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SENATE

ECONOMICS LEGISLATION COMMITTEE

Reference: Customs Tariff Amendment (Greater Sunrise) Bill 2004; Greater Sunrise Unitisation Agreement Implementation Bill 2004

MONDAY, 22 MARCH 2004

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SENATE
ECONOMICS LEGISLATION COMMITTEE
Monday, 22 March 2004

Members: Senator Brandis (*Chair*) Senator Stephens (*Deputy Chair*), Senators Chapman, Murray, Watson and Webber

Substitute members: Senator Stott Despoja to replace Senator Murray for the consideration of the provisions of the Greater Sunrise Utilisation Agreement Implementation Bill 2004 and the Customs Tariff Amendment (Greater Sunrise) Bill 2004

Participating members: Senators Abetz, Boswell, Buckland, George Campbell, Carr, Cherry, Conroy, Cook, Coonan, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Forshaw, Harradine, Harris, Kirk, Knowles, Lees, Lightfoot, Ludwig, Lundy, Mackay, Marshall, Mason, McGauran, Murphy, O'Brien, Payne, Ridgeway, Sherry, Stott Despoja, Tchen, Tierney and Wong

Senators in attendance: Senator Brandis (*Chair*) Senator Stephens (*Deputy Chair*), Senators Brown, Chapman, Marshall, O'Brien, Stott Despoja, Watson and Webber

Terms of reference for the inquiry:

Customs Tariff Amendment (Greater Sunrise) Bill 2004 and Greater Sunrise Utilisation Agreement Implementation Bill 2004.

Committee met at 5.05 p.m.

CHAIR—We are here today to take evidence on the [Greater Sunrise Unitisation Agreement Implementation Bill 2004](#) and the [Customs Tariff Amendment \(Greater Sunrise\) Bill 2004](#). On 10 March 2004 the Senate adopted the Selection of Bills Committee report No. 4 of 2004, which referred the provisions of the bills to the Senate Economics Legislation Committee to report by 23 March 2004. The bills put in place the framework necessary to give effect to the agreement between Australia and the Democratic Republic of Timor Leste relating to the unitisation of the Sunrise and Troubadour, the Greater Sunrise, petroleum fields. Specifically the Greater Sunrise Unitisation Agreement Implementation Bill 2004 puts into place the administrative arrangements for the unit development of the Greater Sunrise petroleum resource. The Customs Tariff Amendment (Greater Sunrise) Bill 2004 gives effect to article 22 of the agreement, which provides for the duty-free entry into the Greater Sunrise unitisation area of all goods and equipment required for petroleum activities.

Before we start taking evidence, I remind you for the record that all witnesses appearing before this committee are protected by parliamentary privilege with respect to their evidence. Parliamentary privilege refers to the special rights and immunities necessary for the discharge of parliamentary functions without obstruction or fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by that witness before this committee may be a breach of privilege. These privileges are to protect witnesses. I must also remind you that giving false or misleading evidence to the committee may constitute a contempt of the Senate. I propose to take the evidence in accordance with the agenda which has been circulated in the hearing room.

[5.07 p.m.]

NICHOLSON, Mr Daniel Peter, Spokesperson, Timor Sea Justice Campaign

CHAIR—The committee prefers all evidence to be given in public. Should you at any stage wish to give any part of your evidence in private you may ask to do so and the committee will consider your request. In accordance with the custom of the committee, I ask you to make a brief opening statement after which I will invite senators to ask any questions of you which they may have.

Mr Nicholson—Thank you for the opportunity to give this submission. I represent the Timor Sea Justice Campaign, an independent campaign which was set up in Melbourne early this year. The campaign is made up of Australians of different ages and from different walks of life who are greatly concerned about the Australian government's actions and policies towards East Timor in relation to the Timor Sea.

I notice that there have been relatively few submissions to this committee and that I am the only person other than the government agencies making a submission today. I believe that this is a shame. I know that a number of organisations, including some large NGOs, were considering making submissions but, due to the extremely short time frame and also the limited nature of the invitation to give submissions, some people were deterred. I hope this committee does not interpret this as a lack of interest in this issue. I believe that interest in this issue and in Australia's relations with East Timor in general is growing across various sectors of Australian society as the existence of the Timor Sea Justice Campaign demonstrates. I hope that in the future these issues will be given more time for careful consideration.

The bills in question implement the Greater Sunrise unitisation agreement, which was signed by East Timor and Australia in 2003. The Greater Sunrise field is the largest petroleum field so far discovered in the Timor Sea, with reserves valued at between \$A22 billion and \$A25 billion and a combined government share of around \$10 billion. Although the field is twice as close to East Timor as it is to Australia, it is wholly claimed by both countries. Our view is that if maritime boundaries were drawn consistent with international law it is likely that most, if not all, of Greater Sunrise would fall under East Timorese territory.

The primary purpose of this unitisation agreement should be to create a single regulatory environment which enables development of the Greater Sunrise project to continue while the permanent maritime boundaries are decided between East Timor and Australia. Our concern is that this is being used as an attempt to push Australia's claim over disputed territory—which, as I said, is twice as close to East Timor as it is to Australia—and to put in place revenue-sharing agreements that will give Australia 82 per cent of the revenue over the life of the Greater Sunrise field.

The unitisation agreement and the Greater Sunrise bill explicitly state that they do not prejudice future maritime boundaries which will be decided between East Timor and Australia. We would certainly expect Australia to respect this undertaking throughout the boundary delimitation process. However, this bill can prejudice how revenue is distributed between East Timor and Australia in two ways. Firstly, the Australian government can stall and delay the boundary negotiations with East Timor for years, until the Greater Sunrise field is depleted. We have already seen the Australian government stall on these negotiations. Usually if negotiations between two countries are proving fruitless they can go to arbitration—except that two months before East Timor's independence, Australia withdrew from the jurisdiction of the ICJ and the International Tribunal for the Law of the Sea.

Secondly, even if maritime boundaries were set under which East Timor gained most or all of Greater Sunrise—which we believe would be probable under international law—under this bill an Australian government acting in bad faith could continue to take 82 per cent of Greater Sunrise revenues. There is nothing which compels the government to alter or rewrite the unitisation agreement when maritime boundaries are finalised.

The passing of these bills in their current form, accompanied by continued actions in bad faith by the Australian government, could lead to Australia taking up to \$8 billion of revenue from Greater Sunrise that should belong to East Timor under current principles of international law. We believe that this would harm Australia's relations with East Timor in both the short and long term and in our view it does not serve Australia's national interest. We do not support the passing of these bills under these circumstances.

You may ask what this committee and the Senate more generally can do in dealing with these bills to change the situation. The Timor Sea Justice Campaign is calling on the committee to recommend an amendment to the bills to place in trust Australia's share of the revenues collected from Greater Sunrise. This trust would be held until permanent maritime boundaries between East Timor and Australia are determined

and would then be distributed according to the entitlement of each country. Placing Australia's revenues in trust would have no negative effect on the development of the Greater Sunrise project and would cost the Australian government nothing in terms of good faith.

I have visited East Timor on eight occasions, and I lived there for most of the year 2000. I have had the great honour of having many close East Timorese friends. We studied at the same time and now, like me, those friends are entering the work force. I have heard about and in some cases personally seen the sacrifices these young people have made in order to win their independence. One of the great pleasures I have had in recent years is seeing some of these friends start families and meeting their beautiful children—children who, to them, represent the hope of the nation for the future. I want these children to have a decent hospital or clinic to go to if they get sick. I want them to have a decent school when they are ready to learn. I want them to have a decent chance at a job once they finish studying.

The Timor Sea petroleum revenues, if invested properly, give these kids a chance at that. In particular, the East Timor share of the \$10 billion in revenues from Greater Sunrise will play a part in giving these kids a chance. To me, this is what this issue is all about. The committee and the Senate more broadly have the chance to do something about this in the way they respond to these bills. For that reason, I respectfully urge you to follow our recommendations.

CHAIR—Thank you very much. I will give the call to Senator Stephens and then to Senator O'Brien so we can have questions from opposition senators in one bracket.

Senator STEPHENS—Mr Nicholson, I was interested in your submission as a member of the Joint Standing Committee on Treaties who was actually part of the consideration of the Timor Sea treaty. I cannot see that there is any aspect of these bills that is not consistent with the Timor Sea treaty and the IUA as they have already been agreed between Australia and East Timor.

Mr Nicholson—Our concern, I guess, is not so much the explicit wording of the bills; it is more the actions that have taken place around the Sunrise unitisation agreement and the effect that that would have. If an Australian government were acting in good faith on the Sunrise unitisation agreement, there would be no problem as far as I am concerned. But, as I outlined, our concerns are about acting in bad faith. This bill gives the government the opportunity to stall on negotiations. It creates an incentive for that, because, whilst the stalling is going on, they collect 82 per cent of the revenue. Also, even if boundaries were finalised, there is nothing to actually ensure that the petroleum would be redistributed in accordance with those boundaries. So, for example, even if all of Greater Sunrise were given to East Timor, Australia could continue to take 82 per cent of the revenue from it.

CHAIR—Just so that I understand, you are not saying that Australia has acted in bad faith in the past; you are saying that, under this structure, it is possible that, were a future Australian government to act in bad faith, those consequences would follow?

Mr Nicholson—I think there have been indications that this government is currently acting in bad faith. I will give a couple of examples. The first meeting to decide the time frame on the maritime delimitation negotiations was held in November last year. At that meeting, Australia said it only had enough resources to meet every six months. In earlier negotiations with East Timor there have been monthly meetings. To me, that is a pretty clear example of the first stage of stalling. You may also have seen the comments from the East Timorese Prime Minister Dr Alkatiri recently—in fact, it was reported in the *Age* and the *Australian* this morning—where he accused Australia of breaching the spirit of the Greater Sunrise unitisation agreement. So, to me, there are certainly very strong indications that the government is acting in bad faith. But, as I said, this proposed amendment, which would place the revenue in trust, would be a way of ensuring that, if a future Australian government did act in bad faith, it would not profit in any way from those actions.

Senator O'BRIEN—And presumably, if this legislation is passed, that will have an impact on and potentially bring forward the development timetable. Is that how you understand matters?

Mr Nicholson—I understand that is Woodside's position. I am obviously not privy to exactly what stage their development is at. My understanding is that it is still quite a long way away—that would not come online until 2009. But, obviously, from the point of view of a development, you want to get a legal framework in place as quickly as possible. East Timor has not ratified this agreement yet. It seems from Dr Alkatiri's comments today that, because of actions of the Australian government, they are actually less likely to ratify it soon than they were a year ago. As I said, our proposed amendment would not have any negative effect on the

project itself because it would put a regulatory framework in place that Woodside and the other operators would like.

