Vietnam on favourable terms with investors from other countries.

Each of the respective agreements will enter into force when diplomatic notes are exchanged advising that the necessary constitutional processes to give the agreement the force of law in the respective countries have been completed. The enactment of this Bill will complete the processes required of Australia for those purposes.

The Government believes that the agreements will contribute positively to the strengthening of trade, investment, and wider relationships between Australia and the treaty partner countries. I am pleased to be able to say that Australia is the first country with which Vietnam has entered into a double taxation agreement.

On 23 April 1992 the Treasurer, Mr John Dawkins, issued a news release which read in part:

A comprehensive taxation agreement between Australia and Indonesia for the avoidance of double taxation was signed in Jakarta yesterday by Australia's Ambassador to Indonesia, His Excellency Mr Phillip Flood and by Indonesia's Minister for Foreign Affairs, Mr Ali Alatas, in the presence of Prime Minister Keating and President Suharto.

The agreement prevents double taxation by allocating taxing rights to Australia or Indonesia on all forms of income flows between the two countries. The basis of allocating these rights is substantially similar to that adopted in Australia's other modern double taxation agreements. ...

The agreement will enter into force when the Australian and Indonesian Governments have exchanged notes advising each other that the last of the necessary constitutional processes to give the agreement the force of law in their respective countries has been completed. In Australia, legislation will be necessary to give the agreement the force of law and a Bill for that purpose will be introduced into Parliament as soon as practicable.

Upon entry into force, the agreement will have effect in Australia for all Australian taxes (including taxes withheld at source) covered by the agreement in respect of income, profits, or gains of any year of income beginning on or after 1 July in the calendar year following that in which it enters into force.

The agreement will have effect in Indonesia in respect of all Indonesian taxes covered by the agreement (including withholding tax) for taxable years beginning on or after 1 July in the calendar year following that in which it enters into force.

Copies of the agreement will be available to interested persons at all principal Taxation Offices.

International agreements for the avoidance of double taxation - Agreement with India

On 12 February 1992 the Treasurer, Mr John Dawkins, issued a news release which read in part:

The comprehensive taxation agreement between Australia and India entered into force on 30 December 1991 following the exchange of notes with India

through the diplomatic channel indicating that the necessary procedures to give the agreement the force of law had been completed in each country.

Signature of the agreement took place in Canberra on 25 July 1991. Details of the agreement were made public on the signature date and legislation providing for the agreement to be given force of law in Australia – the *Income Tax (International Agreements) Act (No 2)* 1991 – received Royal Assent on 24 December 1991.

The agreement is a comprehensive one for the avoidance of double taxation in relation to all income flowing between Australia and India. The allocation of taxing rights between Australia and India under the agreement generally accords with that provided for in Australia's other modern comprehensive taxation agreements.

The agreement with India will have effect in Australia, for withholding tax purposes, in respect of income derived on or after 1 July 1992 and for other income tax purposes in relation to income or gains of any year of income beginning on or after 1 July 1992. It will first have effect in India for Indian taxes covered by the agreement in respect of income derived on or after 1 April 1992.

The agreement limits the withholding tax or other tax that the source country may apply on certain dividends, interest or royalties payable to residents of the other country. Details of the practical application of those tax rate limits in relation to Australian withholding tax or income tax imposed on an assessment basis are available from Taxation Offices.

International agreements for the protection of investments – Agreement with Hong Kong

On 24 January 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read as follows:

Australia and Hong Kong have initialled an agreement which will protect Australian investments during Hong Kong's transition to Chinese sovereignty.

The Acting Minister for Foreign Affairs and Trade, Senator Robert Ray, said Australia had more invested in Hong Kong ($2.6 billion) than in any other part of Asia except Japan.

About 250 Australian companies operate in Hong Kong, employing over 70,000 people.

Senator Ray said that by concluding separate treaties with Hong Kong, the Government was promoting the economic autonomy promised in the 1984 Sino–British Joint Declaration. The Government considered this autonomy crucial to maintaining Hong Kong's prosperity after 1997.

The agreement was negotiated in Canberra this week and will be signed once Britain and China have given the necessary approvals. China's approval will enable the agreement to remain in force for at least ten years after Hong Kong rejoins the Mainland in 1997.

International agreements on science and technology - Proposed agreement with the European Communities

On 31 May 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, issued a news release which read in part:

> Australia is poised to begin negotiating a Science and Technology [S&T] Agreement with the European Communities, the Foreign Affairs and Trade Minister, Senator Gareth Evans, and Industry, Technology and Commerce Minister, Senator John Button, announced today.
>
> Following final approval on 21 May by the EC Council of Ministers (the EC's principal decision-making body), the EC Commission can now pursue an agreement with Australia which it intends to use as a prototype for S&T agreements with other non-European countries.
>
> The proposed agreement will give Australia more equitable access to collaborative research and development projects with the EC under the Community's Framework R&D [research and development] Programs. It will also provide reciprocal access for the EC to Australian research programs.
>
> While Australia already has an informal co-operation arrangement with the EC in several key areas of R&D, an agreement would improve the quality, range and security of our access to European research programs.

