

National Interest Analysis [2017] ATNIA 3

with Attachment on Consultation

Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations

[2017] ATNIF 3

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations¹

[2017] ATNIA 3

[2017] ATNIF 3

Nature and timing of proposed treaty action

1. Australia is a Contracting Party to the *Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions*, done at Geneva on 20 March 1958, as amended with effect from 10 November 1967 (Revision 1) and 16 October 1995 (Revision 2) ('the current Agreement').²
2. The proposed treaty action is the deemed acceptance of a revision (Revision 3) of the current Agreement. The proposed title of the revision is the *Agreement Concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations* ('the revised Agreement').
3. Pursuant to Article 13 of the current Agreement, Australia will be deemed to have accepted the revised Agreement six months after it is transmitted to Contracting Parties by the United Nations ('UN') Secretary-General, provided no Contracting Party expresses an objection within that period. If no such objection is expressed, the revised Agreement will enter into force for all Contracting Parties three months after the expiry of the six-month objection period. The revised Agreement was transmitted to Contracting Parties on 14 December 2016.
4. The revised Agreement will supersede the current Agreement.

¹ Former titles of the Agreement:

Agreement concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts, done at Geneva on 20 March 1958 (original version);

Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, done at Geneva on 5 October 1995 (Revision 2).

² [2000] ATS 11.

Overview and national interest summary

5. The 1958 Agreement is a United Nations Economic Commission for Europe ('UNECE') agreement that originated to enhance technical uniformity of vehicle standards among European countries. It was first amended in 1967 (Revision 1) and further amended in 1995 (Revision 2, the current Agreement) to allow accession by non-European countries.
6. The 1958 Agreement provides for the development of technical prescriptions (i.e., UN regulations) dealing with safety, anti-theft, emissions and energy for new wheeled vehicles, their equipment and parts. The 1958 Agreement is administered by the UN World Forum for Harmonisation of Vehicle Regulations ('WP.29'), the peak international forum for the development and harmonisation of automotive standards. Australia actively participates in WP.29.
7. As at July 2016, there were 138 UN regulations annexed to the 1958 Agreement, for which UN type approvals (indicating conformity with a regulation) may be granted. 'Application' of UN regulations by Contracting Parties provides a mechanism for mutual recognition (acceptance) of approvals issued according to the UN regulations by other Contracting Parties.
8. Two substantive obligations are imposed by the 1958 Agreement: to accept an approval for the purposes of new vehicle certification to any UN regulation that has been applied (as an alternative to any domestic requirements); and, to meet prescribed technical and administrative requirements if issuing an approval to a UN regulation.
9. Australia acceded to the current Agreement on 25 February 2000. As at July 2016, there were 50 Contracting Parties to the current Agreement, including all major European countries and key Asian manufacturing nations such as Japan, the Republic of Korea, Malaysia, and Thailand.
10. Involvement by Australia in the 1958 Agreement is consistent with the Asia-Pacific Economic Cooperation (APEC) Bogor Declaration objectives of free trade among countries in the region and facilitates the early voluntary sector liberalisation process endorsed by APEC Trade Ministers. Australia is a party to the World Trade Organisation Agreement, and a policy of harmonisation of vehicle requirements with international regulations is a means of compliance with its obligations under that Agreement.
11. Harmonisation is also consistent with the Council of Australian Governments (COAG) Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies, requiring standards to be compatible with relevant international or internationally accepted standards or practices.
12. In this respect, it has been a long-term Government policy to harmonise Australia's national standards for road vehicles, the Australian Design Rules (ADRs), with UN regulations. Harmonisation avoids unique national vehicle standards, minimising impediments to international trade. Over 85 per cent of new vehicles sold in Australia are imported. This figure is expected to increase with the end of light vehicle manufacturing in Australia. Harmonisation ensures Australian consumers may access vehicles conforming to the highest standards at the lowest possible cost.