Senator O'BRIEN—What aspect of Dr Alkatiri's statements suggest what you just said?

Mr Nicholson—The comment that Australia is undermining Greater Sunrise development, which is the headline in the media release.

Senator O'BRIEN—So the Timor Leste government has to pass its own legislation, does it?

Mr Nicholson—The process is that both governments have to pass legislation and then it can come into force.

Senator O'BRIEN—So, if it is unhappy with these measures, it can decline to pass such legislation?

Mr Nicholson—Yes. I am not sure what they are going to do, but it would seem to me that, if they were concerned they were getting a bad deal, they would be less likely to pass the legislation.

Senator O'BRIEN—So that matter is in their hands?

Mr Nicholson—It is up to them when they pass their legislation. It is up to the Timorese parliament, I suppose.

Senator WATSON—Could you outline the history of the boundary arrangements between Australia and Indonesia or, more latterly, East Timor?

Mr Nicholson—There are no permanent maritime boundaries between East Timor and Australia, nor did the Portuguese colonial government set any permanent boundaries. No permanent boundaries were set during the Indonesian occupation. Timor probably would not have been bound by them anyway. At the moment we have a series of revenue sharing agreements but no boundaries. In the other areas, Indonesia and Australia agreed to a boundary in the 1972 treaty between those two countries. My understanding is that, under the terms of that treaty, neither state can unilaterally withdraw, so the boundaries with Indonesia are set in stone. A gap was left for Timor, hence the Timor Gap. As I said, while there have been various revenue sharing agreements, which in our view have been to the detriment of East Timor and getting a fair go for East Timor, there are no boundaries. Quite reasonably, the East Timorese believe that part of the process of self-determination and being independent is settling boundaries with your neighbours and getting access to control of the resources which are inside your exclusive economic zone.

Senator WATSON—What are the unusual features of the boundaries that are subject to this legislation?

Mr Nicholson—As I said, there are no boundaries at the moment. The revenue sharing agreement has the effect of giving to Australia 82 per cent of a field, which is twice as close to East Timor as it is to Australia.

CHAIR—You know, don't you Mr Nicholson, that in international law equidistance between maritime states is not an absolute rule of determining where boundaries are?

Mr Nicholson—It is not an absolute rule but certainly if you examine the recent decisions of the International Court of Justice and recent state practice you will find it is certainly dominant.

CHAIR—It is an indicium among others.

Mr Nicholson—That is right. The other thing that is worth considering is that East Timor is on Australia's continental shelf. There are certainly a variety of legal opinions. If the Australian government were so confident of its legal position, it is interesting that it withdrew from the arbitration mechanism two months before East Timor's independence.

CHAIR—I am sorry, Senator Watson. I interrupted you.

Mr Nicholson—In short, it would seem to us that the most likely result of boundaries drawn in accordance with international law would be to shift the lateral boundary east so as to give a majority or all of Sunrise to East Timor, and the boundary running east-west would probably most likely to be drawn on or close to the equidistant line.

Senator WATSON—But that is based on the proposition that we are starting from a greenfields site, but we already have some boundary arrangements in place in the area in which this is being built, haven't we?

Mr Nicholson—There are revenue sharing agreements. The revenue sharing agreement—in this case the IUA, the unitisation agreement—specifically says that it is without prejudice to future boundary delimitation. I can only presume that Australia is going to act in accordance with the terms of the unitisation agreement,

which says that it is without prejudice to future boundaries. From memory, that is included in article 2 of the unitisation agreement.

Senator WATSON—It does refer to a resource rent tax. Generally that is based on profit, so we assume that this must be a highly profitable field, otherwise it would be on a royalty or excise basis, wouldn't it?

Mr Nicholson—I must admit that I am no expert in the taxation arrangements of resource companies in general.

Senator WATSON—I will not pursue those questions then.

Senator MARSHALL—If I understand what you have said, the trust fund proposal that you put in your submission would remove any incentive for stalling in the final negotiations that may occur around the boundaries. Would the trust fund arrangement in any way provide uncertainty for developers of the field?

Mr Nicholson—Our understanding from the Woodside submission is that what they need is regulatory certainty, and that is quite reasonable. It seems to me that it does not really matter to an oil company who the money they pay goes to in the end—how it is divided. The Woodside submission to this committee makes particular reference to the idea that boundaries will be negotiated while development in the field goes on. Our understanding is that this would give the certainty required to the developers of the field and the only thing which would be altered is how the money is divvied up between the two states—that is, between East Timor and Australia.

Senator STOTT DESPOJA—Mr Nicholson, I am also going to ask you about the second recommendation in your summary in relation to the trust fund. Could you elaborate for the committee how you think that trust fund might work? For example, do you have a precedent in mind in relation to that trust fund? I am certainly very attracted to it—it is something that we have recommended in our minority report on the Joint Standing Committee on Treaties investigation into this issue—but could you elaborate further?

Mr Nicholson—Our understanding is that when the Timor Sea Treaty was negotiated revenues were placed in trust from the time of East Timor's independence and once the Timor Sea Treaty came into effect they were then distributed according to the 90-10 split of that area which was decided under the treaty. So there is a precedent even within negotiations about the Timor Sea for such a trust fund. We understand that the reason for this is that it was understood that there were valid overlapping claims and therefore in that case it was appropriate to place them in trust and then distribute them once that was sorted out.

Clearly in the case of Sunrise both countries have valid overlapping claims to this area, so it would make sense under that precedent set by the Timor Sea treaty to place the Greater Sunrise revenues in trust until the boundaries are finalised. It is also something which received support in a variety of submissions in relation to the Timor Sea Treaty, including those from a number of East Timorese NGOs. I understand that Oxfam made a submission to this committee—but it does not seem to have appeared—which also agreed with this recommendation. As I said, it would have no detrimental effect on the operators of the project because it would give them the legal certainty they require. It would cost a good faith Australian government nothing, since Greater Sunrise will probably not come online until around 2009 and there is no doubt that the maritime boundaries could be voluntarily settled by that time if the Australian government were to negotiate in good faith.

CHAIR—How can you be sure? The premise of your argument is that this is a contentious matter. How can you be sure that it will be settled by 2009? I know it sounds a long time away but it is only five years. There have been international boundary disputes going on for 50 years.

Mr Nicholson—That is right. I guess it is because our understanding is that the technical issues are not as complex as they are in some cases and that if meetings were held monthly rather than six-monthly and there was a possibility of getting an advisory opinion from an international body if negotiations broke down—if these various international mechanisms were used rather than just a straight negotiation every six months—then things would happen much faster. It is also a position we have heard from inside East Timor: that Timor certainly desires to get a boundary set within three to five years and will be working towards that. I cannot see any reason, if two countries are negotiating in good faith, why they could not reach an agreement within that agreed time frame.

Senator STOTT DESPOJA—Thank you, Chair, for saving me from playing devil's advocate. Mr Nicholson, on the differences in the handling of the revenue from the joint petroleum development area under the Timor Sea Treaty you are arguing that, because these restrictions have applied in terms of that revenue, that precedent should serve as a guide for your trust idea under this legislation.

Mr Nicholson—That is right. My understanding is based on a letter that one of our members received from the government when they asked about this situation. They were told that it was because of valid overlapping claims. If that is the case, clearly the same situation applies here: there are valid overlapping claims to Greater Sunrise. So it seems to me there is no reason not to do it for those same reasons and, as I said, it would cost a good faith Australian government not one cent.

Senator STOTT DESPOJA—You have been asked today about the fact that this has to be ratified and voted on by the Timor Leste government. It is almost as if, ‘We can deal with it from our end; they can vote on it from their’s.’ Do you feel that there may be a sense for that government that it is better than nothing to get it through now, and are we conducting these negotiations and discussions in a way that is in the best interests of both countries? I acknowledged last time round that when a government from another nation suggests to you as a senator or indeed as a government that you should pass legislation because it is in that nation’s interest, you feel morally obliged to do so. I am wondering if you can see a conundrum there for some of us in that, while we may not agree with the handling of it, there is a strong sense that people need this revenue?

Mr Nicholson—That people in East Timor need this revenue?

Senator STOTT DESPOJA—Yes, people in East Timor need this revenue.

Mr Nicholson—Okay, but the Greater Sunrise revenue will not come online until about 2009. That is my understanding from industry estimates. So we are not talking about an urgent thing whereas, in the case of Bayu-Undan, the other field, that revenue was needed that year. Whether we consider this for a few more weeks and whether there is a possibility of an amendment which could put this trust fund in place, it is not going to impact on Timor next week. In any case, as I said, I would hope that the permanent boundaries could be settled by 2009.

Senator STOTT DESPOJA—Thank you. I take on board your point about economic imperatives and I like your amendment. Thank you.

Senator BROWN—Mr Nicholson, you spoke about \$8 billion being taken from East Timor and their kids’ future and schools and hospitals. On the figures in your submission, I understand that government revenue in East Timor would be about \$100 per head of population?

Mr Nicholson—That could be right, yes.

Senator BROWN—It is almost unimaginable in Australian terms. With your experience and contacts in East Timor, what is the degree of awareness there about the Timor Gap debate and about the progress on the treaties and the arrangement—Australia versus Timor Leste—and the outcome that those arrangements are going to have?

Mr Nicholson—There is no doubt that the East Timorese are very grateful for the role Australia played in 1999 through INTERFET and their other involvement in the East Timor’s move to independence. But, unfortunately, that gratitude and the sympathetic feelings toward Australia are starting to change in East Timor. I have no doubt about that. For example, you can see the comments by Mr Alkatiri, which are very critical of the Australian government. You may have also seen the submission to this committee by the East Timor Institute for Reconstruction Monitoring and Analysis, called La’o Hamutuk in Tetum. This is an extremely well-regarded East Timorese NGO. Its opinion reflects closely the elite opinion in East Timor. The East Timorese man, Joao Sarmiento, who signed off on the submission, is one of the most highly regarded young intellectuals in East Timor. You can see in the submission the increasing frustration and hostility towards the Australian government’s position in relation to the Timor Sea. In fact, if you were to trace through the submissions by La’o Hamutuk to the various Australian committees about these issues you can see the move from constructive and friendly comments into more and more frustration.

