VIII. International Economic Law

GATT—Uruguay Round—Implementing Legislation

Further to discussion in the *Aust YBIL* 1994, vol 15, p 507, on 18 October 1994, Mr Gordon Bilney, representing the Foreign Minister, explained legislation to implement in Australian domestic law the agreements reached late in 1993 during the Uruguay Round of negotiations within the General Agreement on Tariffs and Trade, in the following speech (House of Representatives, *Debates*, 18 October 1994, p 2185):

> The purpose of these bills is to provide for amendments to a number of Acts and passage of the Trade Marks Bill 1994 to enable Australia to accept the World Trade Organization Agreement by 1 January 1995. The World Trade Organization Agreement is the outcome of the Uruguay Round of multilateral trade negotiations. The agreement will provide a stimulus to the world economy, a framework for the continuing conduct of international trade on a non-discriminatory and sustainable economic basis. For the first time, trade in agriculture, services and intellectual property has been brought within the framework of GATT disciplines.
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> All GATT parties, including developing countries, stand to gain from the Uruguay Round outcomes, which in turn will boost job creation, investment, and economic reform internationally. The Uruguay Round outcomes contain commitments by Australia's major trading partners for substantially improved market access across the key sectors of agricultural, mineral and industrial products. Of special interest to Australia are commitments on beef and sheep meat, dairy, grains (including rice), sugar, horticulture, coal, steel, pharmaceuticals, beer, medical equipment and non-ferrous metals.
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> The OECD has estimated that for agricultural and industrial products alone the Uruguay Round outcomes will result in an increase in global economic activity of up to $A418 billion by the year 2002. For Australia, the income gain has been estimated by the OECD at $A2.5 billion per year. Assessments by the Industry Commission suggest that there may be as much as a $5 billion increase in exports and a $A3.7 billion increase in Australian gross domestic product. These estimates include:
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> - around $Al billion in increased agricultural exports per year;
> - an average cut of more than 50 per cent in tariffs facing Australia's manufactured exports; and
> - improved conditions of trade for our mineral exports, especially coal.
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> To these figures need to be added gains from expanded services exports and increased sales and royalties for Australian know-how.
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> I will now outline for honourable members the benefits for Australia in each of the major categories of the Uruguay Round outcomes on agriculture, tariff reductions, intellectual property and services. In doing so, I will explain the legislative action necessary to give effect to Australia's commitments in each of these categories, which is in the bills before honourable members.

Agriculture

In the Uruguay Round, Australia took on the daunting task of bringing agriculture more fully into the international trading regime. Reform of the global agricultural system was, and still is, a top priority for Australia. It is an indication of the determination and solidarity of Australia and the Cairns Group—which Australia founded and chairs—that the Round negotiations included a comprehensive mandate on agriculture, which led to a genuinely trade liberalising outcome. The negotiations have broken new ground by extending fully the rules and disciplines of the GATT to trade in agriculture.

The benefits will flow from reform commitments on a formula basis to world agricultural trade in three major areas: market access, domestic support and export subsidies. As a result of improved market access, the Australian Bureau of Agricultural and Research Economics, ABARE, has estimated that Australia can expect by the end of the implementation period to export annually an extra $A330 million in beef, $A210 million in dairy products, $A320 million in wheat, $A50 million in coarse grains, $A30 million in rice and $A10 million in sugar. Over the next six years, there will be a major reduction in the level of trade distorting export subsidies. They are to be cut by 36 per cent in value and by 21 per cent in volume. Domestic support will be cut by 20 per cent.

The agreement on the application of sanitary and phytosanitary measures—the SPS agreement—will also assist Australian exporters in ensuring that such measures are only maintained to the extent necessary to protect human, animal or plant life or health, and are scientifically justifiable.

Neither the SPS agreement nor the agreement on technical barriers to trade, the revised standards code, will alter Australia's ability to maintain more stringent measures than provided for in international standards if this is appropriate to our requirements. Australia could, however, be called upon to demonstrate that any more stringent standards do not unjustifiably restrict trade or discriminate between countries.

