

Report 143

Treaties tabled on 17 June and 15 July 2014

Amendment to the Annex to the Protocol on Trade in Services in the Australia New Zealand Closer Economic Relations Trade Agreement (Yet to be signed)

Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea (Port Moresby, 21 March 2014)

Amendment, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (Canberra, 20 October 1986)

Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (Tokyo, 6 February 1974)

Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes (Canberra, 6 December 2006)

Amendment to Annex 15A (Government Procurement) of the Australia-Chile Free Trade Agreement

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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 on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements 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

ACIFTA	<i>Australia-Chile Free Trade Agreement</i>
ANZCERTA	<i>Australian New Zealand Closer Economic Relations Trade Agreement</i>
CAMBA	<i>Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
JAMBA	<i>Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment</i>
NIA	National Interest Analysis
PNG LNG	Papua New Guinea Liquefied Natural Gas
RIS	Regulation Impact Statement
ROKAMBA	<i>Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes</i>



List of recommendations

2 Amendment to the Annex to the Protocol on Trade in Services in the Australia New Zealand Closer Economic Relations Trade Agreement

Recommendation 1

The Committee supports the *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* and recommends that binding treaty action be taken.

3 Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea

Recommendation 2

The Committee supports the ratification of the *Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea* and recommends that binding treaty action be taken.

4 Amendments to the migratory birds bilateral treaties between Australia and China, Japan and Korea

Recommendation 3

The Committee supports the ratification of the *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment* and recommends that binding treaty action be taken.

Recommendation 4

The Committee supports the ratification of the *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports the ratification of the *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the following treaty actions tabled on 17 June and 15 July 2014:
- *Amendment to the Annex to the Protocol on Trade in Services in the Australia New Zealand Closer Economic Relations Trade Agreement (Yet to be signed);*
 - *Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea (Port Moresby, 21 March 2014);*
 - *Amendment, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (Canberra, 20 October 1986);*
 - *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (Tokyo, 6 February 1974); and*
 - *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes (Canberra, 6 December 2006).*
- 1.2 In addition, the Report contains the Committee's views on one Minor Treaty Action:
- ⇒ *Amendment to Annex 15A (Government Procurement) of the Australia-Chile Free Trade Agreement.*

- 1.3 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.5 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties considered in this report do not require Regulation Impact Statements.
- 1.7 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.8 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/17_June_2014/Terms_of_Reference; and
 - http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/15_July_2014/Terms_of_Reference.

Conduct of the Committee's review

- 1.9 The treaty actions reviewed in this report were advertised on the Committee's website from the date of tabling. Submissions for the treaties were requested by 4 July 2014 and 1 August 2014.
- 1.10 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.

- 1.11 The Committee held a public hearing into these treaties in Canberra on Monday 1 September 2014.
- 1.12 The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaties' tabling dates, being:
- 17 June 2014; and
 - 15 July 2014.
- 1.13 A list of submissions received and their authors is at Appendix A.
- 1.14 A list of witnesses who appeared at the public hearings is at Appendix B.

Amendment to the Annex to the Protocol on Trade in Services in the Australia New Zealand Closer Economic Relations Trade Agreement

Introduction

- 2.1 The *Australian New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA), which came into force in 1983, is a comprehensive bilateral free trade agreement covering nearly all goods and services traded between Australia and New Zealand.¹
- 2.2 The *Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* liberalises the trade in services between the signatories.²
- 2.3 The obligations in the protocol can be subject to limitation by the signatories. The NIA states:

Article 2(4) states that subject to certain limited exceptions, the obligations of the protocol do not apply to services inscribed in the Annex, within the territory of the Member State responsible for the inscription. In other words, Australia and New Zealand may

1 Department of Foreign Affairs and Trade, *Australia-New Zealand Closer Economic Relations Trade Agreement snapshot*, <<http://www.dfat.gov.au/fta/anzcerta/>>, accessed 9 September 2014.

