

**National Interest Analysis [2017] ATNIA 9
with attachments**

Agreement to Amend the Singapore-Australia Free Trade Agreement

(Canberra, 13 October 2016)

[2017] ATNIF 9

Attachment I: Consultation

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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is for Australia to bring into force amendments to the Singapore-Australia Free Trade Agreement (SAFTA), done at Singapore on 17 February 2003. The amendments arise from the third review of SAFTA as reflected in the Agreement to Amend the Singapore Australia Free Trade Agreement, done at Canberra on 13 October 2016 (Agreement to Amend).
2. Article 7 of Chapter 17 of SAFTA provides that SAFTA may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed between them. The Agreement to Amend provides that the amendments will enter into force on the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of the Agreement to Amend. It is proposed that Australia provide such notification, as soon as practicable, following consideration by the Joint Standing Committee on Treaties (JSCOT) and passage of the necessary legislative amendments.

Overview and national interest summary

3. 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. The third review of SAFTA was identified as a priority outcome of the CSP, and aimed to further integrate the two economies.
4. SAFTA, as currently in force, is a broad and comprehensive trade agreement. It is Australia's second oldest FTA, and the central pillar of Australia's economic relationship with Singapore. In 2014-15, two-way trade was valued at \$28 billion Singapore was Australia's 5th largest two-way trading partner. Australia exported \$4.1 billion of services to Singapore in 2015, with professional, technical and other business services making up the largest share (at 41 per cent).
5. All Australian products have been able to enter Singapore tariff-free since SAFTA entered into force in 2003. The amendments focus on ensuring SAFTA meets the needs of modern business, and that complex non-tariff barriers, particularly those faced by services suppliers, are addressed.

6. The amended SAFTA will incorporate the modern provisions in Australia's recent free trade agreements, including for: customs, e-commerce, telecommunications, and investor state dispute settlement (ISDS). Singapore has provided Australia with greater certainty regarding entry and length of stay for business visitors and their families. Australian business will be in a better position to provide services to Singapore as a result of improved recognition of professional qualifications, increased market access for financial service providers and greater certainty about regulations faced by Australian lawyers and law firms operating in Singapore. In addition, Singapore has provided improved, bound, access to government procurement opportunities.
7. Amending SAFTA will ensure that Australia will have the same, or better, outcomes than those provided to Singapore's other free trade agreement (FTA) partners, including the United States, the European Union and Japan in areas of key stakeholder interest. The Agreement also ensures that, for a number of sectors, Australia will automatically benefit from future liberalisation by Singapore. This will better enable Australian businesses to maintain their competitiveness in the Singaporean market.
8. Australia has three trade agreements in force, and one concluded trade agreement with Singapore – the World Trade Organization (WTO) Agreement, SAFTA, the ASEAN-Australia New Zealand Free Trade Agreement 2007 (AANZFTA) and the Trans-Pacific Partnership (TPP) Agreement (yet to be in force). Amending SAFTA to incorporate the best outcomes from each of these agreements will make it simpler for exporters and investors to do business in Singapore.

Reasons for Australia to take the proposed treaty action

9. In order to underpin and support high levels of commercial activity between Australia and Singapore, it is important that SAFTA continues to meet the needs of business in Australia and Singapore. Bringing into force the proposed amendments arising from the review will help to ensure that SAFTA remains a high-quality FTA which remains relevant to Australian and Singaporean business. The proposed amendments represent a balanced package of outcomes for Australia and Singapore.

Outcomes for Australia

10. Pursuant to the Agreement to Amend, SAFTA will be updated to include modern trade-facilitating rules including for customs, e-commerce and telecommunications. In addition:
 - Financial service providers will be able to provide investment advice and portfolio management services to collective investment schemes and brokerage services for insurance of maritime, aviation and transport-related risks.
 - Singapore has agreed to bind existing access in freight transport services.
 - Singapore has agreed to bind existing access to the legal sector, and allow Australian firms to automatically benefit from future market liberalisation.