I have no doubt that the more general opinion amongst the East Timorese is beginning to change and there is a growing awareness of these issues because of the activities of a number of highly respected NGOs in East Timor. So it does seem to me to be a great shame that these actions will have the effect of harming Australia’s relationship with East Timor. You can see it at a government level today, with some of the comments of Mr Alkatiri, and you can see it happening through some of their most respected opinions, which are starting to change, and that will have a long-term effect. It seems to me a great shame to throw away the goodwill from 1999 because of these issues.

Many Timorese hear Mr Downer talking about the 90-10 split in favour of East Timor. But actually, if you analyse all the fields in the Timor Sea, Australia is currently taking 72 per cent of the revenues. If you look at the just those fields that are closer to East Timor than they are to Australia, 60 per cent of these revenues are

going to Australia. So it is not surprising that the Timorese are starting to feel that they are not actually getting a fair deal and they do not believe it when they are told they are getting a fair deal. To me it is a great shame that this is happening. I actually do not see how it is in Australia's broader national interest. It would seem to me to be strongly in Australia's national interest to have East Timor as an economically independent, developed state with good health and education facilities in the future rather than a possibility of East Timor having to go into debt, of East Timor remaining aid dependent and a Timorese elite which is hostile to Australia.

Senator BROWN—I gather from that that you mean that it is not in Australia's interests as far as Australia's security is concerned to turn a friendly neighbour into a hostile neighbour.

Mr Nicholson—I guess that is true as well.

Senator BROWN—You talked about the intellectuals but is there a general understanding amongst the populace about the split on the oilfields? It has to be put bluntly: is there a feeling that Australia is robbing East Timor of its rights in this regard?

Mr Nicholson—Public interest and public opinion are growing on this issue. Some of the issues are complicated but public interest and opinion are growing and will continue to grow so long as there is unhappiness among some of the key NGOs which have strong links to the community. For example, La'o Hamutuk has produced a 15-minute radio play about these issues which has been broadcast throughout East Timor.

Senator BROWN—What does the play say?

Mr Nicholson—I have not actually heard it, but it talks about the issues and reflects that NGO's opinion which, as you can see from its submission, is quite critical of Australia's position.

Senator BROWN—I have one more question which is about the environmental considerations. Can you tell the committee about the environmental considerations of the proposal, what the environmental impact will be and what studies are being done into the environmental impact on the marine environment?

Mr Nicholson—My understanding is that the operators of the Sunrise field have not actually decided whether they are going to build a pipeline to East Timor or to Australia, or whether they will extract it through some floating NLG plant. I understand that the East Timorese government is currently looking into the environmental and social impacts of a pipeline to East Timor. My understanding is that those steps are being taken to a greater extent in relation to Australia, but I am not really sure.

Senator BROWN—Has there been an environmental impact assessment of the extraction in situ, in the Timor Sea?

Mr Nicholson—Not that I know about. Perhaps you had better address that question to an operator, or someone from the Department of Foreign Affairs and Trade or a relevant government agency.

CHAIR—Thank you, Mr Nicholson.

[5.37 p.m.]

BRIEN, Mr Joshua Alexander, General Counsel (International Law), Office of International Law, Attorney-General's Department

CAMPBELL, Mr William McFadyen, General Counsel (International Law), Office of International Law, Attorney-General's Department

FRENCH, Dr Greg, Legal Adviser, Department of Foreign Affairs and Trade

MORAITIS, Mr Chris, Senior Legal Adviser, Department of Foreign Affairs and Trade

GRIFFITHS, Mr John, General Manager, Offshore Resources Branch, Department of Industry, Tourism and Resources

HARTWELL, Mr John, Head of Division, Resources, Department of Industry, Tourism and Resources

HOOD, Mr Chris, Tax Counsel Network, Department of the Treasury

CHAIR—I welcome to the committee officers from interested departments. It has not been customary in this committee for departmental officers to make an opening statement. Unless any of you wish to urgently clarify anything that has been said by the previous witness, we might proceed directly to questions.

Senator O'BRIEN—In the House on 10 March, Mr Macfarlane said:

I was asked by the shadow spokesman in his contribution about the reasons for the amendment to the customs schedule in proposed item 22A, as set out in the Customs Tariff Amendment (Greater Sunrise) Bill 2004. In answer to that, it is known to those who follow the issue that the legislation cannot go beyond the unitisation agreement of East Timor, strongly supported by the duty-free entry. East Timor has strongly supported the duty-free entry to facilitate this development. Those are their words ...

I am still struggling to understand exactly what the minister means. Perhaps an officer from the department can further enlighten us.

Mr Hartwell—In relation to the customs issue, it certainly was brought up in the debate in the House. Some background to the customs provision which is in the bill is that the issue related to the fact that for petroleum activities it was agreed with East Timor that it would be exempt for customs duty. This, in a sense, is related to the fact that within the Timor Sea Treaty itself, which has been ratified by both countries, there is duty-free entry of goods for petroleum activities. In relation to the Greater Sunrise area, under article 22A it would have been very, very difficult to have a different arrangement applying there. That is why we have customs duty-free entry both in the area that is under the jurisdiction of Australia and in the area under the joint arrangements that we have with East Timor. It was against that basis that the provisions that are in the customs bill were formulated. It was with the strong insistence of East Timor in order to facilitate the development of the activities within the Greater Sunrise area that that arrangement had been put in place in terms of the international unitisation agreement.

Senator O'BRIEN—What impact can we expect from the implementation of the customs duties part of this legislative package in terms of the development and the impact on manufacturing in Australia or, to the extent possible, in East Timor?

Mr Hartwell—As you would know, there is a process for other areas in Australia related to major projects—that is the major projects by-law, which is for projects over \$10 million. There are arrangements in place, provided that they have a suitable local content plan. Provided that goods of a required nature or of sufficient technological capacity for the development are not available in Australia, then goods can be imported duty-free. In relation to what might happen in the Greater Sunrise area, you would certainly have seen a submission from Woodside Petroleum, the operators of the Sunrise deposits. They have indicated that they would go through a process of ensuring that as much local content as possible was included. In our view, taking into account the fact that preference is given to both East Timorese and Australians with employment in the Timor Sea Treaty, and we would expect that that would apply for any development in terms of supply arrangements that might be related to a project which would occur in the Greater Sunrise area, we would expect that maximum effort would be directed towards ensuring the highest local content possible.

Senator O'BRIEN—I understand Woodside wrote to the minister last week with regard to the Customs Tariff Amendment (Greater Sunrise) Bill 2004. What commitments have Woodside given to the minister?

Mr Hartwell—Woodside have given commitments along the lines that I just indicated—that is, that maximising local content is an important principle and part of the philosophy of doing business for Woodside. This approach will be unchanged by the Customs Tariff Amendment (Greater Sunrise) Bill 2004. As I said

before, Woodside are committed to maximising local industry participation in the project and, as I understand it, are committed to undertaking industry consultation processes of the kind normally included in projects under that scheme, which is enhanced by law. It would be customary practice for Woodside. Certainly, they intend to prepare a local industry participation plan for the project and to liaise with the relevant Australian and Timor Leste stakeholders in that case.

Senator O'BRIEN—Are you able to provide the committee with a copy of the letter, for the record?

Mr Hartwell—As long as I can get clearance from my minister and my minister's office, I think we would be able to do that.

Senator O'BRIEN—I would appreciate it if you could do that.

Mr Hartwell—My understanding is that the opposition has been provided with a copy, but I cannot be certain of that.

Senator O'BRIEN—I am asking if the committee can be provided with a copy. I am not certain who has received copies. If there is a commitment in the hands of the minister in the context of this hearing, I think it should be on the public record.

Mr Hartwell—Sure.

Senator STEPHENS—You heard the evidence of our previous witness—

Mr Hartwell—Sorry, Senator, I did not hear all of it. I caught the last five minutes.

Senator STEPHENS—That is okay. The submissions to the committee have been concerned about the negotiations on the permanent maritime boundary. That is one of the key concerns among the issues. Can you clarify for the committee whether there are any aspects of the bills that would prejudice East Timor's rights in the Timor Sea and negotiations on the permanent maritime boundary?

Mr Hartwell—I will make a brief comment on that, then pass to my colleague Chris Moraitis from the Department of Foreign Affairs and Trade, who is leading those maritime boundary negotiations. The Greater Sunrise unitisation bill is without prejudice to permanent maritime delimitation arrangements.

Mr Moraitis—To confirm what Mr Hartwell said, as the IUA makes specifically clear, in an article of the agreement there is a without-prejudice clause, so there is nothing that I can see in any of this IUA legislation that has anything to do with the maritime delimitation process.

Senator STEPHENS—My question to previous witness also was: is there any aspect of the bills that is not consistent with the Timor Sea Treaty or the IUA?

Mr Moraitis—I defer to Mr Hartwell, whose department has been running the legislation, but my understanding is that the legislation is to implement the IUA, to be consistent with the obligations we have entered into on signing the IUA. That is my understanding. There is nothing that I am aware of that provides for any inconsistency with those commitments in both the TST and the IUA.

Mr Hartwell—That is correct.

Senator MARSHALL—Mr Campbell, it was put to the committee that negotiations about finalising the permanent maritime boundary have been put back to one every six months. Is that the case?

Mr Campbell—It is the position that have we put to East Timor that we ought to have maritime boundary negotiations at this point in time once every six months.

Senator MARSHALL—At that rate, when would you expect to finalise those negotiations?

Mr Campbell—That is very difficult to say. I would hesitate to say at the beginning of any maritime delimitation negotiation how long those negotiations would take. It all depends on how far apart the parties are, what sorts of claims are being made and how entrenched the positions are. So it is very difficult to say in any maritime boundary negotiation how long it will take. I think it has been mentioned in this case that these negotiations have to be completed within a certain time. I think it has been put that the time frame for the negotiations should be a period of three to five years. Neither side would want to commit to a timetable if ultimately giving effect to that timetable were somehow going to affect the interests of their country and the areas to which they were entitled.

Senator MARSHALL—Would it be your view that we would be able to complete negotiations within that time?

Mr Campbell—I just cannot make an estimate about that at this point in time.

Senator MARSHALL—So what process is open to us now if both parties fail to agree?

Mr Campbell—I am not sure whether you are alluding to—

Senator MARSHALL—Do we remain without a permanent boundary? Is that what happens?