13. When Australia acceded to the current Agreement, it declared a reservation that it would not apply any UN regulations, as provided for in Article 1 and Article 11. In 2010 Australia subsequently notified application of 29 UN regulations, in accordance with Article 1 (7). Australia has since applied another eleven UN regulations. It is anticipated that more UN regulations will be applied in the future as the majority of the ADRs have now been aligned in content with the suite of available UN regulations.
14. Australia has not issued and has no plans to issue any UN regulation approvals. Manufacturers and importers based in Australia have cost effective access to overseas testing and approval arrangements. There has been no interest in having the Australian Government issue UN regulation approvals.
15. The proposed revisions under the revised Agreement are aimed at ensuring the 1958 Agreement remains the key international framework for the harmonisation of technical regulations in the automotive sector. The revised Agreement will be more attractive to new Contracting Parties, including because of its improved quality and reliability, its more attractive voting arrangements for new Contracting Parties, and because it will enable the implementation of International Whole Vehicle Type Approval ('IWVTA'). IWVTA will allow Contracting Parties to issue mutually recognised approvals for whole vehicles, rather than the current system where multiple separate approvals are issued for vehicle components and systems only, with each Contracting Party then separately approving whole vehicles on a national basis. The elimination of the need for duplicate national processes will streamline the approval of vehicles for the Australian market and so reduce costs for business and the Australian Government.
16. IWVTA will be enabled by new provisions which allow the application of a separate UN regulation (UN Regulation No. 0) for the approval of a whole vehicle. However, UN Regulation No. 0 can only be finalised once the revised Agreement is in force. It would then be a separate decision for all Contracting Parties, including Australia, to apply UN Regulation No. 0.
17. The revised Agreement will not mandate any UN regulations domestically, impose any mandatory restrictions on business or add to regulatory intervention. In addition, it will only oblige the Australian Government to accept product into its market where it is approved to a UN regulation that Australia chooses to apply.
18. It is vital that Australia accepts the revised Agreement. The revised Agreement will be more attractive to potential Contracting Parties and so further harmonise regulations around the world. It will also streamline national vehicle certification, including in Australia, by allowing for IWVTA. As a receiver of product conforming to UN approvals only (Australia does not issue approvals) there will be no increased obligation on Australia, however vehicles being supplied into the Australian market will have conformed to a more robust approval process.
19. Critically, acceptance of the revised Agreement is by consensus which means it cannot come into effect without Australia's support. Australia has been a strong contributor to the development of the revised Agreement, as well as IWVTA, and encourages its adoption by other countries at international forums.

Reasons for Australia to take the proposed treaty action

Appeal to new Contracting Parties

20. The proposed revisions make the revised Agreement more attractive to new Contracting Parties, particularly countries with developing automotive markets and regulatory systems. These revisions include:
- allowing Contracting Parties flexibility to issue and accept approvals pursuant to earlier versions of UN regulations;
 - allowing Contracting Parties to vote in favour of new UN regulations without being obliged to apply them immediately; and
 - changing the two-thirds majority necessary to vote in new and amended UN regulations to four-fifths, therefore reducing the potential influence of regional economic integration organisations (such as the European Union) and increasing the influence of individual Contracting Parties.
21. Attracting new Contracting Parties, particularly those with developing automotive markets and regulatory systems, would have substantial road safety benefits globally. Additionally, Australia (and other Contracting Parties) would benefit from new trade opportunities.

Improved quality and reliability

22. The proposed revisions clarify, specify and amend some of the already existing procedures and guidance material for UN regulations as well as provide new administrative provisions to cover voting arrangements and the treatment of emerging technology and computer-based testing. These include:
- assessment criteria for technical services (testing agents);
 - harmonised procedures for issuing and numbering of UN approvals;
 - procedures for circulation of approval documentation;
 - procedures for solving diverging interpretations between Contracting Parties concerning the application of UN regulations;
 - procedures for Contracting Parties to issue exemption approvals for new technologies; and
 - general conditions for virtual testing methods.

Strengthened integrity of approval process

23. The proposed revisions strengthen the international approval and compliance regimes. The revisions include setting timeframes for Contracting Parties to rectify a non-conforming product, and (where the non-conformity relates to technical, rather than administrative, requirements of a UN regulation) obliging Contracting Parties to inform others of the non-conformity immediately.
24. Strengthening the approval and compliance regimes will enable Contracting Parties to streamline their national certification systems. This will be with the confidence that there be an increased assurance of compliance to national requirements for vehicle safety, anti-theft and environmental performance. These revisions to introduce a greater level of robustness in approvals were specifically proposed by Australia.

Cost reduction to industry and governments

25. The revisions will enable the implementation of IWVTA, which itself will be facilitated through UN Regulation 0. The main effect of this will be to streamline the approval of vehicles.
26. IWVTA will allow Contracting Parties to issue mutually recognised approvals for whole vehicles, which is currently only available for vehicle systems. With the existing arrangement, each Contracting Party separately approves whole vehicles on a national basis, despite the models being essentially the same in many cases. This results in duplication around the world. With IWVTA, only one Contracting Party need approve the whole vehicle. The approval comprises an initial certification element and follow-up auditing, as laid out by the revised Agreement. The whole vehicle approval is then recognised by all other Contracting Parties that apply UN Regulation 0. If Australia chooses to apply UN Regulation 0, the elimination of duplicate national processes will streamline the approval of vehicles for the Australian market and so significantly reduce compliance and regulatory costs for the Government, industry and consumers. Application of UN Regulation 0 is a separate decision to be made once it becomes available under the revised Agreement and is not the subject of this National Interest Analysis.

