

# Report 147

## **Treaties tabled on 18 June, 24 November, 2 December 2014 and 25 February 2015**

World Trade Organization (WTO) Agreement on Trade Facilitation (Bali,  
7 December 2013)

First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New  
Zealand Free Trade Area (AANZFTA) (Nay Pyi Taw, 26 August 2014)

Treaty on Mutual Legal Assistance in Criminal Matters between Australia and  
the Socialist Republic of Viet Nam (Sydney, 2 July 2014)

World Trade Organization (WTO) Agreement on Trade Facilitation: Protocol  
Amending the Marrakesh Agreement Establishing the World Trade Organization  
(including the Agreement on Trade Facilitation annexed to that Protocol)  
(Geneva, 27 November 2014)

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## Membership of the Committee

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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

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

AANZFTA	Australia and New Zealand Free Trade Agreement
ACBPS	Australian Customs and Border Protection Service
ACCI	Australian Chamber of Commerce and Industry
AFGC	Australian Food and Grocery Council
AFP	Australian Federal Police
ASEAN	Association of Southeast Asian Nations
ATF	Agreement on Trade Facilitation
CCES	Centre for Customs and Excise Studies
COAG	Council of Australian Governments
COO	Certificates of Origin
CTC	Change in Tariff Classification
DFAT	Department of Foreign Affairs and Trade
FOB	Free-on-Board
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
HS	Harmonized Commodity Description and Coding System
IFIS	Imported Food Inspections Scheme

IGAB	Intergovernmental Agreement on Biosecurity
JSCOT	Joint Standing Committee on Treaties
MFN	Most Favoured Nation
NIA	National Interest Analysis
OCP	Operational Certification Procedures
PSR	Product Specific Rules
RIS	Regulation Impact Statement
ROO	Rules of Origin
RVC	Regional Value Content
SPS	<i>Agreement on the Application of Sanitary and Phytosanitary Measures</i>
TBT	<i>Agreement on Technical Barriers to Trade</i>
USD	United States Dollars
WCO	World Customs Organization
WTO	World Trade Organization



## List of recommendations

### **2 World Trade Organization (WTO) Agreement on Trade Facilitation**

#### **Recommendation 1**

The Committee supports the World Trade Organization *Agreement on Trade Facilitation: Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization* (including the *Agreement on Trade Facilitation* annexed to that Protocol) and recommends that binding treaty action be taken.

### **3 First Protocol to Amend the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area**

#### **Recommendation 2**

The Committee supports the *First Protocol to Amend the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area* and recommends that binding treaty action be taken.

### **4 Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam**

#### **Recommendation 3**

The Committee supports the *Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam* 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 18 June, 24 November, 2 December 2014 and 25 February 2015:
  - World Trade Organization (WTO) *Agreement on Trade Facilitation: Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization* (including the *Agreement on Trade Facilitation* annexed to that Protocol (Agreement on Trade Facilitation originally adopted at Bali on 7 December 2013; Protocol adopted at Geneva on 27 November 2014));
  - *First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (Nay Pyi Taw, 26 August 2014); and
  - *Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam* (Sydney, 2 July 2014).
- 1.2 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.
- 1.3 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.
- 1.4 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.

- 1.5 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 only treaty considered in this report for which an RIS was required is the *First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area*.
- 1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.7 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/18\\_June\\_2014/Terms\\_of\\_Reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/18_June_2014/Terms_of_Reference);
  - [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/24\\_November\\_2014/Terms\\_of\\_Reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/24_November_2014/Terms_of_Reference); and
  - [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/2\\_December\\_2014/Terms\\_of\\_reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/2_December_2014/Terms_of_reference).

## Conduct of the Committee's review

- 1.8 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 23 January 2015.
- 1.9 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.
- 1.10 The Committee held a public hearing into these treaties in Canberra on Monday 2 March 2015.
- 1.11 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:
  - 18 June 2014 (also for treaty tabled 25 February 2015);
  - 24 November 2014; and
  - 2 December 2014.

- 1.12 A list of submissions received and their authors is at Appendix A.
- 1.13 A list of witnesses who appeared at the public hearings is at Appendix B.



# World Trade Organization (WTO) Agreement on Trade Facilitation

## Introduction

- 2.1 This chapter examines the *Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization* (the Protocol) and the World Trade Organization (WTO) *Agreement on Trade Facilitation* (ATF).
- 2.2 The ATF was adopted in Bali on 7 December 2013. The Protocol was adopted by the WTO General Council and WTO Members on 27 November 2014. The ATF will be incorporated into Annex 1A of the *Marrakesh Agreement Establishing the World Trade Organization* (Marrakesh Agreement) by means of the Protocol. By accepting the Protocol, Australia will consent to be bound by the provisions of the ATF.<sup>1</sup>
- 2.3 In a slightly unusual procedure, the ATF was tabled in the Commonwealth Parliament on 18 June 2014 and the Protocol, which includes the text of the ATF as an Annex, on 25 February 2015.<sup>2</sup>
- 2.4 The Attachment to the NIA tabled on 25 February 2015, states that there are no substantive changes to the text of the ATF. However, typographical errors have been corrected and a WTO document number has been inserted.<sup>3</sup>

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1 National Interest Analysis [2014], ATNIA 6 with attachment on consultation World Trade Organization (WTO) *Agreement on Trade Facilitation*, text as adopted at Bali on 7 December 2013 [2014] ATNIF 7 (hereafter referred to as 'NIA'), para 1.

2 The reasons for the unusual procedure are explained below.

3 Attachment to NIA tabled on 18 June 2014: Attachment on second tabling (February 2015) [2014] ATNIA 6, (hereafter referred to as NIA Attachment), para 43.

## Background

- 2.5 The text of the ATF was adopted at the WTO Ministerial Conference in Bali on 7 December 2013. Under the terms of the Bali Ministerial decision, the WTO General Council were expected to meet no later than 31 July 2014 to adopt the Protocol of Amendment and open it for acceptance by WTO Members. The Protocol was to remain open for acceptance until 31 July 2015.<sup>4</sup>
- 2.6 Accordingly, the Minister for Trade and Investment tabled the ATF in the Australian Parliament on 18 June 2014.
- 2.7 However, at the meeting in Geneva on 31 July 2014, WTO Members failed to accept the Protocol. The Department of Foreign Affairs and Trade (DFAT) explained that difficulties arose over issues other than trade facilitation:
- ... some WTO members ... would not agree to adopt the protocol by the July 2014 deadline and sought to reopen and renegotiate other decisions, not relating to trade facilitation, which had been agreed by all members in Bali.<sup>5</sup>
- 2.8 As the Protocol had to be adopted before the ATF could be opened for formal acceptance by the WTO Members, Australia could not proceed and the Minister for Trade and Investment wrote to the Joint Standing Committee on Treaties (JSCOT) on 13 August 2014 requesting that the Committee suspend consideration of the Agreement.<sup>6</sup>
- 2.9 On 27 November 2014, WTO Members agreed to adopt the Protocol enabling Members to accept the ATF. The Minister for Trade and Investment wrote to JSCOT on 18 December 2014 requesting that the inquiry into the Agreement be resumed.<sup>7</sup> The Protocol was tabled in the Parliament on 25 February 2015.
- 2.10 In accordance with Article X(3) of the Marrakesh Agreement, the Protocol will enter into force upon acceptance by two-thirds of WTO Members (i.e. acceptance by 107 Members). The ATF will then form an integral part of

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4 NIA, para 2.

5 Ms Helen Stylianou, Assistance Secretary, Services and WTO Trade Policy Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 2 March 2015, p. 2.

6 Letter from the Hon Andrew Robb AO MP, Minister for Trade and Investment, to the Joint Standing Committee on Treaties (JSCOT), 13 August 2014.

7 Letter from the Hon Andrew Robb AO MP, Minister for Trade and Investment, to JSCOT, 18 December 2014.

the WTO 'single undertaking', as embodied in the Marrakesh Agreement and its Annexes.<sup>8</sup>

## Overview and national interest summary

2.11 According to the NIA the objective of the ATF is to clarify and improve existing WTO obligations on trade procedures relating to transparency of trade regulations, fees and formalities, and the transit of goods. The ATF seeks to cut the costs of trading by removing red tape and unnecessary formalities in border clearance procedures.<sup>9</sup>

2.12 The Centre for Customs and Excise Studies at Charles Sturt University (CCES) verified the need for uniformity in the increasingly complex arena of international trade. The development of 'highly integrated and interdependent' supply chains necessitates the streamlining of cross-border regulations:

The ATF represents a significant step towards a globally consistent approach to the regulation of cross-border trade with the potential to achieve the high level of trade facilitation being sought by both governments and industry alike.<sup>10</sup>

## Reasons for Australia to take the proposed treaty action

2.13 It is expected that the implementation of the ATF will lead to some of Australia's largest trading partners, particularly in larger developing countries, simplifying and streamlining customs procedures. This should allow goods in cross-border trade to move more efficiently, including reducing compliance costs. This could encourage participation in global trade by removing regulatory burdens and increasing transparency. The NIA states that, in addition to the assistance that the ATF provides to Australian traders, implementation is expected to improve law enforcement cooperation between Members' customs authorities. The NIA claims that, if fully implemented, the ATF could add \$US1 trillion to the world economy and create 21 million jobs by cutting trade costs.<sup>11</sup>

2.14 The Australian Food and Grocery Council (AFGC) maintains that the ATF will provide Australian exporters with:

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8 NIA, para 2.

