

Documents tabled on 11 September 2007:

National Interest Analysis [2007] ATNIA 29

with attachment on consultation

**Agreement between the Government of Australia and the Government of the Kingdom
of Tonga relating to Air Services, done at Neiafu, Tonga on 23 August 2003
[2003] ATNIF 16**

Background information:

Country political brief and fact sheet

List of other treaties with the Kingdom of Tonga

List of treaties of the same type with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Kingdom of Tonga relating to Air Services, done at Neiafu, Tonga on 23 August 2003 [2003] ATNIF 16

Nature and timing of Proposed Treaty Action

1. The treaty action proposed is to bring into force the Agreement between the Government of Australia and the Government of the Kingdom of Tonga relating to Air Services (hereafter “the Agreement”). The Government proposes to provide its notification to the Government of the Kingdom of Tonga under Article 20 as soon as practicable following the conclusion of fifteen sitting days from the date the Agreement is tabled in both Houses of Parliament.
2. The Agreement was signed on 23 August 2003.
3. Article 20 specifies that the Agreement will enter into force when the parties have notified each other in writing that their respective requirements for its entry into force have been satisfied.
4. Aviation arrangements of less than treaty status, in the form of a Memorandum of Understanding signed in August 2002, have preceded the Agreement. In accordance with customary international, and established Australian practice, these arrangements have included applying the provisions of the Agreement, pending the completion of domestic requirements before the Agreement is brought into force. Prior to the arrangements entered into in August 2002, air services between the two countries were provided for under a Memorandum of Understanding signed in June 1999.

Overview and national interest summary

5. The purpose of the Agreement is to allow direct air services to operate between Australia and the Kingdom of Tonga, which will facilitate trade and tourism between the two countries and provide greater air travel options for consumers. The Agreement will provide a binding legal framework supporting the operation of air services currently provided by Pacific Blue, a subsidiary of Australia’s Virgin Blue Airlines.

Reasons for Australia to take the proposed treaty action

6. The Agreement provides a new framework for the operation of scheduled air services between Australia and the Kingdom of Tonga by the designated airlines of both countries.

7. This framework improves access for Australian airlines to the Australia-Tonga aviation market and allows for the expansion of air services between the two countries, based on capacity levels decided from time to time between the aeronautical authorities. While the aviation market between Australia and Tonga is small and is unlikely to grow substantially in the foreseeable future, the Agreement provides opportunities for Australian airlines to expand services to Tonga and to link these services with operations to other South Pacific countries. The Agreement is liberal in its approach to code sharing, giving the airlines the flexibility to serve the market through selling seats on other airlines, as well as through own aircraft operations. The Agreement is important for Tonga's tourism industry, which the Tongan Government recognises can play a major role in the development of its economy.

Obligations

8. Australia and Tonga are both parties to the Convention on International Civil Aviation, opened for Signature at Chicago on 7 December 1944 ([1957] ATS 5), commonly referred to as the Chicago Convention.

9. Australia has a standard draft air services agreement which has been developed in consultation with aviation stakeholders. The Agreement was negotiated from the Australian standard draft Agreement in use at the time the Agreement was negotiated, and does not differ from it substantially.

10. The Agreement obliges Australia and the Kingdom of Tonga to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes in accordance with the provisions of the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation, and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

11. Article 2 of the Agreement allows each Party to designate as many airlines as it wishes to operate the agreed services. Either Party may revoke or limit authorisation of an airline's operations if the airline fails to meet or operate in accordance with the conditions prescribed in the Agreement, including if the airline is not incorporated and does not have its principal place of business in the territory of the Party designating the airline.

12. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the right to overfly its territory and to make stops in its territory for non-traffic purposes.

13. Article 4 of the Agreement confirms the designated airlines of one Party must comply with the domestic laws, regulations and rules of the other Party relating to such matters as entry, clearance, aviation security, immigration, passports, customs, quarantine and postal services. The Contracting Parties must not give preference to their own or any other airline in the application of their laws and regulations relating to these matters.

