

Documents tabled on 27 March 2007:

National Interest Analysis [2007] ATNIA 3

with attachment on consultation

**Agreement concerning the Establishing of Global Technical Regulations
for Wheeled Vehicles, Equipment and Parts which can be Fitted
and/or be Used in Wheeled Vehicles,
done at Geneva on 28 June 1998**

[1998] ATSD 4616

Regulation Impact Statement

Background information:

Current status list of parties

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles, done at Geneva on 28 June 1998 [1998] ATSD 4616

Nature and timing of proposed treaty action

1. The proposed treaty action is for Australia to accede to the treaty.
2. The treaty was done at Geneva on 25 June 1998 and came into force generally on 25 August 2000. It is known as the “1998 Global Agreement”. Upon becoming a Contracting Party, Australia could choose whether or not to adopt selected global technical regulations established under the treaty, by incorporating them in domestic law and informing the United Nations Secretary-General in accordance with the Agreement.
3. Under Article 9, accession is open to all members of the United Nations that participate in the United Nations World Forum for Harmonization of Vehicle Regulations. Australia participates in this Forum.
4. It is not proposed for the obligations under the treaty to apply to any of Australia’s external territories (such as Norfolk Island). Australia will lodge a reservation to this effect upon accession, under Article 15.
5. The treaty action is proposed to be undertaken as soon as practicable after the completion of domestic processes. The Agreement would enter into force for Australia 60 days after the date that Australia deposits its instrument of accession with the United Nations Secretary-General.

Overview and national interest summary

6. The 1998 Global Agreement is designed to reduce barriers to international trade by harmonising national standards for motor vehicles. In particular, the Agreement acknowledges and supports the goals of Contracting Parties to enhance vehicle safety, energy efficiency and environmental performance. The Agreement acts to harmonise the underlying national regulations that are used to achieve these performance goals.
7. By reducing barriers to international trade, the proposed treaty action is intended to reduce costs and increase flexibility for Australia’s automotive manufacturing industry. In particular, the proposal will boost export market opportunities, especially for low volume “niche” products.
8. For a global technical regulation to be established under the 1998 Global Agreement, it must be approved by a consensus vote of all Contracting Parties (although a Party is treated as having voted in favour of a regulation if, having voted against it, the Party does not provide a written explanation to the United Nations Secretary-General within 60 days of the vote). Thus, any Contracting Party may prevent the establishment of a new global technical regulation.
9. Once established, global technical regulations are listed in a “Global Registry”. Established global technical regulations may subsequently be amended.

Reasons for Australia to take the proposed treaty action

10. The 1998 Global Agreement reduces barriers to international trade by developing global technical regulations for motor vehicles. The regulations govern the use of vehicles and components (equipment or parts) fitted or used on vehicles. They cover topics such as vehicle safety, energy efficiency and environmental performance. Once established, the regulations are available for adoption by Contracting Parties. In this manner, a single harmonised set of vehicle performance standards can potentially apply across-the-board for all Contracting Parties.

11. The proposed treaty action will allow Australia to gain a voice in the development of global vehicle standards. As a Contracting Party, Australia will have the right to vote on proposed global technical regulations and to submit its own proposals for the development and amendment of regulations. It will no longer be “locked out” of discussions on the continuing evolution of standards. This will provide an important mechanism for Australian requirements to be reflected in the global standards.

12. As a result, the proposed treaty action will provide benefits to industry. Costs for exporters will be lowered, by reducing the need for unique Australian standards and by minimising the need for Australian products to be redesigned for global markets. For Australian exporters, the costs involved in re-designing, re-tooling and re-certification to meet different international standards can be prohibitive. Industry flexibility will be increased. The proposed treaty action will accordingly provide enhanced export opportunities for Australian automotive manufacturers.

13. During 2005, exports of automotive products totalled some \$5.14 billion. Further growth in exports will assist the overall viability of the Australian automotive manufacturing industry. Consumers are likely to benefit, as a result of the potential for lower prices and earlier access to innovative products.

The 1998 Global Agreement follows an earlier treaty

14. The 1998 Global Agreement follows an earlier treaty on the same subject. This earlier treaty is known as the “1958 Agreement” and its full title is the *Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles and the conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, as amended to 16 October 1995* [2000] ATS 11. The 1958 Agreement was done at Geneva on 20 March 1958 and came into force generally on 20 June 1959. Australia acceded to the 1958 Agreement with effect from 25 April 2000.

15. The two treaties operate simultaneously. Many countries are Contracting Parties to both agreements, including Japan, the Republic of Korea, New Zealand, the E.C., France, Germany, Italy, Spain, Sweden and the U.K. The proposal is for Australia to do the same.