9 NIA, para 4.

10 Centre for Customs and Excise Studies, Charles Sturt University (CCES), *Submission 1*, p. 2.

11 NIA, para 5.

- better access to information on customs requirements in foreign markets;
- the opportunity to gain advance rulings on product entering foreign markets;
- new procedures to support the timely transit of perishable goods into market; and
- greater certainty on procedures and arrangements when disputes arise.<sup>12</sup>

2.15 The ATF multilateral agreement is seen as providing a much needed antidote to the proliferation of preferential trade agreements (PTAs) or so called 'free trade agreements'. Pointing to the Noodle Bowl effect caused by the growing number of preferential trade agreements, the Australian Chamber of Commerce and Industry (ACCI) identified the 'confusion and higher costs for international business' that result from 'overlapping and inconsistent rules and administrative requirements' of varying PTAs.<sup>13</sup> Echoing these concerns, AFGC acknowledged the importance of bilateral and regional agreements in the absence of a comprehensive multilateral agreement, but identified the difficulties for business:

For example, Australia may have up to five individual and overlapping trade agreements applying to trade with a single country should all current negotiations be complete. Companies have difficulty managing the requirements of individual agreements, let alone multiple arrangements for trade with the same market.<sup>14</sup>

## Obligations

- 2.16 The ATF is comprised of three sections: **Section I** deals with trade facilitation measures and obligations; **Section II** focuses on flexibility arrangements for developing and least developed countries (otherwise known as 'special and differential treatment'); and **Section III** discusses institutional arrangements. Australia's primary obligations are contained in **Sections I** and **III**. However, **Section II** also contains some obligations relevant to Australia.<sup>15</sup>
- 2.17 Nothing in the Agreement diminishes the obligations of Members under the GATT and it does not diminish the rights and obligations of Members

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12 Australian Food and Grocery Council (AFGC), *Submission 3*, p. 4.

13 Australian Chamber of Commerce and Industry (ACCI), *Submission 4*, p. 6.

14 AFGC, *Submission 3*, p. 6.

15 NIA, para 7.

- under the *Agreement on Technical Barriers to Trade* (TBT Agreement) and the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement).<sup>16</sup>
- 2.18 The first group of articles, **Articles 1-5**, essentially addresses transparency issues, and expands on GATT Article X.<sup>17</sup>
- 2.19 Under **Article 1** (Publication and Availability of Information), Members will be required to publish information on their customs procedures, including the forms, fees and charges applicable to importation, on the internet. Members must also establish 'Enquiry Points' to answer questions and provide documentation.<sup>18</sup>
- 2.20 Under **Article 2** (Opportunity to Comment, Information before Entry Into Force, and Consultations), a Member will be required, to the extent practicable and in a manner consistent with its domestic law and legal system, to provide an opportunity for traders to comment on new or amended customs laws and regulations, and to allow a reasonable period of time between their publication and entry into force.<sup>19</sup>
- 2.21 The Committee asked if **Article 2** would place any constraints on Australia's ability to change its sanitary and phytosanitary (SPS) and quarantine regulations, particularly in response to an immediate threat. The Department of Agriculture told the Committee that the current process to change regulations involved extensive consultation with stakeholders, primarily importers, as well as other countries that may be affected by the changes. While this consultation process could take some time, the Department assured the Committee that it retained the capacity to act swiftly in an emergency situation.<sup>20</sup>
- 2.22 Under **Article 3** (Advance Rulings), Members' customs authorities will be required to provide rulings to traders prior to importation upon written request, outlining how the trader's goods will be treated upon arrival to that country, e.g. how the goods will be classified (and what tariffs and non-tariff barriers will apply). Members will be required to provide advice on tariff classification and origin. Additionally, Members shall publish, at a minimum: the requirements (information and format) for the application for an advance ruling; the time period by which it will issue an advance ruling; and the length of time for which the advance ruling is valid.<sup>21</sup>

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16 NIA, para 8.

17 NIA, para 9.

18 NIA, para 10.

19 NIA, para 11.

20 Mr David Ironside, Acting Assistant Secretary, Compliance Arrangements, Compliance Division, Department of Agriculture, *Committee Hansard*, Canberra, 2 March 2015, p. 7.

21 NIA, para 12.

- 2.23 The Australian Customs and Border Protection Service (ACBP) told the Committee that Australia has had an advanced ruling scheme in place since the 1950s:

We provide advice to industry on request on how we will treat goods when they arrive in the country with respect to classification – the tariff that applies, how we will deal with the valuation of the goods, and how we will determine what the origin of the good is, and that can be for the purposes of satisfying a preferential trade agreement claim.<sup>22</sup>

- 2.24 Under **Article 4** (Procedures for Appeal or Review), Members will be required to provide appeal mechanisms to challenge the decisions by customs on goods, including rights to further appeal or review for traders if the decision on appeal takes too long.<sup>23</sup>

- 2.25 Australia presently has an appeal mechanism in place that fulfils this requirement. ACBPS explained:

We have an internal appeal mechanism within Customs and Border Protection, so a person can seek a second view from a different officer. Industry also has the opportunity of going to the Administrative Appeals Tribunal and seeking their view, and that is a merits review. And of course there are all the ordinary judicial review options.<sup>24</sup>

- 2.26 While Australia's trade facilitation measures already meet best practice standards, this Agreement will help to develop similar measures across Australia's trading partners and improve conditions for Australian business and industry generally:

... Australia has some of the best practice in trade facilitation measures. So this agreement will help Australian exporters principally by lifting other countries up to that standard.<sup>25</sup>

- 2.27 **Article 5** (Other Measures) sets disciplines for how Members operate systems for border controls to ensure that controls are not maintained unnecessarily; details how Members shall notify exporters if their goods are detained; and provides for transparent testing of detained goods.<sup>26</sup>

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22 Ms Anita Langford, Acting Assistant Secretary, Trade Branch, Trade, Customs and Industry Policy Division, Australian Customs and Border Protection Service (ACBPS), *Committee Hansard*, Canberra, 2 March 2015, p. 3.

23 NIA, para 13.

24 Ms Langford, ACBPS, *Committee Hansard*, Canberra, 2 March 2015, p. 3.

25 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 3.

26 NIA, para 14.

- 2.28 The Department of Agriculture assured the Committee that testing of detained goods in Australia is transparent.<sup>27</sup> Asked for clarification of controls being maintained ‘unnecessarily’, DFAT referred to **Article 24.6** which states that the ATF does not diminish the rights and obligations contained in the TBT Agreement or the SPS Agreement. If Australia puts in place testing requirements that are consistent with its rights and obligations under these TBT and SPS Agreements, such requirements cannot be deemed unnecessary.<sup>28</sup>
- 2.29 The next group of articles, **Articles 6–12**, is concerned mainly with fees, charges and formalities for import, export and transit, expanding on GATT Articles V and VIII.<sup>29</sup>
- 2.30 Under **Article 6** (Disciplines on Fees and Charges), Members undertake obligations related to the rationale and amount of fees and charges imposed in connection with importation and exportation. It also covers the size of penalties imposed for a breach of customs regulations, and the procedure for imposing them.<sup>30</sup>
- 2.31 Under **Article 7** (Release and Clearance of Goods), Members will be required to establish procedures and objectives for customs authorities to draw upon to clear goods. The article contains nine disciplines, covering:
- pre-arrival processing of import documents;
  - electronic payment;
  - release of goods where the amount of duty payable still has not been determined;
  - use of risk management procedures;
  - use of post clearance audits to minimise inspections;
  - tracking average release times;
  - establishment of authorised operator schemes and expedited shipment schemes (or ensuring equivalent treatment for all shipments); and
  - procedures to be used for perishable goods.<sup>31</sup>
- 2.32 Under **Article 8** (Border Agency Cooperation), Members’ border agencies will be encouraged to cooperate domestically as well as with their counterparts in neighbouring countries.<sup>32</sup>

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27 Ms Nicola Hinder, Assistant Secretary, Pathway Compliance, Compliance Division, Department of Agriculture, *Committee Hansard*, Canberra, 2 March 2015, p. 4.

28 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 7.