- Singapore has increased the number of government entities to which Australian companies have bound access to Singaporean government procurement.
- Government procurement rules which reflect Australia's current procurement practices and policies, including in relation to federal indigenous procurement and procurement from small-medium enterprises.
- A professional services working group will be established to address barriers to services exports, such as the mutual recognition of professional qualifications.
- Longer lengths of stay for investors/independent executives, contractual service suppliers, intra-corporate transferees, and their families.
- Enhanced certainty on entry and length of stay for installers and servicers of machinery and equipment.
- Updated rules to facilitate addressing non-tariff measures, including enhanced transparency and greater regulatory coherence.
- Investment rules will be modernised, including additional ISDS safeguards for legitimate government regulation.

Outcomes for Singapore

11. Pursuant to the Agreement to Amend, Singapore will also benefit from the updated SAFTA. Key outcomes are:

- Higher Foreign Investment Review Board (FIRB) screening threshold (\$1,094 million) for private investment in non-sensitive business and commercial land (non-vacant), with thresholds of \$15 million and \$55 million for investment in agricultural land and agribusiness respectively.
- Binding existing access to State and Territory government procurement markets.
- Reciprocal outcomes on temporary entry of business persons, including a waiver of labour market testing for installers and servicers, contractual service suppliers and investors/independent executives.
- Greater certainty regarding services and investment market access in the States and Territories by listing of sub-federal measures as in the Korea and Japan FTAs.
- More flexible rules of origin, making it easier for importers and exporters to claim preferential treatment.

Associated documents

12. Four non-binding side-letters were also agreed during the third review of SAFTA and were exchanged between the Hon Steven Ciobo MP, Minister for Trade Tourism and Investment, and his Singaporean counterpart, Mr Lim Hng Kiang, on 11 October 2016. The four letters address:

- facilitating temporary entry into Singapore, by streamlining the application process for Australian intra-corporate transferees covered by SAFTA, and the establishment of a dedicated help desk to assist Australian natural persons seeking temporary entry into Singapore;

- an agreement that mutual recognition arrangements for accountants and engineers should be negotiated through relevant professional bodies;
- introducing a process for Singapore's consideration of requests from Australian universities to use the term 'university' in its business name for campuses in Singapore, and an agreement to provide fair consideration of feedback by universities on regulatory processes; and
- an understanding that in relation to reservations in Annex 4-II, Parties will not apply any discriminatory measure that would nullify or impair the benefits accruing to the other Party under Chapter 11 (Movement of Natural Persons).

Obligations

13. The proposed treaty action will amend Chapters 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 17, and Annexes 2, 3, 4-I, 4-II, 4-III and 5. In addition, two new annexes will be created. The new Annex 6 lists each Party's non-conforming measures in the financial services sector (previously in Annex 4-I and 4-II). The new Code of Conduct for arbitrators appointed under Chapter 8 (Investment) and Chapter 16 (Dispute Settlement) is contained in Annex 7. The remaining chapters and annexes remain unchanged from SAFTA as currently in force. This section describes the new obligations under SAFTA, pursuant to the Agreement to Amend.

Chapter 1: Objectives and Definitions

14. Chapter 1 (Objectives and Definitions) includes additional definitions for terms which are used in more than one chapter of SAFTA, as amended by the Agreement to Amend.

Chapter 2: Trade in Goods

15. Chapter 2 (Trade in Goods) has been revised to reflect the more modern provisions of the TPP and other recently concluded FTAs, for example provisions on temporary admission of goods and on import and export restrictions. These new provisions will improve transparency and address non-tariff barriers in order to facilitate trade in goods.

Chapter 3: Rules of Origin and Annex 2: Rules of Origin

16. Chapter 3 (Rules of Origin) has been updated to reflect modern customs procedures and practices, and to include a full schedule of product-specific rules of origin. This is consistent with the approach to rules of origin in all Australia's other FTAs.

17. For most products, SAFTA's updated rules of origin are largely the same as the rules of origin with Singapore under AANZFTA. Certain goods, such as certain plastics and textile products, were provided with more liberal rules of origin, in line with other Australian FTAs.

18. Adopting a product-specific approach simplifies administration, and reduces the compliance costs for traders using SAFTA. Under the new approach, exporters simply need to record where inputs came from, and show that the good is exported under a different tariff classification. This is simpler than the existing, general 50 per cent content rule that requires businesses to record all production costs. This general rule means that if the cost of inputs were high, a good could be ineligible for preferences even though it underwent a substantive transformation process.
19. The procedures for claiming preferential treatment will also be modernised. Traders will now be able to self-certify that their goods meet the rules of origin. The procedures will also provide exporters with flexibility to continue to have goods certified by a third party.