16. The two treaties are necessary in order to allow the U.S.A., Canada, China and India to join the same framework as the rest of the world. The earlier 1958 Agreement is based on the European system of governmental compliance. In contrast, alternative compliance systems used in these four countries are incompatible with the European approach. As a result, these countries never joined the 1958 Agreement. The 1998 Global Agreement was negotiated, under the leadership of the U.S.A., Japan and the E.C., to reflect these alternative compliance models.

17. In short, the 1998 Global Agreement is fundamental to full harmonisation. The intention is for regulations made under the 1958 Agreement (known as United Nations/Economic Commission for Europe (UN/ECE) Regulations) and global technical regulations (established under the 1998 Global Agreement) to reflect the same technical standards. Regulations and standards will be reviewed to form a “common ground”. Ultimately, the two sets of regulations will cover the same content and mandate the same performance. As global technical regulations are adopted, the world’s major manufacturing countries will be progressively brought into the one international system.

Operation of the 1998 Global Agreement

18. There are currently 125 UN/ECE Regulations annexed to the earlier 1958 Agreement. The regulations cover the field and have been widely adopted. In contrast, Contracting Parties to the 1998 Global Agreement have only recently started to develop global technical regulations; to date, only five regulations have been established. Nevertheless, the number of global technical regulations is expected to increase significantly in the future. Nine candidate global technical regulations are registered pursuant to the 1998 Global Agreement. Other proposals are “in the pipeline”, being in the early stages of committee consideration.

19. The 1998 Global Agreement provides two different paths for the development and establishment of global technical regulations. Once established, global technical regulations are listed in a Global Registry created and maintained under the 1998 Global Agreement.

20. The first path provides for **pre-existing standards**—either UN/ECE Regulations or pre-existing national or regional technical regulations—to be established as global technical regulations. In each case, the proposed regulation must meet the criteria for regulations set out in the Agreement and be adopted by a consensus vote of the Executive Committee in favour of the regulation. However, a regulation is treated as having been adopted by consensus vote if no Party which voted against it provides a written explanation of its objection to the Secretary-General within 60 days of the vote. The Executive Committee is constituted by the representatives of all Contracting Parties.

21. In addition, pre-existing national or regional technical regulations may only be considered for establishment as global technical regulations if they have been listed, in accordance with the Agreement, as candidate regulations under the “Compendium of Candidates”. Any Contracting Party may submit a proposal to develop a candidate global technical regulation containing elements of performance or design characteristics of pre-existing technical regulations or UN/ECE Regulations. A standard is listed if supported by a one-third vote of Contracting Parties, including the vote of either Japan, the E.C. or the U.S.A. In considering whether a proposal is established as a global technical regulation, any existing standards that are listed on the “Compendium of Candidates” must be considered.

22. The second path provides for the establishment of new global technical regulations where there are **no pre-existing standards**. Any Contracting Party may submit a proposal to develop a new global technical regulation concerning elements of performance or design characteristics not addressed by technical regulations or by the UN/ECE Regulations. The process of determining whether the proposal is established as a global technical regulation includes an assessment of technical and economic feasibility and a comparative evaluation of the potential benefits and cost effectiveness of alternative standards. Again, the proposed regulation must meet the criteria for regulations set out in the Agreement and be adopted by a consensus vote of the Executive Committee in favour of the regulation, as outlined in paragraph 20 above.

23. Assessments are to be conducted in a transparent manner. They are designed to promote public awareness of, and participation in, the regulatory development process. This includes the opportunity to have views represented at meetings, working parties and consultations.

Timing

24. When it acceded to the 1958 Agreement, Australia declared that it would not be bound by any of the UN/ECE Regulations adopted under that Agreement. The intention was for the individual standards to be first subject to thorough and public review by the Australian, State and Territory Governments. By adopting wide public involvement, the review process was designed to promote community confidence in the resulting vehicle standards.

25. This review process is nearing completion; it commenced in 2000 and is expected to be complete by mid 2007. To date, the review has identified some 33 Australian Design Rules that would provide significant benefits if harmonised with particular UN/ECE Regulations and global technical regulations. The Government expects to be in a position to start adopting selected UN/ECE Regulations and global technical regulations from late 2007.

Obligations

Article 7: Adoption, and notification of application, of established global technical regulations

26. The establishment of a global technical regulation does not obligate Contracting Parties to adopt the regulation as domestic law. Contracting Parties retain the right to choose whether or not to adopt a regulation.