29 NIA, para 15.

30 NIA, para 16.

31 NIA, para 17.

32 NIA, para 18.

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- 2.33 Under **Article 9** (Customs Controls), Members will be required to allow goods intended for import to be moved within their territory from one customs office to another, to the point where the goods would be released or cleared.<sup>33</sup>
- 2.34 Under **Article 10** (Formalities), Members will be required to streamline and simplify formalities (i.e. forms and customs checks) connected with trade and remove some unnecessary requirements or constraints on the import/export traders to submit documentation through a single entry point for all participating agencies/authorities.<sup>34</sup>
- 2.35 Under **Article 11** (Freedom of Transit), Members will be required to minimise restrictions on goods transiting through their territories (for example, limitations on the amount of guarantee requested).<sup>35</sup>
- 2.36 **Article 12** (Customs Cooperation) relates to the sharing of information between governments to verify information on specific imports or exports. For example, Members shall hold all information or documents provided by the requested Member strictly in confidence, respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.<sup>36</sup>
- 2.37 **Section II** provides for special and differential treatment of developing and least developed countries, including staged implementation of commitments and assistance for implementation. Australia's obligations under **Section II** are only activated upon Australia's interaction with developing and least developed countries. For example, under **Article 20**, developed countries are obliged to exercise restraint in bringing disputes against such countries. Under **Article 21**, developed countries are required to apply certain principles should they decide to provide assistance and support for capacity building with respect to the implementation of the ATF.<sup>37</sup>
- 2.38 In **Section III, Article 23** establishes a WTO Committee on Trade Facilitation, open to all WTO Members, to oversee implementation of the ATF. In addition, each Member is required to establish a national

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33 NIA, para 19.

34 NIA, para 20.

35 NIA, para 21.

36 NIA, para 22.

37 NIA, para 23.

committee on trade facilitation to facilitate domestic coordination and implementation of the provisions of the ATF.<sup>38</sup>

- 2.39 **Article XV** of the Marrakesh Agreement provides for the withdrawal of Members from WTO and thereby the ATF. It states that any Member may withdraw from the Marrakesh Agreement. Such withdrawal shall apply to all of the multilateral trade agreements annexed to the Marrakesh Agreement, including the ATF, and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO. That is, Australia may only withdraw from the WTO as a whole, and may not withdraw from the ATF separately. Withdrawing from the Marrakesh Agreement would result in Australia losing its Most Favoured Nation status and a range of other rights that membership of the WTO provides.<sup>39</sup>

## Implementation

- 2.40 The NIA states that it will not be necessary to enact or amend legislation in order to implement the ATF in Australia and that Australian border procedures already comply with the Agreement.<sup>40</sup>
- 2.41 In line with **Article 23** of the ATF, Australia will need to establish a National Committee on Trade Facilitation involving governmental and private sector stakeholders. The NIA says that this can be undertaken administratively and will not require legislation. Arrangements for establishing the Committee are currently being considered by the relevant agencies (including ACBPS and DFAT). According to the NIA these arrangements will be made before Australia accepts the ATF and will be in place at the Agreement's entry into force.<sup>41</sup>

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38 NIA, para 24.

39 NIA, para 30.

40 NIA, para 25.

41 NIA, para 26.

## Costs

- 2.42 The NIA claims that the financial impact of the Agreement is expected to be revenue neutral as border procedures will not need to be changed. The establishment of a National Committee on Trade Facilitation is not expected to add any cost burden as the Committee's functions are expected to largely consist of meeting and corresponding to consider trade facilitation matters and will be managed by participating agencies as part of their normal running costs.<sup>42</sup>
- 2.43 The Committee requested clarification on the establishment and running costs of the WTO Committee on Trade Facilitation and the National Committee on Trade Facilitation. DFAT told the Committee that the National Committee on Trade Facilitation will be set up by ACBP as an interdepartmental committee and no costs will be attached to its establishment. The WTO Committee on Trade Facilitation will be a regular WTO committee set up under the WTO's current organisational structure and will also be cost-neutral:
- It would be attended by, for example, our WTO mission in Geneva, so it is just a part of the institutional structure of the organisation.<sup>43</sup>
- 2.44 The ATF provides a framework for the provision of assistance to developing countries and least developed countries, but there are no obligations upon Members to provide such assistance.<sup>44</sup>
- 2.45 Australia is contributing \$6 million over three years to the World Bank's Trade Facilitation Support Program. The aim of this program is to 'assist developing countries to undertake at-the-border reforms, such as improving their customs procedures'.<sup>45</sup> Additionally, Australia has pledged \$1 million to the WTO Trade Facilitation Agreement Facility to assist developing and least developed countries to implement the Agreement.<sup>46</sup>
- 2.46 To assist Pacific Island Members, Australia has also co-founded a workshop for Pacific Islands WTO Members.<sup>47</sup> This project has been

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42 NIA, para 27.

43 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 5.

44 NIA, para 27.

45 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 4.

46 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 4.

47 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 5.

funded under Australia's aid-for-trade program and is a one-off expenditure with no recurrent obligation attached.<sup>48</sup>

- 2.47 The NIA reiterates that the effective implementation of the Agreement by WTO Members is expected to reduce business costs for Australian exporters over time.<sup>49</sup>

## Sanitary and phytosanitary regulations

- 2.48 In light of the recent suspected link between imported frozen berries and cases of hepatitis A in New South Wales and Victoria, the Committee questioned the effect of the ATF on Australia's control of its SPS regulations. DFAT reiterated that the TBT and SPS Agreements still apply, and that the ATF does not in any way impinge on Australia's ability to maintain its SPS regulations:

It does not diminish in any way our rights and obligations under those agreements ... There is nothing in this agreement that would diminish our right to take SPS action or to set our own quarantine standards.<sup>50</sup>

- 2.49 The Department of Agriculture pointed out that the aim of the ATF is to 'offer the most facilitative trade mechanism possible' for exporters and importers. The Agreement is not seeking to 'amend any of the stringent quarantine or biosecurity standards' that are currently in place.<sup>51</sup>

- 2.50 The Committee sought clarification on claims that Australian food producers are required to meet higher standards than food importers in terms of inspections and health standards. The Department of Agriculture emphasised that it depends on the type of food in question and the legislative requirements that apply. However, in general, the Department consider that a high level of regulation applies to imported foods:

Anything that comes across the border has to, first of all, satisfy all of the legislative requirements that apply under the Quarantine Act, and the Quarantine Act is particularly focused on animal and plant health. If the food is coming in for human consumption then obviously, it also has to comply with all of the requirements that apply under the Imported Food Control Act, which ensures that any food that arrives in Australia is compliant with the Food

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48 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 5.

49 NIA, para 27.

50 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 3.

51 Ms Hinder, Department of Agriculture, *Committee Hansard*, Canberra, 2 March 2015, p. 7.

Standards Code. So, there is a fairly high level of regulatory burden ...<sup>52</sup>

- 2.51 Most consignments are inspected when they arrive in Australia but there is a process of off-shore pre-shipment inspections (OPI) for some horticultural products. In some cases the Department also inspects and audits produce facilities in other countries, for example for pig meat. Additionally, products are inspected by 'officers of recognised overseas authorities' in accordance with Australian requirements.<sup>53</sup>
- 2.52 OPI inspections follow the same process as those performed on arrival in Australia:
- The consignment or inspection lot is sampled and 100 per cent of the sample is examined for biosecurity pests, diseases and other contaminants such as soil, feathers, plant trash, etc ...
- Remedial actions (such as treatment, reconditioning, destruction, rejection for export) are applied to the whole consignment or lot based on the inspection outcome of the sample.<sup>54</sup>
- 2.53 Fresh table grapes from Chile and South Korea are subject to mandatory OPI, while the following fresh horticultural products are subject to optional OPI:
- USA table grapes, citrus, cherries, strawberries;
  - New Zealand avocados, kiwifruit, summer fruit, tomatoes, capsicums, blueberries, cherries, lemons, mandarins/tangerines, persimmons, strawberries;
  - Chinese apples, pears;
  - Korean pears; and
  - Japanese nashi pears.<sup>55</sup>
- 2.54 Where it is considered necessary, the Department also undertakes 'comprehensive systems audits of the production, packing, treatment (where required), and export certification procedures' in exporting countries prior to trade commencing. Such audits have been carried out for Chinese apples, Korean table grapes, Fijian ginger, Thailand mangosteens, Philippine, Indian and Pakistan mangoes, and New Zealand apples.<sup>56</sup>
- 2.55 Under the Imported Food Control Act, the Department of Agriculture administers the Imported Food Inspection Scheme (IFIS). Foods that pose

52 Mr Ironside, Department of Agriculture, *Committee Hansard*, Canberra, 2 March 2015, p. 3.

53 Department of Agriculture, *Submission 6*, p. 1.

54 Department of Agriculture, *Submission 6*, p. 1.

55 Department of Agriculture, *Submission 6*, p. 1.

56 Department of Agriculture, *Submission 6*, p. 2.

a medium to high risk to public health are inspected by the Department at a rate of 100 per cent at first, decreasing to five per cent over time:

Risk food is initially inspected and tested at a rate of 100 per cent against a published list of potential hazards – including micro-organisms and contaminants. Once five consecutive consignments have passed inspection, the inspection rate is reduced to 25 per cent; after a further 20 consecutive passes, the inspection rate is reduced to 5 per cent.<sup>57</sup>

