

AGREEMENT TO AMEND SINGAPORE AUSTRALIA FREE TRADE AGREEMENT (SAFTA)

Analysis of Regulatory Impact on Australia

1. Introduction

This Regulation Impact Statement relates to the Agreement to Amend of the Singapore-Australia Free Trade Agreement (SAFTA) as a result of the Third SAFTA Review. The completion of the Third SAFTA Review was announced on 6 May 2016, as part of package of initiatives to advance the Comprehensive Strategic Partnership (CSP) that was first announced by the Prime Ministers of Australia and Singapore in June 2015. This will be the third amendment of SAFTA. A key feature of these amendments is the update of SAFTA to reflect modern trade provisions and outcomes provided to more recent FTA partners by both Australia and Singapore.

2. Policy Problem

- 2.1. Singapore and Australia are open markets, enjoying a substantial trade and investment relationship. Singapore is Australia's fifth largest trading partner, with two-way trade in 2015 valued at \$25.7 billion. Australian exports to Singapore are valued at \$11 billion and are growing strongly — 7.0 per cent for goods and 7.7 per cent for services (five year trend). Singapore is Australia's 5th largest source of foreign investment (valued at \$98.6 billion in 2015), and is Australia's 6th largest destination for investment abroad (\$67 billion in 2015).
- 2.2. Services make up a significant proportion of total Australian exports to Singapore (37 per cent in 2015), and are evolving to reflect our comparative advantage. While transportation and travel exports remain significant (45 per cent of service exports), business services (including engineering and legal services) have grown at almost four times the rate of total services, and now make up 41 per cent of service exports in 2015 (up from 10 per cent in 2000).
- 2.3. The *Singapore Australia Free Trade Agreement 2003* (SAFTA), which entered into force in 2003, forms the central pillar of Australia's economic relationship with Singapore, and is the legal framework for the trading relationship between the two countries. It is one of Australia's first bilateral free trade agreements, with only the *Australia-New Zealand Closer Economic Trade Relations Trade Agreement 1983*, being older. All Australian products are able to enter Singapore tariff free. However, Australian exporters, particularly those providing services, face long-standing, complex non-tariff barriers in Singapore's market.
- 2.4. Impediments for service suppliers include restrictions on temporary entry of staff, professional qualifications recognition, and the lack of certainty regarding access to Singapore's market to provide those services, including for government procurement contracts. Singapore's free trade agreements with other countries, including the United States (US), Japan, and the European Union (EU), have addressed many of these issues. Without an update to SAFTA to address such issues, Australian businesses will not be able to maintain their competitiveness.

- 2.5. Australia could soon have five trade agreements with Singapore — World Trade Organization (WTO) Agreements, SAFTA, and *ASEAN-Australia New Zealand Free Trade Agreement 2007 (AANZFTA)*, the Trans-Pacific Partnership (TPP) Agreement (yet to be in force), and the Regional Comprehensive Partnership Agreement (RCEP), which is currently under negotiation. The Third SAFTA Review will make it simpler for exporters and investors to capture the benefits from these agreements by ensuring that the best trade agreement outcomes are contained in SAFTA. As a result of the Third Review, SAFTA will be upgraded to incorporate trade rules appropriate for an increasingly global, competitive and connected business environment.

3. Need for Government Action

In June 2015, Australia and Singapore agreed to a Comprehensive Strategic Partnership (CSP), which seeks to strengthen defence ties, and further trade and economic integration. A priority outcome of the CSP, the Third SAFTA Review, aimed to address the key barriers to a Closer Economic Relationship. The substantial conclusion of the Third SAFTA Review was announced on 6 May 2016.

4. Policy Options

Policy Alternatives

- 4.1. With ***no action***, Australian service suppliers will lose competitiveness in the Singaporean market. An update to SAFTA will lead to reductions in regulatory obstacles, certainty on market access, better integration of financial and capital markets and an increased flow of skilled labour and visitors; without it the Closer Economic Relationship (CER) envisaged under the CSP may not arise.
- 4.2. ***Multilateral and plurilateral trade agreements***, including through the WTO, could be considered an alternative means of obtaining the outcomes we have achieved in the Third SAFTA Review. However, no such negotiations are currently taking place, or are likely to take place in the near future, that would deliver the same access; particularly as Singapore is not a part of the plurilateral Trade in Services Agreement (TiSA) negotiations.
- 4.3. Both Australia and Singapore are part of ***regional trade agreements***, including the TPP and RCEP. The Third SAFTA Review was negotiated immediately after the finalisation of the TPP, and sought to include outcomes Singapore did not agree to provide to the broader group of countries in the TPP, nor would it provide in RCEP. Given this, regional approaches would be similarly unable to deliver the outcomes obtained through the Third SAFTA Review.