With our Cairns Group members, we will need to work to ensure that the Round commitments are implemented fully and promptly. With regard to measures required by Australia on agriculture, amendments are required to the current support arrangements for the dairy industry and to the tariff measures applicable to cheese and tobacco. Amendments are also required to tariffs on a small number of processed agricultural products to conform with the Uruguay Round agricultural tariff reduction formula.

DAIRY PRODUCE (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994

The purpose of this bill is to amend the Dairy Produce Act 1986 by terminating market support payments to the Australian dairy industry for exports beyond 30 June 1995. The current dairy market support payments, which were introduced in the 1986 dairy plan, are classified as an export subsidy under the Uruguay Round agreement. Australia is committed to reduce export subsidies over the period 1995–96 to 2000–01 by 36 per cent in expenditure terms and by 21 per cent in volume from the base period of 1986–90.

As the current market support payments are not constructed in a manner which enables the volume of supported exports to be reduced, a revised approach is necessary. The government and the dairy industry have agreed to a two-stage approach. The first stage comprises the amendments of this bill to

terminate market support payments for the Australian dairy industry for exports beyond 30 June 1995, thereby satisfying Australia's commitments on subsidies by removing the export subsidy. In the event of the WTO Agreement not coming into force until after 1 July 1995, provision is made for the termination of the market support payment scheme to be delayed until the first day of the next financial year after the financial year when the agreement enters into force.

The second stage will involve the introduction of legislation in the autumn sittings next year, amending the Dairy Produce Act 1986 to enable the implementation of a new domestic market support mechanism to apply from 1 July 1995 until 30 June 2000. The government has committed itself to deliver the same level of support as applied under the existing scheme.

Tariff reductions

The second major category of Uruguay Round outcomes is tariff reductions. The Uruguay Round achieved the biggest market access tariff reductions package ever in GATT negotiations. Overall, tariffs facing Australia's exports will be cut on average by around 50 per cent on a trade weighted basis. More than 86 per cent of Australia's exports will now enjoy predictable market access through bound tariff commitments by most of our major trading partners. The average bound tariff rate facing Australian exports of industrial products will be less than two per cent on a trade weighted basis while nearly 50 per cent of Australia's exports will enjoy duty-free access to significant markets.

Australia will meet virtually all of its commitments within the framework of the government's current program of phased tariff reductions. While more than 95 per cent of Australia's tariffs will be bound, in general these commitments will be at levels above the current applied tariff rates or the rate which will apply when the current program of tariff reductions has been fully implemented. Based on Industry Commission analysis, the export gains for industrial products will be about $3 billion per annum when the majority of the cuts are implemented by 1 January 1999.

CUSTOMS TARIFF (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994

This bill amends the Customs Tariff Act 1987 to give effect to Australia's tariff binding commitments arising from the Uruguay Round negotiations. As a result of the government's domestic economic reform program there will be only a very limited number of minor adjustments to the tariff reduction program announced in the March 1991 industry statement.

On light beer and some medical equipment items tariff phasing will continue beyond 1996 levels. On these lines the tariffs will phase to zero by 1999. In both cases, there is industry support for Australia's participation in these sectoral arrangements which will result in most major markets also reducing tariffs to zero.

For a few motor vehicle parts, some technical adjustments will be made to bring certain tariff lines into conformity with our GATT obligations. These products—which include clutches and gaskets, air conditioning components, electric motors and electrical component—are part of a larger group of products that were recently restored to the motor vehicle plan. As a consequence, the tariffs were temporarily raised to 15 per cent, consistent with the industry rate for this sector. The tariffs on the 12 lines affected will be phased down to the bound

rates negotiated in the Round. In all cases the final tariff level will remain at or above rates which have applied in recent years.

For a small number of agricultural products, some modest additional tariff cuts will also be required beyond the government's tariff reduction program. These adjustments will be necessary in order for Australia to comply with the minimum 15 per cent cut per tariff line on the base rates required by the agriculture agreement. This bill also introduces the changes necessary to give effect to Australia's Uruguay Round obligations applying to cheese and tobacco.

Differential sales tax on fruit juices

One of the fundamental pillars of the GATT is the principle of national treatment in which each country gives the products of all other countries treatment no less favourable in their market than that given to like domestic products in terms of internal rules, regulations, taxes and other charges.