- 2.56 The Committee understands that the majority of fruits and vegetables are classified as ‘surveillance foods’ rather than ‘risk foods’ and therefore only 5 per cent of these foods are referred for inspection. The 5 per cent is tested for ‘pesticides and antibiotics above accepted levels, microbiological contaminants, natural toxicants, metal contaminants and food additives’. It is only if a ‘surveillance food’ fails a test that it moves into the ‘risk food’ category and undergoes 100 per cent testing.<sup>58</sup>
- 2.57 The Department pointed out that the States and Territories also have regulations in place, providing another barrier of protection:
- Each state and territory authority has its own food legislation, and therefore state and territory action on food is different from, but complementary to, that which occurs under the IFIS.<sup>59</sup>
- 2.58 The Committee also expressed concern that, as Australia’s SPS regulations could be perceived as a barrier to trade, the high standards imposed by the regulations may be considered negotiable in the context of trade agreements. DFAT emphatically stated that, although negotiating countries raise concerns regarding Australia’s regulations, the Australian Government’s position is that the standards are not negotiable.<sup>60</sup>
- 2.59 In this regard, the Committee asked if other countries in the region had implemented a process of 100 per cent of testing of high-risk agricultural products imported from Australia. The Department of Agriculture is unaware of any country in the region that routinely implements such a process however, most countries ‘conduct some degree of port-of-entry testing on imports from Australia’.<sup>61</sup>

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57 Department of Agriculture, ‘Imported Food Inspection Scheme’, <<http://www.agriculture.gov.au/import/food/inspection-compliance/inspection-scheme>>, accessed 24 March 2015.

58 Department of Agriculture, ‘Imported Food Inspection Scheme’, <<http://www.agriculture.gov.au/import/food/inspection-compliance/inspection-scheme>>, accessed 24 March 2015.

59 Department of Agriculture, *Submission 6*, p. 3.

60 Ms Stylianou, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 6.

61 Department of Agriculture, *Submission 6*, p. 4.

## Conclusion

- 2.60 The Committee acknowledges that the adoption of the ATF is a significant milestone in the development of a multilateral trading system and that it is designed to reduce trade barriers, cut red tape and streamline customs procedures.
- 2.61 The Committee's major concern is the impact that the ATF may have on Australia's ability to control its sanitary and phytosanitary standards. It sought assurances that these regulations will not be threatened by the implementation of the ATF but encourages relevant agencies to be vigilant in this area.
- 2.62 The Committee regards it as important that imported food products are subjected to the same level of sanitary controls and inspections as Australian grown food.
- 2.63 To promote a nationally consistent framework, the Committee encourages the Council of Australian Governments (COAG) to accelerate full implementation of the Intergovernmental Agreement on Biosecurity (IGAB) that came into effect in January 2012.<sup>62</sup>
- 2.64 The Committee supports Australia's ratification of the Protocol and recommends that binding treaty action be taken.

### Recommendation 1

- 2.65 **The Committee supports the World Trade Organization Agreement on Trade Facilitation: Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (including the Agreement on Trade Facilitation annexed to that Protocol) and recommends that binding treaty action be taken.**

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62 Department of Agriculture, 'Intergovernmental Agreement on Biosecurity', <<http://www.agriculture.gov.au/biosecurity/partnerships/nbc/intergovernmental-agreement-on-biosecurity?wasRedirectedByModule=true>>, accessed 24 March 2015.

# First Protocol to Amend the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area

## Introduction

- 3.1 This chapter examines the *First Protocol to Amend the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (AANZFTA)*. The First Protocol was signed on 26 August 2014 and tabled in the Commonwealth Parliament on 10 February 2015.
- 3.2 The AANZFTA is Australia’s largest existing free trade agreement, accounting for 18 per cent of Australia’s total trade in goods and services, worth \$121.6 billion in 2013–14. With a combined population of 650 million people, the Parties to the Agreement account for \$4.1 billion of global GDP.<sup>1</sup>

## Overview and national interest summary

- 3.3 According to the NIA the First Protocol addresses a number of administrative requirements and implementation issues with AANZFTA that have discouraged or hampered business utilization of the Agreement’s provisions when importing or exporting goods. The NIA

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1 Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 2 March 2015, p. 9.

claims that the amendments should facilitate greater business use of AANZFTA.<sup>2</sup>

3.4 The Regulation Impact Statement (RIS) identifies three key problems relating to administrative arrangements for claiming preferential tariff treatment that may be contributing to underutilisation of AANZFTA:

- the Minimum Data Requirements setting out the information that must be included on AANZFTA Certificates of Origin (COO) require traders to disclose information which some companies regard as of a commercial-in-confidence nature; this has either prevented these companies from making use of AANZFTA or forced them to divulge information to either their suppliers or customers that may adversely affect their competitive position;
- the presentation of the Agreement's Product Specific Rules of Origin (PSR) are currently not in a business-friendly format and the format is very different from the PSR in Australia's other free trade agreements (FTAs), imposing additional complexity on business when seeking to determine whether goods comply with the rules of origin; and
- the PSR are also recorded in a superseded version of the Harmonized Commodity Description and Coding System (HS) imposing administrative costs on companies as all other commercial and Customs documents that they need to use are in the current HS version (HS 2012).<sup>3</sup>

3.5 The RIS claims that these issues impose excessive compliance costs on businesses, as they involve information and other requirements which are unnecessary to conform to the substantive obligations of AANZFTA. The issue relating to commercial-in-confidence information may either be:

- resulting in reduced overall trade under AANZFTA; or
- leading multinational corporations and other large companies to directly source products from suppliers at the expense of a range of small and medium sized enterprises who operate as intermediary companies in the sourcing and supply of goods and whose business model is discriminated against by AANZFTA's current requirements.<sup>4</sup>

3.6 The RIS suggests that small and medium sized enterprises may be particularly affected by these requirements. Such businesses are less likely to have dedicated staff with expertise in international trade and therefore

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2 National Interest Analysis [2014] ATNIA 23 with attachments *First Protocol to Amend the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (AANZFTA)*, done at Nay Pyi Taw, 26 August 2014, [2014] ATNIF 27 (hereafter referred to as 'NIA'), para 4.

3 Regulation Impact Statement, *First Protocol to Amend the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area*, November 2014, (hereafter referred to as the 'RIS'), para 2.

4 RIS, para 3.

find it more challenging to ensure that they meet these additional regulatory requirements currently imposed by AANZFTA.<sup>5</sup>

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

3.7 The First Protocol attempts to address the three key problems hindering businesses from taking full advantage of the opportunities presented by AANZFTA.

### **Minimum Data Requirements prevent some companies from using AANZFTA due to concerns about commercial-in-confidence information**

3.8 The AANZFTA Rules of Origin (ROO) require the Free-on-Board (FOB) value of the goods at the country of export to be included on the COO. The FOB value refers to the value of goods at the time of export, including the cost of transport to the port or site of final shipment abroad. No other Australian FTA includes this requirement and Australia opposed the inclusion of the FOB value on the COO during the AANZFTA negotiations. However, ASEAN was not prepared to move on the issue and Australia was forced to agree to the inclusion of the requirement as part of the final negotiated package.<sup>6</sup>

3.9 The purpose of the COO is to provide *prima facie* documentary evidence of the origin of the goods. The RIS maintains that the FOB value is not a necessary requirement for this purpose. Australia therefore considers AANZFTA's requirements in this area as an unnecessary regulatory burden.<sup>7</sup>

3.10 The RIS claims that a range of businesses have expressed concern including that the FOB value on the COO may disclose to their clients the profit margin of companies who act as intermediaries in the sourcing and supply of goods. The RIS states that the companies affected are mainly small and medium sized enterprises, but some larger trading houses and manufacturers may also be affected.<sup>8</sup>

3.11 However, in its submission to the inquiry, the Australian Chamber of Commerce and Industry (ACCI) claims that, although this issue was

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5 RIS, para 4.

