

VIII. International Economic Law*

GATT—Uruguay Round—Conclusion

On 16 December 1993 in response to a question without notice from Dr Blewett (Bonython, ALP), the Prime Minister, Mr Keating, made the following statement regarding the conclusion of the Uruguay Round of multilateral trade negotiations (House of Representatives, *Debates*, vol 191 (1993), p 4210):

I am delighted to be able to report to the House that the Uruguay Round was concluded with the gaveling of the final act by the trade negotiating committee chairman earlier this morning our time. Final market access schedules are to be submitted by 15 February next year, prior to the final meeting of the ministerial committee of the trade negotiating committee in Marrakesh in April 1994. This has been a long, difficult and very rewarding negotiation. It is the largest international negotiation of its kind and the largest world trade deal ever by a huge margin...

I spoke to Senator Cook and his team of officials in Geneva this morning and congratulated them, on the government's behalf, for the very fine achievements which will greatly enhance the prosperity and welfare of the round for fellow Australians.

I think we should record the faith the government has shown in the multilateral trading system and our belief in such a system serving not just Australia and the world well, but imagining an international trading world where there could be a higher level of growth and a higher level of incomes. This is very much in accord with the model that this government has set for Australia from the early 1980s onwards—in removing exchange controls in the early 1980s, in lowering border protection from 1988 on a phased basis to 1991, and then of course announcing further reductions in tariffs going way down to the year 2000.

That open, competitive model, which it took a Labor government to put into place in this country, was complemented by the structures we built for Australia internationally. The Treasurer built these first as Minister for Trade with the Cairns Group in 1986. We then supported them by a succession of ministers and efforts to build the possibility the Uruguay Round had for extending the Kennedy Round from goods, into things such as services, intellectual property rights and, particularly for Australia, agriculture...

Australia has played a very substantial role in our leadership of the Cairns Group and, as well as that, in the negotiation with the European Union and the United States. The consequence is a deal which will now set a backdrop in world trade as the world community moves to a new phase of commerce with these great societies rejoining the world economy—in the case of Russia, for the first time since the First World War; in the case of China, substantially, in this

* Report prepared by the International Trade and Economic Law Group.

modern environment, for the first time ever; and with India, another major state, now emerging as a major player in the world of commerce and trade...

It is a very different world today from yesterday as a consequence of this happening. It means that we will now see great opportunities for growth in trade. For Australia, the Industry Commission suggests that the benefits may be as much as a \$5 billion increase in exports and a \$3.7 billion increase in Australian GDP as a result of the round. That model does not capture all of the dynamic and confidence effects which would obviously come from this kind of change.

Nonetheless, it does point to a minimum increase of over \$2 billion in our manufactured exports and a \$2 billion increase in resource exports, as well as a \$1 billion increase in agricultural exports. According to the Industry Commission, the transport industry could see exports rise by well over \$200 million, with the same for machinery and the equipment industry. ABARE tells us that the wheat industry may see its export returns rise by over \$250 million. The meat industry could see returns rise by over \$400 million.

These are fairly spectacular changes. It might be worth mentioning that there will be 50 million tonnes less subsidised wheat and flour on the world market over the six-year implementation period compared with now. United States and European union subsidised wheat exports are likely to be down one-third by the year 2000 on current levels. But, as everybody expected those subsidies to continue, it will be down about half of what everyone expected it might have been by the year 2000. This is quite a spectacular outcome.

GATT—Uruguay Round—Conclusion—Australian benefits

On 16 December 1993 the Minister for Foreign Affairs, Senator Evans, provided the following response to a question without notice from Senator Foreman (ALP, South Australia) (Senate, *Debates*, vol 161 (1993), p 4824):

The Prime Minister said yesterday that there is no doubt that this is really outstanding news for Australia with the Uruguay Round representing the largest ever world trade deal and a much needed shot in the arm for the world economy. Australia will be a major beneficiary of the round with recent analysis indicating that exports could increase by as much as \$5 billion annually when the round fully takes effect, and Australia's GDP could increase by up to \$3.7 billion annually. All sectors of the Australian economy—agriculture, manufacturing and services—will benefit.

The conclusion of the round does represent, in particular, a turning point for world agricultural trade and for Australian agriculture. After years of increasing exports of heavily subsidised agricultural products by the United States and the European Community, we will now see a steady reduction in export subsidies for the rest of this decade.

Senator Cook set as his main task while he was in Geneva obtaining the best possible market access deal for Australia; this he has done. Among those receiving major improvements in market access is the beef industry where the access level into the US market of 380,000 tonnes negotiated by Senator Cook will be over 25 per cent higher than the likely restraint level applicable in 1994. Importantly, Australian exporters of beef will, from 1995 onwards, no longer be subject to the vagaries of the meat import law formula, which has seen our access into the US market decline over the last four years. On top of this, beef exporters will also gain from greatly improved access into the Korean beef

market and, while there are already rapidly expanding exports to Japan, they will benefit from a further reduction in the Japanese beef tariff. Beef, however, is not the only winner; other agricultural commodities such as rice, dairy and horticulture will all register major gains.

In the manufacturing sector the GATT round has delivered the largest result ever. Indeed, the Uruguay Round outcome is 30 times larger than that obtained from previous rounds. As a result, Australia's exporters of manufactured goods will see a cut in tariffs of more than 50 per cent on average, while our exporters of coal will also see an improvement in market access, particularly into Europe.

The agreement on services provides for the first time international trade rules, which will enable Australian exporters of services, already worth some \$15 billion, to compete on the same basis as other services exporters. There will be major benefits to Australian exporters, particularly of intellectual property. For smaller and medium sized economies, such as Australia's, an effective rules based international trading system does provide the best opportunities for increasingly liberalised trading conditions. The strengthening of GATT and its institutional structure through the establishment of what I now understand is to be called the World Trade Organisation, WTO, is of itself a major benefit.

