
The Parliament of the Commonwealth of Australia

Report 64

Treaties tabled on 7 December 2004 (2)

Agreement with Poland relating to Air Services

Amendment to the Agreement establishing the European Bank of
Reconstruction and Development to admit Mongolia as a country of operations

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Membership of the Committee

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Resolution of appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report upon:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

Cth	Commonwealth
EBRD	European Bank of Reconstruction and Development
NIA	National Interest Analysis



List of recommendations

2 Agreement with Poland relating to Air Services

Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services (Warsaw 28 April 2004)* and recommends that binding treaty action be taken.

3 Amendment to the Agreement establishing the European Bank of Reconstruction and Development to admit Mongolia as a country of operations

Recommendation 2

The Committee supports the *Amendment to the Agreement establishing the European Bank for Reconstruction and Development (Paris, 29 May 1990) in order to admit Mongolia as a country of operations*, and recommends that binding treaty action be taken.

Introduction

Purpose of the Report

- 1.1 This Report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of two proposed treaty actions tabled on 7 December 2004¹, specifically:
- *Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services (Warsaw, 28 April 2004)*
 - *Amendment to the Agreement establishing the European Bank for Reconstruction and Development (Paris, 29 May 1990) in order to admit Mongolia as a country of operations.*

Briefing documents

- 1.2 The advice in this Report refers to the National Interest Analyses (NIAs) prepared for these proposed treaty actions. Copies of the NIAs are available from the Committee's website at www.aph.gov.au/house/committee/jsct/7dec2004/tor.htm or may be obtained from the Committee Secretariat. These documents were prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty.

1 *Senate Journal*, 7 December 2004, p. 233 and *House of Representatives Votes and Proceedings*, 7 December 2004, p. 99.

- 1.3 Copies of treaty actions and NIAs can also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at <www.austlii.edu.au/au/other/dfat>.

Conduct of the Committee's review

- 1.4 The Committee's review of the treaty actions canvassed in this Report was advertised in the national press and on the Committee's website.² In addition, letters inviting comment were sent to all State Premiers and Chief Ministers and to individuals who have expressed an interest in being kept informed of proposed treaty actions such as these. A list of submissions and their authors is at Appendix A.
- 1.5 The Committee also took evidence at a public hearing held on 7 March 2005. A list of witnesses who gave evidence at the public hearing is at Appendix B. A transcript of evidence from the public hearing can be obtained from the Committee Secretariat or accessed through the Committee's internet site at <www.aph.gov.au/house/committee/jsct/7dec2004/hearings.htm>.

2 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 9 February 2005. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee.

Agreement with Poland relating to Air Services

- 2.1 The *Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services (Warsaw, 28 April 2004)* (the Agreement) establishes an air services agreement between Australia and Poland.
- 2.2 The Agreement provides a legal framework for the operation of scheduled air services between Australia and Poland, thereby facilitating trade and tourism between the two countries through freight and passenger transportation and providing greater air travel options for Australian consumers.¹ The Agreement includes reciprocal provisions on a range of aviation related matters such as safety, aviation security, customs regulations, and commercial aspects of airline operation, including the ability to establish offices in the territory of the other party and to sell fares to the public.²

1 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 2.

2 National Interest Analysis (NIA), para. 9.

Background

- 2.3 By way of background, Mr Nicholas Bogiatzis from the Department of Transport and Regional Services advised the Committee:

Over the past 10 years the Australia-Poland yearly origin-destination passenger market has grown from a base of just over 20,000, in 1994, to just over 31,000, 10 years later in 2004 – an average annual growth rate of 4.4 per cent. Australian residents made up 57 per cent of the total in 2004.³

- 2.4 Furthermore, Mr Bogiatzis advised the Committee in relation to airfreight:

To the year ended September 2004 exports from Australia were valued at around \$11 million, and the main categories were medicinal and pharmaceutical products and professional scientific apparatus. The value of exports has increased significantly from \$6.6 million in the year ended September 2003, nearly doubling. The total airfreight imports from Poland to the end of September 2004 were valued at \$20.3 million. The main categories, by value, were electrical machines and appliances, telecommunications and miscellaneous manufactured goods. There was an increase from \$17 million in the previous year.⁴

- 2.5 Aviation agreements of less than treaty status, dating from March 2003, have preceded the Agreement. These have permitted Qantas to operate in cooperation with British Airways between Australia and Poland, and have provided similar opportunities for Polish carriers.⁵

- 2.6 Mr Bogiatzis noted that Australia has a standard draft air services agreement which has been developed in consultation with aviation stakeholders and that the Agreement does not differ in substance from the standard Australian draft at the time the Agreement was negotiated.⁶

3 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 3.

