

**National Interest Analysis [2014] ATNIA 10**

**with attachment on consultation**

**Treaty on Economic Cooperation between the Government of Australia and the  
Government of the Independent State of Papua New Guinea  
(Port Moresby, 21 March 2014)**

**[2014] ATNIF 3**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

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Government of the Independent State of Papua New Guinea  
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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to bring into force the *Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea* (the ECT).
2. The ECT was signed on 21 March 2014. Pursuant to its Article 6(1), each Party shall notify the other Party in writing through diplomatic channels upon the completion of its necessary domestic legal procedures for the entry into force of the ECT. The ECT will enter into force on the date of the last notification.
3. Pursuant to Article 6(2) of the ECT, the *Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea*, done at Port Moresby on 7 October 1999<sup>1</sup> (the 1999 DCT), will terminate on the date the ECT enters into force. All activities being conducted pursuant to the 1999 DCT that are incomplete on the date the ECT enters into force shall be governed by the terms of the ECT.

#### **Overview and national interest summary**

4. The ECT sets out a framework for bilateral cooperation between Australia and Papua New Guinea (PNG) in areas of shared interest including trade, investment, business relations and development cooperation. The ECT reflects a maturing relationship built on economic and strategic partnership.
5. PNG has experienced a decade of strong economic growth, which is set to continue with a major Liquefied Natural Gas project to come online later in 2014. Australia's investment in PNG is worth more than \$19 billion – almost the same as Australia's investment in China – and Australia is PNG's largest trading partner. Two-way trade between Australia and PNG is valued at \$5.7 billion. Therefore, PNG is an increasingly important commercial partner. The ECT commits both Parties to further promote and expand mutually beneficial trade and economic relations between them.

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<sup>1</sup> [2000] ATS 30

## **Reasons for Australia to take the proposed treaty action**

6. Development of the ECT was recommended in a 2010 independent review of the 1999 DCT, which found that an economic cooperation treaty would better reflect the contemporary, maturing bilateral relationship with Papua New Guinea, rather than the past relationship dominated by aid.

7. The change from a development focused treaty to an economic cooperation treaty is both practical and symbolic. As well as setting out a framework for key areas of cooperation, the ECT demonstrates the importance of a relationship based on economic and strategic partnership. The Annex to the ECT outlines procedures applying to development cooperation, as this remains a key aspect of the relationship.

## **Obligations**

8. The ECT is not a free trade agreement and it does not supplant existing trade agreements to which Australia and PNG are Parties. All commitments in the ECT are subject to the laws and regulations of each Party. The ECT reaffirms the respective rights and obligations of the Parties under international law, including their mutual rights and obligations as Members of the World Trade Organization (WTO).

9. The ECT commits the Parties to a series of principles that further promote and expand mutually beneficial relations encompassing trade and investment cooperation, business cooperation and development cooperation.

### *Bilateral relations (Article 2)*

10. Article 2 obliges the Parties to work together to foster mutually beneficial and sustainable bilateral economic relations. The Parties are required to extend fair and transparent treatment to each other's nationals in relation to their business, immigration and professional activities. This includes a "best endeavours" obligation not to discriminate between nationals of the other Party and nationals of a third country.

### *Trade and Investment Cooperation (Article 3)*

11. Article 3 seeks to strengthen relations in the economic, trade, investment and commercial fields on the basis of mutual benefit and trust. The Parties undertake to endeavour to improve trade, investment and business cooperation and to cooperate with each other in a manner consistent with their rights and obligations under existing bilateral, regional and multilateral agreements, including the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994<sup>2</sup>. The Parties are required to promote favourable environments for trade and other economic linkages and to provide adequate and effective protection of intellectual property rights, in accordance with relevant international agreements. Parties shall endeavour to enhance cooperation, consultation and mutual understanding in relation to sanitary and phytosanitary measures (quarantine) and technical barriers to trade (technical regulations and product standards).

