

Exchange of Notes constituting a Treaty to amend the Singapore-Australia Free Trade Agreement

Introduction

- 3.1 The *Exchange of Notes constituting a Treaty between the Government of Australia and the Government of the Republic of Singapore to amend the Singapore-Australia Free Trade Agreement of 17 February 2003 (the Amendments)* make three general amendments to the *Singapore-Australia Free Trade Agreement (SAFTA)*. The Amendments relate to joint law ventures and formal law alliances, the removal of Singapore's numerical quota on wholesale bank licences in relation to Australian banks from 1 January 2007, and the extension of the range of exceptions to Australia's obligations under SAFTA to include reservations made by Australia's State and Territory governments.
- 3.2 The Committee was informed that the Amendments will deliver additional benefits to Australia above those negotiated in SAFTA.¹ Moreover, the review process, which the Amendments are a result of, identifies emerging issues and keeps SAFTA up to date and relevant to Australian and Singaporean business.²

1 National Interest Analysis (NIA), para. 6.

2 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 1; NIA, para. 7.

Background

- 3.3 The Committee recommended binding treaty action be taken in relation to SAFTA in Report 52 and SAFTA entered into force on 28 July 2003.
- 3.4 Under Article 3 of Chapter 17 of SAFTA, a Ministerial Review was to be conducted a year after its entry into force and biennially thereafter. The first Ministerial Review took place in Sydney on 14 July 2004, and these Amendments are the second tranche of amendments resulting from the first Ministerial Review to be considered by the Committee. The first tranche of amendments were tabled in the Parliament in March 2005 and considered by the Committee in Report 66.
- 3.5 The trade in merchandise and services between Australia and Singapore is considerable, with Singapore currently Australia's sixth largest merchandise trading partner in 2005.³

In 2005, merchandise exports to Singapore were valued at A\$4.00 billion and imports were A\$8.67 billion. Australian services exports to Singapore were valued at A\$2.38 billion in 2005 and services imports were valued at A\$2.78 billion.⁴

The Amendments

Joint law ventures and formal law alliances

- 3.6 Currently under SAFTA, joint law ventures (JLVs) and formal law alliances (FLAs) must comprise at minimum four foreign lawyers resident in Singapore, with an aggregate experience of 20 years, and of whom at least two must be equity partners in the foreign law firm or members of the board of directors.⁵
- 3.7 Following the exchange of diplomatic notes between Australia and Singapore, Singapore agreed to amend these conditions and extend to Australia treatment no less favourable than that granted to the United

3 NIA, para. 5.

4 NIA, para. 5.

5 Section III (Waiver and Modifications of Statutory Conditions governing Joint Law Ventures and Formal Law Alliances in Singapore) of Annex 4-III Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment); NIA, para. 15.

States under the United States-Singapore Free Trade Agreement (USSFTA).⁶

- 3.8 The Amendments will require JLVs and FLAs to comprise at minimum three foreign lawyers resident in Singapore, with an aggregate experience of 15 years and at least two of whom must be either equity partners or members of the board of directors of the foreign law firm.⁷

Wholesale bank licences

- 3.9 Currently under SAFTA, Singapore will lift its numerical quota on wholesale bank licences in relation to Australian banks on 28 July 2007.⁸
- 3.10 Following the entry into force of the Amendments, Singapore will lift its numerical quota on wholesale bank licences in relation to Australian banks from 1 January 2007.⁹
- 3.11 Prior to this Amendment only 20 new wholesale bank licences were to be issued by the Monetary Authority of Singapore (MAS) during the period from 30 June 2001 to 30 June 2003.¹⁰ During the period from 1 July 2003 to 28 July 2007, the MAS advised that it was prepared to issue a limited number of wholesale bank licences but that no formal quota had been set.¹¹
- 3.12 This Amendment is a result of Singapore's agreement to extend the same commitment to Australia in relation to wholesale bank licences as is extended to the United States under the United States-Singapore Free Trade Agreement (USSFTA).¹²
- 3.13 The Committee was informed that the lifting of the numerical quota, in line with the USSFTA:

6 NIA, para. 17.

7 NIA, paras 16 and 17.

8 Section V (Note to Singapore's Commitments for Financial Services) of Annex 4-III Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment) of SAFTA; NIA, para. 14.

9 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 2; NIA, para 14.