GATT—Uruguay Round—Conclusion—Agriculture

On 16 December 1993 in response to a question without notice the Minister for Primary Industries and Energy, Mr Crean, made the following statement regarding the impact of the Uruguay Round on Australian agriculture (House of Representatives, *Debates*, vol 191 (1993), p 4212):

Let me join with the Prime Minister in congratulating all of those on this side of the House who have been responsible for steering this very significant outcome, and for what the Prime Minister has identified as very good news for the Australian economy. The deal that has been struck in the GATT round is particularly good news for our agricultural and mining sector. The farm sector, which has been long plagued by corrupt and subsidised world markets, which have led to depressions of the prices that they have got and restrictions on access, has been a significant beneficiary of this outcome.

The outcome establishes the discipline, the ground rules, for reform in the world marketplaces, that will lead to much freer markets as a result. The Prime Minister has indicated that for agriculture the gains are in excess of \$1 billion; for the beef industry, on ABARE's analysis, the gains are up to \$480 million when fully implemented; for dairy products, \$170 million; for wheat, \$250 million; and for coarse grains, in addition to that, some \$60 million.

The effect of this decision when it starts to flow in concrete terms from 1995 will mean that there will no longer be a meat import law or section 22 quotas in the US for Australian beef and that the European Union and the US will be exporting substantially less subsidised wheat into world marketplaces. There will no longer be bans on rice imports in Japan and Korea and, importantly, what we have also been able to secure is that the US will not use its EEP program to subsidise rice sales into those markets. On top of that, we have secured the retention of the Andreissen assurance which will protect Australian beef markets in Asia from subsidised European beef.

The Minister for Primary Industries and Energy, Simon Crean MP, issued the following media release on 16 December 1993 regarding the impact of the Uruguay Round outcome on Australian agriculture:

“The conclusion of the GATT Round is very good news for the farm and mining sectors and the Australian economy as a whole,” Mr Crean said.

“The farm sector has long been plagued with corrupted and heavily subsidised world markets for agricultural products. This has lowered the prices farmers receive for their products and greatly restricted market access in a number of key consuming countries,” he said.

The GATT Round conclusion will provide much needed disciplines on agricultural subsidies and is an important step in the freeing up of world trade more generally.

“The Australian Bureau of Agricultural and Resource Economics (ABARE) has estimated that when the GATT Agreement is fully implemented, Australian farmers stand to gain \$1 billion in additional exports,” the Minister said.

Major gains will be achieved for beef (up to \$400 million), wheat (up to \$250 million) and dairy products (up to \$170 million). Important gains will also accrue to coarse grains, rice, sugar, sheep meat, horticultural products and wine...

Australian beef producers will benefit from increased access to the US and Korean markets, further reductions in Japanese tariffs and a continuation of the Andriessen Assurance under which subsidised EU beef does not enter key markets in Asia.”...

Australia has successfully sought a commitment from the US that it will not use its Export Enhancement Program (EEP) to subsidise sales to these two new markets. That means that Australia’s farmers will be competing to secure a share of the market on fair and open grounds.”

“Miners also stand to gain substantially, with coal exports expected to be boosted by \$0.5 billion and good potential gains for steel and other mineral exports,” the Minister said.

The GATT Round is good news not only for farmers and miners, but it is also good news for our value adding food and fibre processors and service sectors who will also gain from lower tariffs on industrial products and associated services. As incomes rise from a freer and more open world trading system, the demand for quality value added food and fibre products will grow strongly, creating new opportunities for our primary producers.

Regional Australia can prosper if we more effectively develop the linkages between our efficient primary producers and the manufacturing and services sectors of the economy.

The successful GATT Round will reinforce and accelerate the trend to do more with our primary products before we export them as well as create important opportunities for the export of services such as grain handling and other well developed Australian technologies.”

GATT—Uruguay Round—Conclusion—Copyright

The following media release regarding the impact of the Uruguay Round of Trade Negotiations on Copyright was issued by the Minister for Justice, Mr Kerr, on 16 December 1993:

Protection against the piracy of Australian copyright material will be strengthened as a result of the Uruguay Round of GATT, the Minister for Justice, Duncan Kerr, said today.

The Minister said the Uruguay Round package secured stronger global copyright protection for Australian creators by requiring all GATT member nations to adopt specific measures to prevent copyright infringement.

The GATT agreement on intellectual property rights sends a clear message to would-be pirates of copyright material that piracy will not be tolerated by any of the nations which are signatories to the GATT.

Australian copyright material contributed \$320 million in export revenue in 1992. The Uruguay Round has ensured security and growth for this major contributor to our economy.

The trade-related aspects of intellectual property rights (TRIPS) in the Uruguay Round will create a more secure world copyright environment and will thus encourage greater creativity of works and materials protected by copyright, Mr Kerr said.

As a result, for consumers, there will be a greater range of books, plays, records, films, computer programs, databases and art. The list goes on.

At present Australian copyright materials, depending on their form, are protected by two international conventions, the Berne convention and the Rome convention. TRIPS requires all its member nations to comply with the Berne convention and major elements of the Rome convention, greatly extending international copyright protection.

Mr Kerr said, "A very important feature of the agreement for copyright owners is that it will require all GATT member nations to adopt very specific procedures and remedies for copyright infringement. Enforcement of copyrights has to date been unpredictable and difficult in some countries which are signatories to the conventions.

"The other great advance in international copyright protection won through the Uruguay Round is the effective resolution of disputes between countries about meeting international standards. The agreement has established procedures for investigation and reporting on alleged breaches of a member nation's obligations."