Mr Campbell—Without a permanent boundary, the position as stated in the unitisation agreement would remain in place for the period of that agreement. If you are alluding to the question about whether there is any other form of resolving the boundary, the two means of resolving boundaries are by negotiation or, failing negotiation, some form of international dispute settlement mechanism. It is the position of the current government that it prefers maritime boundaries to be resolved by agreement. That is reflected in article 83 of the law of the sea convention as the first means by which one should seek to negotiate a boundary.

Senator MARSHALL—It has been put to the committee as well that these bills would actually create a financial incentive to delay finalisation of those negotiations. Is that the case?

Mr Campbell—I think that is almost a suggestion that the government would not act in good faith in negotiating a boundary.

CHAIR—It was actually a suggestion; it was not almost a suggestion. Mr Nicholson said that the government has not been doing it in the past and he announced that he had a suspicion that the government may not in the future negotiate in good faith. What do you say about that?

Mr Campbell—The position is that Australia negotiates its agreements in good faith. It might have a disagreement in the course of those negotiations or a difference with the other party, but that does not mean it is not negotiating in good faith. But we have said that we would pursue these negotiations in good faith.

Senator MARSHALL—Let us put the good faith argument to one side. Is there a financial advantage to Australia the longer these negotiations drag on?

Mr Campbell—That is not a question I could answer. I do not know what the outcome of the final negotiations would be.

Senator MARSHALL—Sorry. Yes, we would probably have to make an assumption. If they remained exactly under the unitisation agreement, I suppose it would not change. But assume it moves, however small. If there were a final negotiation about a maritime boundary, or an arbitrated decision—and assume that, however small, it is in East Timor's favour—would East Timor be financially disadvantaged? To help you, because there is no trick in this, I will come to the point that was put to the committee that one of the ways around this would be to establish a trust where Australia's share would be put in the trust and then divided on the basis of the outcome of the final maritime boundary. That is where I want to go to. I would like a view on whether that would assist the parties in negotiating a final settlement.

Mr Campbell—I find it very difficult to put aside this proposition, which is reflected in international law, that parties approach such a negotiation in good faith. I have seen the suggestions that we would not, and I know that we would not agree with that suggestion. As to placing the proceeds in the eastern Sunrise area—as it is referred to in the bill—in an escrow account, the unitisation agreement itself actually sets out a ratio on what is to be attributed to the JPDA and what amount of oil is to be attributed to Australia, and in those circumstances it is very difficult to see why money should be placed in an escrow account.

Senator MARSHALL—If, for instance, we finalised a final boundary at the second meeting next year, are you saying the financial ratio will not change as a result of that? Are you saying that these bills fix for all time—

Mr Campbell—No, I am not saying that. I am just saying that we will pursue these negotiations in good faith and that until a permanent maritime boundary delimitation is negotiated the ratio of approximately 80 to 20, or 79.9 to 80.1, is set out in the unitisation agreement and reflected in the Timor Sea Treaty. If I could just mention the question of an escrow account, which I think was raised in evidence. I think that question was that in effect there was an escrow account between the time the Timor Sea Treaty was negotiated and the time the Timor Sea Treaty was actually brought into force. That is so, but the reason that was so was to ensure that the benefits that East Timor gave out of the Timor Sea Treaty in that case, which were agreed by Australia, would be given to East Timor for that interim period.

Senator MARSHALL—Do the bills ensure that after the final determination of the maritime boundary the benefit of the development will then reflect the boundary? Sorry, I put that rather clumsily. It was also put to us that the bills could be applied to ensure and enshrine the current split regardless of the outcome of any final boundaries. Is that the case?

Mr Campbell—They would not. There are ‘without prejudice’ clauses in the Timor Sea Treaty and in the unitisation agreement that say that they are without prejudice to the ultimate resolution of the boundary.

Senator MARSHALL—Can you explain to me what that means exactly? The split is 18 to 72. Does that automatically change once a final boundary is set or will those figures continue to apply until the field is exhausted under these bills?

Mr Campbell—The unitisation agreement says that, once the maritime boundary is negotiated:
In the event of permanent delimitation of the seabed, Australia and Timor-Leste shall reconsider the terms of this Agreement.

Senator MARSHALL—I have just one last question. I think it was also put by the previous witness that we did have scheduled monthly meetings to determine the boundary. Is that the case? If so, why have we changed to six-monthly?

Mr Campbell—I think there is no doubt that Timor Leste supported monthly rounds of negotiations. That was not a schedule that was agreed to by Australia. The Australian proposition was that there should be a greater time between each round of negotiations. But I cannot recall Australia ever having accepted that there should be monthly rounds of negotiations.

Senator MARSHALL—So East Timor seeks monthly and we are insisting on six-monthly. What is the rationale for six-monthly?

Mr Campbell—The rationale is that it is in the nature of these negotiations that very serious propositions are put by both sides during each round of negotiations—particularly on questions of bore, geomorphology, geography and a whole range of issues which are quite serious in a maritime delimitation. I just do not think it is realistic to have a negotiation one month and then expect that all of those issues that are raised in one round of negotiations could be given adequate consideration by respective governments.

CHAIR—So you reject the rather sinister interpretation of the movement to six-monthly negotiations that Mr Nicholson advanced that this exhibited bad faith on the part of the Australian government?

Mr Campbell—Yes, I do. I am rather surprised at it.

CHAIR—The reasons are much less exciting—they are practical reasons.

Mr Campbell—The reasons are more practical and they have to do with ensuring that—I would say on both sides—we can give adequate time to consider issues that have been raised in the course of the negotiations.

Senator WATSON—I have a number of questions. Firstly, without the customs tariff amendment bill, which provides for customs-free entry, what would be the revenue implications of the project? We are relying on a resource rent tax, but we are providing customs- or excise-free entry. What would be the implications without this bill? It is a little bit unusual, isn't it? This bill has a number of unusual features. That is one of them.

Mr Hartwell—Senator, you pointed out how unusual it is. I am not sure about that. As I indicated in my previous statements, in terms of projects like this, there is an enhanced project by-law scheme which enables the importation of goods duty free, where substitutable products are not available in Australia. We do understand that, as I said before, while attempts will certainly be made to maximise local content, the—

Senator WATSON—I can understand that one, but I am talking about the revenue implications as a result of the flow of gas.

Mr Hartwell—What I am saying to you is—

Senator WATSON—I can understand the duty-free context for consumables and for building.

Mr Hartwell—It is difficult. Because some of this is in Australian jurisdiction and some of it is in the joint area, we cannot apply the normal by-law procedures if we are going to develop this as a unitised area. That underlies the duty-free entry. We would expect that the revenue implications, given our experience in the past, would not be that significant. We suspect that, if we applied the same test that applies for major projects elsewhere in Australia, a lot of the goods would still be coming in duty free. While that is an issue that I could ask my colleagues from Tax or Customs to comment on, I suspect the revenue implications are not that great. This is in the area of speculation rather than any hard figures that I could provide you.

Senator WATSON—The revenue to the Australian government is based on a resource rent tax. In other words, it is based on a profit.

Mr Hartwell—Yes.

Senator WATSON—Is that profit going to be the same baseline calculation for Australia as it is going to be for the authorities in East Timor, or are there different calculations of profit depending on who the final recipient is going to be?

Mr Hood—I am from the tax office and I am representing the Treasury portfolio. Although there has been some loose and convenient talk about sharing the revenue, in fact what is shared is the secondary taxing right. We collect our share in petroleum resource rent tax, which only collects money after costs and assured returns have been fully recovered. Timor Leste—or in this case the joint authority in the treaty area—in effect collects secondary tax by a different mechanism, which collects more tax and collects it earlier, so that the percentages are not percentages of where actual money is going to flow; they are percentages in terms of the application of the two different secondary taxing systems.

Senator WATSON—Is the primary tax collected only by Australia?

Mr Hood—No.

Mr Hartwell—Maybe I can add a bit to what Mr Hood has said. The taxation system is worked on the basis of the current proportionment ratio that the hydrocarbon reservoir or petroleum deposit is based on. As you are aware, within the unitisation agreement in the bill, it is based on a ratio that 79.9 per cent is attributed to Australia and 20.1 per cent is attributed to the joint petroleum development area. Therefore, the 79.9 per cent is subject to the normal provisions of the petroleum resource rent tax and the other 20.1 per cent, which is in the joint area, is subject to the joint petroleum development area form of secondary taxation which is, as Mr Hood indicated, a production sharing contract arrangement. In that sense, 79.9 per cent of the deposit is subject to Australian secondary taxation, as represented by the petroleum resource rent tax, and 20.1 per cent is subject to the production sharing contract arrangement, which is in the joint area—90 per cent of which goes to Timor Leste.

Senator WATSON—At that stage, does Timor virtually gets its share of the profit of 20-odd per cent tax free, or not?

Mr Hartwell—I am not sure what you mean by tax free.

Senator WATSON—You are going to apply tax to the production unit—the joint arrangement. Australia is entitled to approximately 80 per cent and East Timor to about 20 per cent. On that basis of profit, we are going to apply a resource rent tax. Is there any recovery of resource rent tax from the 20 per cent entitlement or is it just the 79 per cent?

Mr Hartwell—If I understand the question correctly, it is just the 79.9 per cent that is subject to petroleum resource rent tax.

Senator WATSON—That is the primary tax. How are the secondary taxes shared?

Mr Hood—The petroleum resource rent tax is a secondary tax.

Mr Hartwell—I am sorry. We probably need to make the distinction. There are two levels of taxation here.

Senator WATSON—We have worked out the first level of tax. Please explain the second level of tax.

Mr Hartwell—I was going on to explain that the next level of tax is normal company tax: corporate tax arrangements. Because we are exploiting a resource which is essentially in the hands of the Crown, companies pay a certain resource rent for the right to exploit that resource.

Senator WATSON—We have already covered that in the first tax.

Mr Hartwell—I know, but you are asking me what the next level of taxation is, and the next level is corporate taxation.

Senator WATSON—We have already picked that one up. We cannot have a double dipping under the guise of petroleum resource rent tax. We have picked that up under the first one, and Australia has a collection on the basis of its 80 per cent quota. Then East Timor determines what it wants to do with its share. There is another tax which you say is a company tax. What is the basis of that?

Mr Hartwell—The same arrangements apply. The Australian corporate tax arrangements would apply on our share, which is 79.9 per cent, and the corporate tax arrangements that apply within the joint petroleum development area, which are essentially East Timor corporate tax arrangements, would apply there.

Senator WATSON—Given that there are few mining ventures that are profitable initially, when do you expect the field to produce petroleum resource rent tax income, because that is based on profitability. When is it going to start?