14. Under Article 5, each Contracting Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party, provided such documents conform to the standards established by the International Civil Aviation Organization (ICAO). Each Party may request consultations concerning safety standards maintained by the other Party and take appropriate action essential to the safety of airline operations if it considers such actions to be necessary. If consultations are not successful, then the Party concerned about safety may set out the steps required for the other Party to comply with the minimum standards set by ICAO. A failure to take the necessary steps to meet those minimum standards will allow the concerned Party to withhold authorisation for the air services. Article 5 also confers on the Parties a right to inspect the aircraft operating the agreed services.

15. Under Article 6, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. Each Party may require that the designated airlines of the other Party observe its aviation security provisions for entry into, departure from or sojourn in the territory of that Party and shall ensure that adequate measures are applied to protect the aircraft and to inspect passengers, crew and carry-on items, as well as baggage, cargo and aircraft stores prior to and during boarding or loading.

16. Article 7 requires that the charges levied by charging authorities for the use of aviation facilities be non-discriminatory and not excessive.

17. In line with international practice, Article 9 provides that both Parties are required to exempt equipment and stores used in the operation of the agreed services from customs and excise duties and other related charges.

18. Article 10 allows airlines to set their own fares, which shall be subject to the competition and consumer laws of both Parties.

19. Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services on the specified routes, and that the capacity that can be operated between the two countries shall be decided between the aeronautical authorities. The Memorandum of Understanding signed at the time the Agreement was negotiated in 2002 provides that airlines of each side may operate unlimited services to and from all cities in Australia other than Sydney, Melbourne, Brisbane and Perth, and up to 600 seats each way each week to/from those four cities.

20. Article 12 provides a framework that allows airlines to establish themselves in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, employ and maintain staff, sell tickets to the public and convert currency freely, subject to the domestic rules and regulations of the other Party. This Article also gives airlines of each Party the right to enter into cooperative marketing arrangements (such as code sharing) with any other airline, provided the airlines participating in such arrangements hold the appropriate authority or authorities to conduct international air transport on the routes concerned. Article 12 also permits the designated airlines of each Party to conduct international air transportation using aircraft leased from any other company, and provides for favourable consideration to be given to the use of aircraft and crew leased from any other

company, provided they meet the applicable operating and safety standards and requirements of the Parties.

21. Article 13 confirms that the designated airlines of each Party can utilise surface transport to connect with their international air services, within the territory of the Parties of third countries, provided that passengers and shippers are informed of who will provide the transport involved.

22. Article 14 confirms the prospective application of each Party's competition laws to the operation of the airlines within their jurisdiction, and requires each Party to use best efforts within its jurisdiction to eliminate anti-competitive or discriminatory behaviour adversely affecting the competitive position of the designated airlines of the other Party.

23. Dispute resolution is provided for in the Agreement at Article 17. If the parties fail to resolve a dispute by negotiation there is provision for compulsory settlement by submitting the dispute to arbitration.

24. The Annex, which is part of the Agreement, contains a route schedule which specifies the routes that may be operated by designated airlines.

Implementation

25. The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts are required for the implementation of the Agreement.

Costs

26. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments, and the Agreement reduces the regulatory burden on business and industry.

Regulation Impact Statement

27. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

28. Article 16 of the Agreement provides for amendment or revision by agreement of the Parties. Any amendment to the Agreement, including the Annex, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, that they have completed their domestic procedures.

29. Any amendment to the Agreement will be subject to Australia's domestic treaty procedures.

30. If a multilateral convention concerning air transport comes into force in respect of both Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

31. Any future amendments to the Agreement are likely to involve further deregulation of air services arrangements between the Parties and would be subject to Australia's domestic treaty processes, including consideration by JSCOT.