6 RIS, para 5.

7 RIS, para 5.

8 RIS, para 6.

initially of concern, business and industry have found means to mitigate the problem:

Over time ... users of the treaty have found ways to avoid disclosing this information to counterparts, and Customs have also allowed this information to be provided on a separate removable sheet. Hence the original issue has been overcome through alternate means. ACCI has not been alerted to any ongoing concerns on this issue for some time and we have not maintained any concerns over this issue for a number of years.<sup>9</sup>

3.12 The RIS states that a wide range of businesses have reported to the Department of Foreign Affairs and Trade (DFAT) and the Australian Customs and Border Protection Service (ACBPS) that they are not claiming tariff preferences available to them solely due to the administrative requirements of the Agreement that would reveal information that these businesses regard as commercial-in-confidence. Therefore Most Favoured Nation (MFN) tariffs continue to be paid adding to the cost of products for consumers while potentially diminishing business competitiveness for those involved.<sup>10</sup>

3.13 The RIS indicates that this issue does not only affect the business opportunities of the intermediary companies. Many of the companies that have complained about this issue to DFAT and ACBPS are customs brokers, freight forwarders or logistics companies involved in enabling various aspects of the supply chain. These trade services companies complain that they are losing business as their client companies are frustrated at being unable to make use of AANZFTA due to their concerns with the FOB value issue.<sup>11</sup>

3.14 As mentioned, the ACCI contests the currency of the data on which these assertions are made and states:

ACCI has asked on a number of occasions for DFAT to provide contemporary information on the number of and level of concerns being raised by industry with regards to the FOB issue, however this has not been forthcoming.<sup>12</sup>

## Complex presentation of the Agreement's Rules of Origin

3.15 The current presentation of the Agreement's ROO involves a combination of:

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9 Australian Chamber of Commerce and Industry (ACCI), *Submission 1*, p. 6.

10 RIS, para 8.

11 RIS, para 12.

12 ACCI, *Submission 1*, p. 6.

- Annex 2 of the Agreement, containing a partial list of PSR, i.e. it only covers a subset of products. Annex 2 sets out the detailed ROO requirements for the products listed, which are identified using the internationally harmonized six-digit HS nomenclature; and
  - a general rule set out in Article 4 of Chapter 3 of the Agreement. This applies to all products not listed in Annex 2. The general rule is a choice of: (i) a Regional Value Content (RVC) of 40 per cent of the FOB value of the good, and the final process of production performed within a Party, or (ii) a change in tariff classification (CTC) at the four-digit level.<sup>13</sup>
- 3.16 Australia's other FTAs present the detailed ROO requirements for individual products in a consolidated annex setting out the PSR for all products. The RIS maintains that the AANZFTA's ROO presentation creates unnecessary complexity for business, and is often the subject of enquiries to DFAT due to both the very different approach compared to other Australian FTAs, and the difficulties in understanding the structure.<sup>14</sup>
- 3.17 The RIS suggests that the set of codes needed to identify the ROO requirement that is met by the product covered by the COO causes further confusion. While the business may correct this issue, the RIS points out that this can incur time and financial costs due to delays while the paperwork is corrected.<sup>15</sup>
- 3.18 The RIS claims that the complex presentation of the ROO continues to generate confusion and frustration, particularly for less experienced small and medium businesses with fewer resources.<sup>16</sup>

### **The nomenclature used to describe the tariff commitments and PSR**

- 3.19 The HS Code is a structured nomenclature that assigns a 6-digit code to every good. The World Customs Organization (WCO) updates the HS regularly, usually every five years, to keep it relevant to the needs of the international community.<sup>17</sup>
- 3.20 The PSR in Annex 2 of AANZFTA is recorded using the 2007 edition of the HS. This was current when AANZFTA was concluded but has since been superseded by the latest revision, HS 2012, which came into effect on 1 January 2012. This version is currently used to complete all export and

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13 RIS, para 13.

14 RIS, para 14.

15 RIS, para 15.

16 RIS, para 16.

17 RIS, para 17.

import declarations in Australia. Most of Australia's trading partners also require the use of HS 2012 on Customs documentation. Commercial documentation would generally also use HS 2012.<sup>18</sup> (An example of an amendment between HS 2007 and HS 2012 is at Attachment A to the RIS.)

3.21 As AANZFTA's PSR are still in HS 2007, this has imposed compliance costs and administrative complexity for business:

- exporters need to apply for an AANZFTA COO using PSR in HS 2007, but all other Customs and commercial documentation for the same goods needs to be in HS 2012. They have to operate in two different versions of the HS, and may need to refer to detailed transposition tables or to HS experts to ensure that they have correctly identified the relevant HS lines under both HS 2007 and HS 2012. In addition, some of the documentation they would use to help determine whether the HS 2007 PSR for the product is met would be in HS 2012 (e.g. import declarations or commercial invoices for non-originating materials); and
- importers need to be in possession of an AANZFTA COO that identifies the goods using HS 2007, but other commercial documentation and the Customs import declaration need to be in HS 2012. They have to apply great care to ensure that they do not claim AANZFTA tariff treatment for the wrong goods or on the basis of incorrect documentation.<sup>19</sup>

3.22 The RIS states that the lack of consistency in the HS used in the AANZFTA ROO with other commercial documentation and the customs import declaration adds to the cost and complexity of international trade. The RIS maintains the time taken to prepare documentation adds compliance costs, potentially impacts on business competitiveness and further undermines the use of AANZFTA tariff preferences.<sup>20</sup>

## Outcomes in the First Protocol

3.23 To address the issues identified above, the following specific outcomes were sought in the First Protocol:

- removal of the requirement to include the FOB value on all COOs, so that affected businesses would be better able to make use of AANZFTA to import and export goods;
- removal of the list of Minimum Data Requirements from the text of the Agreement to allow for more efficient administration of documentation;
- presenting the PSR in a consolidated annex in the HS 2012 version; and

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18 RIS, para 18.

19 RIS, para 19.

20 RIS, para 20.

- improving the arrangements to update tariff schedules to reflect the periodically updated HS.<sup>21</sup>
- 3.24 To achieve these outcomes, the RIS states that the First Protocol will:
- update AANZFTA to reflect modern business practices and further secure Australia's competitiveness in key markets;
  - remove regulatory impediments that have hindered business use of AANZFTA; and
  - make AANZFTA more consistent with Australia's other FTAs, reducing the regulatory complexity faced by businesses using the FTAs to import or export goods.<sup>22</sup>

## Obligations

- 3.25 **Article 1** provides for the insertion of a new **Article 13** (Transposition of Schedules of Tariff Commitments) into AANZFTA, which will require the Parties to carry out transposition of the schedules of tariff commitments without impairing existing tariff concessions and in accordance with procedures to be adopted by the Committee on Trade in Goods.<sup>23</sup>
- 3.26 **Article 2** provides for the replacement of the existing **Articles 4** and **9** with amended versions of each Article to reflect the change to a consolidated PSR Annex.<sup>24</sup>
- 3.27 **Article 3** provides for amendments to the Annex on Operational Certification Procedures (OCP) of **Chapter 3** (Rules of Origin), with rules 6, 7 and 10 to be replaced by new rules 6, 7 and 10 relating to the content, issuance and acceptance of COO. These amendments are necessary to reflect the deletion of the list of Minimum Data Requirements.<sup>25</sup>
- 3.28 **Article 4** provides for the replacement of the existing **Annex 2**, which sets out PSR for only some products, in the HS 2007 nomenclature, with a new **Annex 2** of consolidated PSR, in the HS 2012 nomenclature, applying to all products.<sup>26</sup>
- 3.29 **Appendix 1** sets out the new version of **Chapter 2** as a result of the amendments provided for in **Article 1**.<sup>27</sup>

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21 RIS, para 23.

22 RIS, para 68.

23 NIA, para 14.

24 NIA, para 15.

25 NIA, para 16.

26 NIA, para 17.

27 NIA, para 18.

- 3.30 **Appendices 2A and B** set out the new version of **Chapter 3**, as a result of the amendments provided for in **Article 2**, and the replacement OCP, as a result of the amendments provided for in **Article 3**.<sup>28</sup>
- 3.31 **Appendix 3** is the List of Data Requirements that the Parties will apply as a transitional measure until the Parties adopt a List of Data Requirements.<sup>29</sup>
- 3.32 **Appendix 4** sets out the replacement **Annex 2** (PSR), as provided for in **Article 4**.<sup>30</sup>

## Implementation

- 3.33 Implementation of the First Protocol will require amendment of the *Customs (ASEAN–Australia–New Zealand Free Trade Agreement Rules of Origin) Regulations (2009)*. The amendment will replace the existing PSR in the Regulations, which are recorded in the HS 2007 nomenclature, with equivalent PSR recorded in the HS 2012 nomenclature.<sup>31</sup>
- 3.34 The other aspects of the First Protocol will be implemented administratively. The two Issuing Authorities for FTA Certificates of Origin, the Australian Chamber of Commerce and Industry and the Australian Industry Group (Ai Group), will implement the First Protocol by issuing Certificates of Origin using the HS 2012 PSR, and no longer requiring all applications for a Certificate of Origin to include the Free-on-Board value. The ACBPS will also no longer require Certificate of Origin to include the Free-on-Board value.<sup>32</sup>

## Implementation timeframe

- 3.35 The RIS states that the Agreement will enter into force 30 days after Australia, New Zealand and at least four ASEAN Member States have notified all AANZFTA Parties that they have completed their internal requirements necessary for entry-into-force. The Agreement would enter into force for other ASEAN Member States 30 days after they notify all Parties they have completed their internal processes. Parties are aiming for entry-into-force in the first half of 2015.<sup>33</sup>

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28 NIA, para 19.

