

National Interest Analysis [2017] ATNIA 8

with attachment on consultation

**Consequences of termination of the Treaty between Australia and the Democratic
Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea**

[2017] ATNIF 8

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Consequences of termination of the Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea

[2017] ATNIA 8

[2017] ATNIF 8

Nature and timing of proposed treaty action

1. The proposed treaty action is to amend the 2006 *Treaty on Certain Maritime Arrangements in the Timor Sea* ('CMATS Treaty') ('the Proposed Amendment'), done at Sydney on 12 January 2006, before it ceases to be in force on 10 April 2017 following the unilateral termination of the CMATS Treaty by Timor-Leste on 10 January 2017. The CMATS Treaty would be amended such that the provisions listed in Article 12(4) of the Treaty will not survive termination of the Treaty pursuant to Article 12(2).

2. The proposed action also confirms an agreement between Australia and Timor-Leste that the *Timor Sea Treaty between Government of East Timor and the Government of Australia* ('Timor Sea Treaty'), done at Dili on 20 May 2002, will remain in force between the Parties in its original form prior to its amendment by the CMATS Treaty ('the Agreement on Duration').

3. The proposed treaty action would be taken as soon as practicable following consideration by the Joint Standing Committee on Treaties (JSCOT) and subject to approval by the Executive Council. The proposed treaty action would enter into force on 10 April 2017, being the date that the CMATS Treaty is no longer in force.

Overview and national interest summary

4. Australia and Timor-Leste have not delimited a permanent maritime boundary. Between 2002 and 2006, both Parties entered into three treaties—the 2002 Timor Sea Treaty, the 2003 *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields* ('International Unitisation Agreement') and the 2006 CMATS Treaty—that govern maritime arrangements in the Timor Sea. The treaty regime enables joint development of petroleum resources pending the delimitation of a maritime boundary.

5. The 2002 Timor Sea Treaty established the Joint Petroleum Development Area (JPDA) to enable petroleum development in an area of the Timor Sea claimed by both Australia and Timor-Leste. It apportions 90 per cent of the petroleum resources in the JPDA to Timor-Leste and 10 per cent to Australia. It established a Joint Commission to oversee cooperative management of the resources.

6. The 2006 CMATS Treaty was agreed to allow the development of the Greater Sunrise gas and condensate resource in the Timor Sea to proceed without prejudicing the position of either country on their maritime boundary claims. It established a moratorium on

delimitation of a maritime boundary and would have shared future revenue from upstream exploitation of Greater Sunrise equally between Australia and Timor-Leste.

7. In April 2016, Timor-Leste initiated a conciliation procedure under Article 298 and Annex V of the *United Nations Convention on the Law of the Sea* ('UNCLOS') related to maritime boundaries. The conciliation is conducted by a Conciliation Commission established under UNCLOS. The proceedings are confidential to the Parties, in accordance with the Rules of Procedure adopted by the Commission.

8. As part of a package of measures to facilitate the conciliation process, Timor-Leste formally notified Australia on 10 January 2017 that it wished to terminate the CMATS Treaty, pursuant to Article 12(2) of that Treaty. Consistent with that provision, the CMATS Treaty will cease to be in force on 10 April 2017, three months after Australia was notified of the termination. The Proposed Amendment would implement Australia and Timor-Leste's shared understanding of the consequences of termination of the CMATS Treaty by Timor-Leste.

9. Australia's interests are served by fulfilling its commitment to implement the package of measures agreed with Timor-Leste, including the shared understanding between the Parties on the consequences of termination of the CMATS Treaty. Australia has committed to engage in the conciliation in good faith, reflecting our commitment to settle disputes peacefully and consistently with international law, including UNCLOS.

Reasons for Australia to take the proposed treaty action

2006 CMATS Treaty

10. Australia and Timor-Leste's shared understanding of the legal consequences of the termination of the CMATS Treaty includes an understanding the provisions listed in Article 12(4) of the Treaty will also be terminated. These provisions would, in the absence of further action, ordinarily survive termination of the Treaty.

11. Article 12(4) gave continuing effect to a number of provisions in the CMATS Treaty, set out at paragraph 16 below. It also reflected the understanding of the Parties that the CMATS Treaty as a whole would re-enliven should—following its termination—the Greater Sunrise resource be developed in the future. Australia and Timor-Leste are committed to negotiating a maritime boundary. Before the CMATS Treaty ceases to be in force, Australia and Timor-Leste wish to amend the Treaty to give effect to their agreement that these provisions will not survive termination.

2002 Timor Sea Treaty

12. The 2006 CMATS Treaty (which, had it not been terminated, would have been in force for 50 years from the date of its entry into force or five years after development of Greater Sunrise ceased) amended the 2002 Timor Sea Treaty such that the Timor Sea Treaty would remain in force for the same duration. The consequence of the termination of the 2006 CMATS Treaty is that the 2002 Timor Sea Treaty will revert to its original terms.