Economic boycotts—Effect of United States trade embargo on Australian NGO aid project in Vietnam

On 25 November 1993 the Minister for Foreign Affairs, Senator Gareth Evans, said in the course of an answer to a question without notice on the intervention by the United States of America to interrupt the transfer of funds from the Fred Hollows Foundation to aid projects in Vietnam (Senate, *Debates*, vol 160 (1993), p 3663):

I am very pleased to be able to report back to the Senate, as I said I would when I had something to say, that US officials have now found a basis for reversing the original decision and releasing the money in question. On closer examination, it appears that the initial request by the manufacturer of the lenses, which I understand to be a company based in India, for the appropriate licence to carry out this transaction in New York was incomplete in that, among other things, no mention was made of the involvement of a humanitarian NGO—that is, the Hollows Foundation—in the transfer of these lenses to Vietnam.

Now that the US authorities are aware of the humanitarian nature of the transaction and the very good work of the Hollows Foundation, they have advised our embassy that a licence will be issued, probably immediately after the Thanksgiving break.

There was a second issue relating to a fine levied on Westpac. As to that, US officials have advised us that this was levied on a “US person”, that is to say the New York branch of Westpac, for not blocking the funds involved as no licence had at that stage been issued. The fine has in fact been paid by Westpac New York. In light of the history of this case and the surrounding circumstances, I do believe that it would be very appropriate for this fine to be rescinded, if there is a discretion open to US authorities to do so, and Australian officials will be pursuing this matter.

Australia and Lithuania sign Trade and Economic Agreement

On 14 December 1993 the Department of Foreign Affairs and Trade issued a news release which read in part:

A Trade and Economic Co-operation Agreement between Australia and Lithuania was signed in Vilnius on 9 December by the Lithuanian Foreign Minister, Mr Povilas Gylys and the Australian Ambassador to Lithuania, Mr John Burgess.

The agreement provides an institutional basis for building broader economic relations between the two countries.

The Australian Government looks forward to expanding and mutually beneficial trade and investment relations between Australia and Lithuania...

There are promising prospects for Australian exports to Lithuania, particularly wool, where Australia has traditionally been a major Lithuanian supplier through the former Soviet Union...

Australia has given strong support for Lithuanian independence. It was one of the first countries to re-establish diplomatic relations when Lithuania regained its effective independence in August 1991.

In its two years of independence Lithuania has achieved impressive political and economic progress. It has adopted a new Constitution and has successfully held separate Parliamentary and Presidential elections with a smooth transfer of power in both cases.

Australia also signed a Trade and Economic Agreement with Latvia on 23 November 1993.

European Community—Australia Wine Agreement—Australian legislation

The second reading speech for the Australian Wine and Brandy Corporation Amendment Bill 1993, tabled by the Minister for Primary Industries and Energy, Mr Crean, on 29 September 1993, reads in part as follows (House of Representatives, *Debates*, vol 189 (1993), p 1342):

The purpose of this bill is to implement the EC-Australia wine agreement. On 6 December 1992, I jointly announced with our wine industry that Australian and European Commission officials had negotiated the text of a bilateral wine agreement aimed at improving our bilateral wine trade. This announcement attracted wide media attention, and rightly so, as the European Community is Australia's largest export market for wine...

This agreement is a vital part of the strategy to further lift exports...

This legislation enables the agreement to enter into force and our winemakers to enjoy its benefits. The agreement provides for the mutual recognition of each party's winemaking practices and standards; it affords mutual protection to each party's geographical indications—that is, the names of our wine regions such as Coonawarra and Hunter Valley; it reduces the number of analyses the EC requires of Australian wines from eight to three; it allows Australian winemakers to market wines in the EC labelled with multi-varietal and multi-regional blends; and it allows the export of Australian sweet wines, such as the justly famous De Bortoli "Noble One", to the European Community, which was previously not permitted. Importantly, it prevents either party from introducing additional certification requirements on imports of each other's wines.

The agreement recognises the importance of European geographical indications to the European Community. It also recognises the widespread use of EC names on Australian wines. The agreement provides for the gradual phase-out of our use of EC geographical indications according to their commercial importance...

The bill also provides for the protection of traditional wine expressions. Words such as "brut" or "reserve" are frequently used to indicate a certain quality or style of wine. Under the bill, traditional expressions may only be used to describe wine which originates in the country in which the expression has been traditionally and consistently used...

The agreement has the strong support of the peak wine industry body, the Winemakers Federation of Australia. Wine industry representatives were fully involved in the negotiations on the agreement from the outset. The agreement has strong support throughout the European Community.

The bill establishes a Geographical Indications Committee to determine the boundaries of Australian geographical indications. EC regulations require that where wine exported to the EC is labelled with a geographical indication, the boundaries of that region must be defined precisely.

...By defining the boundaries of our geographical indications, this bill will give greater certainty to enforcement of the label integrity program provisions of the act, which require winemakers to keep records to substantiate label claims of the vintage, variety or geographical indication of wine...

The Geographical Indications Committee will comprise a Winemakers Federation of Australia nominee, a nominee of the Wine Grape Growers Council of Australia and an Australian Wine and Brandy Corporation, AWBC, nominee. The committee will publish proposed determinations and seek submissions from winemakers and grape growers and their organisations on the boundaries of Australian wine regions. There will be appeal rights to the Administrative Appeals Tribunal and the Federal Court.

The bill establishes a registrar of geographical indications and traditional expressions who will be an employee of the Australian Wine and Brandy Corporation. The registrar will list all geographical indications determined by the committee, list the protected EC names and inform other countries of Australia's protected names...

The EC-Australia wine agreement is the first of several agreements on wine we intend to conclude with our major wine trading partners. Work is already under way on developing a wine agreement with New Zealand. The bill therefore amends the objects of the act to include implementing the EC-Australia wine agreement; enabling Australia to implement further international agreements relating to trade in wine; and defining Australian geographical indications for wine.