The differential in taxes between fruit juice which has 25 per cent or more Australian content and other juices is not consistent with this principle. However, Australia has been able to retain this tax arrangement because of the 'grandfather' clause allowing countries joining the GATT to apply the multilateral rules to the fullest extent not inconsistent with their own legislation existing when they joined. The establishment of the World Trade Organization involves the removal of the 'grandfather' provision and, hence, the removal of the GATT coverage provided to the Australian local content sales tax arrangement on fruit juice.

The requirement to change GATT-inconsistent measures maintained under the 'grandfather' clause applies to all of the 123 member countries of the GATT-WTO which have unfair and discriminatory trade practices under this provision. As an export dependent country, Australia stands to benefit from the removal of discriminatory barriers to trade which other countries may have maintained under the 'grandfather' clause.

SALES TAX (WORLD TRADE ORGANIZATION AMENDMENT) BILL 1994

This bill will amend the Sales Tax (Exemptions and Classifications) Act 1992. Under the existing sales tax law, particular juice products are taxed at a concessional rate—currently 11 per cent—if they are made with fruit or vegetables grown in Australia, New Zealand or Papua New Guinea, and meet certain conditions. Very broadly, the products which are covered are non-alcoholic drinks, concentrates and cordials for making non-alcoholic drinks, and food flavourings. Non-alcoholic carbonated beverages must consist wholly of juices from fruit or vegetables grown in Australia, New Zealand or Papua New Guinea for the concessional rate to apply. Juice products made from juices of fruits or vegetables grown in other countries, or which have less than 25 per cent by volume of fruit or vegetable juice, are taxed at the general rate—currently 21 per cent.

As a result of this amendment, the distinction between juice products made from Australian, New Zealand or Papua New Guinean fruit or vegetables and juice products made from fruit or vegetables from other countries will be removed. The concessional rate—11 per cent—will apply to the same range of juice products which fall within the current concession, but without the requirement that the fruit or vegetables used in making them be grown in Australia, New Zealand or Papua New Guinea. The requirements as to the

minimum percentage of fruit or vegetable juices in the goods which qualify for the concession will not be changed. The amendment will come into effect on either 1 January 1995, or the date the World Trade Organization Agreement comes into force for Australia, whichever is the later.

Intellectual property

Australian exports with an intellectual property content contribute billions of dollars in revenue to Australia. These include industries that rely on copyright law, such as film-making, music recording, computer software engineering and the publishing industry, high value manufactures such as telecommunications, chemicals, pharmaceuticals and advanced technology products, and wines, whose distinct geographical indications are used as a marketing tool.

The agreement on trade related aspects of intellectual property rights—the TRIPS agreement—will significantly assist the development of our cultural and knowledge industries. It will provide a single multilateral framework of principles, rules and disciplines dealing with a broad range of intellectual property including trade marks, patents, copyright, integrated circuits, geographical indications, plant variety rights and confidential information. It also provides procedures for consultation and dispute settlement, for border controls and criminal procedures for the enforcement and deterrence of piracy and counterfeiting.

There are three bills before the House dealing with Australia's TRIPS obligations: the Copyright (World Trade Organization Amendments) Bill 1994, the Patents (World Trade Organization Amendments) Bill 1994 and the Trade Marks Bill 1994.

COPYRIGHT (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994

As Australia is a member of the Berne Convention for the Protection of Literary and Artistic Works, our law already complies with most of the copyright obligations in the TRIPS agreement. However, three changes to the Copyright Act 1968 are necessary to comply fully with the TRIPS provisions.

These changes are:

- to grant rental rights in relation to computer software and sound recordings;
- to extend the scope of performers' protection; and
- to expand the border enforcement provisions in the Act.

To provide a reasonable opportunity for transition for affected businesses, advantage will be taken of the implementation period allowed by the TRIPS agreement and they therefore will not enter into effect until later in 1995.

PATENTS (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994

Australia's patent law, by and large, accords with the minimum standards and principles set by the TRIPS agreement. However, the Patents (World Trade Organization Amendments) Bill 1994 proposes that the Patents Act be amended in four areas in order that our patents legislation is fully consistent with the TRIPS agreement.