International maritime law - Limitation of liability for maritime claims - Hamburg Rules - Australian position

The following is extracted from the *Review of Developments in International Trade Law* prepared by the Commonwealth Attorney-General's Department in November 1992 (pp 5-6):

> UNCITRAL: UN Convention on the Carriage of Goods by Sea 1978 ("Hamburg Rules")
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> The United Nations Convention on the Carriage of Goods by Sea ("Hamburg Rules") was prepared by UNCITRAL following pressure from developing countries for a new international legal framework to replace the Hague Rules which were regarded as favouring the interests of carriers. The Hamburg Rules were adopted at a Diplomatic Conference held in Hamburg in 1978 and entered into force on 1 November 1992, following adoption by 20 countries. A further 22 countries have signed the Convention.
>
> The Rules were developed to take into account modern methods of shipping and cargo handling and modern forms of shipping documentation and provide greater protection for shippers by increasing the liability of carriers.
>
> Prior to 1991, the Sea-Carriage of Goods Act 1924 (Cth) implemented in Australia the 1924 International Convention for the Unification of Certain Rules Relating to Bills of Lading ("the Hague Rules"). Because of perceived limitations in the Hague Rules, two Protocols amending the Rules were developed, namely the Visby Protocol and SDR Protocol of 1968 and 1979 respectively. The Protocols do not alter the fundamental balance of rights and liabilities between shipper and carrier embodied in the Hague Rules, but rather, update and clarify the limitation of liability provisions in those Rules. The

Visby Protocol has been adopted by 20 States whilst the SDR Protocol has been adopted by 13 States.

In 1986/87 the Department of Transport and Communications undertook an extensive review of Australia's marine cargo liability law and issued a discussion paper on which industry views were sought. It was announced in 1988 that Australia would accede to the Visby and SDR Protocols and provide for the future implementation of the Hamburg Rules and that the Sea-Carriage of Goods Act 1924 would be amended accordingly.

Australia deposited the instrument of denunciation of the Hague Rules in Brussels on 16 July 1992, to take effect 12 months later. ... The Sea-Carriage of Goods Act 1924 was repealed on 31 October 1991 and replaced by the Carriage of Goods by Sea Act 1991.*

As a first step, the Carriage of Goods by Sea Act 1991 gives effect to the Hague Rules as amended by the Visby and SDR Protocols. As a second step, the Act provides a mechanism for the future implementation of the Hamburg Rules. If that part of the 1991 Act dealing with the Hamburg Rules is not proclaimed by 31 October 1994, those provisions will automatically come into effect unless the Parliament decides otherwise.

International trade law 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 19th International Trade Law Conference held in Canberra in November 1992.

International economic law and trade - Australian view of developments and institutional structures

In the course of a Ministerial Statement concerning his visit to Japan, Singapore and Cambodia the Prime Minister, Mr Paul Keating, said on 13 October 1992 (HR Deb 1992, Vol 186, p 2002):

In recognition of Australia's position as a medium-sized trading nation with considerable diversity in the composition and direction of our trade, the Government attaches fundamental importance to maintaining and strengthening the open, non-discriminatory multilateral trading system based on the GATT. As part of this, we accord high priority to an early and successful conclusion of the Uruguay Round of multilateral trade negotiations...

We are also firmly committed to promote the development of APEC as an organisation which embraces the main economic linkages between the Western Pacific and North America. We also remain willing to seize trade opportunities and solve trade problems whenever and wherever they arise, whether bilaterally or plurilaterally, whether in a particular class of exports or with a particular country or group of countries...

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* See p 311 of Volume 13 of this *Year Book* for part of the speech with which the relevant Minister introduced into Parliament and explained the purpose of the Carriage of Goods by Sea Bill 1991 (HR Deb 1991, pp 1924-2201).

As to the institutional forms and arrangements into which we may be prepared to enter, we are open-minded. We certainly do not rule out bilateral agreements or plurilateral agreements. Indeed, we may well initiate them, and we are of course a member of a strong bilateral arrangement with New Zealand. But some bilateral agreements are better than others, and some may deliver few bilateral trade benefits while potentially incurring substantial trade costs...

The Government certainly does not rule out Australian membership of regional trading arrangements. APEC is already evolving into a regional trade arrangement with a useful agenda of trade liberalising measures. If thinking and practice in the region evolves towards the idea of a trade pact, we would very much prefer that it be APEC-wide, and of course that it did not raise barriers or hinder trade between members and non-members. We appreciate that such an outcome will not be achieved easily and that, in the meantime, there may be proposals for plurilateral arrangements between subsets of the APEC membership. Australia stands ready to consider on its merits possible membership of any such arrangements that may evolve.

