Report 166

Implementation Procedures for Airworthiness-USA; Convention on Choice of Courts-accession; GATT Schedule of Concessions-amendment; Radio Regulations-partical revision

Joint Standing Committee on Treaties
Executive Summary

This report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- Amendment 1 to Revision 1 of the Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance Between Authorities, under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America and Addendum to the Implementation Procedures for Airworthiness between the Government of Australia and the Government of the United States of America;

- Australia’s Accession to the Convention on Choice of Court Agreements (The Hague, 30 June 2005);

- Amendment of Australia’s Schedule of Concessions under the General Agreement on Tariffs and Trade 1994 (GATT) and the Marrakesh Agreement establishing the World Trade Organization for Implementation of Ministerial Declaration on the Expansion of Trade in Information Technology Products (Nairobi, 16 December 2015) and Ministerial Decision -Export Competition (Nairobi, 19 December 2015); and


The inquiry into the Treaties Implementation Procedures for Airworthiness—USA and Australia’s Accession to the Convention on Choice of Court Agreements lapsed at the
end of the 44th Parliament and were re-referred at the beginning of the 45th Parliament. As the previous Committee had called for submissions and conducted a public hearing for the first treaty action, the current Committee resolved to adopt the evidence received by the previous Committee for this treaty action. However, the Committee did pose a number of questions on notice to relevant departments requesting further evidence.

The revision of the implementation procedures for the Bilateral Aviation Safety Agreement (BASA) between Australia and the United States identify additional Civil Aviation Safety Authority (CASA) design approvals which will be accepted by the United States as the basis for Federal Aviation Administration (FAA) design approvals. Relevant Australian manufacturers are expected to benefit from the implementation of the changes to BASA. However, the resourcing and efficiency of CASA were questioned during the inquiry.

The Convention on Choice of Court Agreements sets out how courts will treat jurisdiction clauses in private contracts. In these clauses, the contracting parties agree in which court system they will resolve any disputes. Australia’s accession to the Convention will provide greater clarity and certainty in this area.

The amendments to Australia’s Schedule of Concessions in the General Agreement on Tariffs and Trade 1994 (GATT) will remove tariffs on a range of technology products and eliminate agricultural export subsidies for parties to the WTO agreement. The Committee acknowledges the significance of these two Ministerial Decisions. While it notes that both will provide incremental improvements for Australian consumers and farmers, the Committee is acutely aware that further work needs to be done to reduce domestic subsidies and non-tariff barriers if more progress is to be made on liberalising global trade.

The partial revision of the Radio Regulations updates the international use of the radiofrequency spectrum, including the allocation of spectrum to radiocommunications services. Australia has lodged a number of reservations and declarations to the revision.

The Committee has recommended that the four treaty actions reviewed in this report be ratified.
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Abbreviations

ACMA    Australian Communications and Media Authority
AGD    Attorney-General’s Department
AIS    Automatic Identification System
ARSP    Australian Radiofrequency Spectrum Plan
ASRR    Aviation Safety Regulations Review
CASA    Civil Aviation Safety Authority
CASR    *Civil Aviation Safety Regulations 1998*
CWT    Cooperatives Working Together
DFAT    Department of Foreign Affairs and Trade
EU    European Union
FAA    Federal Aviation Administration
GATT    *General Agreement on Tariffs and Trade 1994*
IMT    International Mobile Telecommunications
ISDS    Investor-State Dispute Settlement
ITU    International Telecommunications Union
<table>
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<tr>
<th>Acronym</th>
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<tr>
<td>JSCOT</td>
<td>Joint Standing Committee on Treaties</td>
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<tr>
<td>NIA</td>
<td>National Interest Analysis</td>
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<tr>
<td>RIS</td>
<td>Regulation Impact Statement</td>
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<tr>
<td>STC</td>
<td>Supplemental Type Certificate</td>
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<td>URAA</td>
<td>Uruguay Round Agreement on Agriculture</td>
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<td>WRC</td>
<td>World Radiocommunication Conference</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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Members

Chair

Hon Stuart Robert MP

Deputy Chair

Senator the Hon Don Farrell (to 07.11.16)\(^1\)

Hon Michael Danby MP (from 07.11.16)\(^2\)

Members

Mr John Alexander OAM MP (from 07.11.16)

Senator Chris Back

Mr Chris Crewther MP

Senator Sam Dastyari (from 08.11.16)

Senator David Fawcett

Senator Sarah Hanson-Young

\(^1\) Senator the Hon Don Farrell resigned as Deputy Chair of the Committee on 7 November 2016 and was discharged from the Committee on 8 November 2015.

\(^2\) The Hon Michael Danby MP was appointed to the Committee on 17 October 2016 and elected Deputy Chair of the Committee on 7 November 2016.
Ms Madeleine King MP (to 17.10.16)
Senator Kimberley Kitching (from 10.11.16)
Senator the Hon Ian Macdonald
Ms Nola Marino MP
Senator Jenny McAllister
Mr Ken O'Dowd MP (to 07.11.16)
Senator Glenn Sterle (to 10.11.16)
Ms Susan Templeman MP
Mr Ross Vasta MP
Mr Andrew Wallace MP
Mr Josh Wilson MP
Committee Secretariat

Ms Lynley Ducker, Committee Secretary

Dr Narelle McGlusky, Inquiry Secretary

Mr Kevin Bodel, Senior Researcher

Mr James Bunce, Senior Researcher

Cathy Rouland, Office Manager
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 questions relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
   i either House of the Parliament, or
   ii a Minister; and

c such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.
List of Recommendations

Recommendation 1

2.48 The Committee supports the following two treaty actions and recommends that binding treaty action be taken:

- Amendment 1 of Revision 1 of the Implementation Procedures for Airworthiness between the Government of Australia and the Government of the United States of America; and


Recommendation 2

3.21 The Committee supports the accession to the 2005 Hague Convention on Choice of Court Agreements and recommends that binding treaty action be taken.

Recommendation 3

4.28 The Committee recommends that the amendments to Australia’s Schedule of Concessions in the General Agreement on Tariffs and Trade 1994 (GATT) incorporated into Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization to give effect to commitments made under the World Trade Organization (WTO) Ministerial Declaration on the Expansion of Trade in Information Technology Products and Ministerial Decision on Export Competition be ratified and binding treaty action be taken.
Recommendation 4

5.33 The Committee supports the *Partial Revision of the 2012 Radio Regulations as incorporated in the International Telecommunication Union Final Acts of the World Radiocommunications Conference (WRC-15)* (Geneva, 27 November 2015) and recommends that binding treaty action be taken.
1. Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- Amendment 1 to Revision 1 of the Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance Between Authorities, under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America and Addendum to the Implementation Procedures for Airworthiness between the Government of Australia and the Government of the United States of America;¹

- Australia’s Accession to the Convention on Choice of Court Agreements (The Hague, 30 June 2005);²

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¹ The inquiry into the Treaty on Implementation Procedures for Airworthiness — USA lapsed at the end of the 44th Parliament. The Treaty was re-referred at the beginning of the 45th Parliament and the current Committee resolved to accept the evidence received by the previous Committee and not call for further submissions or conduct further public hearings. However, the Committee did pose a number of questions on notice to relevant departments requesting further evidence.