First, the term of a standard patent will be increased from 16 years to 20 years. This will apply to every patent whose 16th anniversary falls on or after 1 July next year. This change will subsume the special provisions for extending

the term of pharmaceutical patents to 20 years. The government nevertheless remains committed to providing an effective 15-year term for those patents and is working closely with industry to that end.

Second, in certain infringement proceedings, it will be over to the defendant to prove that his or her product was obtained by a process other than the patented process. This will be: where the product is identical with those obtained by the patented process; the court considers infringement very likely; and the patentee has taken reasonable steps to establish, without success, the process actually used by the defendant. This will remedy, to a large extent, a difficulty with the present system in successfully bringing infringement proceedings in respect of a process patent.

Third, the conditions under which compulsory licences to work a patented invention are granted by a court will be extended to take account of the economic requirements of both the patentee and the person wishing to work the patented invention. And fourth, the conditions under which the Commonwealth or a state can use a patented invention without the authorisation of a patentee will be brought into line with internationally accepted norms.

The transitional provisions will help ensure that persons who might find themselves at a sudden commercial disadvantage in the short term because of the increased patent term will have adequate recourse to remedies.

TRADE MARKS BILL 1994

Since the Commonwealth first legislated in trade marks matters in 1905, there have been three significant reviews. The first two, in 1938 and 1954, resulted in the existing Trade Marks Act 1955. The third, which stems from a desire to streamline the trade marks registration system, is under way right now. This review takes account of Australia's TRIPS obligations. It also reflects the government's commitment to having in place the best possible registered trade marks system for Australian industry.

The Trade Marks Bill 1994 was introduced in the Senate as an exposure draft earlier this year by the Minister for Small Business, Customs and Construction (Senator Schacht) who sought comments on it until 31 August. Those comments are at present receiving consideration. The bill now before the House is, for all intents and purposes, the same bill as that introduced. It differs only in relation to minor TRIPS specific details.

The key changes required to make the existing trade marks law consistent with the requirements of the TRIPS agreement relate to the definition of a trade mark, and the tests for registrability and infringement. As public comment had already been sought on the Trade Marks Bill at the time of the Marrakesh ministerial conference in April, and as amendment to current legislation and administrative procedures would be complex, it is expedient to proceed with passage of the Trade Marks Bill to enable Australia to accept the WTO Agreement.

To the extent that the bill does go further than is required in relation to our TRIPS obligations, the government will be taking account of comments received during the public exposure period and will make any necessary changes. It is proposed to introduce an amending bill early in the Autumn sittings of 1995.

Services

The fourth major category of Uruguay outcomes is services. The main outcome for Australia in respect of trade in services was the achievement of clear framework rules which can apply to all service sectors. The other main outcome—country market access commitments—will set the world on the course of services trade liberalisation, although there will need to be future rounds of negotiations to match what has been achieved in goods.

By removing discrimination and adopting clear rules and disciplines, the General Agreement on Trade in Services—the GATS—will assist Australian services exporters to overcome trade barriers. It will produce export and investment opportunities in the telecommunications, banking, insurance, professional and business service sectors.

A sample of tangible benefits to Australia's services exporters from the GATS includes:

- more liberal access to Japan's legal services sector;
- enhanced access to Japan's insurance market/cross-border freight;
- Thailand is phasing out preferential access for United States professional service providers over a 10-year period;
- Korea has committed to eliminate discrimination in favour of United States insurance providers;
- Korea has begun to open its financial sector to foreign competition;
- many countries have made commitments on movement of personnel, a key factor in exporting professional and business services, and further work is slated for this area commencing next year; and
- all the developed countries, most ASEAN countries, Korea and Japan have made commitments on value-added telecommunications services—this includes data transmission, facsimile, private leased services, on-line information, data processing, and so on.

Australia only undertook commitments that reflect the current situation for those services included in its schedule, and it took out exemptions to cover two minor pre-existing MFN-inconsistent measures. States agreed to the commitments listed in the Australian schedule. No legislative changes will be required to implement the GATS undertakings made by Australia.