27. If a Contracting Party votes to support the establishment of a global technical regulation, the Contracting Party must submit the regulation to the process used by that Contracting Party to adopt such a regulation into its own laws or regulations and must seek to make a final decision on whether to adopt the regulation expeditiously.

28. While the decision is voluntary, each Contracting Party must, within 60 days of deciding whether or not to adopt a global technical regulation, notify the United Nations Secretary-General of its decision. Each Contracting Party must also notify the Secretary-General, within 60 days of the decision, if it decides to:

- rescind or amend its decision to adopt a regulation;
- accept products (ie, components or vehicles) that comply with a global technical regulation, without adopting the regulation itself—this includes allowing the components or vehicles to enter the market of the Contracting Party; or
- cease accepting such products.

29. If a Contracting Party has not made a decision to adopt or not to adopt a global technical regulation within one year of its establishment in the Global Registry, the Party must provide a status report to the United Nations Secretary-General.

Article 8: Issue Resolution

30. Any questions regarding the provisions of an established global technical regulation must be referred to the Executive Committee.

31. Issues between Contracting Parties concerning the interpretation or application of the 1998 Global Agreement must, as far as possible, be resolved through consultation or negotiation between those Parties. If they are unable to do so, the Contracting Parties may agree to request the Executive Committee to resolve the issue.

Implementation

32. Australia maintains a federal scheme of safety and emission standards for motor vehicles. The scheme is underpinned by an Inter-Governmental Agreement between the Commonwealth, the States and Territories. The scheme is overseen by a Ministerial Council, the Australian Transport Council. Industry-specific regulation is provided under the *Motor Vehicle Standards Act 1989* which came into effect on 1 August 1989. Discrepancies between jurisdictions are minimised by the use of uniform, national standards for vehicle design; these standards are called Australian Design Rules (ADRs). ADRs are adopted under a joint Commonwealth, State and Territory decision-making process, following industry and public scrutiny. ADRs are also exposed to the transparency of Regulation Impact Statements and tabling in Parliament. ADRs are generally recognised as contributing towards safer roads and cleaner air.

33. Upon the 1998 Global Agreement entering into force for it, Australia would be able to choose to adopt one or more global technical regulations. It would do so by implementing the regulation in a new ADR or by amending an existing ADR. Australia would also be required to notify the Secretary-General of its decision to adopt any global technical regulations and any decision to accept products that comply with any of the regulations without adopting the regulation itself.

Costs

34. The only costs arising from acceding to the 1998 Global Agreement are those relating to the administration of Australia's role within the treaty. This primarily covers attendance at regular meetings of the administering body – the United Nations World Forum for Harmonization of Vehicle Regulations. Attendance by Departmental officials will be met from within the Department's existing budget.

35. Forum meetings are also open to observers. These can include a range of non-government organisations, mainly peak bodies (representing manufacturing, standard-setting, consumer and motoring organisations). These peak bodies meet their own costs of attending.

Regulation Impact Statement

36. A Regulation Impact Statement is attached.

Future treaty action

37. As outlined above, the 1998 Global Agreement provides for the establishment and development of global technical regulations for motor vehicles. Once approved by the Executive Committee, these regulations are established in a Global Registry. The regulations may be amended from time to time.

38. A question arises as to whether or not the adoption or amendment of a global technical regulation would constitute a treaty action which should be tabled in the Australian Parliament. The regulations are legally discrete from the text of the 1998 Global Agreement, so their particular adoption or amendment would not constitute an amendment to the treaty itself.

39. It is noted that the Joint Standing Committee on Treaties has already considered whether technical regulations for wheeled vehicles adopted by Australia pursuant to the 1958 Agreement need to be tabled in the Australian Parliament as a treaty action. When Australia was in the process of acceding to the 1958 Agreement, the Committee issued its Report 25 of 21 September 1999, *Adoption of Uniform Technical Prescriptions for Wheeled Vehicles*. At paragraphs 7.27 and 7.28, the Committee noted:

“7.27. We accept the Minister’s proposition that each action to adopt an ECE Regulation should be considered to be implementation action within the overall framework of the treaty, rather than a separate treaty action. This acceptance is given on the proviso that community participation in the regulation review process is wide and effective and that the usual Regulation Impact Statement and parliamentary scrutiny opportunities are available for each regulatory action.

7.28. We also accept the Minister’s offer to advise this Committee on each occasion that regulatory action is taken to align the Australian Design Rules with ECE Regulations.”