Third SAFTA Review

- 4.4. The CSP provided a unique opportunity for further economic integration with Singapore including through the Third SAFTA Review. Australia and Singapore agreed to update SAFTA, to reflect the more modern provisions in recent FTAs and to include the best outcomes of these agreements in SAFTA.
- 4.5. SAFTA has already delivered duty-free trade in goods between Singapore and Australia. Given this, and the commercial interests of Australian and Singaporean business

stakeholders, Singapore and Australia agreed to update the following areas under the Third SAFTA Review:

- services (including professional and financial services);
- telecommunications and e-commerce;
- investment;
- government procurement;
- goods (including rules of origin); and
- movement of business persons.

4.6. In parallel to legally binding (treaty-level) commitments in SAFTA, Australia and Singapore concluded outcomes on: visa facilitation, mutual recognition of academic and professional qualifications; and addressing regulatory burdens faced by Australian universities operating in Singapore.

Services

4.7. SAFTA's services chapters (Chapter 7: Trade in Services, Chapter 9: Financial Services) have been updated to include modern rules which better protect and promote the interests of service suppliers. Singapore and Australia agreed to establish a professional services framework to support mutual recognition of professional qualifications, beginning with those for engineers and accountants, and address concerns regarding the supply of professional services into each other's markets.

4.8. As a result of the Third SAFTA Review, Australia has:

- commitments from Singapore to allow Australian companies to provide brokerage services, on a cross-border basis, for insurance of maritime, aviation and transport-related risks;
- commitments to permit financial institutions to transfer information into and out of Singapore for data processing – subject to certain conditions including the protection of privacy and confidentiality; and
- locked in existing opportunities and future market access in Singapore's legal sector, including the ability to practice Singapore law and to work in international commercial arbitration.

4.9. The Third SAFTA Review will increase opportunities for Australian education exports through increased recognition of Australian qualifications in law, medicine and allied health. As a result of the Third SAFTA Review, James Cook University will now be able to brand itself as the Singapore Campus of James Cook University (rather than JCU Singapore). A process for considering requests by other Australian Universities to use the term "university" in Singapore will be developed. Singapore has also agreed to develop a process to consider feedback on regulatory burdens faced by Australian tertiary education providers operating in Singapore.

4.10. Australian States and Territories have agreed not to impose new restrictions on the provision of services by Singaporean businesses.

Telecommunications and E-Commerce

- 4.11. Telecommunications (Chapter 10) and E-Commerce (Chapter 14) have been updated in line with technological progress and developments in trade rules in these areas. These outcomes will not prevent the Australian Government from regulating to address public policy objectives, such as privacy and health.
- 4.12. The Third SAFTA Review recognises that businesses rely on the ability to move information across borders, that they provide content over the internet, and that the source code of software is integral to the value of a product. As a result, under the amended SAFTA, all businesses will be able to transfer information freely across borders, and will not be required to use local data storage or local computing facilities. Nor will software suppliers be required to hand over source code when seeking to import or distribute software in Singapore or Australia. Singapore and Australia have also agreed not to impose customs duties on electronic transmissions or content delivered over the internet by the other Party, and will have the same requirements on digital content (including software and games) irrespective of whether it is produced by Australian or Singaporean firms.
- 4.13. SAFTA will also address important consumer issues. Australia and Singapore have committed to protect privacy, consumer rights and undertake efforts to combat 'spam' messages. In addition, Australia and Singapore have agreed to promote transparent and reasonable rates for international mobile roaming services.

Investment

- 4.14. SAFTA's Investment Chapter (Chapter 8) has been revised to incorporate a set of modern rules governing the treatment of investors, and their investments. This includes updating the investor-state dispute settlement (ISDS) mechanism to incorporate robust safeguards to preserve the right of the Government to continue regulating in the public benefit.
- 4.15. SAFTA will incorporate higher Foreign Investment Review Board thresholds agreed as part of the TPP negotiations. The threshold at which private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board will increase from the currently applied threshold of \$252 million to \$1,094 million, with thresholds of \$15 million and \$55 million applying to investment in agricultural land and agribusiness respectively.