Annex 5: Technical Regulations and Sanitary and Phytosanitary Measures

20. The amended Annex 5: Technical Regulations and Sanitary and Phytosanitary Measures will include annexes on cosmetics, medical devices, and wine and distilled spirits. These annexes provide additional commitments to enhance transparency, and promote greater regulatory coherence. The annexes do not mandate specific requirements or standards for these products. Australia's ability to set requirements and standards, including for testing and certification will not be affected.

Chapter 6: Government Procurement and Annex 3: Government Procurement

21. Chapter 6 (Government Procurement) and Annex 3 (Government Procurement) has been updated to reflect both Parties' current procurement practices and policies. For Australia this includes carve-outs for the federal indigenous procurement policy, small-medium enterprises, health, government advertising, and research and development services. Australia has provided Singapore with similar market access to that provided in more recent FTAs.
22. Should the TPP has enter into force, the amended SAFTA will require Australia to strengthen its domestic review mechanism so that suppliers (both foreign and domestic) have a more streamlined process through which to challenge government procurement decisions that do not follow proper processes. This outcome is consistent with planned domestic reforms. The department of Finance is responsible for implementing this mechanism.
23. Singapore has provided Australia bound access to additional Singaporean government entities, including the public utilities board. This provides greater certainty for Australian companies seeking to bid for contracts in such sectors as freight transport, construction and engineering services. This is Singapore's best FTA treatment.

Chapter 7: Cross-Border Trade in Services and Chapter 8: Investment

24. Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment) has been updated to reflect more recent FTAs, including the TPP. The obligations will apply unless otherwise specified in the non-conforming measures annexes to the Agreement (Annexes 4-I and 4-II). The structure of these chapters will also be updated to be consistent with the modern FTA practice in which services supplied through an investment are covered in the investment chapter (Chapter 8).
25. Both chapters will now include the most-favoured-nation (MFN) obligation whereby Australia and Singapore commit not to treat the other Party's service suppliers and investors less favourably than like services suppliers and investors from other countries.

Services

26. Chapter 7 will include an additional obligation prohibiting Australia and Singapore from requiring service providers of the other Party to establish a local office in its territory, or to live in its country as a condition of supplying services (the 'local presence' obligation).
27. Chapter 7 also includes a commitment by Australia and Singapore to establish a framework under SAFTA to support mutual recognition of professional qualifications.
28. Australia will lock in existing opportunities in Singapore's legal sector, including the ability to practise Singapore law and to work in international commercial arbitration. Australia will also benefit from future market reforms in Singapore's legal sector, which will become SAFTA commitments. In addition, as outlined in Annex 4-III, Singapore will recognise both undergraduate and Juris Doctor degrees from 10 Australian universities. Australia has agreed to recognise law degrees from two additional Singaporean universities, subject to meeting other conditions as may be prescribed by the relevant state or territory in Australia.

Investment

29. Chapter 8 will include an additional obligation preventing the Parties from obliging investors of the other Party to appoint people of a particular nationality to senior management positions (the 'senior management and board of directors' obligation).
30. SAFTA already includes an investor-state dispute settlement (ISDS) mechanism. Under the Agreement to Amend, this mechanism will be updated to incorporate more explicit safeguards protecting the Government's right to regulate in the public interest. For example, the Agreement to Amend includes explicit recognition that:
- governments have the right to regulate to ensure the protection of public welfare, including in the areas of health and the environment;

- non-discriminatory regulatory actions to safeguard public welfare objectives do not constitute indirect expropriation, except in rare circumstances; and
- government action which may be inconsistent with an investor's expectations does not constitute a breach of the minimum standard of treatment obligation, even if it results in loss or damage to the investment.

31. Further, SAFTA updated ISDS mechanism will not apply to:

- tobacco control measures;
- Australia's Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator;
- measures with respect to creative arts, Indigenous traditional cultural expressions and other cultural heritage; and
- Australia's foreign investment policy, including decisions of the Foreign Investment Review Board.

32. The ISDS mechanism also includes transparency and procedural rules for the arbitration process, including a Code of Conduct for arbitrators (in Annex 7), a requirement that ISDS hearings will be open to the public, and disincentives to pursue unmeritorious claims.