Science and Technology—Australia/European Community Agreement—Declaration on signature

At the time of signature of the Australia/EC Science and Technology Agreement the Minister for Industry, Technology and Regional Development, Senator Peter Cook, passed over the following declaration to Sir Leon Brittain QC, the EC Commissioner for External Economic Affairs and Commercial Policy:

The Right Honourable Sir Leon Brittan QC
Member of the Commission of the European Communities
Commissioner for External Economic Affairs and Commercial Policy

Dear Sir Leon:

I have the honour to refer to the Agreement relating to Scientific and Technical Co-operation between Australia and the European Community, done at Canberra on today's date.

In signing this Agreement it is the understanding of the Government of Australia that:

1. The reference in Article 10 to "territory" means, in the case of Australia, the land territories as well as the territorial sea, the exclusive economic zone and the continental shelf.
2. In respect of the Annex on the Dissemination and Utilisation of Information and Management, Allocation and Exercise of Intellectual Property Rights, which forms an integral part of the Agreement:

- (a) Paragraph 3 of Section I of the Annex does not impose an obligation on the Parties to change their respective domestic laws, but rather envisages that the Parties will use their best endeavours to ensure that rights to intellectual property are allocated in accordance with the principles set out in Section I of the Annex

- (b) Paragraph 1 of Section m applies only to those works in respect of which the Party or the public bodies of that Party own the copyright or are licensed to authorise further publication. The reference to "public bodies" does not, in the case of Australia, include bodies which are capable of owning property in their own right and which control the use of their own intellectual property. Any licence under this paragraph will only be used for the dissemination of information arising from joint research and not for commercial advantage. As well, the Parties will not exercise the licence in such a way as to prejudice any intellectual property rights of the participants.

Accept, Sir, the assurances of my highest consideration

Peter Cook.

Closer economic relations with New Zealand—Mutual recognition of standards and qualifications

On 4 August 1993 the Minister for Trade, Senator Cook, issued a news release which read in part as follows:

Top priority will be given to developing a trans-Tasman scheme for the mutual recognition of product standards and occupational qualifications.

This was decided at wide-ranging talks on CER and regional and multilateral issues held today by New Zealand's Minister for Trade Negotiations, Mr Philip Buldon, and the Australian Minister for Trade, Senator Peter Cook.

The talks were the first of the newly instituted annual reviews of CER agreed upon in the 1992 General Review.

Senator Cook said annual reviews of CER were more fitting for a mature relationship, allowing issues to be addressed in a more normal way and avoiding the build-up of possible irritants and difficulties.

He said a range of forward-looking issues were considered, the most important of which was mutual recognition of product standards and occupational qualifications...

"Mutual recognition has been accorded high priority on the CER agenda, including by the two Prime Ministers.

"It would greatly facilitate trans-Tasman trade in goods and services as well as boosting the competitiveness of both countries on world markets.

"In some areas, food standards for instance, harmonisation may be appropriate...

Senator Cook said useful discussions were also held on further cooperation on standards, industry policy, trade in services, business law harmonisation and commodity issues.

He noted New Zealand's views on taxation issues, particularly mutual recognition of imputation credits. He said Australia would continue to keep this matter under review.

The double taxation agreement between the two countries will be renegotiated in February 1994.

Senator Cook said many of the CER matters were also discussed in the context of APEC, including ways in which the experience of CER could be drawn upon to help facilitate trade in the wider regional sense.

He said the respective Governments had confirmed their support for APEC as the pre-eminent forum for promoting economic integration in the Asia Pacific region...

Both Ministers had applauded the growing cooperation between Austrade and Tradenz under the MOU signed in May this year.

Closer economic relations with New Zealand—Rules of origin

On the 31 August 1993 the second reading speech for the Customs Legislation Amendment Bill 1993 presented by the Minister for Defence, Senator Ray, reads in part as follows (Senate, *Debates*, vol 159 (1993), p 671):

The proposed amendments to the rules of origin effected by Clause 10 of the Bill are a response to the Government's agreement to the outcome of the 1992 review of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). The proposed amendments also extend the administrative and technical aspects of that agreement to other preference arrangements.

Rules of origin are those rules which previously appeared in section 151 of the Customs Act 1901 (the Act), to determine whether particular goods imported into Australia are eligible for entry at preferential rates of duty.

Clause 10 of the Bill inserts a new Division 1A of Part VIII into the Act to provide a better defined and more predictable basis for calculating the origin of goods. The concept of "factory or works" cost of goods as calculated in accordance with rules set out in Gazette notices issued by the Comptroller, has been replaced by specific provisions contained in the Act (new sections 153C–153G refer). Furthermore, the Bill includes diagrams and explanatory notes in a new Schedule inserted in the Act as a means of illustrating the operation of the rules of origin in their application to New Zealand.

In relation to New Zealand, it should be noted that there is some modification of the rules of origin in certain circumstances. New section 153K of the Act implements the agreement between Australia and New Zealand to allow a two percent margin of tolerance in meeting the usual fifty percent area content requirement, where an unforeseen circumstance (such as an adverse movement in exchange rates) would otherwise result in a shipment failing to qualify for preference. The amendment is intended to assist manufacturers in such unforeseen circumstances, whilst ensuring that the preferential trade benefits of ANZCERTA are not diverted away from Australian and New Zealand manufacturers.

Other amendments peculiar to New Zealand modify the treatment of materials of mixed origin to allow the area content of such materials to contribute to the area content of the final product in circumstances where otherwise they would not.

The amendments will make the rules of origin more objective in their application and should overcome weaknesses in the previous provisions which had enabled some claimants for preference to circumvent the spirit of the rules.

International dispute settlement—International Convention on the Settlement of Investment Disputes—Australian legislation

On 28 September 1993 the Attorney-General, Mr Lavarch, replied in part to a question on notice from Mr Melham (Banks, ALP) as follows (House of Representatives, *Debates*, vol 189 (1993), p 1280):

(Q1) Did the Whitlam Government sign the 1975 Convention on the Settlement of Investment Disputes between States and Nationals of Other States on 24 March 1975.