2 National Interest Analysis [2014] ATNIA 13 with attachment consultation, *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* (Canberra, unsigned to date) [2014] ATNIF 6, (hereafter referred to as 'NIA'), para 3.

continue to maintain restrictions on services they have respectively inscribed in the Annex...³

- 2.4 Australian exclusions include air services; coastal shipping; broadcasting (foreign ownership); broadcasting and television (short wave and satellite broadcasting); third party insurance; and postal services. New Zealand has exclusions for coastal shipping and air services.⁴

Background

- 2.5 Article 10(2) of the protocol provides that:
- ...a Member State may, at any time, either upon request of the other Member State or unilaterally, remove in whole or in part services inscribed by it from the Annex by notifying the other Member State in writing of its intention to do so.⁵
- 2.6 Article 10 further provides for the review of the protocol to increase trade liberalisation by reducing the number of exclusions contained in the annex. The protocol was reviewed in 1991, 1992, 1995, 1997 and 1999.⁶
- 2.7 The review that resulted in the amendment being considered here, the *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* (the proposed amendment), commenced in 2009.⁷
- 2.8 The proposed amendment will remove the listing “Broadcasting and Television: Limits on foreign ownership as set out in the *Broadcasting Services Act 1992*” from the Australian exclusions in the annex.⁸
- 2.9 Presently, the annex indicates that the limits on foreign ownership of commercial broadcasting and television services contained in the *Broadcasting Services Act 1992* take precedence over the ANZCERTA protocol on trade in services.⁹

3 NIA, para 9.

4 NIA, para 3.

5 Article 10(2), *Protocol on Trades and Services to the Australia New Zealand Closer Economic Relations Trade Agreement*.

6 NIA, para 3.

7 Ms Robyn Stern, Director, New Zealand and Associated Countries Section, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 1 September 2014, p. 3.

8 NIA, para 1.

9 ANNEX: Services Inscribed by Australia and New Zealand, as at 9 March 1999, *Protocol on Trades and Services to the Australia New Zealand Closer Economic Relations Trade Agreement*, <http://www.dfat.gov.au/fta/anzcerta/annex_990309.html>, accessed 9 September 2014.

- 2.10 Commercial broadcasting and television services foreign ownership limits were removed from the *Broadcasting Services Act in 2007*, making the listing in the annex unnecessary.¹⁰ According to the National Interest Analysis (NIA):
- Removing this inscription from the Annex would align Australia's commitments under the Protocol with existing legislation.¹¹
- 2.11 The NIA goes on to point out that all foreign persons wishing to invest in commercial broadcasting and television services in Australia, including New Zealanders, continue to be subject to the requirements of Australia's Foreign Investment Policy and the *Foreign Investments and Takeovers Act 1975*.
- 2.12 The Foreign Investment Policy requires that all foreign investment of five per cent or more in the media sector¹² requires prior notification and approval regardless of the value of the investment. The Treasurer has the power to prohibit, or approve with conditions, proposed investments that are not considered to be in Australia's national interest.¹³
- 2.13 The NIA makes the following arguments in favour of removing the listing:
- it brings ANZCERTA into line with trade liberalisation amendments already made to the Broadcasting Services Act; and
 - it clarifies that the limitations to foreign investment removed from the Broadcasting Services Act will not be reintroduced.¹⁴

Obligations

- 2.14 The protocol on trade in services grants a range of concessions to individuals and corporations from Australia wishing to access New Zealand markets and individuals and corporations from New Zealand wishing to access Australian markets, including:
- market access rights no less favourable than those that apply to national participants;

10 NIA, para 4.

11 NIA, para 4.

12 According to *Australia's Foreign Investment Policy*, "The media sector refers to daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media)," Foreign Investment Review Board, p 16, <http://www.firb.gov.au/content/_downloads/AFIP_2013.pdf>, accessed 9 September 2014.