Mr Hartwell—Given that we would not expect production to start until about 2009, and given that you can write off all your expenditure before you need to incur petroleum resource rent tax, I would only be hazarding a guess but it would be some years after the first production point.

Senator WATSON—That is the question I am asking. Production starts in 2009. We expect to get revenue in the form of resource rent tax for what amount of time? Will it be six months, one year or 10 years?

Mr Hartwell—Are you asking at what point the project would start paying petroleum resource rent tax?

Senator WATSON—Yes.

Mr Hartwell—I would not like to hazard a guess at that. It depends on the nature of the project development. It depends on oil prices at that time. It depends on a whole range of things.

Senator WATSON—Just a minute. You have come up with a figure of \$8.5 billion over the life of the project.

Mr Hartwell—But it is a 30-year project. Certainly there are estimates around which suggest that the total revenue, which would include both corporate tax and secondary tax accrued by both governments over the life of the project, will be about \$10 billion.

Senator WATSON—My question is: when are we first going to get a petroleum resource rent tax income? It is starting in 2009—

Mr Hartwell—Production is starting in 2009.

Senator WATSON—Yes, production is starting in 2009. How many years are we going to wait: one, two, three or 10? Are we going to get all the income in the last decade?

Mr Hartwell—It is not a question I can precisely answer.

Senator WATSON—You have projected figures of just under \$10 billion. There has to be some basis for you to have allocated those revenues into certain periods of time. I do not mind if you are a couple of billion out; I am just asking you to give us some idea of when the money is going to flow.

Mr Hartwell—I understand the substance of your question. I will let my treasury people have a little bit of a guess at this. We have been working with them on this. It could be in the first year, but I cannot make that categorical assumption.

Senator WATSON—I would like a forecast rather than a guess.

Mr Hood—On behalf of Treasury, we genuinely cannot give you a real estimate on that at this stage because, although we have a global estimate for the whole field, it is so very sensitive to things like the amount and the timing of serious capital expenditure, the exchange rate from time to time and the crude oil and gas prices from time to time. It really is not possible to give you a meaningful answer.

Senator WATSON—So the \$10 billion is in actual dollars or today's dollars—

Mr Hartwell—It is in nominal dollars. It is only an estimate and it does have a high level of imprecision against it. It is a combination of both secondary taxation, as I mentioned, which is petroleum resource rent tax, and the production sharing arrangements within the joint area plus corporate taxation—

Senator WATSON—What is the degree of volatility in terms of your estimates? Are you looking for 10 per cent or 20 per cent?

Mr Hartwell—They are quite high.

Senator WATSON—What is the volatility component built into your estimates? You say you do not know when it is going to start. You say it is going to last for 30 years. You have given us a figure of \$8 billion to \$10 billion. Can you give us some sort of time frame when it is likely to happen? Given your forecasts, what is your estimated percentage for error? Given all the normal fluctuations that we would expect in these sorts of long-term agreements, are you looking for a 20 or 30 per cent margin of error?

Mr Hartwell—I am trying my best along with my colleagues to answer the questions you are asking, Senator.

Senator WATSON—I am quite happy for you to take them on notice.

Mr Hartwell—We can do that. We can come back to you. Those figures have been put on the table because many people have asked for them and they are very much based on a degree of precision, but I do not want to mislead you that we have that precision. There is a lot of volatility, to use your term, based on a whole range of capital costs of the project, unknowns such as gas and oil prices and things of that nature which could impact on the revenue estimates. I am reminded by my treasury people that we would expect at least four or five years to pass before the petroleum resource rent tax might cut in.

On the other side, because different arrangements apply in the production sharing arrangement and there is almost a production based tax up front, as soon as there is production a share does go to the two contracting states. I do not want to get into technicalities but it is called first tranche petroleum. So there would be some secondary taxation in the joint part of the exercise which would cut in from day one. In relation to petroleum resource rent tax, if you are pushing me towards a figure I will say five years, but I would not like to be held to account on that.

Senator WATSON—A casual reading of the explanatory memorandum suggests that you can increase the actual past expenditure on the basis that that expenditure can be carried forward and compounded. So, in effect, you get a real time value of the money that was previously expended. What is the time value of the money that was used?

Mr Hartwell—The carry-forward rates that exist in relation to the petroleum resource rent tax arrangements for exploration expenditure are the long-term bond rate plus 15 per cent, and on general expenditure in relation to the resource project they are the long-term bond rate plus 10 per cent.

Mr Hood—And for expenditure of an older character there are different compounding rates in the system. It is fairly complicated to go over them.

Senator WATSON—So if it is the long-term bond rate plus 15 per cent and if our long-term bond rate is, say, six per cent, that means we are looking at 21 per cent, compounding, for past expenditure.

Mr Hartwell—For exploration, yes.

Mr Hood—In effect, for expenditure more than five years before the first relevant production authority, you are talking GDP indexation to maintain real long-term value but no more.

Senator WATSON—Just a minute: let us categorise it. I was told that for exploration it was the long-term bond rate plus 15 per cent. You are now saying—

Mr Hood—I am trying to simplify it and make it as clear as I can.

Senator WATSON—Well, can somebody give us a schedule because it looks as though they differ?

Mr Hood—There is no schedule in the PRRT Act. I can give you the section references.

Senator WATSON—No, I would like this in a schedule—the compounding formulas to be used for the life of the project. Now you are saying that initially for exploration it is on the basis of indexation. That is a lot different from the long-term bond rate plus 15 per cent.

Mr Hood—Yes. Basically, what indexation applies depends on when the first relevant production licence issues. Anything that is spent more than five years before that first production licence issues carries forward essentially according to GDP factor rates. Anything more recent, anything within five years of the start of the first applicable production licence or anything thereafter carries forward in essence at long-term bond rate plus a compounding percentage rate of return which does vary between your exploration and your general expenditure.

Senator WATSON—So exploration is higher than general expenditure?

Mr Hartwell—That is correct.

Mr Hood—But the substance is therefore that all expenditure maintains its real value over time, and any expenditure incurred within five years of the first production licence and any subsequent expenditure not only maintains real value but uses long-term bond rate to do so and also attracts a substantial real rate of return before it is taken to be recovered. The provisions are somewhat complex but they mean that you get the real value back and you get a real rate of return. In the case of these fields, for example, it is extremely unlikely that there will be any substantial expenditure that is outside the five-year margin and that drops back to GDP—that is a practical question; it can arise—but the bulk of expenditure clearly attracts both maintained real value in terms of long-term bond rate and an assured real rate of return, all of which must be recovered before they have to pay any PRRT.

Senator WATSON—Is the operator Woodside?

Mr Hartwell—Yes.

Senator WATSON—Who is going to pay this initial tax? Is it the unit or is it Woodside?

Mr Hartwell—It would be attributed to the JV partners, as such.

Senator WATSON—So all the partners will be subject to an Australian corporate tax rate; is that right?

Mr Hartwell—Yes, that is right.

Senator WATSON—So there is no exclusion. It is not just on the 79 per cent; it is on the 100 per cent.

Mr Hartwell—Yes, but it is only Australian corporate tax rates and the petroleum resource rate tax which will apply on the 79.9 per cent. The other 20.1 per cent is subject to different taxation arrangements consistent with the arrangements that apply within the joint petroleum development area.

Senator WATSON—This is what I am trying to get to: does a corporate entity pay tax on the basis of 100 per cent production or 79 per cent?

Mr Hartwell—It will pay tax on the 100 per cent, but different arrangements apply on 79.9 per cent of that and other arrangements will apply to the 20.1 per cent. So they are still paying tax on the whole amount but different tax arrangements apply to the apportioned share.

Senator WATSON—The Australian government is actually taxing a share of the profits that are attributable to East Timor. Is that correct?

Mr Hartwell—No, we are taxing a share of the profits attributable to Australia—that is the 79.9 per cent.

Senator WATSON—So the entity only pays tax on—for shorthand purposes—80 per cent of its taxable income to the Australian revenue authorities as corporate tax?

Mr Hartwell—Yes.

Senator WATSON—You are not very convincing.

Mr Hartwell—I said yes, but—.

CHAIR—Senator Watson, you have asked him the question; he answered it unequivocally. He said yes. If Mr Hartwell wants to elaborate on his answer, he should be allowed to do so without interruption.

Senator WATSON—It was the tone with which you said yes, Mr Hartwell. It was not very reassuring.

Mr Hartwell—All I am saying is, yes, Australian taxation arrangements, both in relation to the petroleum resource rent tax and corporate tax, are applied on that share of the petroleum production in the Greater Sunrise area attributed to Australia, which is 79.9 per cent. With the other 20.1 per cent, the taxation arrangements which apply in the joint petroleum development area are different because they are East Timorese corporate taxation arrangements. They are also different arrangements which apply in secondary taxation. The whole unit, the whole 100 per cent, is taxed, but the 79.9 per cent is subject to Australian arrangements and the 20.1 per cent is subject to arrangements which apply in our jointly administered area.

Senator WATSON—So the 20 per cent formula is based on Australian tax deductibility arrangements and these particular bills.

Mr Hood—That is not quite the way it works. The petroleum resource rent tax applies to Greater Sunrise projects on the same project basis that the PRRT would apply to an entirely domestic Australian project—say, Bass Strait. That is, it applies on the basis of all the assessable receipts and all the deductible expenditures—

Senator WATSON—No. Only 79 per cent, I was told.

Mr Hood—No. Bear with me, if you will. It applies on the basis of the whole project position because the PRRT only bites when the project, the taxpayers' involvement in the project, has fully recovered its costs and compound returns—but then because of the percentage. Only Australia's share is then applied to what would otherwise be the full PRRT. So, in effect, we calculate the PRRT for the project but then take only Australia's share in applying that PRRT.

Senator WATSON—Once it becomes profitable.

Mr Hood—Which obviously only bites once it is more than profitable—once it has fully recovered its costs and compound return.

Mr Hartwell—As I think you have probably gathered, these are rather complex issues related to taxation. Through you, Chair, we can provide the senator with a detailed paper which I think will probably address the questions that he is asking. We can set out the arrangements in relation to the petroleum resource rent tax and all the carry forward rates in a fashion, hopefully, that can easily be understood. I think at one stage, on general expenditure, I said that the carry forward rate was the long-term bond rate plus 10 per cent. I need to correct that. I think it is five per cent. The carry forward on exploration within that five-year period is the long-term bond rate plus 15 per cent.