Obligations

27. The National Interest Analysis tabled in relation to the current Agreement³ sets out key obligations established by the current Agreement. These obligations are restated (with the enhancements and modifications noted below) in the revised Agreement. They are:
 - An obligation to meet prescribed requirements if issuing an approval to a UN regulation (Article 2) – noting that Australia has not issued, and has no plans to issue, approvals to UN regulations;
 - An obligation to accept wheeled vehicles, equipment or parts for which a type approval issued pursuant to a UN regulation that has been applied as conforming to national regulatory requirements (Article 3);
 - An obligation to report to other Parties any issue of non-conformity with the UN regulations (Article 4); and,
 - An obligation to provide other Contracting Parties with information about approvals it has refused to grant or withdrawn (Article 5).
28. The revised Agreement sets out an updated structure for the adoption and approval of UN regulations. The revised Agreement does not change that structure in a way that would involve Australia accepting new obligations: in particular, the opt-in method of applying UN regulations (Article 1(4)) is retained. However, the revised Agreement incorporates enhancements and clarifications to the following Articles which affect how UN regulations are adopted and administered, as follows:
 - Article 1(1): introduces new defined terms “whole vehicle type approval”, “version of a UN Regulation” and “applying a UN Regulation”;
 - Article 1(2): changes the minority required to block adoption of a new UN regulation from one-third of Contracting Parties to one-fifth of Contracting Parties;

³ Available at: <http://www.austlii.edu.au/au/other/dfat/nia/1999/20.html>

- Article 1(2): enables the establishment of a UN Regulation on IWVTA (UN Regulation 0), and clarifies that a Contracting Party that has elected to accept application of UN Regulation 0 would only be required to accept type approvals that have been granted pursuant to the most recent version of that UN regulation, and which have been granted pursuant to the highest level of stringency;
- Articles 1(4),(5): introduce an option for Contracting Parties to indicate they agree with a UN regulation but do not intend to apply it upon its general entry into force (entry into force for that Contracting Party will not occur unless that Contracting Party subsequently notifies the Secretary-General pursuant to Article 1(7));
- Article 2(2): requires Contracting Parties that issue type approvals to nominate a single approval authority for undertaking type approval pursuant to UN regulations;
- Article 3(2): elaborates the principle of mutual recognition of type approvals by clarifying that such recognition must not require additional testing, documentation, certification or markings.
- Articles 4 (2)-(5): elaborates the process for dealing with non-conformity with UN regulations, including obligations by the State responsible for the non-conformity to disclose it to other Contracting Parties (Article 4(2)) and to either bring the affected products into conformity or withdraw the relevant approval (Article 4(3)), and an entitlement for other Contracting Parties to prohibit the sale and use of affected vehicles, equipment or parts until the non-conformity is rectified (Article 4(2));
- Article 5: modifies the obligation of approving authorities to share information about refused or withdrawn approvals by requiring it to be provided upon request (currently “monthly”), and to enable information to be provided electronically;
- Article 8(3): introduces a clarification regarding the effect of a denunciation of the Treaty on type approvals issued by a Contracting Party (the approval remains in force for a period of 12 months from the denunciation);
- Article 10(4): introduces new clear procedures (elaborated in Schedule 6) requiring disputes between two or more Contracting Parties about the interpretation or application of UN regulations to be settled by negotiation;
- Article 12: updates and clarifies the process for amending UN regulations, with amendments to be adopted unless one-fifth (currently one-third) of Contracting Parties object (reflecting the change to the UN regulation adoption process in Article 1(2)), and specifies transitional provisions regarding amendments to UN regulations;
- Article 13: introduces changes to the procedures for amending the revised Agreement, with Contracting States given nine months (currently six months) to express an objection to a proposed amendment (Article 3(2)), with amendments to which no objection is received to enter into force after a further three months (Article 3(3)), so that the period for proposed amendments to take effect is extended from nine to twelve months;
- Article 13bis: introduces a procedure for amending the Schedules of Administrative and Procedural Provisions which are annexed to the revised Agreement, providing that amendments shall enter into force nine months after notification to the Contracting Parties provided no Contracting Party expresses an objection within six months of notification;
- Article 14: extends the list of matters that the Secretary-General is required to notify Contracting Parties, to include entry into force of new UN regulations, entry into force of amendments to the Schedules of Administrative and Procedural Provisions, and any cessation of application of UN regulations by Contracting Parties (Article 14(1)), and requires the Executive Secretary of UNECE to notify the Secretary-

General and the Contracting Parties of amendments to UN regulations and decisions by the UNECE on requests for and adoption of exemption approval requests pursuant to Schedule 7; and

- Article 15: introduces transitional provisions for regulation adoption and amendment procedures already in train at the time the revised Agreement enters into force, and authorised UN regulations adopted under the current Agreement to be treated as adopted under the revised Agreement if the Contracting Parties unanimously agree.