13 NIA, para 4.

14 NIA, para 7.

- rights to treatment no less favourable than those provided to national participants;
 - an entitlement for service providers from Australia or New Zealand to establish their preferred form of commercial presence in the other country;
 - a prohibition on Australia or New Zealand introducing measures that unjustifiably discriminate against service providers from the other country; and
 - an assurance that licencing and certification requirements do not limit market access.¹⁵
- 2.15 The protocol also sets out rules governing export subsidies, monopolies and transparency; and specifies the circumstances in which a country may deny the benefits of the protocol to individuals or corporations from the other country.¹⁶
- 2.16 Finally, the protocol recognises that these provisions are subject to the foreign investment policies of the signatories.¹⁷

Conclusion

- 2.17 As the foreign investment limitations in the Broadcasting Services Act were removed in 2007, the proposed amendment will not change the existing rules for New Zealand investors wishing to expand into Australian broadcasting and television.
- 2.18 Rather, the proposed amendment better aligns the text of the protocol with the prevailing investment regime.¹⁸ In evidence, the Department of Foreign Affairs and Trade referred to the proposed amendment as “...really akin to housekeeping.”¹⁹
- 2.19 No legislative amendments are required to implement the proposed amendment, and no costs will be involved in the process.²⁰

15 NIA, para 8.

16 NIA, para 8.

17 NIA, para 8.

18 NIA, para 10.

19 Ms Stern, DFAT, *Committee Hansard*, Canberra, 1 September 2014, p. 3.

20 NIA, paras 11 - 12.

2.20 The Committee supports this straightforward proposed amendment.

Recommendation 1

The Committee supports the *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* and recommends that binding treaty action be taken.

Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea

Introduction

- 3.1 The *Treaty on Economic Cooperation between the Government of Australia and the Independent State of Papua New Guinea* (the proposed treaty) sets out a framework for bilateral cooperation in the areas of trade, investment, business relations and development cooperation.¹ When ratified, it will supplant the *Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea* that came into force in 1999.²

Background

Papua New Guinea's economy

- 3.2 Papua New Guinea's formal economy is based primarily on the export of natural resources. However, 85 per cent of the population is engaged in

1 National Interest Analysis [2014], *Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea*, done at Port Moresby, 21 March 2014 [2014] ATNIF 3 (hereafter referred to as 'NIA'), para 4.

2 NIA, para 3.

the informal economy through subsistence agriculture and related enterprises.³

3.3 According to the National Interest Analysis (NIA), Papua New Guinea has experienced a decade of economic growth, and growth is expected to continue as a result of a liquefied natural gas project that has just commenced production, the PNG LNG project.⁴

3.4 PNG LNG is the largest investment project in the country's history, with the potential to double Papua New Guinea's gross domestic product in the near term.⁵

3.5 According to the PNG LNG website:

The PNG LNG Project commercialises natural gas in the Hides, Angore and Juha fields as well as associated gas from the currently operating oilfields of Kutubu, Gobe, Agogo and Moran in the Southern Highlands, Hela and Western Provinces of PNG. The Project has an expected operational life of 30 years.⁶

3.6 The project is exporting liquefied natural gas to China, Taiwan and Japan. PNG LNG reports that it has invested over \$US4.4b in the project to date, and has employed over 9 000 Papua New Guineans.⁷

3.7 The NIA characterises Australia's economic relationship with Papua New Guinea in the following way:

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 trading partner.⁸

3.8 Australia's two way trade with Papua New Guinea has remained relatively steady over the last five years, with the balance of trade favouring Papua New Guinea, as can be seen in the table below.

3 Central Intelligence Agency (CIA), *The World Fact Book: Papua New Guinea*, <<https://www.cia.gov/library/publications/the-world-factbook/geos/pp.html>>, accessed 10 September 2014.

4 NIA, para 5.

5 CIA, *The World Fact Book: Papua New Guinea*, <<https://www.cia.gov/library/publications/the-world-factbook/geos/pp.html>>, accessed 10 September 2014.

6 PNG LNG, *Project Overview*, <<http://pnglng.com/newsroom/fact-sheets/project-overview-fact-sheet>>, accessed 10 September 2014.

7 PNG LNG, *About PNG LNG*, <<http://pnglng.com/project/about>>, accessed 10 September 2014.

8 NIA, para 5.

Table 3.1 Annual two-way trade in merchandise between Australia and Papua New Guinea

Year	Trade from Australia	Trade to Australia	Total
	\$Ab	\$Ab	\$Ab
2009 – 2010	1.972	2.930	4.902
2010 – 2011	2.215	3.474	5.618
2011 – 2012	2.458	3.511	5.969
2012 – 2013	2.759	3.004	5.763
2013 – 2014	2.396	3.455	5.851

Source Australian Bureau of Statistics, 5368.0, *International Trade in Goods and Services, Australia*.