Beyond the trade deals I have just outlined, the Uruguay Round was beneficial for Australia in other ways. The World Trade Organization Agreement provides for improved arrangements for managing the implementation of the Uruguay Round agreements through the establishment of the World Trade Organization, the WTO.

The WTO will administer all the agreements on goods, services and intellectual property, and will manage operations such as the trade policy review mechanism and the integrated dispute settlement system. The WTO will also provide a forum for maintaining the momentum for freer and more open trade.

The Uruguay Round outcomes also include agreements which will improve the effectiveness and transparency of mechanisms for addressing difficulties which inevitably arise in international trade—for example, the agreements relating to anti-dumping and subsidies and countervailing.

Anti-dumping/Countervailing

The arrangements concluded under the Uruguay Round relating to anti-dumping and countervailing, formally titled the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and the Agreement on Subsidies and Countervailing Measures, provide for greater precision and predictability in procedures for the application of anti-dumping and countervailing measures by all countries. In this respect, however, the WTO Agreements will require no fundamental change to Australia's present approach on anti-dumping and countervailing.

Under the new WTO Agreement on anti-dumping there are more specific requirements on when and how anti-dumping action can be taken, and the methodologies to be used by authorities in the conduct of investigations—including for determining dumping and injury—are set out in greater detail. The agreement introduces disciplines to ensure investigations do not proceed where dumping margins are very small or the alleged dumped imports are only a very small proportion of total imports.

With regard to subsidies and countervailing measures, the WTO Agreement introduces a definition of a subsidy and also defines categories of subsidies that are prohibited, actionable and non-actionable respectively. This categorisation addresses a number of grey areas, while establishing limits on the extent to which measures can be countervailed. The agreement also contains clearer and more detailed provisions on the procedural and methodological requirements for the application of countervailing duty measures against subsidised, injurious imports.

The common procedural and methodological aspects of the anti-dumping agreement and the subsidies and countervailing measures agreement have been largely harmonised. Both agreements provide for enhanced dispute settlement procedures.

Australia's export composition is rapidly changing towards more elaborately transformed manufactures directed increasingly to the newly industrialising economies. These countries are moving towards more open regimes, replacing non-tariff barriers with tariff-only regimes and, at the same time, reducing the level of protection provided through tariffs. These countries are looking increasingly at introducing anti-dumping laws. It is in Australia's interest that international rules on dumping be as transparent as possible. To implement the provisions of the WTO agreements on anti-dumping and subsidies and countervailing, the following two bills are before the House:

CUSTOMS LEGISLATION (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994

This bill will amend the Customs Act 1901 and the Anti-Dumping Authority Act 1988 to bring Australia's anti-dumping and countervailing regimes into conformity with the standards and principles arising from the Uruguay Round agreements. The major amendments can be summarised as follows:

- in addition to the current arrangements for determining dumping margins based on a comparison of individual export prices to Australia with individual domestic selling prices—normal values—in the country of export, the Customs Act 1901 will allow for the comparison of a weighted average of the export prices to a weighted average of normal values, as well as an

option for comparing individual export prices with a weighted-average based normal value. This means that where there are price variations for the same product within a market, a weighted average can be used to assess a representative whole;

- the minister will be required to reject an application, or terminate an investigation, where dumping margins or levels of subsidisation are *de minimis* or there are negligible volumes of dumped or subsidised imports; quantified thresholds for each of these concepts have been included;
- applications for an investigation to be initiated must be supported by a major proportion, as defined, of the total Australian industry and there is greater definition of the requirements of an application;
- the procedures for duty imposition have a clear emphasis on company specific rates rather than broad country measures, and provision for residual rates to apply for exporters other than those specified is introduced;
- the normal time limit of holding dumping securities for four months has been extended to six months—the corresponding provision for countervailing duties remains at four months;
- there is comprehensive guidance on identifying forms of subsidies and calculating the levels of subsidisation;
- inclusion of provision for preferential treatment for developing countries in countervailing investigations, essentially via less stringent benchmarks for establishing *de minimis* subsidy levels and negligible volumes of exports for termination purposes.