Implementation

29. Australia would not require any new or amending domestic legislation to give effect to the revised Agreement.
30. In Australia, the obligation to accept approvals to UN regulations under the current Agreement is put into effect through the *Motor Vehicle Standards Act 1989* (Cth) (the Act) and national vehicle standards, the ADRs, which are determined under the Act.
31. The Act currently provides for the making of ADRs for road vehicles and vehicle components, and for the incorporation into national vehicle standards of documents which set out standards produced by the UN and other internationally recognised standards organisations, as in force from time to time.
32. There are no inconsistencies between the revised Agreement and the Act. The Act enables and facilitates the obligations contained in the revised Agreement.

Costs

33. The revised Agreement is not expected to impose any additional cost on government (Australian and state and territory), manufacturers or consumers, as it is consistent with the interests and existing practices of industry.

Regulation Impact Statement

34. The Office of Best Practice Regulation has been consulted and advised that a Regulation Impact Statement is not required.

Future treaty action

35. The revised Agreement provides for the negotiation of new UN regulations, amendments to UN regulations, and amendments to the text of the Agreement itself and of its Appendix and Schedules.
36. Any Contracting Party may propose amendments to the revised Agreement or its Appendix. Any proposed amendment shall enter into force 12 months after it is transmitted to Contracting Parties by the UN Secretary-General (nine months under the current Agreement), provided no Contracting Party expresses an objection within nine months of transmission (six months under the current Agreement) (Article 13).
37. Proposed amendments to the Schedules annexed to the revised Agreement (including new Schedules) may be established by unanimous vote of Contracting Parties that apply at least one UN regulation. The UN Secretary-General shall notify Contracting Parties applying at least one UN regulation of the amendment. The amendment shall enter into

force nine months after notification by the UN Secretary General, provided no Contracting Party expresses an objection within six months of notification. Schedules are new to the revised Agreement (Article 13 bis).

38. Proposed amendments to the revised Agreement or its Appendix and Schedules would be subject to Australia's normal domestic treaty-making requirements.
39. Proposed new UN regulations are voted on by all Contracting Parties, and are established by a four-fifths majority (two-thirds under the current Agreement) (Appendix Article 5). The UN Secretary-General shall notify Contracting Parties of the UN regulation. The UN regulation shall be considered as adopted unless more than one-fifth (one-third under the current Agreement) of the Contracting Parties expresses an objection within six months of notification. The UN regulation shall enter into force for all Contracting Parties which have not expressed an objection or notified their intention not to apply the UN regulation at that time (Article 1). Amendments to UN regulations are made through similar voting and objection processes, involving those Contracting Parties who apply that UN regulation (Article 12).
40. In its report on the current Agreement, the Joint Standing Committee on Treaties accepted that each action to adopt a UN regulation should be considered as implementation action within the overall framework of the treaty, rather than a separate treaty action, on the basis that effective community consultation and parliamentary scrutiny opportunities were available for each regulatory action. The Committee also noted the Minister's offer to advise the Committee on each occasion that regulatory action is taken to align the ADRs with UN Regulations.⁴ These arrangements will be continued in relation to the revised Agreement.

Withdrawal or denunciation

41. Australia may denounce the revised Agreement by notifying the UN Secretary-General (Article 8 (1)). Such denunciation would take effect 12 months after the date of receipt of notification (Article 8 (2)).
42. Any denunciation of the Agreement by Australia would be subject to Australia's domestic treaty-making requirements.
43. Any approvals granted by Australia shall remain valid for a period of twelve months after the denunciation has taken effect (Article 8 (3)). This is new to the revised Agreement, however it is not relevant as Australia has not issued and has no plans to issue any UN regulation approvals.

Contact details

Standards Development and International Section
Vehicle Safety Standards Branch
Surface Transport Policy Division
Department of Infrastructure and Regional Development

⁴ JSCOT Report No. 25, at 7.27-7.28.

ATTACHMENT ON CONSULTATION

Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations

[2017] ATNIA 3

[2017] ATNIF 3

CONSULTATION

44. States and territories were consulted via the Commonwealth-State-Territory Standing Committee on Treaties.
45. The revised Agreement and the establishment of UN Regulation 0 have been regularly discussed within the Strategic Vehicle Safety and Environment Group (SVSEG), the Australian Motor Vehicle Certification Board (AMVCB) and Technical Liaison Group (TLG) forums. SVSEG consists of senior representatives of government (Australian and state/territory), the manufacturing and operational arms of industry (including the Federal Chamber of Automotive Industries) and representative organisations of consumers and road users (include the Australian Automobile Association). TLG comprises technical experts from SVSEG members while AMVCB comprises technical experts from SVSEG government members.
46. All parties have been supportive of the proposed revisions.