

**National Interest Analysis [2015] ATNIA 4**

**with Attachment on Consultation**

**World Tourism Organization (WTO) Statutes,  
(Mexico City, 27 September 1970)  
[1979] ATS 15**

## NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

### SUMMARY PAGE

**World Tourism Organization (WTO) Statutes, (Mexico City, 27 September 1970)**

**[1979] ATS 15**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is for Australia to withdraw from the World Tourism Organization ('WTO'). Under **Article 35** of the WTO Statutes, Australia may withdraw from the WTO on the expiry of one year's notice in writing to the Depositary Government (currently Spain under **Article 37** (Depositary)).
2. Following completion of all domestic requirements for the proposed treaty action, including tabling in both Houses of Parliament, consideration by the Joint Standing Committee on Treaties ('JSCOT') and approval of the Federal Executive Council ('ExCo'), Australia will lodge its notification of withdrawal from the WTO as soon as practical with the Spanish Government. Australia will no longer be a Full Member of the WTO one year from receipt of the notice of withdrawal.

#### **Overview and national interest summary**

3. Australia became a Party to the WTO Statutes on 18 September 1979. Australia initially withdrew from membership of the WTO in 1990 due to perceived deficiencies in the WTO's operations and programs (a focus on Europe and the Northern Hemisphere rather than the Asia-Pacific region) and re-joined in 2004, when changes within the WTO led Australia to believe that the WTO's direction and policy focus better aligned with Australia's priorities and policy direction at that time.
4. Australia's membership of the WTO was an initiative under the Australian Government's 2003 Tourism White Paper 'A Medium to Long Term Strategy for Tourism'. Funding for the first three years of Australia's WTO membership was included in the **AUD235 million** White Paper funding package.
5. When re-joining the WTO in 2004, Australia envisaged playing an influential role in shaping the policy direction and programs of the WTO, while providing greater access to international tourism research and statistics. It also sought to expand Australia's network of contacts and to build our knowledge of key international tourism developments, and our capacity to respond to global events impacting on tourism.
6. Australia's proposed withdrawal from the WTO has been prompted by renewed questions about the value of benefits of membership to Australia in recent years, and follows a comprehensive review in consultation with key industry stakeholders as set out in the Attachment on Consultation. While the WTO has emphasised the importance of Australia's membership, it has not given priority to Australian interests as would be expected given Australia's financial contribution.

Membership fees have also increased ninety two per cent (92%) in the decade since re-joining. These factors have provided a disincentive to Australia's continued membership of the WTO

7. Given the Australian Government's current differences in strategic priorities and resulting work program to those of the WTO, combined with the current constrained resource environment, the benefits of Australia's WTO membership are low, and are not matched by the cost of membership. Overall it is in Australia's national interest to withdraw from WTO membership, as the return on Australia's investment is minimal given the limited benefits to the Australian tourism industry and the Australian Government.

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

8. Withdrawal from the WTO has been prompted by questions about the value of benefits of membership to Australia in recent years and follows a comprehensive review in consultation with key industry stakeholders.

9. While the WTO has emphasised the importance of Australia's membership, it has not given priority to Australian interests, as evidenced in the WTO's work program. To influence the development of its future work-program, the WTO conducts a biennial survey of Members. Australia has completed each biennial survey to ensure a detailed outline of Australia's tourism needs and priorities are presented, with the aim of influencing the WTO's selected themes. However, completion of the surveys has not influenced the WTO in development of its work programs.

10. Despite the size of its financial contribution to the WTO, Australia's ability to influence the direction of the WTO to more closely align it with the Australian Government's tourism policy objectives is limited. In part, this is due to the dissonance between Australia's tourism priorities and those of the WTO. Australia's tourism priorities do not align with those of the majority of WTO Members and are accordingly not prioritised during the creation of new WTO work programs.