Withdrawal or denunciation

32. Article 18 of the Agreement provides arrangements to be followed for termination. Either Party may give notice in writing at any time through the diplomatic channel to the other Party of its decision to terminate the Agreement, and must also lodge a notice of termination with ICAO. The Agreement shall terminate one year after the date of receipt of the notice by the other Party. In default of acknowledgment of a receipt of a notice of termination by the other Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

33. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty action procedures, including consideration by JSCOT.

Contact details

Aviation Markets Branch
Aviation and Airports Business Division
Department of Transport and Regional Services.

**Agreement between the Government of Australia and the Government of the Kingdom
of Tonga relating to Air Services, done at Neiafu, Tonga on 23 August 2003
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CONSULTATION

1. It is the practice ahead of negotiations for the Department of Transport and Regional Services to consult government and non-government bodies that may have an interest in the outcome and to take into account their views in developing a negotiating position for the Minister's approval. In situations where a new air services agreement is being negotiated, the Department, wherever possible, uses the Australian Air Services Agreement model text that has been developed in consultation with other government agencies. This model text is maintained and kept up to date through a process of ongoing consultation with relevant agencies. The Australian model text was used in the negotiations with Tonga.

2. Prior to the negotiations with Tonga in August 2002, at which the draft text of an air services agreement was settled, the following stakeholders were advised by letter and/or email of the proposal to negotiate a new air services agreement between Australia and Tonga and invited to comment on issues of importance to them:

Australian Government Department of Industry, Tourism and Resources
Australian Government Department of Foreign Affairs and Trade
Australian Tourist Commission
South Australian Government
South Australian Tourism Commission
Sydney Airport Corporation
Tourism Queensland
Melbourne Airport
Australian Capital Territory Government
Northern Territory Airports
Qantas
West Australian Government
Victorian Government
Tourism New South Wales
Adelaide Airport
Tasmanian Government
Tourism Tasmania
Perth Airport
Northern Territory Government

3. In response to the Department's request for comments, Qantas Airways expressed support for formalisation of air services arrangements through the negotiation of an air services agreement. No other submissions were received. Australian airlines were invited to attend the negotiations, but chose not to.

4. The Agreement was included in the Schedule of Treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties in 2003 prior to signature.

September 2007

Political brief on the Kingdom of Tonga

Political overview

Tonga is a constitutional monarchy, unique in the Pacific. Under its Constitution of 1875, the Government consists of the King in Privy Council and Cabinet, the Legislative Assembly and the Judiciary.

Riots in November 2007 destroyed most of the central business district of Nuku'alofa. The riots were thought to be fuelled by frustrations with the pace of political reform, a growing presence of disaffected youth and animosity towards Chinese and royal business interests. Five of the Legislative Assembly's People's Representatives, who are linked to the pro-democracy movement, are facing charges of sedition in relation to the riots.

Continuing dialogue on political reform remains an important issue for the Government of Tonga. A National Committee on Political Reform was set up in November 2005 to consult with the Tongan people and consider a roadmap for political change. In July 2007, Tonga's parliament agreed to the establishment of a tripartite committee to consider the various models for taking forward political reform. The committee has made good progress on developing a new model for more democratic Parliamentary representation.

Economic overview

Tonga has a small, open economy with a narrow export base which relies heavily on private remittances from Tongan communities overseas and external development assistance. Economic growth in Tonga has hovered between 1 and 3 per cent in the five years to 2006. In 2006-7, however, growth is expected to reverse significantly to -3.5 per cent, in the wake of low investor confidence after the November 2006 riots.

Inflation in Tonga remains at regionally high levels, 7.2 per cent in 2005-06 – down from 10 per cent in 2004-05 – due to the demand stimulus of private remittances and rapid credit growth. Inflation was expected to hit 10 per cent again in 2006-07.