CUSTOMS TARIFF (ANTI-DUMPING) (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994

The main effect of this bill is in regard to the level of any duty payable for the period prior to the date of the final decision to impose duties. The current practice of limiting these earlier duties to the level of any security has now been formalised.

Conclusion

At the Marrakesh ministerial meeting in April 1994, trade ministers of over 100 countries agreed to give high priority to completing legislative processes according to their respective constitutional requirements so as to be able to agree to the entry into force of the World Trade Organization on 1 January 1995. The major trading nations, particularly the United States, Japan and the European Community, are working to this goal. Despite the delay in the United States vote, the government remains confident that the majors and a large number of our other trading partners will be in a position to agree to the entry into force of the WTO on 1 January 1995.

To receive the benefits of the Uruguay Round agreements from the time our major trading partners start to implement their commitments, it is essential Australia be in a position to accept the World Trade Organization Agreement from the target date of 1 January 1995. For Australia, acceptance of the WTO means much more than acceptance of the trade deals in individual sectors. It means continuing to be an influential member of a comprehensive and dynamic multilateral agreement which is vital to Australia's trade and economic interests. I commend the bills to honourable members.

The passage of this legislation, and supplementary provisions, allowed the Minister for Trade, Senator McMullan, to issue the following press release on 6 December 1994:

> The Minister for Trade, Senator Bob McMullan, said today that Australia has joined the United States and other trading nations in a major breakthrough for global trade with the Senate approving the trade liberalising World Trade Organization (WTO) legislation.
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> The House of Representatives approved the legislative package in September.
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> Senator McMullan said Australia can now ratify the GATT Uruguay Round agreements which were finalised at Marrakesh in April this year.
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> "The US Senate approved their WTO legislation last Friday, and all reports suggest the European Union and Japan will do likewise to allow the WTO to commence operations from 1 January 1995", Senator McMullan said.
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> "The benefits flowing to Australia from the WTO agreement, when it is fully implemented, are estimated to be in the order of $5 billion additional exports annually.
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> "Of equal significance is the confidence the ratification of the Uruguay Round outcomes will give to the world trading system.
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> "If the world failed to give the go-ahead, the rules-based multilateral trading system, which has served Australia and the post-war world so well, would have been endangered.
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> "The WTO package of trade liberalising measures will establish a strong foundation for the creation of further opportunities for Australian companies through APEC.
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> "The days when countries could stand aside and isolate themselves from world developments have long since gone.
>
> "Our polices are aimed at ensuring that Australia is equipped to secure its place in the 21st Century and to play a positive international and regional role to guarantee our economic security."

GATT—Federal Clause

The following is the text of a question on notice and answer given by the Minister for Trade, Senator McMullan, in the House of Representatives on 13 October 1994, about actions by State or local authorities which might be inconsistent with the General Agreement on Tariffs and Trade (House of Representatives, *Debates*, 13 October 1994, p 2063):

> Mr Hollis asked the Minister representing the Minister for Trade, upon notice, on 24 August 1994:
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> (1) Did the Minister for Trade and Overseas Development state in his answer to question No. 854 (*Hansard*, 21 June 1991, page 5344) that (a) Australia had not sought to defend the GATT-inconsistent actions of its subcentral authorities under Article XXIV:12 since 1981 and (b) Canada was the only contracting party which had sought to do so since 1981.
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> (2) What will be the position of subcentral authorities as a result of the negotiations at Marrakesh on 15 April 1994.

Mr Bilney—The Minister for Trade has provided the following answer to the honourable member's question:

(1)(a) I can confirm that the Minister for Trade and Overseas Development stated that no actions by Australia's subcentral authorities had been subject to examination in a GATT panel established under the GATT dispute settlement procedures, and consequently that the issue of Australia seeking to defend these actions in a GATT panel had not arisen. There has been no change in the situation since the Minister for Trade and Overseas Development provided that answer.

(b) I can confirm that the Minister for Trade and Overseas Development stated that Canada was the only GATT contracting party which had sought to defend the otherwise GATT-inconsistent actions of its subcentral authorities under Article XXIV:12 in a GATT panel. Since the Minister provided that answer on 21 June 1991 there have been two additional panels in which contracting parties have sought to defend such actions under Article XXIV:12. The contracting parties involved have been Canada and the United States.