(Q2) Did the Hawke Government deposit the instrument of ratification on 2 May 1991; if so, did it designate both mainland Territories and all States except Western Australia for the purposes of Article 25(1) of the Convention.

(Q3) When the Fraser Government consulted Western Australia in 1976 and 1978 did the Government of Charles Court express a preference for not being designated for the purposes of Article 25(1).

(Q4) When the Hawke Government consulted Western Australia in 1984 and 1991 did the Burke and Lawrence Governments, respectively, confirm the Court Government's preference.

(Q5) Which States have deposited instruments of ratification since the answer to question No. 1752 (Hansard, 15 October 1992, page 2355).

(Q6) Has the Keating Government pursued the question of designation of Western Australia with the Government of Richard Court; if so, with what outcome.

(A1) Yes. However, the Convention was adopted on 18 March 1965, not 1975 as stated in the question.

(A2) Yes. Australia deposited the instrument of ratification on 2 May 1991 and designated both mainland Territories and all States except Western Australia as constituent subdivisions for the purposes of Article 25(1).

(A3) Yes. I am advised that on 13 April 1976 the then Prime Minister, Mr Fraser, wrote to each of the Premiers seeking comments on the draft Bill authorising ratification by Australia of the Convention. Sir Charles Court, the then Premier of Western Australia, replied by letter of 10 June 1976 stating that he did not favour ratification of the Convention by Australia and requesting that, should the Commonwealth decide to ratify, Western Australia not be designated as a constituent subdivision under Article 25(1) of the Convention. On 25 September 1978, Mr Fraser, the then Prime Minister, wrote again to Sir Charles Court and asked him to reconsider his position on the matter. The then Acting Premier of Western Australia responded, affirming the State's earlier position.

(A4) Yes. I am advised that on 4 June 1984, the then Prime Minister, Mr Hawke wrote to Mr Burke, then Premier of Western Australia, advising him that Australia intended to ratify the Convention at an early date and expressing a hope that Western Australia would be willing to join all other States of the Commonwealth and the Northern Territory in being designated a "constituent subdivision" for the purposes of the Convention. In a reply dated 31 August 1984, Mr Burke advised that the Western Australian position on designation had not changed. I am advised that the then Prime Minister, Mr Hawke, wrote in some detail to the then Premier of Western Australia, Dr Lawrence, on 23 October 1990, outlining the benefits of designation and asking that Western

Australia reconsider its position on the question of designation under Article 25(1). In a reply dated 22 February 1991, Dr Lawrence advised that Western Australia remained opposed to ratification of the Convention and requested that, if ratification occurred, Western Australia not be designated under Article 25(1). In response, on 16 April 1991, Mr Hawke wrote to Dr Lawrence agreeing to her request but regretting the Western Australian Government's inability to give favourable consideration to designation.

(A5) The Attorney-General's Department has corresponded with the International Centre for Settlement of Investment Disputes (ICSID) and ICSID has provided the Department with a list of contracting states and signatories of the Convention as at 18 May 1993. I am advised that, since the list provided in answer to question 1752, the following five countries have lodged instruments of ratification; Armenia, Azerbaijan, China, Georgia and Turkmenistan. The Czech Republic has also deposited an instrument of ratification; the Czech and Slovak Federal Republic had previously been a contracting state. The list of the 107 parties to the Convention, together with the date of entry into force for each country, has been forwarded to the honourable member.

(A6) In view of the fact that, over a 15 year period up to 1991, Western Australia consistently requested that it not be designated, the question has not been raised with the new Western Australian Government. In his letter in 1991, the former Prime Minister indicated that, should the Western Australian Government change its position on this matter, the appropriate designation could take place. It should be noted that non-designation does not affect the ability of Western Australians who are investing abroad to take advantage of ICSID jurisdiction where it is available. What it does mean is that Western Australia would not have open to it the options available to other States and mainland Territories; 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 in a designated constituent subdivision of a Convention country, however, jurisdiction under the ICSID Convention requires the consent of both parties to a dispute.

United States anti-dumping cases on Australian steel exports

On 23 June 1993 the Minister for Trade, Senator Peter Cook, issued a news release which read in part:

The Minister for Trade, Senator Peter Cook, said today he was disappointed that the US Department of Commerce had decided on an increase in the dumping margin levied on Australian steel exports to 24.96% (up from 21.47%), despite the extensive material provided by BHP in arguing against such action.

Senator Cook said the Australian steel industry had a demonstrated record of operating in a responsible manner in the US market.

BHP is a small supplier, with its exports of corrosion-resistant steel accounting for 1.29% of the US domestic steel market.

Thirty-eight per cent of its exports to the US go as feed to BHP's own factories there.

"It is therefore difficult to envisage how Australian steel exports could cause injury to the US industry, especially as much the same level of trade was

permitted under the Voluntary Restraint Arrangements (VRAs) that applied in this market until 31 March 1992," Senator Cook said.

"However, it should be noted that this decision affects a total of 19 countries currently exporting steel to the US and that Australia is not being singled out.

"This announcement is one point in a long process which began in June 1992, with the final phase being the determination by the US International Trade Commission as to whether injury is being caused to US industry. That determination is due on 5 August.

Canadian beef import restrictions and the Australian response

On 22 June 1993 the Minister for Trade, Senator Peter Cook, issued a news release which read:

The Minister for Trade, Senator Peter Cook, and the Minister for Primary Industries and Energy, Mr Simon Crean, today expressed regret at the Canadian decision to impose restrictions on imports of boneless beef from countries including Australia.

The measures were imposed following an inquiry by the Canadian International Trade Tribunal (CITT). The Tribunal found that, while there was no evidence of injury to Canadian producers, there was a potential threat to the Canadian industry if beef imports continued at their current level.