² The inquiry into the Treaty on Australia’s Accession to the Convention on Choice of Court Agreements lapsed at the end of the 44th Parliament. The Treaty was re-referred at the beginning of the 45th Parliament.
• Amendment of Australia’s Schedule of Concessions under the General Agreement on Tariffs and Trade 1994 (GATT) and the Marrakesh Agreement establishing the World Trade Organization for Implementation of Ministerial Declaration on the Expansion of Trade in Information Technology Products (Nairobi, 16 December 2015) and Ministerial Decision -Export Competition (Nairobi, 19 December 2015); and


1.2 The Committee’s resolution of appointment empowers it to inquire into any treaty to which Australia has become a 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 treaties examined in this report did not require a RIS.

1.6 The Committee takes account of these documents in its examination of the treaty texts, in addition to other evidence taken during the inquiry program.

1.7 Copies of the treaties considered in this report and associated documentation may be obtained from the Committee Secretariat or accessed through the Committee’s website at:
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 inquiries were requested by:

- 23 September 2016 for the amendment of Australia’s Schedule of Concessions under the General Agreement on Tariffs and Trade 1994;
- 26 September 2016 for Accession to the Convention on Choice of Court Agreements; and

1.9 Invitations were made to all State Premiers, Territory Chief Ministers and Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the treaties reviewed.

1.10 The Committee held public hearings into the treaties in Canberra on 10 October 2016 and 7 November 2016.

1.11 The transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee’s website.

1.12 A list of submissions is at Appendix A.

1.13 A list of witnesses who appeared at the public hearing is at Appendix B.
2. Implementation Procedures for Airworthiness - USA

2.1 The chapter examines the amendment to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between the Government of Australia and the Government of the United States of America (known as the Implementation Procedures) made under the Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America, more commonly known as the Bilateral Aviation Safety Agreement, and add an addendum to these procedures.

2.2 Specifically, the proposed treaty action will bring into force the following instruments:

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1 Mr Robert Walker, Stakeholder Engagement Group Manager, Civil Aviation Safety Authority (CASA), Committee Hansard, Canberra, 2 May 2016, p. 1.

2.3 The purpose of the Bilateral Aviation Safety Agreement is to ensure an equivalent level of aviation safety between Australia and the United States so that products that meet the aviation safety standard in one country are permitted for use in the other. This involves accepting the other party’s regulatory approvals, evaluation and monitoring of civil aeronautical products, personnel and facilities.  

2.4 The Implementation Procedures are treaty level instruments made under the Bilateral Aviation Safety Agreement directed at recognising each party’s regulatory arrangements in specific areas of aviation safety.  

2.5 So far, Implementation Procedures have been agreed only in the area of airworthiness. These Implementation Procedures have been subsequently revised in Revision 1 of the Implementation Procedures.  

2.6 The treaty actions being considered here identify additional Civil Aviation Safety Authority (CASA) design approvals which will be accepted by the United States as the basis for Federal Aviation Administration (FAA) design approvals.  

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3 NIA, para 4.  
4 NIA, para 2.  
5 Mr Walker, CASA, Committee Hansard, Canberra, 2 May 2016, p. 1.  
6 NIA, para 3.  
7 NIA, para 3.  
8 NIA, para 4.
2.7 In doing so, the treaty actions will address an imbalance whereby the FAA currently recognises fewer CASA approvals.9

Airworthiness regulation in Australia

2.8 Civil aviation safety in Australia is regulated by the Civil Aviation Safety Regulations 1998 (the Regulations). In relation to civil aviation airworthiness, the Regulations divide the aviation sector into a number of classifications covered by different sets of regulations. Each classification is named for the relevant part of the Regulations.10 The relevant regulatory parts for this treaty action are:

- Part 23 - Airworthiness standard for airplanes in the transport category (aircraft of less than 5700kg of weight and are capable of carrying up to nine passengers);
- Part 25 – Airworthiness standard for airplanes in the transport category (multi engine aircraft of more than 5700kg weight and without passenger number limitations);
- Part 27 – Airworthiness standards for helicopters in the normal category (helicopters of less than 2750kg weight); and
- Part 29 – Airworthiness standards for helicopters in the transport category (helicopters without a weight restriction).11

2.9 The treaty actions will require the FAA to recognise CASA approvals of major modifications to aircraft defined under parts 25, 27 and 29, with some limitations.12

2.10 Part 21 of the Regulations sets out the types and requirements for various airworthiness approvals. Major modifications are regulated using a

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9 NIA, para 21.
12 NIA, para 14.
mechanism called a Supplemental Type Certificate or STC. At the time of writing, STCs are defined in Part 21-15 v.3 of the Regulations.\textsuperscript{13}

2.11 Specifically, an STC is a certificate of approval for a design change to a type certificated aircraft, aircraft engine or propeller. In other words, persons wishing to manufacture and sell an improvement to an aircraft, aircraft engine or propeller in Australia must obtain an STC to do so.\textsuperscript{14}

**FAA recognition**

2.12 The Australian Government has a policy of negotiating for the recognition of Australian airworthiness approvals in other countries, and for reciprocal recognition of the airworthiness approvals of other countries.

2.13 In accordance with this policy, CASA and the FAA have developed these amendments in order to increase the range of Australian design approvals and Australian manufactured aviation products accepted by the FAA.\textsuperscript{15}

2.14 According to CASA:

> These proposed amendments will provide significant benefits to Australian manufacturers of aeronautical parts and appliances by enabling them to export Australian certified aeronautical parts directly to the United States. The benefits will extend to owners and operators of transport category aircraft, normal category helicopters and transport category helicopters as well.\textsuperscript{16}

2.15 According to CASA, the process of negotiating Amendment 1 of Revision 1 was lengthy. The process involved CASA providing a number of STCs to the FAA to demonstrate CASA’s competency in making airworthiness

\begin{itemize}
  \item \textsuperscript{15} NIA, para 6.
  \item \textsuperscript{16} Mr Walker, CASA, Committee Hansard, Canberra, 2 May 2016, p. 1.
\end{itemize}
approvals. The FAA agreed to the competency of the STCs CASA provided without further validation.  

**Specific provisions**

2.16 Under the current Implementation Procedures, CASA already accepts specific design approvals from the FAA. These amendments provide an opportunity to balance the acceptance of design approvals. Under the amendments, the FAA will accept more design approvals by CASA. No additional regulatory acceptance is required by CASA.  

2.17 The current procedures only allow for the export of designs and products for normal categories of aeroplanes as defined by Part 23 of the Regulations.  

2.18 STC issued for these designs make up less than 43 per cent of all STCs issued in Australia.  

2.19 The Implementation Procedures will apply to certain STCs issued for aircraft defined by Parts 25, 27 and 29 of the Civil Aviation Safety Regulations, making it easier for manufacturers of modifications for these aircraft, and owners of aircraft so modified to export their aircraft to the United States.  

2.20 At present, exports to the United States in these categories need to be approved by an FAA approved design organisation to validate the CASA approved STCs.  