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<sup>2</sup> [1995] ATS 8

### *Business Cooperation (Article 4)*

12. Article 4 seeks to support increased business links to encourage further investment and private sector interaction. It requires the Parties to encourage and support their business communities to find areas of common interest and to meet regularly to encourage further investment and cooperation. It highlights the role of business organisations in promoting business cooperation, and the importance of small and medium enterprises in driving private sector growth.

### *Development Cooperation (Article 5)*

13. Article 5 sets out the basis on which the Parties will work together for improved development outcomes and sustainable improvements in the quality of life of Papua New Guineans. It reaffirms the (non-treaty level) *Papua New Guinea-Australia Partnership for Development* (the Partnership), signed on 20 August 2008, as the framework for development cooperation between the Parties. Article 5 provides that all Australian developmental assistance to PNG must comply with the procedures in the Annex to the ECT. The Annex sets out rules and procedures for the conduct of development cooperation activities, including provisions on planning, contributions, coordination and consultation, implementation responsibilities, duties and taxes and civil liability. The Annex also contains obligations on the Parties in regards to preventing and detecting fraud and corruption (paragraph 19) and ensuring development funds do not provide support to terrorism (paragraph 20). Article 5(4) of the ECT provides that the Parties may conclude subsidiary (non-treaty) arrangements on the implementation of particular aspects of development cooperation, provided these are consistent with the Annex and the Partnership.

### **Implementation**

14. Australia's obligations under the ECT do not require any legislative or regulatory amendments. The ECT will not effect any change to the existing roles of the Commonwealth, State or Territory governments. The ECT does not impose any obligations on businesses or community organisations.

### **Costs**

15. There will be no net impact on the Budget from the implementation of the ECT. The ECT does not contain any specific financial commitments. Australia will continue to provide development assistance to PNG in accordance with the Partnership, within existing budget allocations. Article 5(2) reaffirms that Priority Outcomes of the Partnership are endorsed by the Parties annually, including primary funding commitments for each Party. Article 5(5) acknowledges that PNG, in accordance with its ongoing economic development, may wish to seek a reduction of Australian development cooperation funding. Costs associated with trade and investment cooperation will be absorbed by relevant agencies as part of their normal business.

## **Regulation Impact Statement**

16. The Office of Best Practice Regulation (OBPR), Department of the Prime Minister and Cabinet, has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

17. Article 6(3) provides that the Parties may at any time enter into negotiations to amend the ECT and agree to such amendments in writing through an exchange of notes through the diplomatic channel. Any amendment shall follow the same procedure set out in Article 6.1 regarding the ECT's entry into force.

18. Article 6(6) provides that the Parties shall meet at periods to be mutually determined to review the implementation of the ECT.

19. Article 7 provides that disputes as to the application or interpretation of the ECT shall be resolved amicably by consultations between the Parties through diplomatic channels.

## **Withdrawal or denunciation**

20. Article 6(4) provides that either Party may terminate the ECT by notifying the other Party in writing through the diplomatic channel of its intention to do so. Such notice would take effect six months from the date of its receipt by the other Party.

21. Article 6(5) provides that, notwithstanding the termination of the ECT, the ECT shall continue to apply in respect of claims referred to under Article 16 of the Annex which arose prior to termination.

## **Contact details**

Papua New Guinea and Torres Strait Section  
Pacific Division  
Department of Foreign Affairs and Trade

## ATTACHMENT ON CONSULTATION

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#### **CONSULTATION**

22. The ECT does not have any direct impact on businesses or Commonwealth or State/Territory Government agencies in Australia. Australian businesses were provided briefings on negotiations for the ECT through regular meetings with the Australia Papua New Guinea Business Council in 2011, 2012 and 2013. Briefings on ECT negotiations were also provided at the 2011 and 2012 PNG Symposium, organised by the Australian Department of Foreign Affairs and Trade, which was attended by academics and business representatives. No objections to the proposed ECT were raised.

23. The Standing Committee on Treaties was briefed on the ECT in March 2012, and updates have been included in the biannual schedule of bilateral treaties under negotiation, consideration and review since that time. States and Territories have not raised any objection to the ECT.