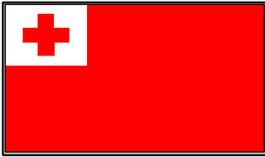
Australia-Tonga relations

Australia has strong relations with Tonga, including economic and social links and extensive development and defence cooperation programs. Tonga's Defence Services operate three patrol boats provided under Australia's Pacific Patrol Boat Program. Australia has been, and continues to be, an important focus for Tongans seeking education, travel, business and other personal contacts. The King was educated in Australia, as were a number of other senior establishment figures and their families.

Australian aid to Tonga in 2007-08 is estimated at \$15.7 million, up from an expected outcome of \$13.9 million in 2006-07. Australia's two-way trade with Tonga totalled \$12.3 million in 2006-07. Imports from Tonga in that period were valued at less than \$613,000.

Australia is providing A\$6.5 million assistance to business recovery and, together with New Zealand, is providing a package of assistance to strengthen the Tongan Police Force.

September 2007



TONGA

Fact Sheet

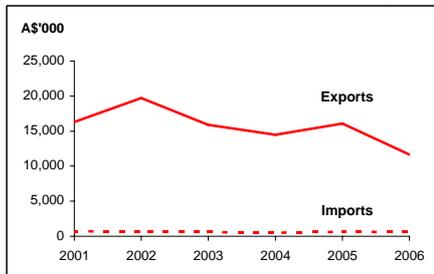
General information:

Fact sheets are updated biannually; May and September

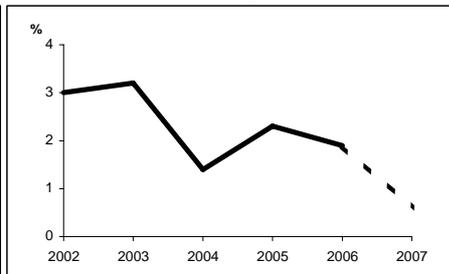
Capital:	Nuku'alofa	Head of State:	
Surface area:	748 sq km	H.M. King George Tupou V	
Official languages:	Tongan, English	Head of Government:	
Population:	102,000 (2006)	Prime Minister Hon Dr Feleti (Fred) Sevele	
Exchange rate:	A\$1 = 1.5812 Pa'anga (Feb 2007)		

Recent economic indicators:	2002	2003	2004	2005	2006(a)	2007(b)
GDP (US\$m) (current prices) (c):	143	159	182	215	224	234
GDP PPP (US\$m) (c)(d):	695	733	764	806	845	868
GDP per capita (US\$):	1,412	1,570	1,787	2,109	2,189	2,279
GDP per capita PPP (US\$) (d):	6,884	7,230	7,504	7,891	8,255	8,454
Real GDP growth (% change YOY) (c):	3.0	3.2	1.4	2.3	1.9	0.6
Current account balance (US\$m):	7	-5	8	-10	-17	-26
Current account balance (% GDP):	5.1	-3.1	4.2	-4.8	-7.4	-11.2
Goods & services exports (% GDP):	23.1	27.7	20.9	16.7	n.a.	n.a.
Inflation (% change YOY):	10.4	11.1	11.7	9.7	6.8	7.9

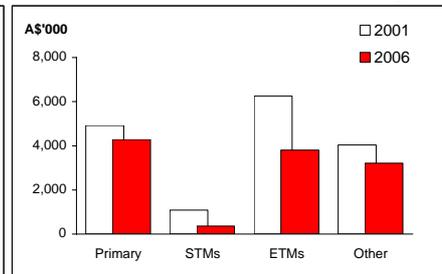
Australia's merchandise trade with Tonga



Real GDP growth



Australia's merchandise exports to Tonga



Australia's trade relationship with Tonga (e):

Australian merchandise trade with Tonga, 2006:

Exports to Tonga (A\$'000):	11,656
Imports from Tonga (A\$'000):	613
Total trade (exports + imports) (A\$'000):	12,269

Total share:	Rank:	Growth (yoy):
0.0%	108th	-27.4%
0.0%	147th	-3.8%
0.0%	129th	-26.5%

Major Australian exports*, 2006 (A\$'000):

Tobacco, manufactured	1,459
Liquefied propane & butane	860
Musical instruments	258
Meat (excl. bovine)	253

Major Australian imports, 2006 (A\$'000):

Vegetables	319
Fruit and nuts, fresh or dried	127
Tobacco, manufactured	63
Measuring and controlling instruments	33

*Includes A\$3m of confidential items and special transactions, 28% of total exports.