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17 Mr Walker, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 2.  
18 NIA, para 9.  
19 NIA, para 10.  
20 NIA, para 10.  
21 NIA, para 11.  
22 NIA, para 11.
2.21 The amendments are expected to eliminate the significant costs associated with this design validation.\(^{23}\)

2.22 The treaty actions will also remove limitations on the FAA recognition of STCs for aircraft designed in a country other than the United States. These are called ‘State of Design’ limitations.\(^{24}\)

2.23 At present the FAA will only accept CASA STCs for Part 23 aircraft where these aircraft are designed in the United States. The amendments will mean that the FAA can accept CASA STCs for Part 23 aircraft that are not designed in the United States.\(^{25}\)

2.24 The treaty action will separate applicable CASA STCs into two tiers of acceptance by the FAA. The first tier includes the STCs that will be automatically accepted. FAA direct acceptance of CASA STCs will be limited to areas where it has been deemed that Australian industry and CASA demonstrated a sufficient level of experience through existing or already approved STCs.\(^{26}\)

2.25 The second tier applies to all other STCs, which will be subject to negotiation between the FAA and CASA were the FAA feels it is necessary to examine the compliance of an STC more thoroughly.\(^{27}\)

2.26 For example, at the public hearing on 2 May 2016, the Committee expressed interest in whether a firm that manufactured landing gear for commercial aircraft under a CASA STC would be able to export to the United States without further FAA approval. CASA witnesses were of the view that this sort of product would require further FAA investigation of the CASA STC, and would not be included in the first tier automatic approval arrangements.

\(^{23}\) NIA, para 12.

\(^{24}\) NIA, para 13.

\(^{25}\) NIA, para 13.

\(^{26}\) NIA, para 14.

\(^{27}\) Mr Peter Nikolic, Manager Initial Airworthiness, Standards Division, CASA, Committee Hansard, Canberra, 2 May 2016, p. 2.
The depth of additional examination by the FAA would be a matter of negotiation.\textsuperscript{28}

2.27 However, under the current arrangements the firm would be required to obtain approval through an FAA design organisation – a significantly more costly process.\textsuperscript{29}

2.28 According to CASA:

Australian parts and appliances—which include any instrument, mechanism, equipment, part, apparatus, appurtenance or accessory, including communication equipment, that is used or intended to be used in operating or controlling an aircraft in flight, is installed in or attached to the aircraft and is not part of the airframe, the engine or propeller—will no longer have to undergo additional often duplicated manufacturing certification by American authorities when exporting to the United States.\textsuperscript{30}

2.29 Every STC accepted by the FAA will enable the relevant modifications to be installed on US registered aircraft. In other words, approved parts manufactured in Australia can be installed on US registered aircraft.\textsuperscript{31}

2.30 According to CASA, the first tier covers probably 80 to 90 per cent of the work currently being done in Australia. In relation to particular types of aircraft, such as those defined as category 25 and 29, the percentage is likely to be higher.\textsuperscript{32}

2.31 The treaty actions could apply to 57 per cent of CASA STCs. In addition, 69 per cent of STC applications currently being processed could benefit from these amendments.\textsuperscript{33}

\textsuperscript{28} Mr Nikolic, CASA, \textit{Committee Hansard}, Canberra, 2 May 2016, p. 3.
\textsuperscript{29} Mr Nikolic, CASA, \textit{Committee Hansard}, Canberra, 2 May 2016, p. 3.
\textsuperscript{30} Mr Walker, CASA, \textit{Committee Hansard}, Canberra, 2 May 2016, p. 1.
\textsuperscript{31} NIA, para 15.
\textsuperscript{32} Mr Nikolic, CASA, \textit{Committee Hansard}, Canberra, 2 May 2016, p. 2.
\textsuperscript{33} NIA, para 16.
2.32 The treaty actions will apply to the products of up to 45 design businesses and up to 85 manufacturers in Australia.\(^{34}\)

2.33 For people or organisations certified to operate aircraft and the owners of aircraft in Australia, the proposed amendments could result in significant cost savings should they wish to export their aircraft to the United States with relevant CASA approved STCs.\(^{35}\)

2.34 According to CASA, the newly accepted STCs include the manufacture and installation of things like cabin refurbishments and emergency medical fitouts for medical and emergency helicopters.\(^{36}\)

2.35 CASA reported that Qantas and Virgin have estimated savings from the proposed treaty actions at between $4 and $5 million.\(^{37}\)

**Australian obligations**

2.36 No changes to the Australian Regulations will be necessary as a result of this amendment as Australian legislation and Civil Aviation Safety Regulations already allow for the acceptance of certain FAA approvals. The amendments do not include any changes to Australian commitments under the Agreement and Implementation Procedures and do not include any new commitments for Australia.\(^{38}\)

2.37 Accordingly, there are no foreseeable costs to Australia arising out of this treaty action. However, CASA expect that the cost of Australian aviation businesses doing business in the United States may be reduced as a result of this treaty action.\(^{39}\)

\(^{34}\) NIA, para 17.

\(^{35}\) NIA, para 19.

\(^{36}\) Mr Nikolic, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 2.

\(^{37}\) Mr Nikolic, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 2.

\(^{38}\) NIA, para 22.

\(^{39}\) NIA, para 25.
Resourcing and demand

2.38 During the public hearing on 2 May, CASA noted that the industry, being aware of the impending changes, had been making increasing numbers of applications for STCs. At the time of the public hearing, CASA stated that it had about 40 applications pending.\(^{40}\)

2.39 Concern has been expressed that CASA is not adequately resourced to handle its current workload with regard to applications for STCs:

> ... it often takes CASA a long time to approve complex STCs and similar modifications. The fundamental reason is that in a small aviation manufacturing country like Australia, CASA cannot hope to attract and retain the calibre and quantity of people required to fulfil the task required. Nor can it afford to do so. These limitations apply equally across the spectrum of CASA’s activities. The problem is exacerbated by the lack of trust between CASA and industry as noted in the ASRR (Aviation Safety Regulation Review), which denies CASA assistance from industry to acquire at least some of the required knowledge.\(^{41}\)

2.40 The Committee discussed with CASA witnesses whether the agency has the resources it needs to assess the pending applications in a timely manner. Asked for the specific number of STC applications outstanding for various periods, CASA supplied the following details:

- as at 30 April 2016: 18 STC applications outstanding;
- as at 30 June 2016: 21 STC applications outstanding; and
- as at 15 September 2016: 23 STC applications outstanding.\(^{42}\)

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\(^{40}\) Mr Roger Weeks, A/G Executive Manager, Standards Division, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 3.

\(^{41}\) Mr David Forsyth AM, *Submission 1*.

\(^{42}\) Civil Aviation Safety Authority (CASA), *Submission 3*. 
2.41 The CASA witnesses argued that the time taken to assess each STC application varied based on the complexity of the application: \(^{43}\)

All STC applications are usually assessed and accepted with a response provided to the applicant within 2 to 3 business days. It should be noted that this process relates to the administrative assessment of the application form and initial supporting documentation. Once the STC application is accepted the STC process begins and the time spent on each application will depend on the complexity of the modification, required involvement of CASA officers and the quality of documentation provided by the applicant. \(^{44}\)

2.42 In general terms, CASA indicated that at present it has sufficient resources to deal with the additional applications for STCs, but that if the number of applications increased in future, CASA may experience some resource pressure. \(^{45}\)

2.43 Under Part 21-J01 v1.0 of the Regulations, CASA has the ability to approve organisations and people to carry out certification work on its behalf.\(^ {46}\) According to CASA:

…the model of part 21 – to the maximum extent possible have experts and industry undertake those types of design and approval processes. In terms of our obligations as a regulator, there are some things that we will obviously need to continue to be involved in. \(^ {47}\)

2.44 In terms of the degree of work done on certification by approved organisations, CASA indicated the about 100 per cent of certifications for minor modifications and minor repairs is done by approved organisations. For more complex work, the certification work would be delegated on a case

\(^{43}\) Mr Weeks, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 3.