11. A significant proportion of the WTO's membership is from developing countries for which poverty alleviation, the United Nations Millennium Development Goals and sustainable development are core priorities. These are worthy objectives to which Australia is also committed, and to which we contribute with DFAT's **AUD5 billion** foreign aid program. Australia understands the WTO's choice of priorities is a key factor, along with budgetary considerations, in the decision of other like-minded countries such as the UK, USA, New Zealand, Canada, Singapore, Ireland, and Belgium to either not join or to withdraw from their membership of the WTO.

12. Membership fees have also increased ninety two per cent (92%) in the decade since re-joining, from **€160,911** (approximately **AUD263,537**) in 2004 to **€308,834** (approximately **AUD448,649** subject to currency fluctuations) for 2015. Due to the significant cost of membership, Australia's current engagement is limited to attending key meetings (when possible), and receiving WTO publications and statistical data and responding to WTO Member surveys.

13. The Australian Government has instead refocused Australia's multilateral tourism engagement towards the APEC Tourism Working Group and the OECD Tourism Committee, as these fora provide a better return on Australia's investment, include Australia's key tourism markets (India and China) and assist Australia to achieve its *Tourism 2020* policy priorities and economic diplomacy objectives. Membership of these bodies also supports our efforts to build strong bilateral tourism relationships with our key tourism markets.

14. In 2013-14, arrivals from APEC member economies accounted for almost seventy per cent (70%) of total visitor arrivals to Australia, and over sixty per cent (60%) of total expenditure. These visitors spent over **AUD18.2 billion**, an increase of seven per cent (7%) on 2012-13. Eight of Australia's top ten inbound markets by visitor numbers are in APEC: New Zealand (1st), China (2nd), USA (4th), Singapore (5th), Japan (6th), Malaysia (7th), South Korea (8th) and Hong Kong (9th). Six of Australia's top ten markets by expenditure are in APEC.

15. In the same period, arrivals from OECD member countries accounted for almost fifty eight per cent (58%) of total visitor arrivals to Australia, and over forty four per cent (44%) of total expenditure. These visitors spent over **AUD13 billion**, an increase of five per cent (5%) on 2012-13. Five of Australia's top ten inbound markets by visitor numbers are in OECD: New Zealand (1st), the United Kingdom (3rd), USA (4th), Japan (6th) and South Korea (8th). Five of Australia's top ten markets by expenditure are in the OECD.

16. While Australia would no longer be a Full WTO Member, this does not preclude the government from engaging with the WTO, especially within the framework of the WTO's ongoing cooperation with the OECD and APEC. For example, the WTO continues to engage with the UK Government even though the UK is no longer a Member. This may be due to the UK's many Affiliate Members.

17. Under **Article 7** (Membership) of the WTO Statutes, affiliate membership of the WTO is open to any public or private organisation, non-government or government organisation, education institution or entity involved in tourism -related activities. WTO Affiliate Members can join the WTO individually regardless of whether their country of origin is a Full Member or not. Currently, 49 of the approximately 462 Affiliate Members of the WTO as listed on its website are from non-Member states.

18. Since Australia re-joined the WTO, new Australian Affiliate Members have required endorsement by the Australian Government. Following Australia's withdrawal from Full membership of the WTO, new Australian Affiliates would be able to apply for WTO membership without the need for Australian Government endorsement.

19. Australian Affiliate Member access to WTO consultancies and project work will not be reduced or eliminated once Australia completes its withdrawal from Full WTO membership; following Australia's initial withdrawal from the WTO in 1990, Australian Affiliates Members continued to work with and for the WTO prior to Australia re-joining the WTO in 2004, and would again be able to do so following the currently proposed withdrawal from membership.

## Obligations

20. Under **Article 25** (Budget and Expenditure) of the WTO Statutes, Australia is obliged to financially contribute to the WTO. While there is no direct obligation to comply with the aims of the WTO, under the threat of suspension of membership placed by **Article 34** (Suspension of Membership) of the WTO Statutes, Australia is obliged to not 'persist in a policy that is contrary to the fundamental aim'. The fundamental aim of the WTO is stated in **Article 3** (Aims) as the 'promotion and development of tourism with a view to contributing to economic development, international understanding, peace, prosperity, and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.