29 NIA, para 20.

30 NIA, para 21.

31 NIA, para 22.

32 NIA, para 23.

33 RIS, para 72. There are currently 10 ASEAN countries: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

- 3.36 This indicates that implementation of the First Protocol will be staggered across the Parties. Further, **Appendix 3** of the Agreement states that for Cambodia and Myanmar, the FOB value shall be included in the COO for all goods for two years from the date of entry into force.<sup>34</sup>
- 3.37 ACCI warn that the staggered, non-uniform implementation process will cause ongoing problems for business during the transition period:
- ... [staggered implementation of] the protocol will mean Australian businesses constantly have to check whether their goods going through the free trade zone will comply with specific requirements where supply chains reach across borders, or else face a loss of the tariff concession. By agreeing to staggered implementation and varied conferring criteria ... parties have made the AANZFTA more complicated and therefore more costly to use for business, risking a commensurate reduction in utilisation of the agreement by Australian business.<sup>35</sup>
- 3.38 DFAT acknowledge the concerns but warns that waiting for uniform implementation will cause considerable delay.<sup>36</sup> DFAT emphasise that all Parties are working closely together to ensure that implementation facilitates business:
- Officials and representatives of the COO issuing bodies from all parties will meet at the end of April to develop arrangements to ensure a business-friendly implementation of the first protocol, including looking at coordination over business activities.<sup>37</sup>
- 3.39 DFAT told the Committee that representatives from Australia's Certificate of Origin issuing bodies, the ACCI and Ai Group, have been invited to attend the meeting in April 2015.<sup>38</sup>

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34 *First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area*, Appendix 3, ft 1.

35 ACCI, *Submission 1*, p. 13.

36 Dr Church, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 10.

37 Dr Church, DFAT, *Committee Hansard*, Canberra, 2 March 2015, pp. 9-10.

38 Dr Church, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 10.

## Costs

- 3.40 According to the NIA, there will be no additional costs to Government administration due to the implementation of the First Protocol, as the amendments it contains will not involve any change in the implementation of the ROO and tariff commitments by ACBPS. Updating of AANZFTA's PSR and tariff schedules to address periodic updates to the HS is a normal part of implementation of FTAs and no additional costs are envisaged.<sup>39</sup>
- 3.41 The NIA also states that the Agreement will not involve any additional ongoing costs for the Issuing Authorities and may generate new business and revenue for them through greater business use of the AANZFTA. The NIA concedes that there may be some small transitional expenses for the Issuing Authorities to ensure personnel are fully trained to implement any necessary changes to COO forms and processing arrangements.<sup>40</sup>
- 3.42 The RIS states that the Agreement is a deregulatory measure which will reduce the regulatory requirements and compliance costs for Australian businesses using AANZFTA. A Regulatory Burden Measurement is at **Attachment B** of the RIS which sets out an example of the possible ongoing savings for exporters and importers.<sup>41</sup>
- 3.43 On the other hand, ACCI argue that the staggered implementation of the First Protocol across the Parties will result in multiple sets of rules to use AANZFTA and may mean that 'two types of AANZFTA Certificates of Origin may be required for a single shipment of goods.' ACCI claim that both the NIA and the RIS 'ignore the resulting cost realities for business caused by the duplication'.<sup>42</sup>
- 3.44 DFAT informed the Committee that attempts are being made to ensure that businesses will only have to deal with one system during the transition period:
- The indication we are getting ... is that there will probably be only one system and that, for most of the parties, even if the protocol enters into force for a number of parties but not for that country then they will still be prepared to accept the new Certificate of Origin and the new presentation of the rules of origin. That would mean, in the case of Australia, that exporters and the certificate of origin authorities will have one system to operate from the point

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39 NIA, para 24.

40 NIA, para 25.

41 RIS, Attachment B: Regulatory Burden Measurement, para 1, 5-7.

42 ACCI, *Submission 1*, p. 7.

when this enters into force for Australia. There may be one or perhaps two countries where that does not happen, so we are talking about a very manageable problem from our perspective.<sup>43</sup>

3.45 ACCI also claim that the changes to the pro forma AANZFTA COO which is hard-coded into many business information systems will require costly changes.<sup>44</sup> DFAT assured the Committee that the proposed changes to the COO form are necessary to establish clarity and will be minimal:

We expect that there will be some small changes. These will only be to some elements, identifying what is actually entered into particular boxes, and that is to have clarity ... Leaving the Certificate of Origin unchanged could actually give rise to confusion for business.<sup>45</sup>

## Conclusion

3.46 The Committee acknowledges concerns that the transition period could prove difficult for some small to medium businesses if it is not managed effectively. The Committee urges relevant departments to monitor the transition period carefully and provide adequate assistance to businesses that may be affected.

3.47 The Committee supports Australia's ratification of the Protocol and recommends that binding treaty action be taken.

### Recommendation 2

3.48 **The Committee supports the *First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* and recommends that binding treaty action be taken.**

43 Dr Church, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 10.

44 ACCI, *Submission 1*, p. 7.

45 Dr Church, DFAT, *Committee Hansard*, Canberra, 2 March 2015, p. 10.



# Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam

## Introduction

4.1 This chapter considers the *Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam* which was tabled in the Commonwealth Parliament on 2 December 2014.

## Overview and national interest summary

4.2 The NIA defines mutual assistance as a formal process whereby the Government of one country (the Requesting Party) requests assistance from the Government of another country (the Requested Party) in relation to a criminal investigation or prosecution. Assistance may extend to locating, restraining and forfeiting the proceeds of criminal activity in the Requested Party's jurisdiction in relation to criminal activity that took place in the Requesting Party.<sup>1</sup>

4.3 Australia is currently party to 29 mutual assistance treaties. Such treaties establish a framework of practical arrangements based on mutual obligation enabling Australia to request and provide information and evidence for investigating or prosecuting serious crimes. According to the NIA it is in Australia's interests to be able to provide and request the widest possible assistance in criminal matters, so that criminals cannot

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1 National Interest Analysis [2014] ATNIA 20 with attachments on consultation *Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam*, done at Sydney, 2 July 2014, [2014] ATNIF 22 (hereafter referred to as 'NIA'), para 3.

evade justice where evidence of their criminal conduct is located in a foreign jurisdiction. This requires a responsive and streamlined mutual assistance framework.<sup>2</sup>

- 4.4 The Attorney-General's Department reiterated the importance of these type of treaties in developing and strengthening international crime cooperation relationships:

Treaties on mutual assistance are vitally important in enabling Australia to work effectively with countries in the fight against transnational crime.<sup>3</sup>

- 4.5 Australia does not currently have a bilateral agreement with Vietnam to facilitate mutual assistance. Australia and Vietnam are parties to multilateral conventions that contain mutual assistance obligations and can also provide the other country with assistance on the basis of reciprocity. The Attorney-General's Department emphasised the strength of the current relationship and the high level of cooperation that exists between the two countries:

Vietnam and Australia already have a close and supportive bilateral relationship, with a good strong record of cooperation between our law enforcement agencies and our justice agencies. The strength of this partnership is demonstrated by the fact that Vietnam and Australia have existing treaties ... on extradition and international transfer of prisoners. The strength of the relationship is also underlined by the AFP's relationship with its counterparts in Vietnam.<sup>4</sup>

- 4.6 However, the NIA cautions that in situations where no multilateral convention applies, there is no obligation on either country to consider a request for assistance from the other country. Therefore, this Agreement could provide a more comprehensive framework to govern bilateral mutual legal assistance between Australia and Vietnam as well as clarity and certainty about the procedures and processes to be used in making and executing mutual assistance requests.<sup>5</sup>

- 4.7 The NIA suggests that the Agreement will add to Australia's existing network of bilateral mutual assistance treaties and its mutual assistance obligations under a number of multilateral conventions. The NIA states that the safeguards and protections in the Agreement are consistent with

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2 NIA, para 4.

3 Ms Catherine Hawkins, Acting First Assistant Secretary, International Crime Cooperation Division, Attorney-General's Department, *Committee Hansard*, Canberra, 2 March 2015, p. 12.

4 Ms Hawkins, Attorney-General's Department, *Committee Hansard*, Canberra, 2 March 2015, p. 12.

5 NIA, para 5.

those contained in the *Mutual Assistance in Criminal Matters Act 1987* and that it can be implemented by regulation under Australia's existing domestic legislative framework for mutual assistance.<sup>6</sup>

## Reasons for Australia to take the proposed treaty action

- 4.8 The NIA states that Vietnam is an important partner in Southeast Asia for the Australian Government's efforts to combat transnational crime and the Agreement will ensure that Australia can provide, request and receive assistance to and from Vietnam in accordance with clearly defined and mutually agreed terms.<sup>7</sup>
- 4.9 Currently Australia and Vietnam have mutual assistance laws which enable assistance to be requested and provided in the absence of a treaty. However, the NIA maintains that the Agreement has a range of benefits over the current arrangement. The NIA proposes that the Agreement will provide certainty, impose obligations at international law and institute practical arrangements for requesting and providing assistance. The NIA places particular importance on the Agreement obliging Vietnam to consider Australian requests for assistance where the requirements set out in the Agreement are met. In the absence of a treaty, the NIA suggests that there are no assurances that Australia's requests will be considered.<sup>8</sup>
- 4.10 The NIA identifies a number of important safeguards and human rights protections in the Agreement, including the ability to refuse to provide assistance in cases where there is a risk that the death penalty may be imposed or carried out, the request has been made for the purpose of prosecuting someone on discriminatory grounds, or where double jeopardy<sup>9</sup> or dual criminality<sup>10</sup> considerations apply.<sup>11</sup>

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6 NIA, para 6.