33. Under the amended SAFTA, the threshold at which private foreign investments in non-sensitive sectors are considered by FIRB will increase to \$1,094 million. Thresholds of \$15 million and \$55 million will apply to investments in agricultural land and agribusiness respectively. FIRB will continue to examine all investment by Government-controlled entities. This is equivalent to outcomes in Australia's FTAs with Korea, China and Japan.

Chapter 9: Financial Services and Annex 6: Reservations to Chapter 9 (Financial Services)

34. Obligations related to financial services in SAFTA, as currently in force, are drawn from Chapter 7 (Trade in Services) with additional commitments outlined in Chapter 9 (Financial Services). The amended SAFTA will now have a more comprehensive Chapter 9 (Financial Services). The amended SAFTA will include a standalone annex (Annex 6) specifying non-conforming measures.

35. The following new obligations on financial services have been introduced to SAFTA in Chapter 9:

- non-discrimination, where each Party must treat financial services suppliers (and investors) of the other Party no less favourably than they do its own suppliers and those suppliers of a non-Party, in like circumstances (National Treatment and Most-Favoured Nation);
- not requiring Parties to provide access to an individual's financial information;
- not allowing restrictions on the nationality of senior management or directors;

- encouraging regulatory transparency; and
 - ensuring access to payment and clearing systems.
36. Under the amended SAFTA, both Australia and Singapore will allow the other Party's companies to provide a range of financial services on a cross-border basis, including: investment advice and portfolio management services to collective investment schemes; and insurance of risks relating to maritime shipping and international commercial aviation and freight, and brokerage thereof.

Chapter 10: Telecommunication Services and Chapter 14: Electronic Commerce

37. Chapter 10 (Telecommunications Services) and Chapter 14 (Electronic Commerce) will be updated to reflect more recent practice. Chapter 10 will include commitments to ensure that telecommunications businesses operating in Australia and Singapore are subject to fewer barriers and are able to access telecommunications networks on transparent, fair and reasonable terms. This chapter will also include provisions seeking to address the high cost of international mobile roaming, by encouraging Australia and Singapore to promote transparent and reasonable rates for international mobile roaming services.
38. Chapter 14 will include a range of new commitments making it easier for businesses to conduct trade and business by electronic means, including a commitment prohibiting the Parties from requiring a service supplier or investor to use or build local data centres in order to conduct business. However, the chapter preserves the right of governments to impose appropriate and proportionate restrictions on the cross-border transfer of information in order to achieve legitimate public policy objectives.

Chapter 11: Movement of Natural Persons

39. Chapter 11 (Movement of Natural Persons) applies to measures regulating the temporary entry of skilled service suppliers into a Party. Chapter 11 does not create any obligations in relation to citizenship, nationality, residence or employment on a permanent basis. The chapter recognises the right of a Party to regulate the entry of natural persons of another Party into its territory.
40. The amended SAFTA will provide greater certainty to Australian and Singaporean service suppliers seeking to enter and work temporarily in each country's market through reciprocal commitments on entry and work rights. Specifically, Australian citizens and permanent residents who are business persons seeking to enter and work in Singapore will benefit from new guaranteed access, enhanced certainty on length of stay and reduced barriers to labour mobility in the following categories:
- Australian independent executives and contractual service suppliers, up from three months to two years;
 - Australian intra-corporate transferees, up from two years to three years with a new maximum stay of 15 years;
 - Australians offering services relating to installation and servicing of machinery and equipment for up to three months; and

- Spouses and dependants of Australian business persons who have been granted entry as intra-corporate transferees, independent executives and contractual service suppliers.
41. Australia will provide guaranteed access for Singaporeans to stay and work in Australia in the following categories:
- Singaporean independent executives and contractual service suppliers, up from three months to two years;
 - Singaporean intra-corporate transferees up to a new maximum stay of 15 years;
 - Singaporeans offering services relating to installation and servicing of machinery and equipment for up to three months; and
 - Spouses and dependants of Singaporeans granted entry as intra-corporate transferees, independent executives and contractual service suppliers.
42. Both Australia and Singapore have agreed to waive labour market testing for installers and servicers, investors/independent executives and contractual service suppliers.
43. Both Australia and Singapore have agreed to bind existing pre-departure visa approval arrangements for service suppliers guaranteed access under SAFTA. Under a side letter (of less-than-treaty-status), Australian business persons will also benefit from Singapore's commitment to establish a help desk and streamline visa processes for Australian intra-corporate transferees seeking to enter and work in Singapore.
44. Australia's commitments will be implemented through Australia's existing 457 visa program. Employers wishing to sponsor workers will still need to meet all 457 requirements, including minimum skill, qualification and experience requirements and the requirement to provide market salary rates and employment conditions equivalent to Australian workers.
45. A side letter (of less-than-treaty-status) on the relationship between the Amended SAFTA Chapter 11 (Movement of Natural Persons) and Annex 4-II reservations confirms that reservations concerning measures with respect to the supply of a service by the presence of natural persons in the respective territories should not be applied in a manner that would nullify or impair the benefits accruing to either Party under Chapter 11.