Senator WATSON—I presume East Timor has basically agreed to this basis of allocation of profit—the petroleum resource rent tax plus the corporate tax arrangements—in terms of the exactability of what is available for their share of the profit?

Mr Hartwell—Yes.

Senator WATSON—The minister has called on the government of East Timor to expedite their own treaty implementation processes. Are they dragging their feet and, if so, why? Can you give us some indication as to the sort of progress in East Timor's agreement? Where are we in the process line? For that to be said—for the call to be made to expedite their own treaty implementation process—there must be some concern. Do they have any worries? What is holding up the business from their perspective?

Mr Hartwell—It is difficult for me to comment—

Senator WATSON—There must be a reason.

Mr Hartwell—on processes within Timor Leste. All I can say is that, once we have completed our application processes, for this treaty to come into force it will require Timor Leste to do likewise. I cannot really comment any further on that.

Senator WATSON—Do we have an indication that they are going to agree or are there some aspects of it that they are likely to try and renegotiate?

Mr Hartwell—All I can say is that all this bill does is to enshrine what is in the unitisation agreement, which both countries have signed.

Senator WATSON—But you cannot give us any idea as to when Indonesia is likely to sign its own treaty implementation process in relation to this Greater Sunrise project?

Mr Hartwell—I would not like to hazard—

Senator WATSON—Nobody from the Department of Foreign Affairs and Trade can give us any indication?

Mr Moraitis—No, it is as Mr Hartwell said: we are going through the process of providing the implementation legislation which will allow us to ratify, of course, and then the other is a bilateral agreement. It has been signed by both sides.

Senator WATSON—Would you expect it to be signed within 12 months, two years or five years?

Mr Moraitis—Yes, I would hope so.

Senator WATSON—But you have no idea.

Mr Moraitis—I have no indication from the East Timorese government as to when they propose to expedite this or to finalise it.

Senator WATSON—Thank you, Mr Chair.

Senator STOTT DESPOJA—I am assuming that my first set of questions is best addressed to the Department of Foreign Affairs and Trade, but I am happy for any of you to correct me if I am wrong. We will start with Foreign Affairs, but otherwise the Attorney-General's Department might be an appropriate one. I wonder if you can confirm for the committee that the Prime Minister or the Australian government has received a letter from 54 congressmen and congresswomen urging Australia to expedite the negotiations of the seabed boundaries. Is that the case?

Mr Moraitis—Yes, I can confirm that. Several congressmen have signed a letter to that effect. It has been received.

Senator STOTT DESPOJA—Is part of that letter a suggestion that the revenue be held in trust until the final determination of the boundaries? Is that your understanding?

Mr Moraitis—My understanding is that there were several ideas but that was raised in the letter as well.

Senator STOTT DESPOJA—What has been the response of the Australian government—or, indeed, the Prime Minister—to that correspondence?

Mr Moraitis—At this stage it is being considered and a response is being prepared.

Senator STOTT DESPOJA—So a response has not been formally made at this stage? There is no written response?

Mr Moraitis—Not yet, no.

Senator STOTT DESPOJA—Are you able to indicate the nature of the response that is being prepared?

Mr Moraitis—Not at this stage.

Senator STOTT DESPOJA—Is the fact that the government is receiving a letter from congress men and women from another parliament—arguably the most significant, influential governing body in the world as far as this government is concerned—of concern to the department, to the government? Are you concerned about the contents of that letter?

Mr Moraitis—It is not of concern. It is to be expected. The East Timorese government in the lead-up to these negotiations on the maritime boundaries have made clear that they want to conduct a very active public campaign to express their point of view through various elements of civil society and otherwise, and it is totally within the parameters of what we expect.

Senator STOTT DESPOJA—So it is to be expected that there will be that kind of international negative view? The letter is not a positive one; it is obviously contrary to the government's stated position. Is it of concern that we are receiving international attention in relation to these negotiations, and attention that reflects negatively on Australia and how this is being handled?

Mr Moraitis—My experience of East Timor issues is that there has been a lot of international attention regarding East Timor, and that is to be expected.

Senator STOTT DESPOJA—When can we expect the response to be formalised?

Mr Moraitis—We are working with colleagues in the Prime Minister's department on that at the moment.

Senator STOTT DESPOJA—I have no doubt, but I am just wondering if you can give the committee a time line, given that this legislation, for example, is due to be debated tomorrow, which is one of our difficulties in asking for questions on notice with this committee tonight. Are you able to give us a time line or take it on very quick notice so that you can give the committee some indication? That letter, as I understand it, was received earlier this month.

Mr Moraitis—As quickly as we can—we will try to do that in a week or so.

Senator STOTT DESPOJA—Okay. In relation to the suggestion that has been put—not only by those congress men and women but by another witness you have heard tonight and in at least one supplementary report to the treaties committee on this issue—are there any problems with the recommendation that the revenue be held in trust until the final determination of those boundaries? Would any officer like to explain exactly what the problem is with that suggestion? I know Mr Campbell made comments in response to Senator Marshall's questioning on the issue of a trust. Why is a trust problematic? Why can't we amend the legislation tomorrow to allow that revenue to be held in trust?

Mr Moraitis—I have nothing to add to what Mr Campbell said, but the point of this exercise has been that there is a Timor Sea treaty in place and a unitisation agreement, which has been agreed by both sides to expedite flow of revenue to both countries. That has been agreed by two sovereign states, so I do not see why a third group has suggested something new and we should consider that.

Senator STOTT DESPOJA—My understanding is that this would not permanently stop the flow of that money to which you refer. It is a suggestion that is contingent upon the determination of the seabed boundaries. It is not suggesting that it would fundamentally alter the agreement in any way or indeed the revenue flow, just that it would insist on the boundaries being determined beforehand. Is that a significant problem?

Mr Campbell—I will just get back to the point I made before. I think it has been alluded to by my colleague from Foreign Affairs. The unitisation agreement itself says that that is the amount that is to be attributed to Australia. There is nothing in the unitisation agreement that says that that is to be put in trust. It says that that is to be attributed to Australia.

CHAIR—Is the point you are making, Mr Campbell, that you would have an escrow account if there were some contingency yet to be resolved about the disbursement of the fund, but under the terms of the unitisation agreement there is no unresolved contingency about the disbursement of these funds and therefore it is unnecessary?

Mr Campbell—It sets the rate now. As I said before, my understanding of the difference between that and the previous one is that it was actually agreed that there would be a ratio of 90:10 within the joint petroleum development zone when the Timor Sea Treaty was first negotiated. The idea of the escrow account was to take account of that between the negotiation of the Timor Sea Treaty and the time the treaty entered into force.

Senator STOTT DESPOJA—Mr Campbell, I would like to go back to one of your earlier comments: the notion that there should be adequate time provided for the negotiations. I am sure that is something with which we all agree. I do not mean to hark back to this issue. I understand your arguments for not having monthly meetings, but I am not sure of the arguments for six-monthly meetings. I am wondering what the rationale is for that. I understand the notion of more time and I understand that there are complex issues being debated, but six months, it could be argued, is an equally arbitrary figure. Why six months? Why has Australia agreed to two meetings a year? Is there a rationale that is, perhaps, more specific than that already provided to the committee?

Mr Campbell—I cannot say that there is a rationale more specific than that, other than that it is probably consistent with the sort of timetable at this stage that has been adopted in relation to other maritime boundary negotiations.

Senator STOTT DESPOJA—It could be useful to provide the committee—and, again, I am sure there are time constraints—with precedent in relation to that. I understand that there may be a lot of law that you will have to trudge through, but I am just wondering why in this case the meetings are not held every two months or three months, especially when you have a partner in this relationship requesting monthly meetings. Perhaps the precedent could be provided to the committee, unless there are some specific examples you can think of now.

Mr Campbell—Maritime boundary negotiations and bilateral negotiations are generally confidential to the parties, including the times of meetings and things like that. We can take that on notice.

Senator STOTT DESPOJA—Thank you. I, as a member of this committee, would certainly like to have a rationale that is more specific than the one that has been provided to us. I return now to the foreign affairs perspective and the fact that this is being debated internationally. I am wondering if the department has any understanding of—or, indeed, has been monitoring—the reaction to these negotiations in East Timor. I would like to know what the reactions have been either from the government perspective or from the people of East Timor. Is the department aware of any negative reactions to Australia? Is that something of concern or do you think it is not necessarily being debated or is well known?

Mr Moraitis—At this stage, in the lead-up to commencing the process of negotiations, we had discussions with the East Timorese side in November in Darwin. We had discussions about modalities, including the frequency of meetings and other issues, and there was general agreement on the process and agreement that we commence formal processes there. There was a general level of satisfaction to that extent. In terms of monitoring the situation in East Timor, the general view is very well known. It is a case of monitoring a lot of activity that is publicly available. There is a lot of public commentary on the Internet and our mission keeps us generally informed of what is happening in East Timor. Specifically on the process at play here in the lead-up to the negotiations and thereafter, we will obviously want to keep an eye on what is happening across the board, not only in East Timor but also internationally and in civil society, which is to be expected, as I said before.

Senator STOTT DESPOJA—Thank you. I would like to ask about Australia's withdrawal from the International Court of Justice for the purposes of maritime boundaries—and, again, Mr Campbell, I think it is best to ask the Attorney-General's Department about this issue. I am wondering about Australia's withdrawal from the ICJ. What was the rationale for our withdrawing from the ICJ for the purposes of maritime boundaries?

Mr Campbell—The rationale at the time was that the government thought that maritime boundaries were best negotiated by an agreement and not decided in third party proceedings such as arbitration or an international court. I would add a couple of things to that. Australia is amongst a minority of countries in the world that actually accepts the so-called 'compulsory jurisdiction' of the ICJ under the optional clause in the

statute. We accept it for many purposes but this is one purpose for which the government did not feel we could accept it. My point is that we do accept that jurisdiction and we are amongst a minority of countries in the world that does. The second point I would make is that, in relation to the dispute resolution procedures under the United Nations Convention on the Law of the Sea, there is a specific provision in the convention that allows a country to make an exception for maritime boundary disputes.

Senator STOTT DESPOJA—While I understand that there are obviously competing interests between our two countries, I would imagine, in relation to the boundaries, that Australia feels confident that we are proceeding in good faith, as has been stated, and that our negotiations would have a firm legal standing. Doesn't our withdrawal from the ICJ suggest that we are a bit nervous of the third party involvement? I understand your argument, but if we are so confident that we are acting in good faith, that we have strong legal grounding and advice, doesn't it suggest that we are nervous about being a party to that framework or that jurisdiction, that we fear that there could be a ruling in favour of East Timor? What is the harm in being party to that jurisdiction? Where is the difficulty?