7 NIA, paras 7 and 8.

8 NIA, para 9.

9 'Double jeopardy' describes a situation where a person is tried twice for the same offence.

10 'Dual criminality' means that the conduct in question would be an offence in both Australia and Vietnam.

11 NIA, para 10.

## Obligations

- 4.11 The Agreement will oblige Australia and Vietnam (the Parties) to grant one another's requests for assistance in criminal investigations and related proceedings in accordance with their respective laws and the provisions of the Treaty (**Article 1(1)**). The assistance to be provided may include:
- taking evidence and obtaining statements of persons, including the execution of letters rogatory (**Article 1(3)(a)**);
  - providing documents, records and evidence (**Article 1(3)(b)**);
  - locating and identifying persons (**Article 1(3)(c)**);
  - executing requests for search and seizure (**Article 1(3)(d)**);
  - locating, restraining and forfeiting proceeds and/or instruments of crime (**Article 1(3)(e)**);
  - seeking the consent of persons in custody and others to give evidence or to assist in investigations (**Article 1(3)(f)**);
  - serving documents (**Article 1(3)(g)**);
  - collecting forensic material (**Article 1(3)(h)**);
  - exchanging information (**Article 1(3)(i)**); and
  - other assistance consistent with the objects of the Treaty, which is not inconsistent with the laws of the Requested Party (**Article 1(3)(j)**).<sup>12</sup>
- 4.12 Mutual assistance under the Agreement does not include extradition, the execution of criminal judgments or the transfer of prisoners (**Article 1(4)**). Australia has existing treaties with Vietnam covering extradition<sup>13</sup> and the transfer of prisoners.<sup>14</sup>
- 4.13 **Article 2** specifies that the Agreement will not affect the obligations of the Parties arising from any other instrument to which both are parties, or otherwise. This would include situations where a Party has a specific obligation to refuse mutual assistance under an international treaty outside of the present Agreement.<sup>15</sup>
- 4.14 The obligation to provide assistance in **Article 1** is subject to a number of internationally accepted mandatory and discretionary grounds for refusal which largely reflect the existing grounds contained in the Mutual Assistance Act. Under **Article 4(1)**, the Requested Party must refuse to provide assistance in any of the following circumstances:
- where execution of the request would prejudice the Requested Party's sovereignty, security, national interest or other essential

12 NIA, para 11.

13 *Treaty between Australia and the Socialist Republic of Viet Nam on Extradition*, (Canberra, 10 April 2012), [2014] ATS 7.

14 *Agreement between the Government of Australia and the Socialist Republic of Viet Nam concerning the Transfer of Sentenced Persons* (Canberra, 13 October 2008), [2009] ATS 27.

15 NIA, para 13.

interests (**Article 4(1)(a)**, which corresponds with the mandatory ground of refusal contained in paragraph 8(1)(e) of the Mutual Assistance Act);

- where execution of the request would be contrary to the fundamental principles of its domestic laws and international agreements to which it is a party (**Article 4(1)(a)**);
- where the person to whom the request relates would be exposed to 'double jeopardy'; that is, where that person has already been acquitted, pardoned, or punished under the laws of the Requested Party, the Requesting Party or another country in respect of the same act or omission (**Article 4(1)(b)**, which corresponds with the discretionary ground of refusal contained in paragraph 8(2)(c) of the Mutual Assistance Act);
- where a lapse of time has meant that the person to whom the request relates has become immune from prosecution under the laws of the Requested Party (**Article 4(1)(c)**);
- the request relates to an offence which is not criminalised in both countries (dual criminality requirement) (**Article 4(1)(d)**, which corresponds with the discretionary ground of refusal contained in paragraph 8(2)(a) of the Mutual Assistance Act);
- the request relates to an offence which the Requested Party considers as being of a political character (**Article 4(1)(e)**, which corresponds with the mandatory ground of refusal contained in paragraph 8(1)(a) of the Mutual Assistance Act);
- the request relates to an offence that is regarded by the Requested Party as an offence under its military law but not also an offence under its ordinary criminal law (**Article 4(1)(f)**, which corresponds with the mandatory ground of refusal contained in paragraph 8(1)(d) of the Mutual Assistance Act);
- the Requested Party considers that there are substantial grounds for believing the request has been made for the purpose of investigating, prosecuting or punishing a person on account of race, sex, sexual orientation, religion, nationality or political opinion, or that the person's position may be prejudiced for any of these reasons (**Article 4(1)(g)**, which corresponds with the mandatory ground of refusal contained in paragraph 8(1)(c) of the Mutual Assistance Act); or
- the Requested Party considers that there are substantial grounds for believing that if the request was granted, any person would be in danger of being subjected to torture (**Article 4(1)(h)**, which corresponds with the mandatory ground of refusal contained in paragraph 8(1)(ca) of the Mutual Assistance Act.<sup>16</sup>

4.15 **Article 4(2)** sets out discretionary grounds for refusal. Parties may refuse assistance if provision of the assistance:

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<sup>16</sup> NIA, para 14.

- could prejudice an investigation or proceeding in the Requested Party (**Article 4(2)(a)(i)**), which corresponds with the discretionary ground of refusal contained in paragraph 8(2)(d) of the Mutual Assistance Act);
- would, or would be likely to, prejudice the safety of any person (**Article 4(2)(a)(ii)**), which corresponds with the discretionary ground of refusal contained in paragraph 8(2)(e) of the Mutual Assistance Act); or
- would impose an excessive burden on resources (**Article 4(2)(a)(iii)**), which corresponds with the discretionary ground of refusal contained in paragraph 8(2)(f) of the Mutual Assistance Act).<sup>17</sup>

4.16 Vietnam retains the death penalty for serious crimes including drug offences. Australia has a long-standing policy of opposition to the death penalty. The provision in **Article 4(2)(b)** relating to the death penalty reflects Australia's policy position and domestic legal requirements. Under the Agreement, Parties may refuse assistance if the request relates to an offence punishable by the death penalty unless the Requesting Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out (**Article 4(2)(b)**), which operates consistently with the existing provisions in subsections 8(1A) and 8(1B) of the Mutual Assistance Act).<sup>18</sup>

4.17 The Committee questioned the strength of the treaty to compel Vietnam to abide by an undertaking not to impose or carry out the death penalty. The Attorney-General's Department explained that such undertakings are considered quite strong in international law and it is unlikely that it would not be honoured:

It would be a very big deal for the ongoing bilateral international crime cooperation relationship if a country did actually breach an undertaking.<sup>19</sup>

4.18 Further, the Agreement acts concurrently with the Mutual Assistance Act, providing a general discretion for the relevant Minister to take into account all relevant considerations:

Section 8 of the Mutual Assistance in Criminal Matters Act draws a distinction between whether or not a person has been charged, arrested, detained or convicted. For one part, it is where a request is received in circumstances where no person has been charged, arrested, detained or convicted of an offence that could result in the death penalty – in the early investigatory stages is effectively

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17 NIA, para 15.

18 NIA, para 16.

19 Ms Hawkins, Attorney-General's Department, *Committee Hansard*, Canberra, 2 March 2015, pp. 13-14.

what that is. There is a general discretion to refuse assistance. In determining whether to provide that assistance the Attorney or the minister as the decision maker takes into account a range of interests of international co-operation, as well as the likelihood of the death penalty being imposed as a result of the assistance.<sup>20</sup>

4.19 The Committee asked if the decision would rest with the Attorney-General if the case was being dealt with by the Australian Federal Police (AFP) or other agencies. The Mutual Assistance Act only refers to formal government-to-government mutual assistance requests. Informal requests between other agencies is governed by AFP guidelines:

... in terms of agency-to-agency requests, the circumstances in which the AFP would provide assistance are governed by AFP national guidelines on death penalty assistance. So that is a separate consideration. In terms of decisions about mutual assistance, it is actually the Attorney or the Minister for Justice – in practice, it is usually the Minister for Justice – who makes the decision about mutual assistance.<sup>21</sup>

4.20 **Article 4(4)** provides that, prior to refusing assistance, the Requested Party must consider whether assistance could be granted subject to any necessary conditions. If the Requesting Party accepts conditional assistance, it must comply with the conditions.<sup>22</sup>

4.21 **Article 5** outlines the content of mutual assistance requests. **Article 5(1)** lists the information that is to be included in a request, including:

- a description of the assistance sought, including the purpose (**Article 5(1)(a)**);
- contact details of the competent authority (**Article 5(1)(b)**);
- a summary of the case (**Article 5(1)(c)**);
- a description of the alleged offence (**Article 5(1)(d)**);
- in asset recovery matters: the order of the competent authority (**Article 5(1)(e)**);
- details of any particular procedures or requirements to be followed (**Article 5(1)(f)**);
- any requirements for confidentiality or limitations on the use of the information (**Article 5(1)(g)**); and
- any time limits for compliance with the request (**Article 5(1)(h)**).<sup>23</sup>

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20 Ms Hawkins, Attorney-General's Department, *Committee Hansard*, 2 March 2015, p. 14.