The Ministers said they regarded the CITT report with utmost scepticism and noted that it was being challenged by the Australian Meat and Livestock Corporation in the Canadian courts.

"However, some encouragement can be drawn from the Canadian Government's decision to implement tariff quota arrangements for 1993 only at this stage, and to exempt exports currently en route to Canada from the tariff surcharge," the Ministers said.

Senator Cook said that he had raised the issue himself with the Canadian Trade Minister, Michael Wilson, at the recent OECD Ministerial Council Meeting in Paris. In addition, Australia had held two rounds of bilateral discussions with Canada at senior officials level, stressing the importance of the need to reach an acceptable solution to this problem. As well as rebutting the findings of the CITT, officials sought maximum flexibility from Canada in the Government's response to the findings.

"We intend to press the new Government of Prime Minister elect, Kim Campbell, to review the decision and to refrain from extending the restraints into 1994," they said.

The Ministers said that Australia was pursuing its GATT rights on this issue and would be holding formal consultations with Canada under GATT Article XIX.

Asia-Pacific Economic Cooperation

In the course of an address on 10 November 1993, to the Department of Foreign Affairs and Trade Business Liaison Seminar in Melbourne, the Minister for Foreign Affairs, Senator Evans discussed the evolution and current emphasis of APEC, as follows:

The evolution of APEC has proceeded cautiously—it has had to, given the sensitivities of a number of its members—but very steadily. In the first place, the focus was on cooperation in the most innocuous “OECD” sense—involving compilation of common data bases, information exchanges and the informal swapping of policy ideas. That kind of activity started from the outset, and continues to grow in substance and sophistication.

In the second phase, this kind of activity was supplemented by more specific forms of cooperation and policy development in different sectoral areas, including minerals and energy, telecommunications, tourism and the like, as well as in cross-sectoral sematic areas like human resource development. Ten specific work programs have been put in place from 1990 onwards covering these areas, and—with some exceptions—they are starting to produce results of real utility. For example the Energy Working Group, whose activity has built upon that already earlier under way through PECC’s minerals and energy forum, has been involved in the compilation and distribution of regional supply and demand energy statistics, and an assessment of the role of coal and clean coal technology in the region; and has reports and studies commissioned on the multitude of more specific topics (eg the use of LNG vehicles in the region).

The third and most important phase in the evolution of APEC’s activity has been the emphasis on trade and investment policy which has been building up over the last two years, and which is likely to result in Seattle next week in the formalisation of a Trade and Investment Framework which will, together with the work program instituted under it, put the focus of APEC squarely where we believe it should be, and where it will be most productive.

The emphasis at this stage is not so much on further trade liberalisation, in the sense of some regional add-on to the tariff barrier reductions that we hope will be achieved in the Uruguay Round. That remains for some of us a longer term aspiration, but nobody is quite yet ready for APEC to assume that kind of negotiating-forum role. In the shorter term APEC is likely to confine its tariff reduction efforts to cheering on the Uruguay Round negotiators: it is hoped in this respect that there will be quite a tough statement on the Round emerging from next week’s Seattle meeting, and that this has in turn some influence on the crucial end game period between now and December 15.

One other thing that APEC does hope to do about tariffs in the shorter term, and something that should be of particular interest to business, is to establish an electronic data base to provide up-to-date information on tariffs and technical trade conditions (eg how our products are likely to be classified) in APEC markets.

The emphasis is rather on what we are all now calling the trade and investment facilitation agenda, the basic elements of which were largely mapped out by Paul Keating in a seminal speech in February this year. What we are talking about here are issues such as non-tariff barrier reductions, movement towards common standards, customs harmonisation and the removal of

impediments to investment. Each one of these issues is of major significance for business, and I would like to take a little time spelling out what is involved with each.

The following "Seoul Declaration" provided the initial framework for APEC:

Representatives of Australia, Brunei Darussalam, Canada, the People's Republic of China, Hong Kong, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Chinese Taipei, Thailand and the United States of America, meeting in Seoul from 12 to 14 November 1991 at Ministerial level,

Recognising that the dynamic growth of economies of the Asia Pacific region has brought with it growing economic interdependence and strong common interests in the continuation of the region's economic dynamism;

Conscious of the vital interests shared by the Asia Pacific region in the expansion of free trade and investment, both at the regional and global level, and of the dangers of protectionism;

Recognising that the healthy and balanced development of economic interdependence within the Asia Pacific region based upon openness and a spirit of partnership is essential for the prosperity, stability and progress of the entire region;

Convinced that closer cooperation is needed to utilise more effectively human and natural resources of the Asia Pacific region so as to attain sustainable growth of its economies while reducing economic disparities among them and improve the economic and social well-being of its peoples;

Recalling the productive outcome of their two previous meetings on Asia Pacific Economic Cooperation held in Canberra, 5-7 November 1989, and Singapore, 29-31 July 1990, the basic principles for Asia Pacific Economic Cooperation which emerged therefrom, and the process of consultations and cooperation evolving among the participating Asia Pacific economies;

Acknowledging the important contribution made by the Association of South-East Asian Nations and the pioneer role played by the Pacific Economic Cooperation Conference (PECC) in fostering closer regional links and dialogue;

Recognising the important role played by the GATT in fostering a healthy and open multilateral trading system, in reducing barriers to trade and in eliminating discriminatory treatment in international commerce;

Believing that Asia Pacific Economic Cooperation should serve as an exemplary model of open regional cooperation;

Do hereby declare as follows:

Objectives

1. The objectives of Asia Pacific Economic Cooperation (hereinafter referred to as APEC) will be:

- (a) to sustain the growth and development of the region for the common good of its peoples and, in this way, to contribute to the growth and development of the world economy;
- (b) to enhance the positive gains, both for the region and the world economy, resulting from increasing economic interdependence,

including by encouraging the flow of goods, services, capital and technology;

- (c) to develop and strengthen an open multilateral trading system in the interest of Asia Pacific and all other economies;
- (d) to reduce barriers to trade in goods and services among participants in a manner consistent with GATT principles, where applicable, and without detriment to other economies.