Mr Campbell—Could I answer in this way: there is no doubt under the law of the sea convention that, as I said before, there are two means of resolving the boundary. But, on reading the convention, it refers in article 83(1) to effecting it by agreement based on international law, and then it refers to disputes of the resolution later. As I said before, my understanding of the position of this government is that it prefers a boundary to be resolved by agreement and not by a third party. In that respect, we can be confident about our position in the law—that is one thing—but it is quite another thing to say that, because we are confident about our position in the law, we want the boundary to be resolved by a third party. The government's position is that it wants the boundary to be resolved by the two countries involved, and that is Timor Leste and Australia.

Senator STOTT DESPOJA—Thank you for that answer. Chair, I would like to ask the Department of Industry, Tourism and Resources a couple of questions. I asked these questions at estimates hearings, where it was indicated to me that they might be better directed to the department. Mr Hartwell, are you the best person to ask?

Mr Hartwell—I am not sure. It depends on the question.

Senator STOTT DESPOJA—I would like confirmation that Dr Alkatiri wrote to our Prime Minister last year requesting the suspension of oil production from the Laminaria-Corallina oilfield. Can you confirm that that letter was received by the Prime Minister? Indeed, could you outline what response there has been from the Australian government?

Mr Hartwell—Letters were sent to the operators of offshore petroleum facilities in areas claimed by Timor Leste. They were not all from the East Timorese Prime Minister, but certainly letters did emerge from the East Timorese government along the lines that you suggested. Yes, that is right.

Senator STOTT DESPOJA—Is it Australia's position that no new exploration licences should be issued until the seabed boundaries have been determined?

Mr Hartwell—In areas that Australia has long exercised jurisdiction and in which we continue to exercise jurisdiction, it is not the Australian government's position that we will not release areas that fall under our jurisdiction. So the answer is that we will continue to administer those areas appropriately in line with our jurisdictional responsibilities.

Senator STOTT DESPOJA—So has Australia granted any new exploration licences since we entered into the treaty with Timor Leste?

Mr Hartwell—You are talking about areas that are under claim by East Timor in the context of the maritime boundary delimitation discussions?

Senator STOTT DESPOJA—Yes.

Mr Hartwell—We have, but I might ask Mr Griffiths, who is head of my Offshore Resources Branch, to answer that question. It may have been the case that we have granted one or two exploration permits in that area, but I will have to check on that.

Mr Griffiths—Yes, there is one area that has been granted, subject to East Timor's claim, and that is NTP65.

Senator STOTT DESPOJA—When you say 'subject to East Timor's claim', what process are we at in terms of their response and what happens next? We have issued a licence but you said that is subject to East Timor's claim. When do we find out?

Mr Griffiths—It is area claimed by East Timor.

Senator STOTT DESPOJA—Okay. I am happy to leave it there.

Senator BROWN—Which of you gentlemen have been down to the East Timorese embassy in Canberra?

Mr Hartwell—Apparently none.

Senator BROWN—Can you tell me where it is?

Mr Campbell—I think it is in Griffith.

Senator BROWN—And do you know what premises it is in?

Mr Campbell—Yes, I do.

Senator BROWN—Can you tell the committee?

Mr Campbell—I am not an expert on the history of Griffith, but I think it is in a building quite close to the Griffith shops.

Senator BROWN—Do you know how many staff are at the embassy?

Mr Campbell—No, I do not.

Senator BROWN—I think it is one and I think it is in an old school building. Is it possible to tell the committee how many times East Timorese government officials have been to the Australian embassy in Dili?

Mr Moraitis—It would be numerous times. The mission has been there since 1999.

Senator BROWN—Since 1999 in discussing the Timor Sea Treaty and this agreement, is it true that there have been monthly meetings to move towards resolution of those matters with the East Timorese government?

Mr Moraitis—On the maritime boundary?

Senator BROWN—And the unitisation agreement, yes.

Mr Moraitis—I could not recall the details of that.

Mr Hartwell—There have been three separate areas of discussions with the East Timorese since the events of October 1999. The first was in relation to the Timor Sea Treaty, and that was followed by the discussions that surrounded the Greater Sunrise unitisation area and, subsequent to that, the maritime boundary delimitation talk. There have been a series of discussions. Certainly at points during the discussions on the Timor Sea Treaty and the Sunrise agreement, there were very regular discussions, sometimes with greater regularity than monthly. At other times there was a bit of a gap in that, depending on the issues that were on the table.

Senator BROWN—I have heard your explanation as to why there are no longer monthly meetings to follow through on the sea boundaries, but we have also heard that that is what the East Timorese government has requested. Wouldn't it seem fair that, when there is a matter as important as that to the government of Timor Leste, the Australian government shows the same degree of interest it has shown in moving towards the development of these oilfields?

Mr Moraitis—The East Timorese, in our discussions in November, indicated that interest in having monthly meetings. We expressed a view on six-monthly meetings. As explained by my colleagues here, the rationale for six-monthly meetings was appropriate in the context of permanent boundary delimitations and the complex issues involving law, geomorphology and a whole variety of issues. There is nothing unreasonable about that. Subject to Senator Stott-Despoja's comment about precedence, we will check that. But it is an eminently reasonable proposition, from our perspective.

Senator BROWN—That is your opinion, but I am hearing that that is not what the government of Timor Leste requested. We do not have the government of Timor Leste here to ask about this. What I am seeing is a difference of approach from the government in the matter of resolving the sea boundaries up to now and the frequency of meetings that the Australian government is prepared to enter into, notwithstanding the interest of the Timor Leste government, as compared to the frequency of meetings and interest in getting this unitisation agreement and the treaty up previously. I just point out to you the difference in approach there. You have given no explanation as to why it should be six-monthly except that that is what the Australian government thinks is appropriate. That is not what the Timorese government thought was appropriate. I let that stand unless you can give me or the committee some clear pointer as to why the Timorese government is wrong in the matter.

Mr Moraitis—There is no wrong or right—it is just a question of deciding what is an appropriate frequency of meetings given the extremely complex issues at stake.

Senator BROWN—I agree—there is no wrong or right. But there are two points of view and the Australian position has prevailed simply because Timor cannot arrange otherwise without the agreement of the Australian government. I want to ask further questions after Senator Stott-Despoja about the International Court of Justice. We heard that Australia has not accepted jurisdiction in the matter of the maritime boundary with East Timor and that is a decision available to Australia to make. But why did the Australian government decide that this was not appropriate for the International Court of Justice? I hear the position put to the committee that the Australian government would prefer to come to an agreement between the two parties—and who wouldn't?—but there is a dispute, there is a mechanism available and suddenly the government pulled the plug. Why did it do that?

Mr Campbell—I think I have already explained the reason. What the government stated was that they would prefer permanent maritime boundaries to be negotiated by agreement rather than have them decided by a third party.

Senator BROWN—Is that because—

Mr Campbell—I would just add to that. This is not a position that applies only to Timor Leste. It also applies to other maritime boundaries which Australia has.

Senator BROWN—I hear that, but a fair-minded person would think that, where there is an international adjudicator which has been set up by the United Nations, to which Australia subscribes, when it comes to a dispute then we should be prepared to submit to it. You have given no reason as to why the Australian government has not been prepared to, except to say that it prefers not to.

CHAIR—Senator, you are putting words into his mouth. That is not what he said. He said the Australian government made a decision. He was asked by another senator and then by you what the reason for the decision was. He gave the reason for the decision. You may not agree with it, but please do not attribute to him things he did not say.

Senator BROWN—Chair, the witness is quite able to defend himself. I ask you: is there any other reason—

CHAIR—No, it is my job to protect witnesses, actually, Senator Brown.

Senator BROWN—that you can give beside saying that the Australian government preferred it that way?

Mr Campbell—No, the reason is that the Australian government stated that it wanted its maritime boundaries decided by agreement and not by a third party.

Senator BROWN—That is the point I am making. Did the Australian government get legal advice on the matter?

Mr Campbell—I do not think, in the practice of successive governments, that we have actually stated whether or not we have received legal advice on particular matters.

Senator BROWN—I put it to you that the Australian government assessed the matter and made the assessment that it would lose at a hearing before the international court and therefore withdrew its jurisdiction. Have you got a point that will make me, the committee or anybody else listening to this believe otherwise?

Mr Campbell—What I can say is what I said before, and that is that the government wanted its maritime boundaries determined by agreement, and it did not feel that that particular matter of boundaries was suitable to be settled by a third body.

Senator BROWN—If it wanted its boundaries always to be agreed by a two-party mechanism, why allow jurisdiction of the international court except in this matter?

Mr Campbell—International adjudication is something that can only be done by the consent of states. This is a process by which states can indicate whether they give their consent in relation to disputes, and in that mechanism there is a mechanism for excluding certain disputes from the jurisdiction of the court. That is precisely what has been done in this case. As I noted earlier in relation to dispute settlement under the Convention on the Law of the Sea, there is an express provision which allows a country to accept maritime delimitation.

CHAIR—Excuse me, Senator Brown, I want to ask a consequential question. Is that in addition to the general provision of the statute of the International Court of Justice which enables states to subscribe to or not to subscribe to the compulsory jurisdiction?

Mr Campbell—That is in addition, yes.

CHAIR—Your evidence before as I understood it—correct me if I am wrong—is that only about a third of states accept the compulsory jurisdiction of the ICJ in general?

Mr Campbell—It is around that; I cannot say exactly what the figure is but it is around that.

CHAIR—So two-thirds of states, roughly, do not accept any compulsory jurisdiction at all?

Mr Campbell—I think that is correct

CHAIR—And then of that roughly one-third who do accept the general principle of compulsory jurisdiction, under the Convention on the Law of the Sea there is then an entitlement to opt out specifically in relation to matters germane to it—is that correct?

Mr Campbell—The position is that you can accept the jurisdiction of the International Court of Justice under the so-called optional clause. Nowhere near the majority of states—and I think it is around one-third of states—have accepted the jurisdiction of the court. In doing that, those states make a declaration and in that declaration they are allowed to make exceptions, and many states have made exceptions to their acceptance. The second form of jurisdiction is that the international Convention on the Law of the Sea has its own dispute settlement mechanism. In that particular dispute settlement mechanism it sets out certain exceptions that a country can make to acceptance of that jurisdiction. One of the listed exceptions is that relating to maritime boundary delimitation.