The proposed treaty

- 3.9 A 2010 review of the proposed treaty's predecessor, the *Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea* found that an economic cooperation treaty would better reflect the contemporary relationship between the parties.⁹
- 3.10 The change from a development treaty to an economic cooperation treaty is intended to be both practical and symbolic. It sets out areas of cooperation between the parties and emphasises the importance of an economic partnership type relationship working to remove barriers to the movement of goods, services and investment between the parties.¹⁰
- 3.11 The NIA notes that the proposed treaty is not a free trade agreement, and does not supplant other trade agreements to which Australia and Papua New Guinea are party.¹¹
- 3.12 According to the NIA:
- The [treaty] reflects a maturing relationship built on economic and strategic partnership.¹²

9 NIA, para 6.

10 Ms Kate Logan, Assistant Secretary, Papua New Guinea and Fiji Branch, Pacific Division, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 1 September 2014, p. 1.

11 NIA, para 8.

12 NIA, para 4.

Obligations

Economic obligations

- 3.13 The proposed treaty commits the parties to a set of principles promoting mutual benefits in trade, investment cooperation, business cooperation and development cooperation.¹³ The significant provisions include:
- obligations to support bilateral economic relations. This includes obligations to provide fair and transparent treatment in business, immigration and professional matters to each other's nationals;¹⁴
 - undertakings to improve trade, investment and business cooperation between the parties consistent with existing trade agreements, such as the World Trade Organisation agreement;¹⁵
 - promoting a favourable environment for trade and other economic linkages;
 - providing protection for intellectual property rights;¹⁶
 - improving cooperation and consultation on sanitary and phytosanitary measures, and technical barriers to trade such as product standards;¹⁷ and
 - supporting increased business links to encourage investment and private sector interaction, particularly through business organisations and focussing on small to medium enterprises.¹⁸

Development obligations

- 3.14 While the proposed treaty changes the focus of the bilateral relationship from trade to economic cooperation, it will also continue to govern the development relationship between the parties.¹⁹
- 3.15 Article 5 of the proposed treaty reaffirms the parties' commitment to the 2008 non treaty level agreement, the *Papua New Guinea – Australia Partnership for Development*.²⁰

13 NIA, para 9.

14 NIA, para 10.

15 NIA, para 11.

16 NIA, para 11.

17 NIA, para 11.

18 NIA, para 12.

19 Ms Logan, DFAT, *Committee Hansard*, Canberra, 1 September 2014, p. 1.

20 NIA, para 13.

- 3.16 In addition, Article 5 requires that all Australian development assistance to Papua New Guinea must comply with the procedures set out in the Annex to the proposed treaty.²¹
- 3.17 The Annex provides that the parties will consult and agree on the quantum of assistance provided to Papua New Guinea. The quantum will be subject to Papua New Guinea meeting performance targets determined by the parties.²²
- 3.18 Contributions by Australia can include:
- the costs of professional and other goods and services required to implement development activities;
 - the cost of providing and transporting supplies for development activities;
 - the cost of travel, living allowances, fees and other associated costs related to student scholarships and training awards; and
 - any other form of development cooperation reportable under the Organisation for Economic Cooperation and Development's Development Assistance guidelines.²³
- 3.19 The Government of Papua New Guinea is required to contribute:
- agreed levels of counterpart funding for joint activities;
 - transportation and facilitation of travel within Papua New Guinea associated with development activities;
 - permission to use the communications infrastructure of Papua New Guinea;
 - furnished offices;
 - salaries and allowances for ancillary personnel;
 - other measures, such as land, that may be required for the development activity.²⁴
- 3.20 The Annex requires regular consultation, with annual meetings of the parties, periodic reviews of development activities, and accountable and transparent tender processes.²⁵

21 NIA, para 13.

22 *Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea*, done at Port Moresby, 21 March 2014 [2014] ATNIF 3 (hereafter referred to as 'the proposed treaty'), Annex article 3.