40. The Department proposes that similar arrangements apply for the 1998 Global Agreement. The Committee’s position on the 1958 Agreement, outlined in paragraph 39 above, is consistent with treating global technical regulations as legally discrete from the text of the 1998 Global Agreement. On this basis, adoptions or amendments to global technical regulations would not constitute separate treaty actions, and would not require tabling in the Australian Parliament. In addition, the 1998 Global Agreement does not oblige Contracting Parties to adopt global technical regulations but instead obliges them to choose whether or not to do so. This decision is not a binding treaty action.

41. As with the earlier treaty, the processes for adopting ADRs provide an open and transparent means of ensuring that international standards are appropriate to Australian conditions and expectations, including public and Parliamentary scrutiny. The Department undertakes to advise the Committee whenever a global technical regulation is adopted by Australia.

42. Any future amendment or addition to the text of the 1998 Global Agreement would constitute a separate treaty action, and would be subject to the usual domestic treaty making process including the tabling of a National Interest Analysis. Procedures for amending the text of the Agreement itself are set out in Article 13. To amend the Agreement, there must be a consensus vote. Thus, if any Contracting Party votes against a recommended amendment, it is not established. Any Contracting Party may propose an amendment; the proposal is forwarded to the United Nations Secretary-General and then to all other Contracting Parties. A proposal is accepted, and the Agreement is amended, if no Contracting Party expresses an objection within six months. The amendment enters into force three months after this notification period.

Withdrawal or denunciation

43. Procedures for withdrawal are set out at Article 12. A Contracting Party may withdraw from the Agreement by notifying the United Nations Secretary-General. Withdrawal takes effect twelve months after receipt of notification. Withdrawal by Australia would be subject to the Australian treaty-making process.

44. A Contracting Party that has adopted a global technical regulation may, pursuant to Article 7.6, decide to rescind or amend the adopted regulation. Parties may also decide to stop accepting products that comply with a global technical regulation where it has not adopted the

regulation itself. In each case, the Party must notify the Secretary-General in writing. Similarly to the adoption or amendment of a new regulation, the rescission of a regulation would not be considered a treaty action.

Contact details

Vehicle Safety Standards Branch
Maritime and Land Transport Division
Department of Transport and Regional Services.

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[1998] ATSD 4616

CONSULTATION

1. Australia's scheme for motor vehicles is overseen by a Ministerial Council, the Australian Transport Council. The Council is supported by a formal committee structure at Department/Agency level. In particular, the relevant consultative forum – between Australian jurisdictions and with industry and consumer bodies – is the Technical Liaison Group (TLG).
2. The TLG hosts regular consultations on the development of motor vehicle standards such as ADRs, and canvasses new initiatives in vehicle safety. The TLG meets at approximately six monthly intervals. Subcommittees (called “single issue working groups”) provide input where specialist expertise is required on stand-alone technical issues.
3. The TLG is chaired by the Australian Department of Transport and Regional Services and includes representatives from all States and Territories, the New Zealand Government, the National Transport Commission and Australia's automotive industry.
4. Industry representatives include the Federal Chamber of Automotive Industries, the Commercial Vehicle Industry Association of Australia, the Australian Road Transport Suppliers Association, the Australian Trucking Association, the Truck Industry Council and the Bus Industry Confederation.
5. The TLG also includes representatives from motoring and consumer bodies (such as the Australian Automobile Association and the Australian Motorcycle Council).
6. TLG members strongly supported the original decision to accede to the 1958 Agreement in 2000, and have been involved in the development of the proposed treaty action since that time.
7. TLG members strongly support the proposed treaty action.

BACKGROUND INFORMATION

Current status list of Contracting Parties to the 1998 Global Agreement

Contracting Party *with effect from*

Canada	25 August 2000
United States of America	25 August 2000
Japan	25 August 2000
France	25 August 2000
United Kingdom	25 August 2000
European Community	25 August 2000
Germany	25 August 2000
Russian Federation	25 August 2000
People's Republic of China	9 December 2000
Republic of Korea	1 January 2001
Italy	30 January 2001
South Africa	17 June 2001
Finland	7 August 2001
Hungary	21 August 2001
Turkey	1 September 2001
Slovakia	6 January 2002
New Zealand	26 January 2002
Netherlands	5 March 2002
	(Netherlands Antilles with effect from 29 June 2003)
Azerbaijan	14 June 2002
Spain	22 June 2002
Romania	24 June 2002
Sweden	1 February 2003
Norway	29 November 2004
Cyprus	11 June 2005
Luxembourg	15 November 2005
Malaysia	4 April 2006
India	22 April 2006
Lithuania	25 July 2006
Moldova	17 March 2007

Total of 29 Contracting Parties.

Source UN/ECE. Current as at March 2007.