\(^{44}\) CASA, *Submission 3*.

\(^{45}\) Mr Weeks, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 3.


\(^{47}\) Mr Weeks, CASA, *Committee Hansard*, Canberra, 2 May 2016, p. 4.
by case basis to either approved organisations or to CASA itself.  

However, there is concern that CASA has not been adequately utilising this avenue for approvals and has been reducing the use of delegations, contributing to the time taken to obtain approvals.  

As asked to quantify the number of approved design organisations, CASA said that two organisations have been approved, one is finalising its assessment, one is in the middle of its assessment and three are at the beginning of the process.

CASA also advised that as a result of a review of Part 21–J01 of the Regulations, CASA was working with industry advisers to find a workable alternative for general aviation design approvals.

The Committee notes that, given the degree of interest from Australian design bureau and manufacturers in obtaining relevant STCs, it will be important for CASA to ensure the STC process proceeds as smoothly and quickly as possible.

Conclusion

The Committee supports the ratification of the treaty actions.

Recommendation 1

The Committee supports the following two treaty actions and recommends that binding treaty action be taken:

- Amendment 1 of Revision 1 of the Implementation Procedures for Airworthiness between the Government of Australia and the Government of the United States of America; and

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48 Mr Nikolic, CASA, Committee Hansard, Canberra, 2 May 2016, p. 4.
49 Mr David Forsyth AM, Submission 1.
50 CASA, Submission 3.
51 Mr Nikolic, CASA, Committee Hansard, Canberra, 2 May 2016, p. 4.
the Addendum to the Implementation Procedures for Airworthiness between the Government of Australia and the Government of the United States of America.
3. Choice of Court Agreements - Accession

Introduction

3.1 The Convention on Choice of Court Agreements (‘the Convention’) sets out how courts will treat jurisdiction clauses in private contracts. In these clauses, the contracting parties agree in which jurisdiction (that is, which court system) they will resolve any disputes. Under the Convention, courts in countries that are party to the Convention are obliged to either exercise or decline jurisdiction in accordance with the contract, and are also obliged to recognise and enforce foreign judgments given by the chosen court. The Convention only applies to civil and commercial contracts and has some exclusions and qualifications.

3.2 According to the National Interest Analysis (NIA), the objective of the Convention is to support party autonomy in international business, by providing uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil and commercial matters.¹ The Convention gives force to the choices made by contracting parties, and increases certainty for the enforcement of foreign judgments. The NIA believes that these improvements will promote international trade and investment.

Timeline and signatories

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<tr>
<td>Sept 2007</td>
<td>Acceded to by Mexico</td>
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<td>Jan 2009</td>
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<td>October 2015</td>
<td>Convention enters into force</td>
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<td>June 2016</td>
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3.3 The current parties to the Convention are all member states of the European Union (except Denmark), Mexico and Singapore. The Committee notes that the Convention took over ten years to come into force. Representatives of the Attorney-General’s Department (AGD) considered that the Convention is generating momentum for increased membership, and that more countries are likely to adopt the Convention in the near future. AGD advised that ten years from signature to entry into force is not unusual for a convention of this nature:

There were some interesting statistics that the Hague conference had across all its conventions—it has a large number of conventions, about 60-odd—but it is about eight or nine years from conclusion of agreement to commencement for these instruments. I think the issue, here, is that it is a significant step for a lot of countries.

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3 Mr Andrew Walter, Assistant Secretary, Civil Law Unit, Attorney-General’s Department (AGD), Committee Hansard, Canberra, 10 October 2016, p. 6.

4 Mr Walter, AGD, Committee Hansard, Canberra, 10 October 2016, p. 6.
3.4 The Committee is concerned that the only Asian party to the Convention is Singapore, and notes AGD’s evidence that Asia is currently underrepresented at the Hague Conference. Given the substantial degree of commercial relationships between Australian and Asian businesses, the Committee supports Australia’s continued efforts to encourage Asian countries to participate actively in the Hague Conference.

Benefits of the Convention

3.5 The NIA claims that the Convention will ensure that courts exercise jurisdiction in accordance with the agreement between the parties. This will create certainty, and reduce costs of possible parallel proceedings in different jurisdictions. Further, implementation of the convention will ensure that more foreign judgements will be capable of recognition and enforcement in Australia, and vice versa. The NIA believes that this will raise the profile of cross-border commercial litigation as an alternative to arbitration, resulting in stronger competition and possibly lower costs.

3.6 The new proposed domestic legislation will also implement the *Hague Principles on Choice of Law in International Commercial Contracts* (the Hague Principles) as approved by the Hague Conference on Private International Law on 19 March 2015. The Hague Principles consist of 12 articles, and are a guide to best practice to be incorporated into domestic law as far as possible; resulting in harmonisation of laws across countries.

3.7 Although the Convention only applies to “exclusive” choice of court agreements, agreements are presumed to be exclusive unless the parties have expressly provided otherwise. In their submission, Ms Brooke Adele Marshall (Senior Research Fellow for Australia and New Zealand, Max Planck Institute for Comparative and International Private Law) and Ms

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5 Mr Walter, AGD, *Committee Hansard*, Canberra, 10 October 2016, p. 10.
6 NIA, para 7.
7 NIA para 7.
8 NIA para 21.
9 NIA, para 14.
Mary Keyes (Professor of Law, Griffith University) consider that this aspect of the Convention has a potential benefit of reducing preliminary litigation as to whether a clause is exclusive or non-exclusive.\(^\text{10}\)

3.8 The Convention and the Hague Principles largely reflect the existing situation, where exclusive choice of court agreements are generally given effect to by the relevant courts. The AGD advised:

> Generally, existing Australian law produces outcomes that are similar to those that result by the applications of the rules found in the convention—and the principles, for that matter.\(^\text{11}\)

3.9 However the Convention will provide more certainty and clarity to give effect to the choice of court contractual agreements. The AGD advised that this will also be relevant where a third party jurisdiction is nominated, even where there is no other link with either party or the subject matter of the dispute.\(^\text{12}\)

**Obligations**

3.10 The Convention imposes three key obligations:

- the court designated in the jurisdiction agreement is obliged to exercise jurisdiction;
- all other courts are obliged to decline jurisdiction; and
- judgements given by the chosen court must be recognised and enforced by other Contracting States.

3.11 The Convention provides for narrow exceptions and qualifications to these obligations; including where the agreement would be null and void, or where giving effect to the agreement would be manifestly contrary to

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\(^\text{10}\) Brooke Adele Marshall and Mary Keyes, *Submission 1 (44th)*, p. 4.

\(^\text{11}\) Mr Walter, AGD, *Committee Hansard*, Canberra, 10 October 2016, p. 6.

\(^\text{12}\) Mr Walter, AGD, *Committee Hansard*, Canberra, 10 October 2016, p. 9.
Australian public policy. The Convention only applies to exclusive choice of court agreements arising in civil and commercial disputes, where the case has an international element. It does not apply to consumer contracts, or contracts of employment.