23 The proposed treaty, Annex article 4.

24 The proposed treaty, Annex article 5.

25 The proposed treaty, Annex article 7.

Fraud prevention obligations

- 3.21 In terms of fraud prevention, the proposed treaty represents an improvement over its predecessor treaty in that it explicitly articulates a shared commitment to the prevention and detection of fraud.²⁶
- 3.22 The Annex to the proposed treaty states that:
- The Parties are committed to preventing and detecting fraud, corruption and bribery...
- The Parties shall not make or cause to be made, receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the Program or the provision of funds in relation to any Activity.²⁷
- 3.23 The proposed treaty also commits the Government of Papua New Guinea to make every effort to recover funds lost to fraud and corruption.²⁸
- 3.24 According to the Department of Foreign Affairs and Trade:
- The intent is to minimise the opportunity for fraud and corruption in the delivery of the Australian Government aid program in PNG, and to provide an avenue to raise and resolve cases when such may occur.²⁹

Costs and implementation

- 3.25 The proposed treaty contains no specific financial commitments, and will therefore have no net impact on the Budget as a result of ratification.³⁰
- 3.26 The NIA states that development assistance to Papua New Guinea will continue to be funded through the *Papua New Guinea – Australia Partnership for Development*.³¹
- 3.27 Any costs arising from trade and investment cooperation under the proposed treaty will be met from within the budgets of relevant agencies.³²

26 Department of Foreign Affairs and Trade (DFAT), *Submission 5*, p. [1].

27 The proposed treaty, Annex article 19.

28 DFAT, *Submission 5*, p. [2].

29 DFAT, *Submission 5*, p. [2].

30 NIA, para 15.

31 NIA, para 15.

32 NIA, para 15.

- 3.28 There will be no legislative or regulatory amendments as a result of the ratification of the proposed agreement.³³

Conclusion

- 3.29 It is clear from the relatively minor role played by Australian interests in the PNG LNG project that Papua New Guinea is forging an independent economic identity. Under these circumstances, it is appropriate for Australia and Papua New Guinea to change their bilateral relationship to reflect the mature nature of the economic relationship enjoyed by these close countries.
- 3.30 The Committee supports the ratification of the *Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea*.

Recommendation 2

The Committee supports the ratification of the *Treaty on Economic Cooperation between the Government of Australia and the Government of the Independent State of Papua New Guinea* and recommends that binding treaty action be taken.

33 NIA, para 14.

Amendments to the migratory birds bilateral treaties between Australia and China, Japan and Korea

Introduction

4.1 This chapter concerns three proposed treaty amendments:

- *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (the CAMBA amendments);*
- *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (the JAMBA amendments);* and
- *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes (the ROKAMBA amendments).*

4.2 The proposed treaty actions are being considered together because they involve similar amendments to each of the agreements.¹

¹ National Interest Analysis [2014] ATNIA 14, *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment* [2014], ATNIF 16, (hereafter referred to as the CAMBA amendments NIA), para 6.

Background

- 4.3 Migratory waterbirds are species that traverse geographical routes, called flyways, annually. The birds make use of a chain of wetlands along the flyways to rest and feed. These chains of wetlands extend across numerous international boundaries, so efforts to protect migratory waterbird species and their habitats are of necessity international in nature.²
- 4.4 Australia forms part of the East Asian – Australasian Flyway, which extends from Alaska and Siberia to Australia and New Zealand, crossing 22 countries.³

Health of the flyway

- 4.5 Representatives of the Department of Environment advised the Committee that the state of health of the East Asian – Australasian Flyway is generally in decline. Migratory shorebirds in particular are experiencing a significant decline in numbers. Of the 37 species of migratory shorebirds in Australia, two species are considered endangered and a further five are expected to become endangered over the next two years.⁴
- 4.6 The ‘quite severe’ decline in the number of migratory shore birds:
...underlines the importance of international action to protect migratory species...⁵
- 4.7 Recent work by the University of Queensland shows that the decline in numbers mostly affects migratory shorebirds that transit the Yellow Sea, with habitat loss the apparent cause of the decline.⁶
- 4.8 The bilateral treaties with China and the Republic of Korea provide Australia with a forum in which to raise the issue of habitat loss on a regular basis.⁷

2 Department of the Environment, *Partnership for the Conservation of Migratory Waterbirds and the Sustainable Use of their Habitats in the East Asian – Australasian Flyway*, <<http://www.environment.gov.au/system/files/resources/1ff172d0-3277-4c26-956d-7ee69e8e4618/files/partnership-text.pdf>>, accessed 19 August 2014.