4 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 4.

5 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 2.

6 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 3.

Features of the Agreement

- 2.7 The Agreement obliges Australia and Poland to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes.
- 2.8 Key provisions of the Agreement are: ⁷
- the right to designate an airline or airlines to operate the agreed services (Article 2)
 - either Party may revoke or limit authorisation of an airline's operations if the airline does not comply with certain laws and regulations that are consistent with the *Chicago Convention on International Civil Aviation* [1957] ATS 05 (Article 2)
 - each Party grants to the designated airlines of the other Party the aviation rights necessary to establish and operate agreed services, including the right to overfly its territory and make stops in its territory for non-traffic purposes (Article 3)
 - recognition of certificates of airworthiness, competency and licences issued by the other party (Article 5)
 - provisions for a Party to request consultations on safety standards. If after the consultations a Party remains concerned about safety, then that Party may set out steps required for the other Party to comply with the minimum standards deemed acceptable by the *Chicago Convention on International Civil Aviation*. A failure to take the necessary steps to meet those minimum standards will allow the Party concerned about safety to withhold, revoke, suspend or limit authorisations for the air services (Article 5)
 - both parties are required to protect the security of civil aviation against acts of unlawful interference and to act in conformity with multilateral conventions relating to aviation security (Article 6)
 - provision of fair and equal opportunity for the designated airlines to operate the agreed services on the specified routes (Article 11)
 - ability for airlines to establish tariffs for international air transportation based on commercial considerations in the marketplace and general competition and consumer law in each Party (Article 10)

⁷ NIA, paras 12-20.

- a framework enabling airlines to establish themselves in the territory of the other Party (Article 12)
- the Agreement may be amended or revised by agreement of the Parties. Any amendment to the Agreement, including the annex, will be subject to Australia's domestic treaty action procedures. If a multilateral convention concerning air transport comes into force, the Agreement is deemed to be amended as far as is necessary to conform with the provisions of that multilateral convention. Any future amendments to the Agreement are likely to involve further deregulation of air service arrangements between the Parties. (Article 14).⁸

Implementation and costs

2.9 The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* (Cth) and the *Civil Aviation Act 1988* (Cth). No amendment to these Acts is required for the implementation of the Agreement.⁹ No financial costs to the Australian Government are anticipated as a result of the Agreement.¹⁰

Entry into force

2.10 Pursuant to Article 18, the Agreement will enter into force when the parties have notified each other in writing that their respective requirements for its entry into force have been fulfilled.

2.11 According to international and established Australian practice, the aviation arrangements of less than treaty status, mentioned in paragraph 2.5, apply the Agreement provisions before it enters into force, pending the completion of domestic requirements.¹¹

8 NIA, paras 27-31, see also Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 3.

9 NIA, para. 21.

10 NIA, para. 22.

11 NIA, para. 5.

Consultation

2.12 Consultations were undertaken with relevant State, Territory and Australian Government Departments and agencies, and with members of the Australia aviation and tourism industries prior to the negotiations with the aeronautical authorities of Poland on the Agreement.¹² All major stakeholders supported the Agreement.¹³

Conclusion and recommendation

2.13 The Committee appreciates the benefit the Agreement will generate by providing legal certainty for air services operating between Australia and Poland. The Committee agrees that the Agreement will increase the opportunities for the Australian community to access Poland, while facilitating tourism and trade.

Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services (Warsaw 28 April 2004)* and recommends that binding treaty action be taken.

¹² NIA, para. 23. See Annex 1 of the NIA for more information on consultation.

¹³ NIA, para. 24.

Amendment to the Agreement establishing the European Bank of Reconstruction and Development to admit Mongolia as a country of operations

- 3.1 The proposed *Amendment to the Agreement establishing the European Bank for Reconstruction and Development (Paris, 29 May 1990) in order to admit Mongolia as a country of operations* (the Amendment) constitutes an agreement to allow Mongolia to receive European Bank of Reconstruction and Development (EBRD) loans.

Background

- 3.2 The EBRD was established in 1991 to facilitate the transition towards open market economies and to provide incentives to private entrepreneurial investment in Central and Eastern European nations.
- 3.3 Australia is one of 60 member states of the EBRD (which also incorporates two intergovernmental institutions). Each state appoints a Governor to the EBRD; Australia's appointed Governor is the Treasurer, the Hon Peter Costello.
- 3.4 The EBRD provides loans for projects such as agribusiness, natural resources, power and energy, telecommunications and transport. All projects in receipt of EBRD funding must benefit the local economy through private sector development and satisfy banking and

environmental standards. Additionally, all projects are approved by the EBRD Board of Directors before funds are disbursed.¹

- 3.5 Mongolia has been a member state of the EBRD since October 2000, but as a non-European nation, it has been ineligible for loans. To be eligible for lending, Mongolia must be given the EBRD status of a country of operations, which in turn requires the unanimous agreement of all EBRD member nations.
- 3.6 Mongolia requested such status at the EBRD Board of Governors meeting on 30 January 2004. All Governors voted in favour of admitting Mongolia as a country of operations.²

Benefits of the Treaty

- 3.7 Granting Mongolia the status of EBRD country of operations would allow it to benefit from the technical and financial assistance of the EBRD. Australia recognises these benefits.