3.12 The Committee was concerned as to whether the obligations under the Convention would amount to an unconstitutional usurping of the power of the Australian courts to hear a matter. AGD advised that the case law supported the types of jurisdictional limits set out in the Convention:

There are lots of cases on chapter III of the Constitution in relation to exactly that point of how far you can go in restricting the discretion of a court to either deal with a matter or make a decision. The critical point is not to go too far to get rid of that discretion.

3.13 AGD advised that the Convention allows the courts some discretion in deciding whether to comply with the prima facie obligations in the Convention. For example, a court can decide not to enforce a judgement that was obtained by fraud using the exception in Article 9(e).

Implementation

3.14 Treatment of exclusive choice of court agreements in Australia is currently largely governed by the common law. These agreements are generally regarded as enforceable.

3.15 The Convention will be implemented domestically through a new International Civil Law Act. The proposed Act will also include the Hague Principles. The NIA considers that including both in a single Act will

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13 NIA para 16.
14 NIA, para 25.
15 Mr Walter, AGD, *Committee Hansard*, Canberra, 10 October 2016, p. 8.
16 Mr Walter, AGD, *Committee Hansard*, Canberra, 10 October 2016, p. 8.
17 Mr Walter, AGD, *Committee Hansard*, Canberra, 10 October 2016, p. 9.
provide clear, consistent and accessible rules and principles. The Act will reflect the obligations and exceptions in the Convention.

3.16 In their submission to the inquiry, Ms Marshall and Ms Keyes argue that the Convention may lead to additional complexity, and result in a split regime for the characterization and treatment of jurisdiction agreements under Australian law.

3.17 The AGD agreed that there is the potential for a set of different—although broadly consistent—regimes. The AGD advised that the issue of complexity is currently under consideration in the development of the International Civil Law Act:

In developing the international civil law act, that is exactly what we are considering—whether the act itself should cover the field and just set up a clear structure for when you get recognition and enforcement of judgements, in particular. It is a very valid point and something that we are working through in the development of the act.

3.18 The Committee is also interested in the inter-relationship between the Convention and the increasing number of Investor-State Dispute Settlement (ISDS) clauses in bi-lateral and multilateral free trade agreements. The AGD advised that the Convention obligations and the ISDS clauses would arise in different circumstances and involve different objectives:

An ISDS mechanism in a treaty provides a foreign investor with the ability to bring a claim against a host State in an international arbitral tribunal for alleged breaches of certain investment obligations under the treaty ... By contrast, the Convention applies in international cases involving exclusive choice of court agreements concluded between parties in civil or commercial matters.

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18 NIA para 22.
20 Mr Walter, AGD, Committee Hansard, Canberra, 10 October 2016, p. 6.
21 Attorney-General’s Department, Submission 1 (45th), p. 1.
3.19 Although the two situations both involve trans-national legal obligations, given the different parties to the dispute and the different jurisdictions involved, it appears that ISDS clauses will not normally have an impact on choice of court agreements, and vice versa.

Conclusion

3.20 The Committee notes that the submission to the inquiry, and the consultation undertaken by AGD, have been in favour of Australia acceding to this Convention. Even if the new domestic legislation does not entirely remove the possibility of different regimes for elements of choice of court matters, the Committee considers that the Convention and Principles will provide greater clarity and certainty in this area.

Recommendation 2

3.21 The Committee supports the accession to the 2005 Hague Convention on Choice of Court Agreements and recommends that binding treaty action be taken.
4. GATT Schedule of Concessions - amendment

Introduction

4.1 The chapter examines the amendment to Australia’s Schedule of Concessions in the General Agreement on Tariffs and Trade 1994 (GATT) which gives legal effect to commitments made under the World Trade Organisation (WTO) Ministerial Declaration on the Expansion of Trade in Information Technology Products (Expanded ITA) and Ministerial Decision on Export Competition as it relates to export subsidies (Export Subsidy Decision), both of which were announced at the WTO Ministerial Conference held in Nairobi in December 2015.¹

Background

4.2 The GATT is a multilateral agreement on liberalising trade, initially negotiated between 23 countries in 1947.² Between 1947 and 1994, eight

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² The original signatory countries were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, the Republic of China, Cuba, Czechoslovakia, France, India, Lebanon, Luxemburg, the
rounds of negotiation were completed under the original GATT, culminating in the Uruguay round. The Uruguay round resulted in both the 1994 GATT and the Marrakesh Agreement to establish the WTO as the single institutional framework encompassing the GATT. The current round of negotiations, known as the Doha round, commenced in November 2001 and is yet to be completed. Membership of the WTO has expanded to include 164 countries, with another 20 observer countries.

4.3 The WTO’s structure is headed by a Ministerial Conference, which meets at least once every two years. The 10th Ministerial Conference was held in Nairobi in December 2015, and the Expanded ITA and Export Subsidy Decision were part of the results of that Ministerial Conference.³

Overview and national interest summary

4.4 According to the National Interest Analysis (NIA), the Expanded ITA extends the original WTO Information Technology Agreement (original Agreement), which commenced in July 1997. The Expanded ITA commits 54 WTO member nations to eliminate tariffs and other customs duties on 201 technology products. WTO members agreed to remove tariffs on the majority of products in the Expanded ITA within three years, with reductions for Australia beginning in 2017.⁴

4.5 The Export Subsidy Decision provides for the elimination of agricultural export subsidies, new rules for export credits, and decisions on international food aid and exporting state trading enterprises. The Export Subsidy Decision commits all WTO member nations to eliminate agricultural export

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⁴ NIA, para 5.
subsidy entitlements and is intended to permanently remove a long-standing source of distortion in global agricultural markets.\(^5\)

4.6 Developed countries—including Australia—agreed to immediately remove scheduled export subsidy entitlements, with developing countries following by 2018. Longer elimination timeframes will apply in a limited number of defined cases, such as for least-developed countries, or in cases where developing countries use export subsidies to cover marketing and transport costs. As Australia does not currently use export subsidies, the commitment involves the elimination of the entitlement to use them in the future.\(^6\)

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

*The Ministerial Declaration on the Expansion of Trade in Information Technology Products*

4.7 The NIA states that the Expanded ITA is expected to reduce costs and barriers to trade in technology products, promoting growth in jobs and innovation in Australia. The WTO estimates that annual trade in the 201 products covered is valued at over AUD1.3 trillion per year, accounting for approximately 10 per cent of total global trade today. Participants to the Expanded ITA account for approximately 90 per cent of world trade in these products. Some of the products in the Expanded ITA currently face high tariffs; for example, the tariff for magnetic cards is 30 per cent in some markets.\(^7\)

4.8 The expanded ITA eliminates tariffs on these products, including new-generation semi-conductors, machine tools and instruments, telecommunications satellites, consumer electronics (including GPS navigation systems and video game consoles) and a range of medical devices. The NIA suggests that eliminating tariffs on these goods may benefit Australian consumers by putting downward pressure on end prices. Upstream technology industries such as software design, and downstream

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\(^5\) NIA, para 6.

\(^6\) NIA, para 7.