Australia's trade in services with Tonga, 2006:

		Total share:
Exports of services to Tonga (A\$m):	n.a.	n.a.
Imports of services from Tonga (A\$m):	n.a.	n.a.

Tonga's global merchandise trade relationships:

Tonga's principal export destinations, 2005:

1	Japan	33.3%
2	United States	26.6%
3	New Zealand	11.1%
5	Australia	2.0%

Tonga's principal import sources, 2005:

1	New Zealand	36.1%
2	Fiji	26.0%
3	Australia	10.2%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) All recent data subject to revision; (b) IMF forecast; (c) Year ending 30 June; (d) PPP is purchasing power parity; (e) Total may not add due to rounding.

n.a. Data not available.

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List of other treaties with the Kingdom of Tonga

THERE ARE NO OTHER BILATERAL TREATIES BETWEEN AUSTRALIA AND THE KINGDOM OF TONGA.

List of Air Services Agreements

- Air Transport Agreement with the United States of America
[1946] ATS 8
- Agreement with Ceylon (now Sri Lanka) for the Establishment of Air Services, and two Exchanges of Notes
[1950] ATS 1
- Exchange of Notes constituting an Agreement with Ceylon (now Sri Lanka) amending the Tariff set out in the Exchange of Notes accompanying the Agreement for the Establishment of Air Services of 12 January 1950
[1950] ATS 1
- Agreement with the Kingdom of the Netherlands for the Establishment of Air Services
[1951] ATS 9
- Agreement with Japan for Air Services, and Exchange of Notes
[1956] ATS 6
- Exchange of Notes with Ireland constituting an Agreement relating to Air Services
[1957] ATS 16
- Agreement with the United Kingdom on Air Services between and through their Respective Territories
[1958] ATS 4
- Agreement with the Federal Republic of Germany relating to Air Transport, and Exchanges of Notes
[1959] ATS 2
- Agreement with the Kingdom of Thailand relating to Air Services
[1960] ATS 4
- Agreement with the Italian Republic relating to Air Services
[1963] ATS 14

- Agreement with France relating to Air Transport
[1965] ATS 3
- Agreement with the Republic of Singapore relating to Air Services
[1967] ATS 25
- Agreement with the Republic of Indonesia for Air Services Between and Beyond their Territories
[1969] ATS 4
- Agreement with the Republic of Nauru relating to Air Services
[1969] ATS 23
- Exchange of Notes with France amending the Schedule to the Agreement relating to Air Transport of 13 April 1965
[1971] ATS 3
- Agreement with the Kingdom of Greece relating to Air Services
[1971] ATS 12
- Air Transport Agreement with the Republic of the Philippines
[1972] ATS 8
- Agreement with Malaysia relating to Air Services
[1973] ATS 5
- Exchange of Notes with the Netherlands Modifying the Annex to Air Services Agreement of 25 September 1951
[1973] ATS 27
- Exchange of Notes with Singapore constituting an Agreement amending the Agreement relating to Air Services of 3 November 1967
[1976] ATS 6
- Exchange of Notes with Nauru constituting an Agreement amending the Schedule to the Agreement relating to Air Services of 17 September 1969
[1976] ATS 25
- Agreement with Papua New Guinea relating to Air Services
[1980] ATS 29
- Agreement with Fiji on Air Services Between and Beyond their Respective Territories
[1982] ATS 7
- Exchange of Notes with Nauru constituting an Agreement to further amend the Schedule to the Agreement relating to Air Services of 17 September 1969
[1984] ATS 34