The Treasurer, as a governor of the EBRD, determined that Australia through the EBRD could play an effective role in fostering transition towards an open market based economy in Mongolia and hence voted in favour of the resolution, as did all other governors.³

- 3.8 As Mongolia stands to benefit from the Amendment and Australia will not bear any cost as a result, it is in Australia's interest to ratify the Amendment.
- 3.9 Until all member nations have ratified the Amendment, Mongolia will be prevented from accessing EBRD loans. As such, it is in Australia's interests to support Mongolia's access to development funding by taking this treaty action.

1 National Interest Analysis (NIA), paras 15-16.

2 NIA, para. 8.

3 Mr Roger Brake, *Transcript of Evidence*, 7 March 2005, p. 9.

Obligations and Costs

- 3.10 There are no new obligations or costs arising from this treaty. Australia's capital subscription to the EBRD (in the amount of 200 million Euros) remains the same.

Implementation

- 3.11 The *European Bank for Reconstruction and Development Act 1990* (Cth) will require amendment, as the original treaty establishing the EBRD is set out as a Schedule to the Act.⁴

Conclusion and Recommendation

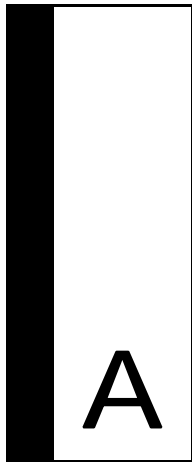
- 3.12 The Committee believes that the Amendment will be beneficial to Mongolia. Australia has already shown its support for this treaty action by its supportive vote at the EBRD Board of Governors and the Committee reaffirms this action by recommending the ratification of the Amendment.

Recommendation 2

The Committee supports the *Amendment to the Agreement establishing the European Bank for Reconstruction and Development (Paris, 29 May 1990)* in order to admit Mongolia as a country of operations, and recommends that binding treaty action be taken.

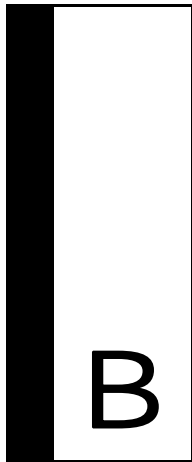
Dr Andrew Southcott MP
Committee Chair

⁴ NIA, para. 19.



Appendix A - Submissions

- 1 Department of the Premier and Cabinet, WA
- 2 Australian Patriot Movement
- 2.1 Australian Patriot Movement (supplementary)
- 2.2 Australian Patriot Movement (supplementary)
- 2.3 Australian Patriot Movement (supplementary)
- 2.4 Australian Patriot Movement (supplementary)
- 2.5 Australian Patriot Movement (supplementary)
- 2.6 Australian Patriot Movement (supplementary)
- 2.7 Australian Patriot Movement (supplementary)
- 3 Queensland Government
- 4 University of Melbourne
- 5 Department of Foreign Affairs and Trade
- 5.1 Department of Foreign Affairs and Trade (supplementary)
- 6 Minister for the Environment and Heritage



Appendix B - Witnesses

Monday, 7 March 2005 - Canberra

Attorney-General's Department

Mr Greg Manning, Principal Legal Officer, Public International Law Branch, Office of International Law

Department of Foreign Affairs and Trade

Mr Michael Jonathan Thwaites, Executive Director, Treaties Secretariat

Department of the Treasury

Mr Roger Brake, General Manager, International Finance Division

Ms Kirsty McNichol, Development Banks Unit, International Finance Division

Mr Hector Thompson, Manager, Development Banks Unit, International Finance Division

Department of Transport and Regional Services

Mr Nicholas Bogiatzis, Assistant Secretary, Transport Markets Branch, Policy and Research Group

Mr Wayne Kelly, Assistant Director International Aviation, Transport Markets Branch, Policy and Research Group

Mr Samuel Lucas, Assistant Director International Aviation, Transport Markets Branch, Policy and Research Group

Ms Elisabeth Welch, Assistant Director, Transport Industry and International Policy Branch, Policy and Research Group