Government Procurement

- 4.16. SAFTA's Government Procurement Chapter (Chapter 6) has been revised and updated to reflect both Parties' current procurement frameworks. This includes important Australian policies to promote small and medium enterprises, as well as indigenous business participation in government procurement.
- 4.17. SAFTA has locked in opportunities to bid for valuable Singaporean government procurement contracts, and from additional Singaporean Government entities. This provides greater certainty for Australian companies seeking to bid for contracts in sectors such as freight transport, construction and engineering services.
- 4.18. Australia has a non-discriminatory procurement framework that currently allows Singapore suppliers to bid for State and Territory government covered procurements.

Movement of Natural Persons

4.19. As part of the review, SAFTA will provide greater certainty to Australian and Singaporean service suppliers seeking to enter and work temporarily in each country's market. SAFTA will also provide new guaranteed access for a range of Australian and Singaporean skilled service providers, investors and business visitors. These temporary entry commitments are the best Singapore has provided in any FTA. Singapore and Australia have provided reciprocal access for citizens and permanent residents for the following categories:

- intra-corporate transferees up from two years to three years with a new maximum stay period of 15 years, up from 14 years;
- independent executives/investors up from three months to two years;
- contractual service suppliers up from three months to two years;
- installers and servicers for up to three months; and
- equivalent entry and stay for spouses and dependants of Australians who have been granted entry as intra-corporate transferees, independent executives and contractual service suppliers.

4.20. Both Australia and Singapore have committed not to apply labour market testing to the categories where each country has made specific commitments. Australia and Singapore have also committed to provide pre-departure visa approval for categories where each country has made specific commitments.

4.21. In addition to these amendments to the Movement of Natural Persons Chapter (Chapter 11), a separate Memorandum of Understanding on visa facilitation and transparency will provide for:

- a bilateral officials-level working group to share information on skilled and temporary business entry frameworks in Australia and Singapore;
- Singapore to streamline the work pass application process for Australian intra-corporate transferees; and
- Singapore to establish a dedicated help desk in the Ministry of Manpower to respond to enquiries from Australian business people regarding temporary entry and work in Singapore.

Rules of Origin and Trade in Goods

4.22. The SAFTA Trade in Goods Chapter (Chapter 2) will be updated to incorporate commitments on import and export restrictions, and other non-tariff barriers that may otherwise present hurdles to Australian exports. SAFTA (Chapter 5: Technical Regulations and Sanitary and Phytosanitary Measures) will also include annexes on cosmetics, medical devices and wine and distilled spirits. This will promote common regulatory approaches between Singapore and Australia for these sectors.

4.23. The SAFTA Rules of Origin Chapter (Chapter 3) will be updated to reflect modern approaches to customs administration. The Rules of Origin Chapter will now include a full schedule of Product Specific Rules of Origin, which will provide flexibility to meet the requirements to claim preferential treatment in each other's markets and improve the use of SAFTA by importers and exporters.

5. Trade Impact Statement

- 5.1. SAFTA, which entered into force in 2003, has already delivered significant benefits for Australian exporters. The Third SAFTA Review focused on addressing non-tariff barriers faced by Australian businesses in Singapore and modernising the agreement to reflect the needs of contemporary Australian exporters. The amended SAFTA will give Australia Singapore's best-FTA treatment in areas of key commercial interest. This will ensure that Australian businesses retain their competitiveness in Singapore. SAFTA's rules and outcomes are consistent (or better) than those contained in other trade agreements between Australia and Singapore. This will make it simpler for Australian businesses to take advantage of preferential trading arrangements with Singapore.
- 5.2. As tariffs on Australian goods exports have been eliminated under SAFTA, we do not anticipate a significant change in Australian goods exports.
- 5.3. SAFTA is expected to have a positive impact on service exports. Outcomes which have locked in existing access to Singapore's market (such as recognition of Australian education qualifications, legal services and some areas of government procurement), create greater certainty for businesses considering exporting to Singapore, and ensure those that currently export do not lose their access. In addition, the amended SAFTA provides new opportunities for exports, including by Australian businesses financial service providers. Commitments related to temporary entry by Singapore will also reduce uncertainty and make it simpler for Australian professional to stay and work in Singapore for longer.
- 5.4. Australian stakeholders which are expected to benefit from SAFTA include:
 - providers of professional services, including in the legal, financial, accounting and engineering sectors.
 - companies in transport and construction sectors;
 - Australian universities
 - Australian professionals.