13. However, given the importance of providing certainty for investors, Australia and Timor-Leste have agreed explicitly to confirm their agreement that, following termination of

the CMATS Treaty, the Timor Sea Treaty and its supporting regulatory framework shall remain in force between them in its original form, prior to its amendment by the CMATS Treaty.

Obligations

2006 CMATS Treaty

14. Article 12(1) of the CMATS Treaty provides that the Treaty will remain in force for 50 years after its entry into force, or five years after exploitation of the Greater Sunrise ceases, whichever comes first.

15. Article 12(2) allows either Party to terminate the CMATS Treaty if a development plan for Greater Sunrise has not been approved within six years after the entry into force of the Treaty (i.e. by 23 February 2013); or if petroleum production has not commenced within ten years. A development for Greater Sunrise has not yet been approved.

16. Article 12(4), which would not survive termination of the Treaty under the Proposed Amendment, provides that several provisions of the CMATS Treaty would ordinarily survive termination of the Treaty. These provide that:

(i) the CMATS Treaty is without prejudice to either Party's position on maritime boundaries (Article 2);

(ii) any comment or finding of a court, tribunal or dispute settlement body relevant to maritime boundaries in the Timor Sea will be of no effect and will not be relied on by either Party (second sentence of Article 4(5));

(iii) should Greater Sunrise be developed subsequent to termination of the CMATS Treaty, all the terms of the Treaty would come back into force from the date of commencement of petroleum production (Article 12(3)); and

(iv) Article 12(4) itself survives termination.

17. The Proposed Amendment would fulfil Australia's commitment to implement this element of the package of measures reached in the conciliation by amending the CMATS Treaty such that the provisions listed in Article 12(4) of the Treaty will not survive termination of the Treaty pursuant to Article 12(2).

2002 Timor Sea Treaty

18. Article 3 of the 2006 CMATS Treaty replaced Article 22 of the 2002 Timor Sea Treaty, such that the Timor Sea Treaty would be in force for the duration of the CMATS Treaty.

19. Article 22 of the Timor Sea Treaty will revert to its original terms prior to its amendment by CMATS, such that the Timor Sea Treaty shall be in force until there is a permanent seabed delimitation between Australia and Timor-Leste or for thirty years from the date of its entry into force, whichever is sooner.

20. The Agreement on Duration confirms explicitly that this is the case and fulfils Australia's commitment to implement this element of the package of measures.

Implementation

21. No change to Australian legislation would be required to give effect to the proposed treaty action.

Costs

22. There are no foreseeable financial costs to Australia of compliance with the proposed treaty action.

23. The 2006 CMATS Treaty obliges the Parties to share equally upstream revenue from production of the as-yet undeveloped Greater Sunrise resource. Following termination of the 2006 CMATS Treaty by Timor-Leste, this obligation will cease. Future revenue flows from Greater Sunrise are governed by the 2003 International Unitisation Agreement (which remains in force), pending the outcome of the negotiation of a maritime boundary with Timor-Leste.

Regulation Impact Statement

24. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

25. No future treaty action concerning the 2006 CMATS Treaty is envisaged.

26. The Governments of Timor-Leste and Australia have each confirmed their commitment to negotiate maritime boundaries under the auspices of the Conciliation Commission. An agreement on maritime boundaries would result in the 2002 Timor Sea Treaty no longer being in force, under the terms of that Treaty.

Withdrawal or denunciation

27. Article 12(2) of the 2006 CMATS Treaty allows either Party to terminate the Treaty, as described above in paragraph 16. Timor-Leste has availed itself of that right. There is no provision for withdrawal from or denunciation of the 2002 Timor Sea Treaty. There is no provision for withdrawal or denunciation of the Proposed Amendment.

Contact details

International Legal Branch
Legal Division
Department of Foreign Affairs and Trade

ATTACHMENT ON CONSULTATION

Consequences of termination of the Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea

[2017] ATNIA 8

[2017] ATNIF 8

CONSULTATION

1. The conciliation between Australia and Timor-Leste on maritime boundaries is being conducted in a confidential setting. Given Conciliation Commission requirements to ensure the confidentiality of the proceedings, it was not appropriate to consult stakeholders on the proposed action concerning the CMATS Treaty and the Timor Sea Treaty.
2. Australia and Timor-Leste notified petroleum companies with investments in the Timor Sea of the mutual understandings reached between the two Governments prior to the publication of a joint statement by the Foreign Ministers of Australia and Timor-Leste with the Conciliation Commission on 9 January 2017.
3. The Australian Government maintains regular contact with industry on the development of resources in the Timor Sea, consistent with the confidentiality requirements of the conciliation proceedings.