(2) The Uruguay Round Agreements signed at Marrakesh on 15 April 1994 have confirmed the existing GATT provisions in Article XXIV:12 requiring a member country to take such reasonable measures as may be available to it to ensure observance of the provisions of the GATT by regional and local governments and authorities within its territory.

Convention on Nuclear Safety—Australian Signature

The Foreign Minister, Senator Gareth Evans, issued the following press release on 22 September 1994:

The Minister for Foreign Affairs, Senator Gareth Evans, today announced Australian signature of the Nuclear Safety Convention.

The Convention was signed by the Australian Permanent Representative to the International Atomic Energy Agency, Mr Ronald Walker, when it opened for signature on 20 September during the IAEA General Conference.

"Conclusion of the Nuclear Safety Convention establishes an important international framework for achieving and maintaining high standards of safety and levels of emergency preparedness at nuclear power plants", Senator Evans said.

"Although Australia has no nuclear power plants, our involvement in negotiations and our early signature of the Convention reflects our determination to contribute to a continuous improvement in global standards for the safety and physical protection of nuclear materials."

An important part of the Convention is its provision for a peer review process in which parties meet to discuss reports on the measures taken by other signatories to implement the obligations of the Convention.

"This process will enhance transparency and confidence in relation to the nuclear power programs of signatories", Senator Evans said.

The Nuclear Safety Convention was negotiated under the auspices of the IAEA. It is the third in a series of safety-oriented conventions following the 1986 Chernobyl accident. The other two are the 1986 Conventions on the Early Notification of a Nuclear Accident and on Assistance in the Case of a Nuclear

Accident or Radiological Emergency. Australia is a signatory to the two earlier Conventions.

Energy Charter Treaty—Australian Signature

The following is the text of a press release issued by the Minister for Trade, Senator McMullan, and the Minister for Primary Industry and Energy, Senator Collins, on 7 December 1994:

The Australian Government has decided to sign the Energy Charter Treaty when it is opened for signature in Lisbon on 17 December 1994, the Minister for Trade, Senator McMullan and the Minister for Primary Industries and Energy, Senator Collins, announced today.

"The Treaty represents a milestone in the opening up of the countries of the former Soviet Union and of Central Europe," the Ministers said.

"It will help to promote fairer, more open access to foreign markets for Australia's energy products and provide more predictable, transparent and secure opportunities for Australian investment interests in signatory countries. The Treaty provides Australia with GATT rights with respect to the energy sectors of the countries of the former Soviet Union, and we will also acquire an investment promotion and protection agreement that is subject to international arbitration, with these and other signatory countries.

"As one of the world's major exporters of energy products, Australia participated actively in the negotiations and will continue to participate in the Energy Charter Conference that will be established by the Treaty. The negotiations began as a European process. We welcome the fact that the Treaty has been negotiated as a multilateral instrument and does not establish a discriminatory arrangement prejudicial to Australian interests."

The Ministers noted that the Government had worked with State and Territory Governments and with Australian companies and industry associations throughout the negotiations, and welcomed the support they had provided in developing Australia's negotiating position.

"The Treaty is based on standards that have been developed under existing international arrangements (such as the GATT) to which Australia is already a party. It will not require changes to Commonwealth Government policy. The Treaty will not impact on the way in which the States and Territories now determine areas for investments, the commercial criteria they are using for selecting investors, or their right to negotiate individual contracts with investors which establish unique terms and conditions for the establishment and conduct of resource projects," the Ministers said.

Negotiations on the Treaty commenced in early 1992, following the adoption of the non-binding European Energy Charter by over fifty countries, including Australia, in December 1991. The basic aim of the Treaty is to integrate the energy sectors of the former Soviet bloc countries into a comprehensive, multilaterally agreed set of rules to promote and protect foreign investment, international trade and sustainable economic development based on market principles and sound environmental guidelines.