Scope of activity

2. APEC will focus on those economic areas where there is scope to advance common interests and achieve mutual benefits, including through:

- (a) exchange of information and consultation on policies and developments relevant to the common efforts of APEC economies to sustain growth, promote adjustment and reduce economic disparities;
- (b) development of strategies to reduce impediments to the flow of goods and services and investment world-wide and within the region;
- (c) promotion of regional trade, investment, financial resource flows, human resources development, technology transfer, industrial cooperation and infrastructure development;
- (d) cooperation in specific sectors such as energy, environment, fisheries, tourism, transportation and telecommunications.

3. In each of these fields, APEC will seek:

- (a) to improve the identification and definition of the region's common interests and, where appropriate, to project these interests in multilateral forums such as the GATT;
- (b) to improve the understanding of the policy concerns, interests and experiences of economic partners, particularly of their international implications, and, to help promote consistency in policy-making in appropriate areas;
- (c) to develop practical programs of economic cooperation to contribute to economic dynamism and improved living standards throughout the region;
- (d) to enhance and promote the role of the private sector and the application of free market principles in maximising the benefits of regional cooperation.

Mode of operation

4. Cooperation will be based on:

- (a) the principle of mutual benefit, taking into account the differences in the stages of economic development and in the socio-political systems, and giving due consideration to the needs of developing economies; and
- (b) a commitment to open dialogue and consensus-building, with equal respect for the views of all participants.

5. APEC will operate through a process of consultation and exchange of views among high-level representatives of APEC economies, drawing upon research, analysis and policy ideas contributed by participating economies and other relevant organisations including the ASEAN and the South Pacific Forum (SPF) Secretariats and the PECC.

6. Recognising the important contribution of the private sector to the dynamism of APEC economies, APEC welcomes and encourages active private sector participation in appropriate APEC activities.

Participation

7. Participation in APEC will be open, in principle, to those economies in the Asia Pacific region which:

- (a) have strong economic linkages in the Asia Pacific region; and
- (b) accept the objectives and principles of APEC as embodied in this Declaration.

8. Decisions regarding future participation in APEC will be made on the basis of a consensus of all existing participants.

9. Non-participant economies or organisations may be invited to the meetings of APEC upon such terms and conditions as may be determined by all existing participants.

Organisation

10. A ministerial meeting of APEC participants will be held annually to determine the direction and nature of APEC activities within the framework of this Declaration and decide on arrangements for implementation. Participants who wish to host ministerial meetings will have the opportunity to do so, with the host in each case providing the chairman of the meeting.

11. Additional Ministerial meetings may be convened as necessary to deal with specific issues of common interest.

12. Responsibility for developing the APEC process in accord with the decisions of the ministerial meetings and the work program determined at those meetings will lie with a senior officials' meeting of representatives from each participant. The senior officials' meeting will be chaired by a representative of the host of the subsequent annual ministerial meeting, and will make the necessary preparations for that meeting.

13. Each project on the work program will be pursued by a working group composed of representatives from participants, coordinated by one or more participants. The working groups will identify specific areas of cooperation and policy options relating to each project.

The future of APEC

14. Recognising the ongoing and dynamic nature of the APEC process, APEC will retain the flexibility to evolve in line with the changes in regional economic circumstances and the global economic environment and in response to economic policy challenges facing the Asia Pacific region.

After their meeting in Seattle from 17–19 November 1993, the Fifth Ministerial Meeting of APEC issued a Joint Statement which read in part:

Trade and investment issues

Ministers confirmed trade and investment liberalisation as the cornerstone of APEC's identity and activity. Strengthening the multilateral trading system, expanding regional and global trade and improving investment rules and procedures in a GATT-consistent manner are, therefore, central APEC objectives. The Uruguay Round must conclude by December 15. Ministers accordingly resolved to exercise the political will required to achieve this goal.

To that end, Ministers agreed to a resolute statement urging an early and successful conclusion to the Uruguay Round and demonstrated their commitment to this goal by expressing their preparedness to take additional specific trade liberalising measures. APEC challenges other Uruguay Round participants to enhance their own contributions to the Round's successful conclusion.

Ministers expressed strong support to non-GATT members of APEC in their efforts to become GATT contracting parties, thus making additional contributions to the strengthening of the multilateral trading system.

Ministers welcomed the Report of the Informal Group on Regional Trade Liberalization (RTL), as agreed by Senior Officials, and endorsed its recommendations on the continuation of a dialogue within APEC on important multilateral and regional trade policy issues and the further development of APEC's action agenda on trade and investment. On the trade policy dialogue, Ministers noted in particular the effective role played by APEC in maintaining the momentum for a satisfactory outcome to the Uruguay Round and in fostering better understanding of subregional trade arrangements and the contribution of such arrangements to APEC's overall goals.

Ministers emphasised the imperative that APEC members give effective support to the market-driven dynamism of the region. In this respect, they endorsed the RTL Group's recommendations aimed at improving access to tariff data, reducing administrative barriers to trade, streamlining customs procedures, harmonising the diverse approaches to standards and conformance issues and encouraging the flow of investment. Ministers welcomed the extensive progress on customs facilitation, publication of an APEC Investment Guidebook and a private sector survey of attitudes toward investment in the region, publication of the APEC Customs Manual and hosting of the APEC Customs Symposium. APEC's important work in this area will be further developed by the new Committee on Trade and Investment which will replace the RTL Group.