\(^7\) NIA, para 9.
industries such as IT service providers, could also benefit from cost reductions. The NIA claims that this has the potential to improve the competitiveness of both export and import industries. It is estimated that Australia imports around AUD19 billion worth of goods covered by the Expanded ITA, and exports around AUD3.6 billion.\(^8\)

4.9 However, the Department of Foreign Affairs and Trade (DFAT) conceded that of the 201 technology products, Australia already applies a zero tariff to 146. The 55 remaining products attract an applied tariff of five per cent. Additionally, the tariff on some items will be phased out over a three-year period and on others over a five-year period. Further, the amount of the five per cent reduction passed on to customers will depend on ‘commercial decisions’.\(^9\)

4.10 The NIA suggests that the implementation of the Expanded ITA will have significant benefits for the Australian economy. Information technologies are highly integrated within global value chains meaning barriers to trade can have significant flow on effects for innovation and productivity in other industries. By removing these barriers, implementation of the Expanded ITA could help to create jobs and boost GDP growth. It may also enhance predictability for traders and investors by providing permanent commitments for the included goods.

**The Ministerial Decision on Export Competition**

4.11 The NIA states that achieving the global elimination of agricultural export subsidies has been a long standing objective of Australian trade policy. The elimination of agricultural export subsidies in global trade was identified as a central goal in the WTO mandate developed at the time of the launch of the WTO Doha Round of negotiations in 2001, and successive Australian governments have worked with agricultural industry groups to achieve this through the WTO.

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\(^8\) NIA, para 10.

\(^9\) Ms Tegan Brink, Assistant Secretary, Goods and Investment Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 10 October 2016, pp. 16 and 17.
4.12 DFAT explained that the Export Subsidy Decision targets export subsidy entitlements which are designed to enable governments to ‘subsidise farmers to put their products more cheaply on the world market, while, to a certain extent, insulating their own market’ and are considered the ‘most trade-distorting form of subsidy that exists’.\(^{10}\)

4.13 The NIA notes that the removal of agricultural export subsidies by other WTO members is expected to significantly benefit Australian farmers by levelling the playing field in many of Australia’s agricultural export markets. The Export Subsidy Decision phases out scheduled export subsidy entitlements worth around AUD15 billion for agricultural commodities across many key Australian sectors including sugar, beef, pork, lamb, dairy, wheat, rice, wine, fruit, vegetables, processed foods and cotton.

4.14 Although the benefit to Australian agriculture is not easily quantified, reducing the potential for these subsidies will boost confidence:

> But even if we cannot put in exact monetary terms what it means for the farming community, it is the potential that has been wiped out here. When food prices spiked some six or seven years ago a number of countries resorted to export subsidies, which many economists would argue exacerbated the food security issues that were in existence at that time. The suggestion here is that that is no longer going to be a viable option—that option is eradicated.\(^{11}\)

4.15 The Export Subsidy Decision commits Australia to removing its remaining export subsidy WTO entitlements to the value of AUD88 million from Australia’s GATT Schedule of Concessions. The NIA states that the practical impact is minimal as Australia has not used export subsidies since 1999-2000 when AUD3.7 million was used to subsidise dairy exports. The NIA claims that the elimination of Australia’s entitlements is a balanced response in view of the benefits Australia is expected to gain through the elimination of other countries’ agricultural export entitlements.

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\(^{10}\) Ms Brink, DFAT, *Committee Hansard*, 10 October 2016, p. 15.

\(^{11}\) Mr Simon Newnham, Assistant Secretary, Agriculture and Food Branch, Office of Trade Negotiations, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 10 October 2016, p. 15.
Obligations

4.16 The obligations as set out in the NIA are provided below.\(^\text{12}\)

4.17 The Expanded ITA commits Australia (and the other 52 participants) to permanently eliminate all customs duties and other duties and charges, within the meaning of Article II:1(b) of the GATT, on 201 technology related products.

4.18 The amendment to the Schedule of Concessions to reflect the Expanded ITA would permanently bind Australia to apply zero customs duties and other duties and charges to these products for imports from all countries. Australia currently applies a zero rate of customs on the majority (146) of the products. In return, the 52 other participants to the Expanded ITA will also bind their duties on the same products to zero. Participants may apply staging in limited circumstances as per the negotiated schedules. For Australia, the first such rate reduction is effective no later than 1 January 2017, and the elimination of customs duties shall be completed no later than 1 July 2019.

4.19 The Export Subsidy Decision commits Australia, and other WTO members, to immediately eliminate its agricultural export subsidy entitlements. The proposed amendment to Australia’s Schedule of Concessions removes the export subsidy entitlements for the small number of products where export subsidy entitlements remain. This includes eliminating remaining export subsidy entitlements for pears and certain dairy products (butter, butter oil, skim milk powder, cheese, other milk products), to the value of AUD88 million from Australia’s schedule of concessions, noting that these subsidies have not been used for over 15 years.

4.20 As the amended Schedule of Concessions does not list subsidy entitlements for any products, Australia will be prohibited from using export subsidies in any sector in the future.

\(^{12}\) NIA, paragraphs 15 to 18.
Implementation

4.21 According to the NIA, the implementation of the amendments to the Schedule of Concessions to reflect the Expanded ITA requires an amendment to the Customs Tariff Act 1901 by 31 December 2016 in order for the Agreement to be implemented by 1 January 2017. The proposed amendment to the Act will revise tariff rates set out in ‘Schedule 3 – Listing of Goods, their classification and duty rates’ of the Act in accordance with the Expanded ITA.\footnote{NIA, para 19.}

4.22 The NIA states that no changes to legislation or policy are required for implementation of the proposed amendments to the Schedule of Concessions to reflect the Export Subsidy Decision. Australia has not used subsidies since 1999-2000.\footnote{NIA, para 20.}

Costs of the treaty action

4.23 The NIA states that the financial cost of implementing the amendment to the Schedule of Concessions in relation to the Expanded ITA is approximately AUD20 million in 2018–19, and AUD60 million in 2019–20. The costs are associated with foregone tariff revenue based on current trade values. The NIA expects the proposed amendments to the Schedule of Concessions to implement the Expanded ITA to reduce the regulatory burden for businesses trading in these products. Businesses previously trading under preferential agreements or concession schemes will no longer have the administrative burden previously associated with accessing lower duty rates, for example under an applicable free trade agreement.\footnote{NIA, para 21.}

4.24 The financial costs of the amendments to the Schedule of Concessions to reflect the Decision on Export Subsidies is expected to be neutral; the
elimination of Australia’s remaining agricultural export subsidy entitlements is not expected to change expenditure or revenue.\textsuperscript{16}

\section*{Conclusion}

4.25 The Committee acknowledges the significance step that these two agreements represent for the WTO and its members. While it notes that both will provide incremental improvements for Australian consumers and farmers, the Committee is acutely aware that further work needs to be done to reduce domestic subsidies and non-tariff barriers if more progress is to be made on liberalising trade.