The Government has decided that Australia will not apply the Treaty until it is applied by Russia or another energy-rich country of the former Soviet Union, as the benefits of the Treaty to Australia are potentially greatest in these

countries. It is expected that it may take those countries some time to complete their ratification of the Treaty.

The following are extracts from the answer to a question without notice on Australian signature of the Treaty in the Senate by the Minister for Trade, Senator McMullan (Senate, *Debates*, 7 December 1994, p 4080):

> My colleague Senator Collins and I have issued a statement confirming that the Australian government has taken the decision to sign the Energy Charter Treaty. We will be signing it at a signing ceremony to be held in Lisbon on 16 and 17 December. The treaty will promote a fairer and more open playing field for our exporters of energy products by extending GATT rights and obligations to the countries of the former Soviet Union. It will provide much more predictable, transparent and secure opportunities for Australian investment interests in the signatory countries. It also provides an investment promotion and protection agreement with respect to the energy sectors of the countries of the former Soviet Union, which we would not otherwise have had.
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> The history of this negotiation is very interesting and illuminating. It began as a European initiative. Australia had some concerns that if it continued in that manner it might have developed into a preferential arrangement that discriminated against Australia's interests...
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> The treaty has now been negotiated as a multilateral instrument. It has been a significant benefit strongly supported by Australian industry, which has urged us to sign this treaty and which has complimented us on the consultative process which has led to this outcome...Industry associations such as AMIC (Australian Mining Industry Council), the Business Council, the coal industry and the companies involved have strongly supported the outcome and the process.
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> The one final piece of advice that I wish to give the Senate is that the provisional application and ratification of this treaty will not come into effect until Russia, or at least one other major energy-rich country of the former Soviet Union, applies the treaty because that is where the concrete benefits to us will flow—they will flow from the benefit in either Russia or somewhere such as Kazakhstan, one of the energy-rich countries of the former Soviet Union.
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> This is a very good example of how multilateral negotiations and treaties can advance Australia's interests. It complements in a timely way the outcome of the Uruguay Round. It has, apart from significant benefits for Australia, significant consequential benefits in terms of sound economic growth in the countries of the former Soviet Union which, while not of such direct benefit to Australia, are important for global security and economic growth from which Australia is a beneficiary as is the rest of the international community.

Finally, it may be noted that Australia in signing the Treaty made two Declarations. One Declaration specifies that Australia will not be applying the Treaty provisionally. The other Declaration, which relates to the application of the Trade-Related Investment Measures article, is as follows:

> Australia notes that the provisions of Articles 5 and 10(11) do not diminish its rights and obligations under the GATT, including as elaborated in the Uruguay Round Agreement on Trade-Related Investment Measures, particularly with respect to the list of exceptions in Article 5(3), which it considers incomplete.

> Australia further notes that it would not be appropriate for dispute settlement bodies established under the Treaty to give interpretations of GATT Articles III and XI in the context of disputes between GATT Contracting Parties or between an investor of a GATT Contracting Party and another GATT Contracting Party. It considers that, with respect to the application of Article 10(11) between an investor and a GATT Contracting Party, the only issue that can be considered under Article 26 is the issue of the awards of arbitration in the event that a GATT panel or the WTO Dispute Settlement Body first establishes that a Trade-Related Investment Measure maintained by the contracting party is inconsistent with its obligations under the GATT or the Agreement on Trade-Related Investment Measures.

Technical Co-operation Agreement with Indonesia

Following some years of negotiations, a bilateral Agreement was concluded in 1994 with Indonesia, providing for cooperation in scientific research and technological development. The Agreement seeks to promote scientific and technological cooperation between Australia and Indonesia in the fields specified, namely human resources development, global weather and environment, marine scientific research and technology, biotechnology, agriculture, aircraft and space technology, telecommunications and information technology, instrumentation and other areas as may be mutually decided. Scientific and technological cooperation under the Agreement may include participation in joint projects, exchanges of information, visits and exchanges of scientists and other experts or technical personnel, provision of materials and equipment and education and training. Cooperative activities under the Agreement are to be coordinated and facilitated by Executive Officers designated by each Party. The dissemination and utilisation of intellectual property covered by the Agreement will be undertaken in accordance with principles set out in the Agreement.