As I said in Tokyo, we do not think a Western Pacific trade area is a preferred arrangement, but we would certainly seek to join one if the trade policy decisions of the major players left us no better choice. So we remain open to forms and arrangements, but we do think there are substantial disadvantages for ourselves and for the entire region if the United States is encouraged to go down the path of seeking bilateral preferential arrangements.

The Attorney-General, Mr Duffy, said in the course of his opening address to the International Trade Law Conference in Canberra on 6 November 1992:

Our participants this year reflect a new stage in international trade law which is seeking to act upon the results of the institutional developments patiently produced over many years.

In fact, that was the message to be gathered from the UNCITRAL [United Nations Commission on International Trade Law] Congress held in New York earlier this year to mark its 25th anniversary, which I understand a number of you attended.

It is time to look more closely at the package of Conventions and model laws which have been developed in a framework of international consensus and make efforts to improve the understanding of their purpose and effect with a view to more widespread adoption of the most relevant of them.

This year, we especially welcome our visitors from the countries and committees represented on the Pacific Economic Cooperation Council (PECC) which met yesterday to consider an initiative which it is hoped will result in more widespread regional adoption of important international trade and business related instruments. ...

What is significant is that we are now starting to make efforts to improve regional linkages and cooperation to get results rather than simply considering the theoretical possibilities. ...

Returning to the GATT Uruguay Round of Multilateral Trade Negotiations, there are a number of general observations I would like to make

as they relate to various aspects of the Round and also on the nature of *multilateral* negotiations.

Multilateral rules are still the only universally acceptable option in resolving long term trade distortions on a global basis, this should not however preclude another vitally important *bilateral and regional* initiatives to reinforce our pursuit of liberalisation and cooperation.

The question of how we bring the Uruguay Round to a conclusion is still very much in the balance. Whether we can bring it to an early conclusion or whether the negotiations will be even more protracted than the seven years that have already passed will have a profound effect on the validity and usefulness of the existing international trade rule of law.

But we should perhaps put some of these matters in perspective. The GATT has been with us for some time now and has been through various rounds since its inception in 1947.

The Uruguay Round has periodically dragged its heels and picked up speed. Agriculture was not directly tackled until this latest Round and was always going to be difficult.

Add to this the inclusion of negotiations on a services agreement, intellectual property and the rapidly changing political and economic landscape, and you begin to appreciate the size of the task which has faced the GATT membership since 1986.

It may also be recalled that the Tokyo Round, although it did result in a number of important agreements which have advanced the process of trade liberalisation, lasted from 1973 to 1979 without dealing with the critical issues now being addressed.

In the area of services, from the Australian side, I should mention that heads of Federal, State and Territory Governments signed a final agreement on mutual recognition in May this year. Implementation of this initiative establishes a national scheme for the mutual recognition between States of products and occupational standards including those of the legal profession, provided the various State professional associations are prepared to act, and accept that this is one nation.

Recently, the Law Council of Australia released its policy statement on the practice of foreign law in Australia. This work is to be welcomed as a step towards achieving uniform regulation of the practice of foreign law in Australia and it will complement the mutual recognition of professional qualifications.

These initiatives will assist Australia in developing an integrated national legal practice and in advancing our objectives in the services negotiations in the Uruguay Round.

Moreover, it is possible to maintain a balanced and even positive outlook by considering trends and achievements in other international negotiations.

While the spotlight has been focussed on the machinations and frustrations being acted out in one forum, in others, which have experienced their own share of frustration and doubt as to their effectiveness, progress has been made.

It is not so long ago that concerns were expressed whether the Vienna Sales Convention, adopted by UNCITRAL in 1980, would attract a sufficient number of ratifications to enter into force.

It entered into force for eleven countries on 1 January 1988 and how has thirty four parties including Australia (from 1 April 1989), Canada (from 1 May this year), France, Germany, Italy, the United States and the Russian Federation as well as other countries in Europe, Scaninavia, the Americas, Africa and the Middle East.

In the Asian region, however, apart from Australia only China has ratified and Singapore has signed, although New Zealand looks to be close to joining. There is certainly room to improve that situation through closer cooperation and sharing of information and resources through gatherings such as this and the PECC meeting held yesterday.

Australia is also looking closely at a number of other conventions adopted by UNCITRAL, the Hague Conference and UNIDROIT in relation to areas as diverse as service abroad, matters of international sales, agency and financial transactions and the form of an international will.

In the field of intellectual property, Australia this year acceded to the Rome ("neighbouring rights") Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations which entered into force for Australia on 1 October.

A new generation is waiting to address questions raised by the growth of areas such as the use of new technologies in international trade. Electronic data interchange (EDI) is a major project on UNCITRAL's current and future work program and the second session later this morning reflects the importance attached to providing opportunities for Australian input to that process.