CHAIR—It sounds to me then as if nonacceptance or non-submission to compulsory adjudication is in fact more common state practice than not.

Mr Campbell—It certainly is a position that is open to states. As I said earlier, international adjudication is based on the consent of states.

Senator BROWN—In what situation would Australia consent to such adjudication in a maritime boundary dispute?

Mr Campbell—I do not think we do accept adjudication at the moment.

Senator BROWN—So is the withdrawal from the jurisdiction of the court across the board and not just in relation to Timor Leste?

Mr Campbell—When you say ‘withdrawal’, the placing of a condition on our acceptance of the jurisdiction—

Senator BROWN—Whatever you say.

Mr Campbell—I am just trying to state the correct position.

Senator BROWN—Of course.

Mr Campbell—The placing of a condition on that acceptance in relation to maritime boundary delimitation applies to all maritime boundary delimitation of Australia and not just the boundary with Timor Leste.

Senator BROWN—So Australia has indicated to the international court that it does not accept this jurisdiction on any maritime boundary matter, not just this one that we are discussing here today?

Mr Campbell—That is correct.

Senator BROWN—When did it do that?

Mr Campbell—It did that in March 2002, I think.

Senator BROWN—Is Australia currently in discussions with Indonesia about maritime boundaries?

Mr Moraitis—We do not discuss discussions with third parties in this context.

Senator BROWN—So you cannot say whether you have had meetings in Paris or elsewhere with Indonesia in recent times about maritime boundaries?

Mr Moraitis—Certainly not in Paris and certainly not anywhere that I am aware of.

Senator BROWN—The without-prejudice clause makes it in Australia’s interests under these circumstances to not settle the boundaries but to allow, under a 30-year agreement, the matter to continue

because of the favourable terms—the 80-20 split—that we are hearing about that go Australia’s way. Would any of you gentlemen care to reassure me otherwise?

Mr Campbell—The without-prejudice clause in the agreement is in there with the agreement of both parties, and it cuts both ways. The agreement is without prejudice to Timor Leste’s position and it is without prejudice to Australia’s position.

Senator BROWN—Yes, and I am putting to you that that means Australia can utilise that to prevent a determination of the boundaries under international law by refusing to accept whatever East Timor puts forward forever and a day but recouping the 8-2 revenues that come from this unitisation agreement for the next three decades if necessary. Isn’t that the case?

Mr Campbell—As I said, it is there to protect the interests of both parties in the sense that it says the unitisation agreement is without prejudice to the negotiation of a permanent maritime delimitation.

Senator BROWN—Yes, but there is dispute between the parties, Mr Campbell. Does the word ‘provisional’ that applies to this agreement mean ‘interim’?

Mr Campbell—I am wondering which particular ‘provisional’ you are talking about.

Senator BROWN—It is the provisional nature of this agreement.

Mr Campbell—What this agreement says is that once a permanent boundary is negotiated then Australia and Timor Leste shall reconsider the terms of this agreement.

Senator BROWN—Yes, but we have already seen how difficult that is and how many years off that may be. This is provisional until that time. In that sense it is an interim agreement, isn’t it?

Mr Campbell—It is an agreement that remains in force.

Senator BROWN—So it is interim?

CHAIR—It is conditional, isn’t it, Mr Campbell? You have an agreement, there is anteriorly to that agreement an existing negotiation going on which one day presumably will be resolved on terms about which we cannot yet be sure and when that resolution arrives, on an unknown future date, it may or may not impinge upon the terms of the existing agreement and if it does those terms will have to be adjusted accordingly. Isn’t that the way it works?

Mr Campbell—It says that Australia and East Timor will reconsider the terms of the agreement at that stage, but I am not quite sure what the consequences of saying it is interim or not are.

Senator BROWN—I do not think there are any. I think it states what the agreement is, so I am surprised that you have any concern with it.

Mr Campbell—The position about the agreement is that it is entered into on the basis, in its own terms, that it is without prejudice to the negotiation of an ultimate maritime boundary.

Senator BROWN—In terms of getting a resolution to the dispute about the boundary—because, obviously, it is important—would the Australian government cavil at the introduction of a sunset clause in this legislation—say six years or 10 years.

CHAIR—I think that is a question of policy, which, under the standing orders, is not in order.

Senator BROWN—Let me put it this way: has the Australian government considered a sunset clause or has the Timor L’Este government looked at a sunset clause?

Mr Campbell—I can answer that as a matter of general principle. Australia, once it enters into an agreement—or before it enters into an agreement—seeks to have the legislation in place to be able to give effect to the agreement. It would want that legislation to remain in place while the agreement is in force. To put in a sunset clause—I have no comment on that as a matter of policy—would lead to the position where we have an agreement in force to which we are not able to give effect.

Senator BROWN—I was just looking at the incentive it may give. It would concentrate the mind wonderfully to have a sunset clause there in terms of settling the dispute. But I can see that we cannot go further with that. I would ask you this: where is the environmental and social impact statement and assessment on the development of this field?

Mr Hartwell—As you are aware, this provides the framework for development to take place. The specific nature of that development has yet to be determined. When that is decided, all the environmental processes that will be required will be handled. At this point in time, this just provides for development to go ahead. The

environmental assessment, as I said, would depend on the nature of the project and the sorts of things that are contemplated. This particular agreement is neutral on that.

Senator BROWN—Is the progress of the development dependent on a environmental and social impact assessment which is acceptable to both governments?

Mr Hartwell—Yes. As you would be aware, all offshore environmental processes are required for any offshore development under the Petroleum (Submerged Lands) Act and would be required under this agreement; regulatory authorities on both sides of the area would be coordinating their approach on environmental issues.

Senator BROWN—Who will do that assessment?

Mr Hartwell—In relation to the area which is attributed to Australia it would be done by the Australian environmental authorities, and in the joint petroleum development area it would be done by the regulatory authority that administers the joint petroleum development area—that is the designated authority—which is an authority set up under the Timor Sea Treaty. It reports to a ministerial council which is made up of East Timorese ministers and Australian ministers and has a commission underneath that which is made up of two East Timorese representatives and one Australian representative. It would be a coordinated process across both regulatory administrations.

Senator BROWN—Does that assessment and the consequences which it may bring up environmentally and socially have to be acceptable to both governments before the development proceeds?

Mr Hartwell—Yes, I think that is a fair assumption.

Senator BROWN—When will the assessment be done and completed?

Mr Hartwell—Again that depends on when a specific project is brought forward.

Senator BROWN—Let us get this clear. You are saying to the committee that the development cannot proceed until an environmental and social impact assessment has been completed and has been signed off by both governments—has been assented to by both governments.

Mr Hartwell—Yes, that would. Certainly the processes under the sunrise unitisation bill would require consent, as I said, by the regulatory authorities on both that area which is under Australian jurisdiction and that area which is under joint jurisdiction.

Senator BROWN—But consent to an environmental and social impact assessment?

Mr Hartwell—Yes. As far as Australia is concerned all petroleum activities are subject to environmental regulations in relation to our own Petroleum (Submerged Lands) Act. Also, because of the Environment Protection and Biodiversity Conservation Act, it would be subject to possible triggers under that act depending on the circumstances.

Senator BROWN—Which triggers?

Mr Hartwell—The marine trigger, for a start. When you say there would be an environmental assessment done, as to whether it is an environmental impact assessment—and there are various degrees of that, as you would be aware—that would be judged on the nature of the project and the environmental significance of it.

Senator BROWN—By whom?

Mr Hartwell—Again, by the authorities that exist within the Australian jurisdiction and within the joint jurisdiction.

Senator BROWN—Mr Hartwell, how can you judge the environmental significance until you have had an independent environmental impact assessment done?

Mr Hartwell—I think the processes would be done under the relevant bits of legislation, and I think that I have referred to those. You were asking me when and how and what level of environmental impact assessment would be done. As is the case when any environmental impact assessment is done, that of course would depend on the project and it would be assessed against the project being brought forward.

Senator BROWN—I just want clarify this because you are dropping the word ‘social’ out of this and I have been asking about a social impact assessment. That is first. Second, what do you mean by ‘what level of environmental impact assessment’? Surely an environmental impact assessment is just that, no more, no less: a rigorous assessment of the potential impact of the project on the environment.

Mr Hartwell—I guess I was just making reference to the fact that under the EPBC Act there are triggers brought into play. That is not a bit of legislation that is under my department's jurisdiction. That legislation allows for various levels of assessment depending on the nature of what is being contemplated. That is the only point that I was making, Senator.

Senator BROWN—Does East Timor have any say on how the EPBC Act—obviously it does not, does it?

Mr Hartwell—Equivalent environmental law is one of the areas of law which is applied across the whole area, and that is the Australian environmental law.

Senator BROWN—I have a final question and it is quite important to my—and I am sure to the committee's—assessment of balance in the matter. Can you tell me how many non-government organisations representing the East Timorese community you have had discussions with on this matter? We have had submissions from 13 of those.

Mr Hartwell—If you are talking about non-government organisations, I think I can speak for a number of my colleagues who have been to Timor Leste a number of times. We have spoken to a whole range of East Timor representatives and there has been a whole range of people in some of the meetings. I cannot say specifically that they represented non-government organisations. Our direct dealings have largely been on a government to government basis. Personally, I have not met directly with any representative of Timor Leste non-government organisations. In some of the meetings that we have been to up there there has been a whole range of people involved and I cannot say for sure that they did not represent those organisations.

Senator BROWN—On the other side, have you met with Woodside or any of the oil corporations at any time?

Mr Hartwell—Yes, Senator.

Senator BROWN—How many times?

Mr Hartwell—We kept in touch with a number of operators in the Timor Sea area and some of the operators in the joint petroleum development area as well. I could not say how many times.

Senator BROWN—Would it be fair to say many times?

Mr Hartwell—It would be fair to say that we have been in regular contact, yes.

Senator BROWN—Thank you.

Mr Hartwell—I would like to add something, if I may. Senator O'Brien has now gone but he did ask me early on in this hearing about a letter that had been sent by Woodside Petroleum to the Minister for Industry, Tourism and Resources and he asked whether that letter could be tabled for the benefit of the committee. I have now received clearance from my minister's office and I can pass that letter across.

CHAIR—It being the wish of the committee, the correspondence is accepted. Thank you, Mr Hartwell.

Committee adjourned at 7.15 p.m.