4.26 For example, the Australian Dairy Industry Council Inc. pointed out that the United States ‘will continue to be able to subsidise exports via its privately funded “Cooperatives Working Together” (CWT) scheme’ and that the EU remains a ‘highly protected and distorted market for dairy with high tariffs, a complex tariff regime and continued existence of Tariff Rate Quotas’.\textsuperscript{17} The Export Subsidy Decision also allows Canada to continue to subsidise dairy exports until the end of 2020:

\begin{quote}
Canada’s uncompetitive milk quota (supply manage) system has created a large and growing structural surplus of milk proteins resulting in a long history of utilising non-tariff barriers to trade to protect their domestic market and also to subsidise exports, especially skim milk power in contravention of their Uruguay Round Agreement on Agriculture (URAA) commitments.\textsuperscript{18}
\end{quote}

4.27 The Committee supports the amendments to Australia’s Schedule of Concessions in GATT and recommends that binding treaty action be taken.

\section*{Recommendation 3}

4.28 The Committee recommends that the amendments to Australia’s Schedule of Concessions in the \textit{General Agreement on Tariffs and Trade 1994 (GATT)} incorporated into Annex 1A of the \textit{Marrakesh Agreement Establishing the

\textsuperscript{16} NIA, para 22.

\textsuperscript{17} Australian Dairy Industry Council Inc., \textit{Submission 2}.

\textsuperscript{18} Australian Dairy Industry Council Inc., \textit{Submission 2}.
World Trade Organization to give effect to commitments made under the World Trade Organization (WTO) Ministerial Declaration on the Expansion of Trade in Information Technology Products and Ministerial Decision on Export Competition be ratified and binding treaty action be taken.
5. Radio Regulations - Partial Revision


Introduction

5.1 The International Telecommunication Union (ITU) is the specialised agency of the United Nations for information and communication technologies. The ITU has 193 Member States, and is concerned with international cooperation in the use of telecommunications and the radiofrequency spectrum.¹

5.2 The Radio Regulations govern how the radiofrequency spectrum is used internationally, including the allocation of spectrum to radiocommunications services. The Regulations are periodically reviewed by a World Radiocommunication Conference, held about every four years. The most recent conference (World Radiocommunication Conference or WRC 15) was held in Geneva in November 2015.

5.3 The proposed treaty action contains the revisions to the Radio Regulations that were agreed at WRC 15.

Overview and national interest summary

5.4 The NIA advises that the purpose of the Radio Regulations is to ensure the rational, efficient and equitable use of the radiofrequency spectrum. The Radio Regulations contain allocations and conditions of use for the radiofrequency spectrum, and satellite orbits. ITU Members are required to ensure that the spectrum is used internationally in a manner that will prevent harmful interference to other services.

5.5 The NIA advises that consenting to this treaty action will align Australian with the rest of the world in its regulation of the radiofrequency spectrum. Although the Revisions allow for continued international compatibility, Australia retains its right to control transmissions within its territory.

5.6 The advantages of consenting to the Revisions was explained in more detail to the Committee by the Department of Communications and the Arts:

Implementing the proposed treaty action would align Australia with the rest of the world. It would ensure that Australia’s regulation and use of the radiofrequency spectrum is harmonised both globally and regionally. Consenting to be bound by the provisions will be to Australia’s benefit, as it

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2 NIA, para 6.
3 NIA, para 3.
4 NIA, para 6.
5 NIA, para 16.
will allow for continued compatibility between communications devices and technologies used in Australia and those around the world.\(^6\)

**Obligations**

*International Mobile Telecommunications (IMT)*

5.7 The revisions identify additional spectrum to meet the growing demand for mobile broadband services. Identification enables use of the band by mobile telephony or broadband services, and provides protection from other services. It does not oblige a country to use that band for IMT.\(^7\) Spectrum is identified both globally and on a regional basis (Australia is in Region 3).\(^8\)

5.8 The Australian Communications and Media Authority (ACMA) advised that the likelihood that mobile telecommunications will require more spectrum in the future was ‘one of the bigger contingencies we have to manage for’.\(^9\) The major mobile network operators–including the NBN–participate in the WRC process, and are a contributing factor in Australia’s broadband strategy.\(^10\)

*Aeronautical services*

5.9 The revisions improve aeronautical communications capability in a number of ways. There is a new global spectrum allocation that enables aircraft to transmit real-time position information to satellites anywhere in the world.

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\(^6\) Ms Pauline Sullivan, Assistant Secretary, Spectrum Branch, Department of Communications and the Arts, *Committee Hansard*, Canberra, 7 November 2016, p. 2.

\(^7\) NIA, para 20.

\(^8\) NIA, para 21.

\(^9\) Mr Giles Tanner, General Manager, Communications Infrastructure Division, Australian Communications and Media Authority (ACMA), *Committee Hansard*, Canberra, 7 November 2016, p. 5.

\(^10\) Mr Tanner, ACMA, *Committee Hansard*, Canberra, 7 November 2016, p. 5.
The NIA advises that this is part of the ITU’s response to the disappearance of MH370.\(^\text{11}\)

5.10 There is also a new allocation for short-range wireless communications systems on board aircraft. This allows heavy and expensive wiring on board aircraft to be replaced by wireless systems.

5.11 A new Resolution was adopted to allow for the use of existing satellite communications infrastructure by drones. This will allow unmanned aircraft to share airspace with conventional air traffic; although the NIA advises this is subject to technical and regulatory arrangements by the International Civil Aviation Organisation.\(^\text{12}\)

\textit{Automotive}

5.12 Spectrum was identified for use by short-range automotive radar in vehicles. This would also be used by other ground based vehicles – such as aircraft wing tip radar, to assist pilots to taxi aircraft around busy airports. The NIA states that this will provide global harmonisation for vehicle manufacturers to build automotive radar for collision-avoidance and driver-warning systems.\(^\text{13}\)

\textit{Maritime procedures}

5.13 The revisions modify the frequencies and channelling arrangements of the Automatic Identification System (AIS). The AIS facilitates identification of ships by providing information to other ships and coast stations on cargo, position, course and speed. New provisions were included to support new applications for data exchange. The NIA advises that the revisions will improve global maritime navigation, and provisions for maritime distress and safety.\(^\text{14}\)

\(^\text{11}\) NIA, para 22.
\(^\text{12}\) NIA, para 24.
\(^\text{13}\) NIA, para 32.
\(^\text{14}\) NIA, para 28.
5.14 The Committee notes ACMA’s advice that the WRC outcomes support emergency management and the speed of Australia’s response to emergencies and natural disasters in our region. ACMA explained further:

There was an agenda item specifically regarding a broadband for public protection and disaster relief. That was a major topic of discussion throughout the world radio conference cycle. The outcomes have supported harmonised arrangements for public protection and disaster relief and we are happy with those outcomes in that they provide Australia with the flexibility and the guidance necessary to support those continued activities.\(^\text{15}\)

**Satellites**

5.15 The revisions make a global spectrum allocation for tracking, telemetry and command of Earth exploration-satellite service spacecraft. The NIA advises that existing systems are experiencing harmful interference in the current band, as it is becoming increasingly congested.\(^\text{16}\) There has been an additional extension of the allocation to enable future space-based satellite radars to transmit higher resolution surface imagery. The NIA advises that this will support increased global capabilities in areas including disaster mitigation and relief planning, humanitarian aid, land use, environmental and climate change monitoring, and coastal surveillance.\(^\text{17}\)

5.16 The NIA advises that the revisions will improve the international coordination of satellite networks. Transparency of the satellite network will be improved by enhancing the ITU’s ability to locate unused satellite frequency assignments and to publish the satellite deployments and networks that have been brought into use.\(^\text{18}\)

\(^{15}\) Mr Christopher Hose, Executive Manager, Spectrum Planning and Engineering Branch, Australian Communications and Media Authority (ACMA), *Committee Hansard*, Canberra, 7 November 2016, p. 5.