- Exchange of Notes with the United Kingdom constituting an Agreement further amending the Schedule to the Agreement for Air Services between and through their Respective Territories of 7 February 1958
[1985] ATS 17
- Exchange of Notes constituting an Agreement with and Thailand to amend the Schedule to the agreement relating to Air Services of 26 February 1960
[1985] ATS 29
- Exchange of Notes constituting an Agreement with Malaysia to amend the Route Schedule to the Agreement relating to Air Services of 4 October 1972
[1985] ATS 38
- Exchange of Notes constituting an Agreement with Indonesia to amend the Annex to the Agreement for Air Services Between and Beyond their Respective Territories of 7 March 1969
[1986] ATS 23
- Exchange of Letters with the United States of America constituting an Agreement to amend the Air Transport Agreement of 3 December 1946
[1987] ATS 24
- Agreement with Canada Relating to Air Services
[1988] ATS 12
- Exchange of Notes constituting an Agreement with the United Kingdom to further amend the Agreement for Air Services Between and Through their Respective Territories of 7 February 1958, as amended
[1988] ATS 19
- Exchange of Notes with the United States of America constituting an Agreement to amend the Air Transport agreement of 3 December 1946
[1989] ATS 6
- Exchange of Notes constituting an Agreement with the United States of America concerning Airline Capacity
[1989] ATS 7
- Agreement with the Republic of Korea relating to Air Services
[1992] ATS 16
- Agreement with Brunei Darussalam relating to Air Services
[1992] ATS 20
- Agreement with Switzerland relating to Air Services
[1993] ATS 9

- Agreement with the Republic of Vanuatu relating to Air Services
[1993] ATS 17
- Exchange of Notes constituting an Agreement with Japan to further amend the Schedule to the Agreement for Air Services of 19 January 1956
[1993] ATS 22
- Agreement with Hong Kong concerning Air Services
[1993] ATS 28
- Exchange of Notes with the United Kingdom constituting an Agreement to further amend the Agreement for Air Services between and through their Respective Territories of 7 February 1958, as amended
[1993] ATS 29
- Exchange of Notes with the Republic of Korea constituting an Agreement to amend the Schedule to the Agreement relating to Air Services of 26 February 1992
[1993] ATS 33
- Exchange of Notes with the United States of America constituting an Agreement to amend the Air Transport Agreement of 3 December 1946 and the Agreement concerning Capacity of 23 March 1989
[1994] ATS 8
- Air Services Agreement with the Russian Federation
[1994] ATS 21
- Agreement with the Republic of South Africa relating to Air Services
[1995] ATS 23
- Agreement with the Socialist Republic of Vietnam relating to Air Services
[1995] ATS 26
- Agreement with Bahrain relating to Air Services
[1995] ATS 29
- Agreement with Malta relating to Air Services
[1996] ATS 21
- Exchange of Notes with Germany constituting an Agreement to further amend the Route Schedule to the Agreement relating to Air Transport, and Exchange of Notes, of 22 May 1957
[1996] ATS 23
- Agreement with the Republic of Lebanon relating to Air Services
[1999] ATS 4

- Agreement with Macau concerning Air Services
[1999] ATS 25
- Agreement with Samoa relating to Air Services
[2001] ATS 18
- Agreement with the Cook Islands relating to Air Services
[2002] ATS 27
- Agreement with New Zealand relating to Air Services
[2003] ATS 18
- Agreement with the Republic of Poland relating to Air Services
[2005] ATS 24
- Agreement with the Republic of Chile relating to Air Services
[2005] ATS 25
- Agreement with the United Arab Emirates relating to Air Services
[2005] ATS 8
- Agreement with the People's Republic of China relating to Air Services
[2006] ATS 19
- Agreement with the Government of the Republic of India relating to Air Services
[2007] ATS 8

September 2007