Chapter 17: Final Provisions

46. Chapter 17 (Final Provisions) establishes the processes by which the Agreement will enter into force, how it may be amended and how a Party may withdraw from the Agreement. In the current SAFTA, exceptions concerning security, balance of payment safeguards and taxation matters are included in multiple chapters. The Agreement to Amend inserts common exceptions on security, balance of payment safeguards and taxation in the Final Provisions Chapter, so that they will apply across all chapters.

Implementation

47. In order to implement the Agreement to Amend, the following regulatory and legislative changes will be required:
- 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 the Foreign Acquisitions and Takeover Regulations 2015 to implement the commitment to a higher threshold for screening by the Foreign Investment Review Board.

Costs

48. The impact on the Government budget of the changes brought about due to Agreement to Amend are estimated to be negligible.
49. An analysis of Regulatory Impact on Australia certified by the Department of Foreign Affairs and Trade as an independent review is attached to this NIA. It undertook a process and analysis equivalent to a Regulation Impact Statement, as required by the Office of Best Practice Regulation.

Future treaty action

50. Article 11 of Chapter 17 (Final Provisions) provides that SAFTA may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed by them.
51. Article 7 of Chapter 17 provides for Ministerial review of SAFTA one year after entry into force, and biennially thereafter.
52. In Article 18 of Chapter 7 (Cross Border Trade in Services), both Parties agree to work towards a separate Open Skies Air Services Agreement. This provision is unchanged from SAFTA as currently in force.
53. Any additional reservations or amendments agreed between Australia and Singapore in the course of further Ministerial reviews of SAFTA would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

54. Under Article 12 of Chapter 17 (Final Provisions), either Party may terminate SAFTA by giving the other Party six months' advance notice in writing. Termination of SAFTA by Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Contact details

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ATTACHMENT I: CONSULTATION

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Consultation with business, industry and civil society

56. On 29 June 2015, the Prime Ministers of Australia and Singapore announced the third review of SAFTA. On 9 November 2015, members of the public were invited, through the DFAT website, to submit their views on the review of SAFTA. The original closing date for submissions was 15 January 2016, although submissions were accepted after that date. Three formal submissions were received:

- Curtin University
- University of Tasmania
- Wilmar Sugar Australia

57. DFAT sought input from a wide range of stakeholders who would be directly affected by potential SAFTA amendments, including individual companies and peak bodies 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. In addition, DFAT drew upon the written submissions, and input provided by stakeholders for other agreements that include both Australia and Singapore, including the Trans-Pacific Partnership Agreement.

58. More than 15 organisations issued public statements in support of the outcomes of the third review of SAFTA, including: Australian Chamber of Commerce Singapore, Singapore Business Circle, Universities Australia, James Cook University, ANZ, National Australia Bank, Engineers Australia, PriceWaterhouseCooper, and the Law Council of Australia.

Consultation with State and Territory Governments

59. The proposed treaty action will have an impact on States and Territories. SAFTA, as currently in force, includes a list of measures maintained by states and territories which are not subject to certain obligations of SAFTA. In amending SAFTA, DFAT, with the agreement of States and Territories, has updated these non-conforming measures.

60. State and Territory Governments were consulted directly by DFAT, and through the Commonwealth-State and Territory Standing Committee on Treaties (SCOT). In addition, the then Minister for Trade and Investment, the Hon Andrew Robb MP, wrote to State and Territories regarding the changes to SAFTA, as did the current Minister for Trade, Tourism and Investment, the Hon Steven Ciobo MP.