\(^{16}\) NIA, para 29.

\(^{17}\) NIA, para 30.

\(^{18}\) NIA, para 32.
5.17 The NIA advises that the revisions will also create efficiencies in two areas.\(^\text{19}\)
Firstly, streamlining the process for submitting advance publication information, allowing the information to be automatically generated. Secondly, the revisions will reduce the ‘coordination arc’; that is, the area of neighbouring satellites that must be consulted before any new satellite deployment.

5.18 The Committee heard that the area of satellite co-ordination is one of the radiocommunications subjects of particular interest to the Department of Defence. In some areas—including satellite co-ordination and unmanned aerial systems—the Department of Defence led the Australian preparatory process to develop the Australian position at the WRC.\(^\text{20}\)

5.19 Given the substantial involvement of the Department of Defence in negotiating the outcomes contained in the Revisions, the Committee considers that it would have been useful to have representatives from the Department of Defence at the public hearing to answer questions relating to these matters.

**Amateur service**

5.20 The revisions create a new global secondary allocation for amateur radiocommunications. The NIA advises that this will enhance capability for disaster relief and emergency communications, and provide opportunity for research and development of new communication modes.\(^\text{21}\)

**Reservations and declarations**

5.21 Australia made three “statements” at WRC-15 that fall within the category of reservations (which exclude or modify the legal effect of part of the treaty)

\(^\text{19}\) NIA, para 32.

\(^\text{20}\) Mr Hose, ACMA, *Committee Hansard*, Canberra, 7 November 2016, p. 3.

\(^\text{21}\) NIA, para 31.
or declarations (which do not have legal effect, but set out the state’s interpretation of the treaty).\(^{22}\)

**Statement Number 59**

5.22 Statement Number 59 is a safeguard reservation. Australia, on its own, reserves the right to take any measures it deems necessary to safeguard its interests if another member fails to respect the conditions. The reservation also allows Australia to make further reservations when it notifies its consent; although the NIA advises that no further reservations are intended.\(^{23}\)

5.23 Mr Christopher Hose, Executive Manager, Spectrum Planning and Engineering Branch, ACMA, advised that he was not aware of a situation occurring where Australia had taken any measures reserved under this statement. Mr Hose speculated that Australia may invoke this reservation to, for example, not adhere to the Radio Regulations, if another country was contravening the Regulations to our detriment.\(^{24}\)

**Statement Number 110**

5.24 Statement Number 110 is in response to Statement 37 by Colombia. In Statement 110, 18 countries—including Australia—declare that any claims of sovereign rights over geostationary-satellite orbits by equatorial countries cannot be recognised by the WRC. The NIA advises that this statement has been made at all WRC meetings since 1995.\(^{25}\)

**Statement Number 119**

5.25 Statement Number 119 declares that 17 countries—including Australia—support Statement Number 86 made by the Ukraine. Statement 119 declares that the stating countries remain committed to uphold the sovereignty and

\(^{22}\) NIA, para 10.

\(^{23}\) NIA, para 12.

\(^{24}\) Mr Hose, ACMA, *Committee Hansard*, Canberra, 7 November 2016, p. 4.

\(^{25}\) NIA, para 13.
territorial integrity of Ukraine, and strongly condemns the illegal annexation of Crimea and Sevastopol to the Russian Federation.

5.26 The Committee notes that this Statement is not about radiocommunications, and seems to be outside of the scope of WRC 15. Mr Neil Meaney, Manager, International Radiocommunications Section, ACMA, acknowledged that it was an unusual statement, and was particular to the circumstances existing at the time. Mr Meaney further advised that the decision to make this statement was made by the Department of Foreign Affairs and Trade (DFAT).26

**Entry into force and implementation**

5.27 The NIA advises that Australia intends to notify the ITU of its consent to be bound as soon as the domestic process is complete.27 Under the ITU Constitution, members agree to be bound by future revisions, subject to any notified reservations. In this case, most of the revisions will enter into force on 1 January 2017 for those countries that have notified their consent before that date.

5.28 Regardless of notification, the revisions provisionally apply to all member states. If a state fails to notify the ITU by 1 January 2020, it will be deemed to have consented to the revisions.28 Despite this deemed application, the NIA states that failing to make early positive consent may have a negative effect on Australia’s standing within the ITU and on Australia’s negotiating position in the future.29

5.29 The NIA states that Australia’s obligations under the Radio Regulations are implemented through the Australian Radiofrequency Spectrum Plan (ARSP), which is prepared by ACMA in accordance with section 30 of the

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26 Mr Neil Meaney, Manager, International Radiocommunications Section, ACMA, *Committee Hansard*, Canberra, 7 November 2016, p. 3.
27 NIA, para 1.
28 NIA, para 4.
29 NIA, para 17.
Radiocommunications Act 1992. The existing ARSP will be updated by the ACMA to take account of the WRC-15 revision.\(^{30}\)

**Enforcement**

5.30 The Revisions contain enforcement provisions for breaches of the Radio Regulations. Any party can argue that another party is not fulfilling its obligations under the treaty. Mr Hose explained further:

> There is what is called the Radio Regulations Board, which is a standing board that hears appeals from countries who have grievances with the process or the actions of other countries.\(^{31}\)

**Costs of the treaty action**

5.31 The NIA advises that there are no identifiable direct costs to Commonwealth, State or Territory Governments arising from the proposed treaty action.\(^{32}\)

**Conclusion**

5.32 The Committee supports the Radio Regulations revisions and recommends that binding treaty action be taken.

**Recommendation 4**


\(^{30}\) NIA, para 33.

\(^{31}\) Mr Hose, ACMA, Committee Hansard, Canberra, 7 November 2016, p. 5.

\(^{32}\) NIA, para 34.
The Hon Stuart Robert MP

Chair

21 November 2016
A. Submissions

Airworthiness - USA

44th Parliament
1 AMROBA

45th Parliament
1 Mr David Forsyth AM
2 AMROBA
3 Civil Aviation Safety Authority

Convention on Choice of Courts - accession

44th Parliament
1 Professor Mary Keyes and Ms Brooke Marshall

45th Parliament
1 Attorney-General's Department
2 Victorian Department of Justice and Regulation
GATT Schedule of Concessions - amendment

1 National Farmers' Federation
2 Australian Dairy Industry Council (ADIC)
3 Australian Sugar Industry Alliance
4 Department of Agriculture and Water Resources
5 Department of Foreign Affairs and Trade
B. Witnesses

Airworthiness - USA
Monday, 2 May 2016
Canberra

Civil Aviation Safety Authority

Convention on Choice of Courts - accession
Monday, 10 October 2016
Canberra

Attorney-General’s Department

GATT Schedule of Concessions - amendment
Monday, 10 October 2016
Canberra

Department of Foreign Affairs and Trade

Department of Immigration and Border Protection
Department of Agriculture and Water Resources

Department of Industry, Innovation and Science

**Radio Regulations - partial revision**

**Monday, 7 November 2016**

Canberra

Department of Communications and the Arts

Australian Communications and Media Authority