6. Regulatory and Legislative Changes and Impacts

- 6.1. The following regulatory and legislative changes are required to implement the outcomes of the Third SAFTA Review:
 - changes to the *Customs Tariff Act 1995* to reflect changes in the rules of origin for Singaporean goods;
 - a Ministerial determination under the *Migration Act 1958* to implement temporary entry commitments; and
 - changes to Foreign Acquisitions and Takeover Regulations 2015 to implement the commitment to increase the threshold for screening by the Foreign Investment Review Board.
- 6.2. Under the amended SAFTA, businesses will be able to self-certify to claim preferential treatment under SAFTA. The estimated, ongoing, cost reduction for business is \$3,828.40 (see Attachment A).

- 6.3. The changes to the Foreign Acquisitions and Takeover Regulations 2015 reflect a commitment contained in the TPP. As these changes were considered in a separate regulatory impact statement, they change in regulatory burden has not been calculated for this Regulation Impact Statement.
- 6.4. Although there has been an expansion of the treaty commitments Australia has offered, existing visa and policy settings already allow for these changes. The Movement of Natural Persons commitments do not alter Australia's visa settings, but lock in a base level of access to the visa programme that Singapore must always be provided irrespective of future visa or policy setting changes.
- 6.5. This Regulation Impact Statement does not assess the change in the regulatory burden faced by Australian businesses and individuals, which will arise from regulatory and legislative changes made by Singapore.

7. Consultation

- 7.1. The Department of Foreign Affairs and Trade (DFAT) undertakes consultation on trade agreements through both formal and informal mechanisms. On 9 November 2015, members of the public were invited, through the DFAT website, to submit their views on the Third SAFTA Review. The original closing date for submissions was 15 January 2016, although submissions were accepted after that date. Three formal submissions were received, of which two (Curtin University and University of Tasmania) are available on the DFAT website. No submissions were received from Stakeholders expressing concerns about the potential outcomes of the SAFTA review.
- 7.2. DFAT sought input from wide range of stakeholders who would be directly affected by the SAFTA amendments, including representatives from the tertiary education, financial services and professional services sectors. This included input from the Australian High Commission in Singapore, based on its ongoing contact with the Australian Chamber of Commerce (Singapore) and the broader Australian expatriate community. This complemented the input provided by stakeholders through consultative processes for other agreements, which included both Australia and Singapore as Parties, namely, the TPP and RCEP. Consultations revealed broad support for addressing barriers to trade with Singapore. DFAT is aware of more than 15 organisations issuing public statements in support of the outcomes. Organisations included: Australian Chamber of Commerce, Singapore Business Circle, Universities Australia, James Cook University, ANZ, National Australia Bank, Engineers Australia, PriceWaterhouseCooper and Law Council of Australia.
- 7.3. DFAT undertook regular and extensive consultation with relevant Commonwealth Government agencies as well as State and Territory Governments throughout the negotiations. In addition, the Minister for Trade, Tourism and Investment wrote to Premiers and Chief Ministers seeking agreement on relevant SAFTA outcomes.
- 7.4. Stakeholders will have an additional opportunity to provide their views regarding the outcomes of the Third SAFTA Review through the Joint Standing Committee on Treaties inquiry.

8. Implementing and Evaluating the Chosen Option

- 8.1. In line with Australia's treaty-making processes, the Agreement to Amend SAFTA will be tabled in Parliament. Following tabling, the Joint Standing Committee on Treaties (JSCOT) will conduct an inquiry into the Agreement and report back to Parliament. Parliament will consider any legislation or amendments to existing legislation that may be necessary to implement the Agreement. Following the exchange of diplomatic notes by Australia and Singapore, advising that domestic processes for implement the Agreement to Amend SAFTA are completed, the amendments to SAFTA will enter into force.
- 8.2. DFAT and other Government agencies will continue to implement SAFTA using existing resources.
- 8.3. The operation and effectiveness of SAFTA will be addressed through working groups, Senior Officials Meetings, Ministerial Meetings and through future reviews of SAFTA. In advance of these meetings and any formal review, DFAT would invite submissions from the public, and consult with stakeholders to identify concerns regarding the implementation of SAFTA.