3 *East Asian – Australasian Flyway Partnership*, The Flyway, <<http://www.eaaflyway.net/the-flyway/>>, accessed 19 August 2014.

4 Mr Geoffrey Richardson, Assistant Secretary, Protected Species and Communities Branch, Wildlife Heritage and Marine Division, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

5 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

6 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

4.9 A range of international agreements are relevant to the conservation of migratory birds in the East Asian – Australasian Flyway, including (but not limited to):

- the *Convention on Wetlands of International Importance* (the Ramsar Convention), a multilateral treaty with 168 signatories that provides an international framework for the conservation and ‘wise use’ of wetlands. Wise use in this instance means the maintenance of the ecological character of the wetlands;⁸
- the East Asian – Australasian Flyway Partnership, a voluntary group of partners including governments, non - government organisations, and private enterprise.⁹

According to the Partnership, its purpose is:

... to provide a flyway wide framework to promote dialogue, cooperation and collaboration between a range of stakeholders including all levels of governments, site managers, multilateral environment agreements, technical institutions, UN agencies, development agencies, industrial and private sector, academe, non-government organisations, community groups and local people to conserve migratory waterbirds and their habitats.¹⁰

and

- the bilateral conservation treaties like those the amendments to which are being considered here:
 - ⇒ the CAMBA, ratified in 1986;
 - ⇒ the JAMBA, ratified in 1974; and
 - ⇒ the ROKAMBA, ratified in 2006.¹¹

7 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 6.

8 The Ramsar Convention, *The introductory Ramsar brochure, 3rd ed., 2008*, <http://www.ramsar.org/pdf/about/about_brochure_2008_e.pdf>, accessed 19 August 2014.

9 *East Asian – Australasian Flyway Partnership*, <<http://www.eaaflyway.net/>>, accessed 19 August 2014.

10 Department of the Environment, *Partnership for the Conservation of Migratory Waterbirds and the Sustainable Use of their Habitats in the East Asian – Australasian Flyway*, <<http://www.environment.gov.au/system/files/resources/1ff172d0-3277-4c26-956d-7ee69e8e4618/files/partnership-text.pdf>>, accessed 19 August 2014.

11 Department of the Environment, *Migratory Waterbirds*, <<http://www.environment.gov.au/biodiversity/migratory-species/migratory-waterbirds>>, accessed 19 August 2014.

The three treaties

4.10 The three treaties are similar in intent and structure, but are distinct and are not based on a model treaty.

4.11 In general, the treaties require the following:

- except where provided under the laws of each country, the taking of migratory waterbirds listed in each agreement is prohibited. The exceptions include: for scientific purposes; for the protection of persons and property; during designated hunting seasons; and for traditional hunting and gathering;¹²
- each government shall take whatever special measures are appropriate to preserve species which are in danger of extinction;¹³
- each government shall cooperate scientifically with the other government over the protection of migratory waterbirds;¹⁴
- each government shall endeavour to establish sanctuaries for the protection of endangered migratory waterbirds and their environments;¹⁵ and
- each government shall endeavour to: prevent damage to protected environments; control the importation of species that could be hazardous to the birds and their environment; and take measures to control the introduction of animals and plants that could disturb the wetlands ecosystems.¹⁶

4.12 The Australian Government's responsibilities in relation to the three treaties are given effect in the list of migratory species contained in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).¹⁷

4.13 The EPBC Act requires that people must not take action that has or is likely to have a significant impact on these species unless approval has been given by the Minister for the Environment.¹⁸

12 See for example *Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment*, 1981 No. 6, (hereafter referred to as JAMBA), Article II.

13 See for example *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds*, [2007] ATS 24, (hereafter referred to as ROKAMBA), Article IV.