10 Department of Foreign Affairs and Trade, *Submission 6*.

11 Department of Foreign Affairs and Trade, *Submission 6*.

12 NIA, para. 14.

... really puts them on a level playing field with any US banks which may want to open up in Singapore. Australian banks now have the same opportunity if they wish to take it up.¹³

State and Territory reservations

3.14 The Amendments incorporate reservations to SAFTA made by Australia's State and Territory governments. The Committee was informed by representatives from the Department of Foreign Affairs and Trade that the reservations were not included in the original SAFTA because:

Negotiating with eight states and territories takes some time, and so it was decided to conclude the agreement on time. Both sides agreed to continue with the consultations with states and territories to come to an agreement that both sides would be happy with. That took about 18 months to do.¹⁴

3.15 The Amendments to Annexes 4-I and 4-II of SAFTA incorporate the reservations and reflect non-conforming measures in trade in services and investment which are maintained at the State and Territory government levels.¹⁵

3.16 The Committee was informed that although in principle, the State and Territory reservations were limiting Singapore's access under SAFTA, overall access was improved:

These amendments essentially allow Singapore business access under the national treatment and market access rules to anything that the states and territories have control over. So, technically, that expands their access to the Australian market. However, in giving them that extra access, the states and territories have said, 'We would like to just take out some reservations on things that we would not necessarily like to give to them straightaway.'¹⁶

3.17 Moreover, no further reservations are able to be made under Annex 4-I of SAFTA, with any future reservations now limited to Annex 4-II.¹⁷

13 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 3.

14 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 3.

15 NIA, para. 10.

16 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 4.

17 Ms Joanne Loundes, *Transcript of Evidence*, 27 March 2006, p. 5.

- 3.18 Mr Kevin Foley MP, the Deputy Premier and the Minister for Industry and Trade in the South Australian Parliament, wrote to the Committee regarding the wording of the reservation for South Australia's legal services contained in Annex 4-I(A)-7 of the Amendments.¹⁸
- 3.19 South Australia's reservation in this instance was approved as set out below rather than as it is set out in the tabled treaty text:

South Australia

Natural persons practising foreign law in South Australia may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers. There are restrictions on the circumstances in which a corporation may obtain a practising certificate.

A person is not taken to be practising the profession of the law if he or she is only providing legal advice or services relating to the law of a place outside Australia.

A company that is a subsidiary of a foreign law firm is not permitted to obtain a practising certificate and is not permitted to share profits with any other company or firm.

Entry into force

- 3.20 The Amendments will enter into force following an exchange of notes between Singapore and Australia upon the completion of the Parties' respective domestic procedures.¹⁹

Future treaty action

- 3.21 The next Ministerial Review is scheduled for July 2006.²⁰
- 3.22 Issues likely to arise at the next Ministerial Review include:

18 Government of South Australia, *Submission 7.1*.

19 NIA, para. 3.

20 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 1.

... improvement to the rules in SAFTA in relation to investment and rules of origin, recognition of more Australian law degrees, revision of the intellectual property chapter to reflect harmonisation of Australia's and Singapore's intellectual property laws, cooperation in competition policy, and commitments under the government procurement chapter.²¹

- 3.23 The Committee was also informed that the focus of future trade negotiations will be in further liberalising the services sector, as there is only limited scope for generating greater access and trade in merchandise due to low tariffs prior to SAFTA.²²

Costs and implementation

- 3.24 The National Interest Analysis states that the Amendments will not introduce any additional costs above what was associated with SAFTA at the time of entry into force.²³
- 3.25 No additional measures or changes to legislation are required in order for Australia to meet its obligations under the Amendments.²⁴

Consultation

- 3.26 Leading up to the first Ministerial Review, the Department of Foreign Affairs and Trade consulted widely with State and Territory governments, other Commonwealth Departments, businesses and universities.²⁵

21 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p. 2.

22 Mr Miles Armitage, *Transcript of Evidence*, 27 March 2006, p.6 and Mr Damian White, *Transcript of Evidence*, 27 March 2006, p. 6.

23 NIA, para. 19.

24 NIA, para. 18.

25 See the 'Consultation' section of the NIA, in addition to the 'Consultation' section of the *Singapore-Australia Free Trade Agreement Amendments NIA*, tabled in the Parliament on 15 March 2005 and available from the JSCOT website at <www.apf.gov.au/house/committee/jsct/15march05/treaties/safta_nia.pdf>

Conclusion and recommendation

- 3.27 The Committee acknowledges that the Amendments are part of an ongoing commitment to trade liberalisation and the expansion of trade and investment links between Australia and Singapore.

Recommendation 2

The Committee supports the *Exchange of Notes constituting a Treaty between the Government of Australia and the Government of the Republic of Singapore to amend the Singapore-Australia Free Trade Agreement of 17 February 2003* and recommends that binding treaty action be taken

