

Amendments to the Singapore–Australia Free Trade Agreement

Introduction

- 5.1 The *Singapore–Australia Free Trade Agreement* (SAFTA) was ratified in February 2003.¹ Article 3 of Chapter 17 of SAFTA provides for a Ministerial Review of the Agreement one year after coming into force and then biennially thereafter.²
- 5.2 The amendments to SAFTA that constitute this amending treaty result from the second of these Ministerial Reviews. The second Ministerial Review was intended to build upon SAFTA to ensure the Agreement remained up to date and consistent with both countries’ business needs, and that it took into account any changes to legislation or policy settings in both countries.³
- 5.3 SAFTA underpins bilateral trade relations between Australia and Singapore and is, according to the Department of Foreign Affairs and Trade (DFAT), regarded as a high quality free trade agreement by both countries.⁴

1 *National Interest Analysis* (NIA) [2011] ATNIA 5, Amendments to Singapore–Australia Free Trade Agreement, done at Singapore on 27 July 2009 [2011] ATNIF 1, para. 1.

2 NIA, para. 14.

3 NIA, para. 3.

4 NIA, para. 4.

Australia's trade with Singapore

- 5.4 DFAT regards the two way trade and investment between Australia and Singapore as significant. In 2010, Singapore ranked as Australia's seventh largest two way merchandise trading partner and Australia's largest Association of Southeast Asian Nations (ASEAN) trading partner. Singapore also ranked ninth as a destination for Australian investment overseas.⁵
- 5.5 The latest trade data (from the December 2010 quarter), indicates that 18.5 per cent of Australia's merchandise exports to ASEAN countries went to Singapore, while 27.6 per cent of merchandise imports from ASEAN countries came from Singapore. This represents a decline over the same quarter in 2009, when merchandise exports to Singapore constituted 26.1 per cent of ASEAN exports, and merchandise imports from Singapore constituted 28.8 per cent of ASEAN imports.⁶
- 5.6 Australian merchandise exports to Singapore were valued at \$5.046 billion Australian for the 2009/2010 financial year while, for the same year, imports from Singapore were worth \$10.899 billion Australian.⁷
- 5.7 Longer term data indicates that, since SAFTA came into force, the share of Australia's exports going to Singapore has remained relatively stable, while the share of Australia's exports going to other ASEAN countries, most notably Thailand, have increased.⁸

Specific amendments

- 5.8 The DFAT argued that:

Bringing into force the proposed amendments arising from the second Ministerial Review will help to ensure that SAFTA remains a high-quality agreement and reflects Australia's most recent FTAs by remaining relevant to Australian and Singaporean businesses. It will also allow Australia and Singapore to build on the platform

5 NIA, para. 4.

6 Australian Bureau of Statistics, 1350.0 - *Australian Economic Indicators*, May 2011, Table 2.15.

7 Australian Bureau of Statistics, 1350.0 - *Australian Economic Indicators*, May 2011, Table 2.14.

8 Australian Bureau of Statistics, 1350.0 - *Australian Economic Indicators*, May 2011, *Graphs* <<http://www.abs.gov.au/ausstats/abs@.nsf/Products/429E7F5A785B8037CA25788000195F52?opendocument>> viewed 18 May 2011.

provided by SAFTA. The proposed amendments represent a balanced package of outcomes for Australia and Singapore.⁹

- 5.9 The amendments relate to Chapters 6, 8, 10, and 13 of SAFTA.
- 5.10 Chapter 6 of SAFTA concerns government procurement, and requires Government entities in Australia and Singapore to accord to the suppliers of goods and services from the counterpart country no less favourable treatment than those applying to suppliers of goods and services in their own country.¹⁰
- 5.11 Annex 3(A) of SAFTA contains a list of Australian Government entities to which Chapter 6 applies. The Annex is proposed to be amended to reflect changes in the machinery of government in Australia since the first Ministerial Review of SAFTA. DFAT was at pains to point out that the changes did not grant Singaporean suppliers of goods and services any additional access to Australian Government entities.¹¹
- 5.12 The Committee notes that while the amendment to Annex 3(A) is discussed in the *National Interest Analysis* (NIA) and is listed on the cover of the version of the Treaty tabled in Parliament, the amended Annex 3(A) is not included in the text of the Agreement.
- 5.13 The DFAT has advised the Committee that this error will be rectified and Annex 3(A) tabled in Parliament.
- 5.14 Chapter 8 of SAFTA deals with investment between the two signatories. The amending treaty introduces new commitments according minimum standards of treatment to each other's investors and prohibits the imposition of performance requirements.¹²
- 5.15 The new minimum standards include a commitment to accord investors from the counterpart country 'fair and equitable treatment' and 'full protection and security.' In this context, fair and equitable treatment means that investors will not be denied justice in criminal, civil or administrative proceedings in accordance with the principle of due process. Full protection and security means providing investors with the level of police protection required under international law.¹³