21 Ms Hawkins, Attorney-General's Department, *Committee Hansard*, 2 March 2015, p. 14.

22 NIA, para 17.

23 NIA, para 18.

- 4.22 **Article 5(2)** lists other information that may facilitate execution of the request and should also be included, where possible.<sup>24</sup>
- 4.23 **Article 6** requires each Party to execute requests for assistance in accordance with its laws, and to the extent those laws permit, in the manner requested (**Article 6(1)**). If the Requested Party becomes aware of circumstances likely to cause significant delay in responding to the request for assistance, it must promptly inform the Requesting Party (**Article 6(3)**). The Requested Party must also promptly inform the Requesting Party if it is unable to comply, in whole or in part, with a request for assistance and, to the extent possible, the reasons for that non-compliance (**Article 6(4)**).<sup>25</sup>
- 4.24 **Article 7** provides for all material provided under the Agreement to be returned to the Requested Party once it is no longer needed.<sup>26</sup>
- 4.25 **Article 8** provides that the Requesting Party may require that an application for assistance and the granting of assistance be kept confidential (**Article 8(1)**). The Requested Party may also require that information and evidence it provides be kept confidential, except to the extent that the information and evidence is needed for the investigation or proceeding to which the request relates (**Article 8(3)**). The information and evidence obtained may not be used or disclosed by the Requesting Party for purposes other than those stated in the request without prior consent of the Requested Party (**Article 8(4)**).<sup>27</sup>
- 4.26 **Articles 9 to 18** set out specific requirements for the various forms of assistance available. This includes:
- service of documents (**Article 9**);
  - taking of evidence (**Article 10**);
  - obtaining voluntary statements of persons (**Article 11**);
  - the availability of persons in custody to give evidence or to assist investigations (**Article 12**);
  - the availability of other persons to give evidence or assist investigations (**Article 13**);
  - the guarantee of safe conduct of any person who is in the Requesting Party in order to give evidence or assist in investigations, pursuant to a request made by the Requesting Party (**Article 14**);
  - provision of publicly available and official documents (**Article 15**);
  - certification and authentication requirements for documents, records or objects provided through a request for assistance (**Article 16**);
  - search and seizure (**Article 17**); and

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24 NIA, para 19.

25 NIA, para 20.

26 NIA, para 21.

27 NIA, para 22.

- requests relating to proceeds and instruments of crime (**Article 18**).<sup>28</sup>
- 4.27 **Article 19** provides that the Parties may enter into subsidiary arrangements consistent with the purposes of the Agreement and with the laws of both Parties.<sup>29</sup>
- 4.28 **Article 20(1)** provides that the Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance, and shall otherwise represent the interests of the Requesting Party.<sup>30</sup>
- 4.29 **Article 21** provides for the Parties to consult with each other promptly concerning the interpretation, application or carrying out of the Agreement.<sup>31</sup>
- 4.30 Under **Article 22(3)** either Party may terminate the Agreement by written notice at any time.<sup>32</sup>

## Implementation

- 4.31 The NIA proposes that the Agreement will be implemented through making regulations under section 44 of the Mutual Assistance Act consistent with the implementation of other mutual assistance treaties entered into by Australia. Section 7 of the Mutual Assistance Act allows regulations to provide that the Act applies to a specified foreign country subject to any mutual assistance treaty between that country and Australia that is set out in the regulations. This is the mechanism through which mutual assistance treaties are given effect in Australia's domestic law.<sup>33</sup>

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28 NIA, para 23.

29 NIA, para 24.

30 NIA, para 25.

31 NIA, para 26.

32 NIA, para 32.

33 NIA, para 29.

## Costs

- 4.32 **Article 20(2)** of the Agreement provides that the Requested Party shall meet the ordinary costs of fulfilling the request for assistance, and the Requesting Party shall bear the travel expenses of any person travelling to or from the Requested Party in connection with a mutual assistance request, including custodial or escorting officers. Where expenses are of a substantial or extraordinary nature the Parties shall consult to determine the terms and conditions upon which the request shall be executed and the manner in which costs shall be allocated (**Article 20(3)**).<sup>34</sup>
- 4.33 The NIA states that, in accordance with the usual practice for mutual assistance requests, expenses incurred by Australia when making or responding to mutual assistance requests under the Agreement will be met from existing budgets, principally those of the Commonwealth Attorney-General's Department and the Australian Federal Police (who execute the majority of requests) in relation to Vietnamese requests, and by the Australian investigative and prosecutorial agencies seeking assistance in relation to Australian requests.<sup>35</sup>

## Conclusion

- 4.34 The Committee recognises the contribution that mutual assistance treaties make to developing and strengthening Australia's international crime cooperation relationships and that this particular Agreement will strengthen Australia's international crime-fighting capacity in the region.
- 4.35 The Committee acknowledges the Attorney-General's Department's evidence that undertakings given regarding the imposition of the death penalty by Vietnam can be expected to be honoured and that the Attorney-General has sufficient discretion to refuse a request if concerns arise.

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34 NIA, para 27.

35 NIA, para 28.

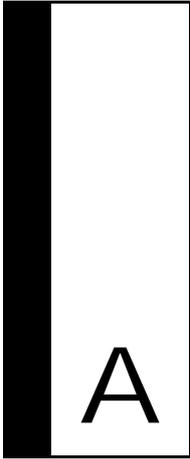
4.36 The Committee supports Australia's ratification of the Agreement and recommends that binding treaty action be taken.

### **Recommendation 3**

4.37 **The Committee supports the *Treaty on Mutual Legal Assistance in Criminal Matters between Australia and the Socialist Republic of Viet Nam* and recommends that binding treaty action be taken.**

Mr Wyatt Roy MP  
Chair





## Appendix A - Submissions

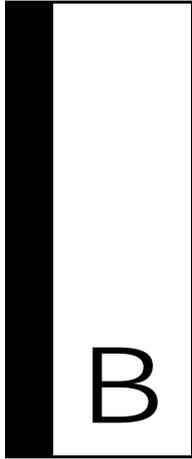
### Treaty tabled on 18 June 2014

- 1 Charles Sturt University
- 2 Australian Food and Grocery Council
- 3 Australian Chamber of Commerce and Industry
- 4 Australian Industry Group
- 5 Export Council of Australia
- 6 Department of Agriculture
- 7 Department of Foreign Affairs and Trade

### Treaty tabled on 24 November 2014

- 1 Australian Chamber of Commerce and Industry





## Appendix B - Witnesses

**Monday, 2 March 2015—Canberra**

**Department of Foreign Affairs and Trade**

Mr Justin Baguley, Director, Vietnam and Cambodia Section, South-East Asia Mainland Bilateral Branch, South-East Asia Mainland and Regional Division

Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division

Mr Stephen Dietz, Legal Officer, Trade Law Branch, Office of Trade Negotiations

Mr Richard Emerson-Elliott, Director, Industrials and Market Access Section, Goods and Investment Branch, Office of Trade Negotiations

Mr Paul Gibbons, Director, South-East Asia Goods Branch, Free Trade Agreement Division

Ms Patricia Hewitson, Acting Director, Treaties Secretariat, Sanctions, Treaties and Transnational Crime Legal Branch

Ms Helen Stylianou, Assistant Secretary, Services and WTO Trade Policy Branch

Mr Cody Wilson, Trade Policy Officer, South-East Asia Goods Branch, Free Trade Agreement Division

**Attorney General's Department**

Ms Catherine Hawkins, Acting First Assistant Secretary, International Crime Cooperation Division

Ms Briony Martin, Acting Principal Legal Officer, Transnational Crime Section, Transnational Crime and Corruption Branch, International Crime Cooperation Division

Ms Susan Williamson-DeVries, Principal Legal Officer, Extradition and Mutual Assistance, International Crime Cooperation Central Authority, International Crime Cooperation Division

**Department of Agriculture**

Ms Nicola Hinder, Assistant Secretary, Pathway Compliance, Compliance Division

Mr David Ironside, Acting Assistant Secretary, Compliance Arrangements, Compliance Division

**Australian Customs and Border Protection Service**

Ms Anita Langford, Acting Assistant Secretary, Trade Branch, Trade, Customs and Industry Policy Division

Ms Sharon Nyakuengama, Acting First Assistant Secretary, Trade, Customs and Industry Policy Division