Ministers wholeheartedly adopted the "Declaration on an APEC Trade and Investment Framework" and the accompanying initial work program for the newly established Committee on Trade and Investment. The Declaration significantly advances APEC's role in trade and investment by engaging APEC members in both policy and facilitation matters. The Declaration serves as an important instrument within which to further define APEC's identity, expand economic activity and facilitate the flow of goods, services, capital, investment and technology throughout the region.

Ministers called for a meeting of ministers concerned with trade policy to review the results of the Uruguay Round and its implications for the region. Ministers urged this post-Uruguay Round meeting to consider next steps for regional and global trade liberalisation...

Participation issues

Ministers noted the continuing interest expressed by a number of economies and organisations in participating in some capacity in the APEC process. Ministers reaffirmed APEC is an open and evolving process and recalled the view expressed in Bangkok that consolidation and effectiveness should be the primary considerations at this stage of APEC's development. Ministers also recognised, however, that APEC should develop more systematic means of addressing the issue of new members in a manner which is responsive to APEC's needs while

promoting constructive interaction with other economies and organisations in the region.

Ministers welcomed the admission of Mexico and Papua New Guinea to APEC. They also decided to admit Chile to APEC and looked forward to its membership at the ministerial meeting in 1994. In the interim, Ministers encourage Chile to participate in the Working Group activities. Noting the importance of increasing APEC's effectiveness, Ministers agreed to defer consideration of additional members for three years, during which time Senior Officials would study APEC's membership policies and provide recommendations to Ministers on an ongoing basis.

Ministers reaffirmed that participation by non-members from the Asia-Pacific region in APEC work projects can be beneficial to members as well as non-members. In order to facilitate cooperation with non-members and address issues arising from increased economic interdependence, Ministers approved the proposed guidelines for non-member participation in APEC working group activities which appear as Annex 6, and asked Senior Officials to identify other potential means to promote mutually beneficial interaction. With respect to organisations, Senior Officials should identify considerations to guide APEC in fostering appropriate ties and report their findings to the Sixth Ministerial.

Private sector participation

The business/private sector has played a major role in facilitating the dynamic growth of the region. Engagement with the business/private sector, particularly through Working Group activities, ensures APEC's efforts are relevant to real world challenges and opportunities. Ministers commended the progress made this year in increasing business/private sector engagement with APEC and directed each Working Group to enhance its outreach to the business/private sector. Ministers pledged to solicit the advice of the business/private sector on issues relevant to APEC's work, especially through the PECC, and instructed Senior Officials to explore other ways of broadening and deepening cooperation with the business/private sector including the work of the new Committee on Trade and Investment.

With the Joint Statement the APEC Ministers also issued a Joint Declaration on the Uruguay Round and a Declaration on an APEC Trade and Investment Framework, parts of both of which are included below:

Declaration of APEC ministers on the Uruguay Round

APEC Ministers call for urgent action to complete successfully the Uruguay Round by December 15 because of its vital contribution to global growth and prosperity. APEC members believe that a strengthened multilateral trading system will serve as the foundation for trade expansion initiatives within APEC...

1. We challenge Uruguay Round participants to improve their market access offers in Geneva. Subject to comparable commitments from our trading partners, and in the context of a global and balanced result in all areas, members engaged in the negotiations are prepared to participate to the maximum extent possible by:

- (a) offering to eliminate, reduce or harmonise tariffs and non-tariff barriers in sectors previously agreed by the Quad;

- (b) offering to eliminate, reduce, or harmonise tariff and non-tariff barriers in additional sectors of particular importance to APEC economies; and
 - (c) accelerating the work in our respective bilateral negotiations to expand and secure market access opportunities in goods and services of particular interest to APEC economies.
2. We confirm that agriculture remains an essential element of a global and balanced result. The Blair House Agreement already dilutes the draft "Final Act" agriculture text and any further efforts to weaken that outcome would jeopardise the ability to secure an overall acceptable result on agriculture. A successful result will also require the strongest possible package of agricultural trade liberalisation, including for processed products.
3. We agree to review and improve our respective services offers in key sectors to the maximum extent possible, keeping MFN derogations to a minimum in order to begin the process of progressive liberalisation that will accompany the strong framework of rules already negotiated.
4. We agree that the draft "Final Act" must provide the basis for the final agreement with any agreed changes kept to a minimum. This should result in a strengthening of the multilateral framework of rules and disciplines and an effective mechanism for resolving disputes...

APEC trade and investment framework

Paragraph one: establishment of the APEC Committee on Trade and Investment

Under the authority of APEC Ministers, the APEC Committee on Trade and Investment (the "Committee") is established. The Committee will report to Ministers through Senior Officials (the SOM).

Paragraph two: Objectives

The objectives of the Committee are to:

1. Create a coherent APEC perspective and voice on global trade and investment issues and increase cooperation among Members on key issues.
2. Pursue opportunities to liberalise and expand trade, facilitate a more open environment for investment and develop initiatives to improve the flow of goods, services, capital and technology within the region consult on issues of importance in that context and develop consensus to expand and strengthen these flows within the region and globally, and to reduce and remove distortions which impede these flows in a manner consistent with applicable GATT principles.

Paragraph three: scope of activity

1. Ministers will review progress on trade and investment issues and determine the Committee's work program at their annual meeting.
2. The Work Program will address a range of such issues encompassing:
 - (a) policy issues related to the evolving interrelationship of the APEC economies within the global economic environment;
 - (b) impediments and distortions which affect the movement of goods, services, investment, and technology in the APEC region;

- (c) reduction of transaction costs which affect the flow of trade and investment in the region;
- (d) trade and investment policy issues evolving from the work of individual APEC Working Groups and activities;
- (e) ways to enhance the contribution of the APEC business sector in evolution of policies, identification of barriers to trade within the region and possible solutions of mutual benefit to the region.

3. At this Ministerial meeting in Seattle, Ministers enjoined the Committee to undertake the initial work program for 1994.