21. Under **Article 32** (Legal Personality, Privileges and Immunities) of the WTO Statutes, Australia is required to provide the WTO with the privileges and immunities in the territory of Australia required for the exercise of its functions.

22. Australia has given effect domestically to its obligations at international law under **Article 32** of the WTO Statutes, by including the WTO as an organisation that enjoys privileges and immunities under the *Specialized Agencies (Privileges and Immunities) Regulations 1986* ('Specialised Agencies Regulations'). The Specialised Agencies Regulations are enacted under the *International Organisations Privileges and Immunities Act (Cth)* ('IOPI Act'). The privileges and immunities available under the Regulations include inviolability of property assets and premises of the WTO, tax concessions, immunity from legal suit, and diplomatic privileges and immunities for the High Officer of the WTO.

23. Once Australia's withdrawal from the WTO takes effect, Australia will no longer have an obligation under **Article 32** of the WTO Statutes in relation to privileges and immunities. It is the intention of the IOPI Act that regulations made under the Act are supported by an international instrument (in this instance the WTO Statutes). Therefore, as a matter of Australian domestic law, prior to withdrawal from the WTO it will be necessary to amend the Specialised Agencies Regulations to remove all references to the WTO.

24. Pursuant to **Article 35** (Withdrawal from Membership) of the WTO Statutes, Australia may withdraw from the WTO on the expiry of one year's notice in writing to the Depositary Government. Pursuant to amendments to the WTO Statutes adopted by the General Assembly in 1981, the Depositary Government changed from Switzerland to Spain. These amendments were effectively adopted by Australia when it re-joined the WTO in 2004 (although no separate treaty action was taken by Australia in respect of amendments to the WTO Statutes between 1979 and 1989). Notification in the form of an instrument of withdrawal will be lodged with the Spanish Government as Depositary following the completion of tabling of Australia's proposed withdrawal from the WTO under the WTO Statutes, consideration by JSCOT, amendment of the Specialised Agencies Regulations and approval of the withdrawal by Ex Co.

25. Australia will no longer be a Full Member of the WTO one year from receipt of the notice of withdrawal by the Depositary, but will be required to pay Member contributions during this time. Once Australia has withdrawn from the WTO and is no longer a member, it will not have any obligations, financial or otherwise under the WTO Statutes.

### **Implementation**

26. Following completion of Australian domestic requirements for withdrawal from the WTO and amendment of the Specialised Agencies Regulations, an Instrument of withdrawal will be lodged with the Government of Spain, as the Depositary of the WTO Statutes. In accordance with **Article 35** of the Statutes, Australia's withdrawal will take effect one year from the date of deposit. The Australian Government will honour its financial commitment to the WTO until this process is complete.

### **Costs**

27. Australia is required to pay Member contributions to the WTO for 2015, totalling **€308,834** (ie. approximately **AUD448,669**). Under **Article 14** of the Annex to the WTO Statutes, for the period during which Australia remains a member, Australia will be required to pay a pro rata amount of the 2016 Member contribution for 2016 (**€331,996** or approximately **AUD482,297**). The amount will depend on when the Depositary Government is notified of Australia's withdrawal from the WTO and when the twelve (12) month notification period ends.

28. On joining the WTO, a one-off payment of around five per cent (5%) of the initial annual membership fee, (ie. **€8,295** – approximately **AUD12,050.30**) was made by Australia to the WTO's Working Capital Fund. Under the Financial Regulations and Rules of the WTO made pursuant to **Articles 11** and **18** of the WTO Statutes, this payment will be refunded after satisfaction of any financial obligation of a Member to the Organisation (Chapter V(Funds), regulation 10, paragraph 2 (f)). Should Australia choose to request a refund of this amount, it could be considered a cost-savings.