9. Status of Regulation Impact Statement

- 9.1. The Third Review of SAFTA is one of the priority objectives of the Comprehensive Strategic Partnership (CSP) between Singapore and Australia. Decisions regarding the Comprehensive Strategic Partnership, including identification of priorities and entering into negotiations on SAFTA were made as a single undertaking.
- 9.2. In light of SAFTA's treaty level status, and the proposed regulatory changes (Section 6), DFAT has prepared a stand-alone Analysis of the Regulatory Impact on Australia on signing the Agreement to Amend SAFTA. The process for undertaking the treaty action is outlined in Section 8.

ATTACHMENT A: REGULATORY BURDEN AND COST OFFSET ESTIMATE

The Third SAFTA Review is expected to result in a small reduction in ongoing business compliance costs for Australian exporters to Singapore. These reductions arise from businesses which previously sought and obtained preferential certificates of origin (COOs) and which may now be able to self-certify the origin of their goods when claiming preferential treatment under SAFTA.

There is a significant level of uncertainty regarding the number and composition of COOs issued in respect of Australian exports into Singapore. Accordingly, the estimates of the compliance costs under the status quo – as well as the likely incremental changes – are largely assumption-driven and should be interpreted as such. Based on the available data, however, it is possible to gain an appreciation of the order of magnitude of these changes.

Certificates of Origin

COOs are issued by industry groups such as the Australian Chamber of Commerce and Industry and the Australian Industry Group. Preferential certificates account for around 10 per cent of all certificates issued. Preferential certificates are currently required to claim preference under SAFTA as the agreement does not allow for self-declaration.

Singapore is Australia's 6th largest goods export destination and represents 3.1 per cent of Australia's total goods exports. Only a small portion of Australia's exports to Singapore are subject to customs duties — beer is the only Australian export on which Singapore levies customs duties (Australia exports around \$2 million of beer to Singapore). The majority of Australian exports to Singapore therefore enter duty free, without needing to claim preference under SAFTA; the regulatory savings from exporters being able to self-certify is small.

Direct Costs

Where businesses seek third-party certification from industry groups, the cost of each certificate varies from \$20 - \$70, with an average of \$33. The cost of a certificate depends on a range of factors, such as whether an applicant is a member of the issuing body and the level of complexity.

Administrative Costs

The ongoing administrative costs incurred by a business in preparing the documentation to obtain a COO are likely to be relatively low. While new businesses may expend considerable time applying for certification for their initial consignment, as a matter of practice, this information is re-submitted for subsequent certifications. In addition, much of the information required would be collected for other purposes. The administrative burden for each application is therefore estimated to be modest.

Similarly, the records related to a COO are required to be kept for five years by most foreign customs agencies. Businesses are required under Australian Tax Law to retain these records for seven years. The incremental compliance burden associated with record keeping for COOs is therefore assessed as nil.

Incremental reduction in number of certificates under the Third SAFTA Review

As businesses will now be able to self-certify to claim preferential treatment under SAFTA, it is possible that the total number of Australian COOs currently issued in respect of exports to Singapore may decrease as a result of the SAFTA Review. Businesses will have to consider for themselves, as a commercial decision, whether the benefits of obtaining a COO are outweighed by the costs (administrative or otherwise).

It is therefore assumed that there will be a modest reduction in the number of COOs issued in respect of Australian exports to Singapore as a result of the Agreement. To the extent that this reduction occurs, those businesses will save the direct costs of certification by industry bodies; together with the administrative costs.

Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from business as usual)				
Costs (\$)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	(\$3,828.41)	\$	\$	(\$3,828.41)
Cost offset (\$)				
Cost offset (\$)	Business	Community Organisations	Individuals	Total by Source
Agency	\$	\$	\$	\$
Within portfolio	\$	\$	\$	\$
Outside portfolio	\$	\$	\$	\$
Total by Sector	\$	\$	\$	\$
Proposal is cost neutral? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no				
Proposal is deregulatory <input checked="" type="checkbox"/> yes <input type="checkbox"/> no				
Balance of cost offsets	-\$3,828.41			