14 See for example CAMBA, Article III.

15 See for example CAMBA Article IV.

16 See for example JAMBA Article VI.

17 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 5.

18 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 5.

Overview and national interest summary

- 4.14 The amendments being considered are related to the annexes of the three bilateral treaties. These annexes contain lists of waterbird species to which each treaty applies. The amendments involve the addition and removal of species from each annex.¹⁹
- 4.15 The NIAs indicate that the amendments are in Australia's interest because they enable Australia to maintain its international reputation for the protection of migratory species, and because the changes will ensure the accuracy of the agreements and the list of migratory species required to be kept under the EPBC Act.²⁰
- 4.16 According to the Department of the Environment, changes to the Annexes of the three treaties are necessary because:
- Improved accuracy of the lists following those amendments will reduce administrative costs in both the public and private sectors. This saving will mostly occur by removing current confusion caused by non-migratory species unnecessarily triggering referral of proposed actions to the Minister of the Environment under the EPBC Act.²¹
- 4.17 As indicated above, the three treaties being amended are only similar in terms of their obligations. Both the text and the lists of species in the annexes of the agreements are different. The following discussion will deal with each proposed treaty action separately.

The CAMBA amendments

- 4.18 The CAMBA amendments will:
- add ten new species to the CAMBA Annex on the grounds that these species regularly migrate between China and Australia.²² Seven of these species are already listed in the EPBC Act as protected migratory waterbirds;²³

19 National Interest Analysis [2014] ATNIA 15, *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment* [2014], ATNIF 17, (hereafter referred to as the JAMBA Amendments NIA), para 2.

20 See for example the CAMBA Amendment NIA, paras 5 and 6.

21 Mr Richardson, Department of the Environment, *Committee Hansard*, Canberra, 1 September 2014, p. 5.

22 CAMBA Amendment NIA, para 8.

23 CAMBA Amendment NIA, para 11.

- remove 28 species from the CAMBA Annex on the grounds that these species do not migrate between China and Australia;²⁴ and
- update the common and scientific names of 18 species listed in the CAMBA Annex on the grounds of advances in taxonomy.²⁵

The JAMBA amendments

4.19 The JAMBA amendments will:

- add ten new species that regularly and predictably migrate between Australia and Japan to the JAMBA Annex.²⁶ Five of these species are already listed in the EPBC Act as protected migratory waterbirds;²⁷
- remove 13 species from the JAMBA Annex that do not migrate between the two countries. One of those being removed is the Wandering Albatross, a particularly endangered species. This Albatross will remain protected under the *Convention on the Conservation of Migratory Species of Wild Animals* (the Bonn Convention);²⁸ and
- update the common and scientific names of 21 species listed in the JAMBA Annex.²⁹

The ROKAMBA amendments

4.20 The ROKAMBA amendments will:

- remove eight species from the ROKAMBA Annex on the basis that these species do not migrate between the two countries;³⁰
- update the common and scientific names of 24 species listed in the ROKAMBA Annex;³¹ and
- add three species to the ROKAMBA Annex.³²

Implementation and costs

4.21 Implementing the amendments to the three bilateral agreements will require an update to the list of migratory species maintained under the EPBC Act.

24 CAMBA Amendment NIA, para 9.

25 CAMBA Amendment NIA, para 10.

26 JAMBA Amendment NIA, para 8.

27 JAMBA Amendment NIA, para 11.

28 JAMBA Amendment NIA, para 9.

29 JAMBA Amendment NIA, para 10.

30 ROKAMBA Amendment NIA, para 9.

31 ROKAMBA Amendment NIA, para 10.

32 ROKAMBA Amendment NIA, para 11.

- 4.22 The NIAs indicate that the amendments will not result in any additional costs to the Australian Government because the range of habitats that require protection will not change.³³

Conclusion

- 4.23 These changes clearly represent an improvement in the quality of the bilateral treaties protecting migratory waterbirds in the East Asian – Australasian Flyway.
- 4.24 However, as noted by representatives of the Department of Environment, the health of the flyway continues to decline. The Committee hopes the treaties will in the near future begin to fulfil their intended purpose in protecting species using the flyway.
- 4.25 The Committee recommends that binding treaty action be taken in relation to all three amending treaties.