9 NIA, para. 5.

10 NIA, para. 6.

11 NIA, para. 6.

12 NIA, para. 7.

13 Chapter 8, Article 4, *Amendments to Singapore-Australia Free Trade Agreement*, done at Singapore on 27 July 2009 [2011] ATNIF 1.

- 5.16 The prohibition on performance requirements will prevent either party from imposing conditions on the establishment, acquisition, operation, management or sale of an entity by an investor from the other party.¹⁴
- 5.17 Chapter 10 of SAFTA relates to telecommunications. The amending treaty removes a series of footnotes from Article 9.7 of the Chapter. The Article concerns interconnection between major suppliers, but DFAT argued that the removal of the footnotes will not affect Australia's obligations under SAFTA.¹⁵
- 5.18 According to DFAT, the footnotes were originally included in SAFTA because the Australian negotiators thought it desirable to include clarifying text explaining Australia's telecommunications regulatory regime. DFAT now believes such clarifications are not necessary.¹⁶
- 5.19 Chapter 13 of SAFTA relates to intellectual property. Since SAFTA was concluded in 2003, both Singapore and Australia have concluded free trade agreements with the United States of America. As a result of these agreements, the legislative frameworks governing intellectual property in both countries have been changed.¹⁷ According to DFAT:
- The differences between Singapore and Australia's respective FTAs with the US mainly reflect our domestic laws and approaches to IP. The scope of some AUSFTA obligations is narrower than SUSFTA, where Australian law is narrower in its application. For example AUSFTA includes a narrower definition of 'rights management information' - that is it is 'electronic information', whereas SUSFTA is just 'information'. The narrower definition in AUSFTA reflects Australian law. Another example is on civil remedies, where the SUSFTA provides an opportunity for the right holder to elect between actual damages or pre-established damages. Australia did not agree to such provisions in AUSFTA as there is no system of pre-established damages in Australia. Instead, AUSFTA provides for 'additional damages'.¹⁸
- 5.20 However, despite these differences, DFAT argued that the Singaporean free trade agreement with the United States does not contain better terms

14 Chapter 8, Article 5.

15 NIA, para. 7.

16 Department of Foreign Affairs and Trade, *Submission 7*, p. 2.

17 NIA, para. 9.

18 Department of Foreign Affairs and Trade, *Submission 7*, p. 4. The acronyms in this quote are as follows: FTA is Free Trade Agreement; IP is intellectual property; AUSFTA is *Australia-United States Free Trade Agreement*; and SUSFTA is *Singapore-United States Free Trade Agreement*.

for Singapore than Australia's free trade agreement with the United States does for Australia.¹⁹

- 5.21 The amending treaty reflects the changes to the Singaporean and Australian intellectual property regimes resulting from these free trade agreements.²⁰

Conclusion

- 5.22 The Committee is satisfied that the amendments contained in this treaty are largely machinery in nature and will not result in significant change to the degree of market access each country accords its counterpart.
- 5.23 However, the Committee notes that the NIA and the treaty text provided to the Committee for the inquiry do not seem to have been prepared thoroughly. For example, as already noted, the text of the amending treaty does not contain the list of Australian Government entities referred to at paragraph 6 of the NIA.
- 5.24 The lack of clarity on the reason for, and nature of, the amendments to SAFTA in the NIA made it necessary for the Committee to seek further clarification from DFAT on a number of issues.
- 5.25 The Committee is otherwise satisfied by the Department's representations indicating that the amending treaty is in Australia's national interest.

Recommendation 4

The Committee supports the *Amendments to Singapore-Australia Free Trade Agreement* and recommends that binding treaty action be taken.

19 *Amendments to Singapore-Australia Free Trade Agreement*, Department of Foreign Affairs and Trade, Submission 7, p. 4.

20 NIA, para. 9.