29. There are no foreseeable costs, or cost savings, to business or industry.

30. Regulatory costs associated with this proposed treaty action, including administrative, substantive compliance and delay costs are limited to the cost of WTO fees during the one year withdrawal notification period under **Article 35** of the WTO Statutes.

### **Regulation Impact Statement**

31. DFAT consulted the Office of Best Practice Regulation, Department of Prime Minister and Cabinet ('OBPR') and was advised by OBPR on 3 December 2014 that a Regulation Impact Statement is not required.

### **Future treaty action**

32. Under a 2005 amendment to **Article 5** of the WTO Statutes (not formally adopted by Australia) States that have withdrawn from the WTO in accordance with

the provisions of **Article 35** have the right to become Full Members of the WTO again, without the requirement of a vote, on formally declaring that they adopt the Statutes of the WTO and accept the obligations of membership.

33. Should Australia wish to again re-join the WTO at some later date, any future treaty action would be subject to Australia's domestic treaty process, including tabling in both Houses of Parliament and consideration by JSCOT.

#### **Withdrawal or denunciation**

34. Under **Article 35**, any Full Member may withdraw from the WTO on the expiry of one year's notice in writing to the Depositary Government. Withdrawal from the WTO is subject to Australian treaty process.

35. The WTO Statutes contain no specific provision for denunciation.

#### **Contact details**

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**ATTACHMENT ON CONSULTATION**  
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**CONSULTATION**

1. Organisations consulted by DFAT on Australia's proposed withdrawal from the WTO included:

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| (a) Australian Regional Tourism Network  | (k) National Tourism Alliance                                     |
| (b) Australian Standing Committee on Tourism   | (l) NSW Business Chamber- Tourism Industry Division               |
| (c) Australian Tourism Export Council  | (m) Queensland Tourism Industry Council                           |
| (d) Central Queensland University  | (n) South Australian Tourism Industry Council                     |
| (e) Commonwealth-State/Territory Standing Committee on Treaties                                  | (o) Tourism and Transport Forum Australia                         |
| (f) Ecotourism Australia   | (p) Tourism Council Western Australia                             |
| (g) GainingEdge  | (q) Tourism Industry Council Tasmania                             |
| (h) Griffith University (Gold Coast Campus), and subsequently the Griffith Institute for Tourism | (r) University of Queensland                                      |
| (i) James Cook University School of Business   | (s) University of Technology Sydney                               |
| (j) National Capital Attractions Association   | (t) Victorian Tourism Industry Council                            |
|  | (u) Victoria University Centre for Tourism and Services Research. |

2. Some organisations were consulted in 2013 as part of an initial review of the WTO's engagement with its Australian Affiliate members. Further consultations took place as part of a review on Australia's membership of the WTO provided to the Minister for Trade and Investment and the Minister for Foreign Affairs in March 2014. Subsequent consultations with other tourism industry stakeholders were undertaken in November 2014 as part of the preparation of the National Interest Analysis.

3. In November 2014, four written submissions were received from Griffith Institute for Tourism, the National Tourism Alliance, the Australia Tourism Export Council and the Queensland Tourism Industry Council, on behalf of their members. These organisations represent a variety of entities ranging from inbound tour operators to industry associations. They expressed concerns around:

- (a) the importance of the tourism industry;
- (b) access to contracts for WTO projects;
- (c) a perceived lack of government engagement with industry on WTO membership;
- (d) Australia's need to engage more with the wider global industry and relevant peak forums than most other countries due to its physical remoteness and the industry's insular perspective; and
- (e) Australia's reputation in its international relationships.



4. Verbally, some organisations were supportive of withdrawal from the WTO as they saw little value in membership beyond providing public relations opportunities.
5. Virtually all Affiliate members of the WTO indicated that they had to drive engagement with the WTO to derive any benefit from their membership.
6. DFAT concluded on the basis of consultations that the proposed treaty action is unlikely to have an impact on the States and Territories.