Recommendation 3

The Committee supports the ratification of the Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment and recommends that binding treaty action be taken.

Recommendation 4

The Committee supports the ratification of the Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment and recommends that binding treaty action be taken.

33 See for example the ROKAMBA Amendment NIA, paras 20 - 22.

Recommendation 5

The Committee supports the ratification of the *Amendments, agreed in Incheon, Republic of Korea on 6 November 2012, to the Annex to the Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes* and recommends that binding treaty action be taken.

Minor Treaty Action

Introduction

- 5.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 5.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee's website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

Minor treaty action

- 5.3 There is one minor treaty action reviewed in this chapter. The Committee determined not to hold a formal inquiry into this treaty action, and agreed that binding treaty action may be taken.

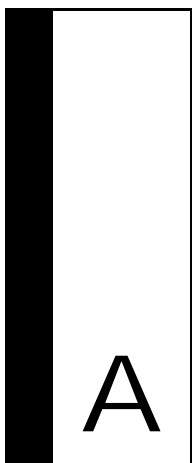
Amendment to Annex 15A (Government Procurement) of the *Australia-Chile Free Trade Agreement*

- 5.4 The *Australia-Chile Free Trade Agreement* (ACIFTA) came into effect on 6 March 2009. The proposed amendments would extend coverage of Chapter 15 (Government Procurement) of ACIFTA to the functions of 14 additional Commonwealth Government entities. Subject to the commitments in Chapter 15, the Australian Government would be legally bound to ensure that the covered government procurement tenders of these additional covered entities would be open to bids from Chilean firms. There is no practical effect from the change as the entities are already covered by the Commonwealth Procurement Rules.

- 5.5 Under Chapter 15 of ACIFTA, Australia is required to afford Chilean companies the opportunity to bid for Australian government contracts on the same terms as Australian firms (and vice versa), subject to certain exceptions. The obligations set out in Chapter 15 apply to procurements above a specified 'threshold' value by the 'procuring entities' of each Party, listed in Annex 15A.
- 5.6 Under the proposed amendment Annex 15A, Section 1 ('central government entities') would be extended to include:
- Australian Commission for Law Enforcement Integrity
 - Australian Institute of Family Studies
 - Australian National Preventative Health Agency
 - Australian Organ and Tissue Donation and Transplantation Authority
 - Cancer Australia
 - Private Health Insurance Ombudsman
 - National Health and Medical Research Council (NIMRC)
 - Australian Sports Anti-Doping Authority (ASADA)
 - Australian Skills Quality Authority
 - Tertiary Education Quality and Standards Agency
 - National Water Commission
 - Fair Work Building and Construction
- 5.7 Additionally, Annex 15A, Section 3 ('other covered entities') would be extended to include the Murray-Darling Basin Authority and the Independent Hospital Pricing Authority.
- 5.8 The proposed amendment will bring ACIFTA into alignment with Australia's more recent trade agreements.
- 5.9 No legislative changes are needed to implement the proposed treaty action. Chilean firms are already able to compete for contracts with the additional entities under the Commonwealth Procurement Rules.

Mr Wyatt Roy MP

Chair



Appendix A – Submissions

Treaties tabled on 17 June 2014

- 2 Australia Papua New Guinea Business Council
- 5 Department of Foreign Affairs and Trade



Appendix B – Witnesses

Monday, 1 September 2014—Canberra

Department of Foreign Affairs and Trade

*Ms Amy Crago, Acting Director, Papua New Guinea Economic Section,
Papua New Guinea and Fiji Branch; Pacific Division*

*Ms Kate Logan, Assistant Secretary, Papua New Guinea and Fiji Branch;
Pacific Division*

Ms Robyn Stern, Director New Zealand and Associated Countries Section

Department of the Environment

*Mr Paul O’Neill, Assistant Director, Migratory Species Section, Protected
Species and Communities Branch, Wildlife Heritage and Marine Division*

*Mr Geoffrey Richardson, Assistant Secretary, Protected Species and
Communities Branch, Wildlife, Heritage and Marine Division*

