

Amendments to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities

Introduction

- 3.1 The proposed treaty action amends the Implementation Procedures for Airworthiness (IPA) under the *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America*, known as the Bilateral Aviation Safety Agreement (BASA).¹
- 3.2 The BASA is a bilateral technical co-operation agreement which facilitates recognition of aviation safety certification between the United States and Australia. In two parts, its Executive Agreement (EA) provides the framework for co-operation on aviation safety while a series of Implementation Procedures on specific topics give effect to the BASA. All are treaty level documents.²

1 *Agreement on the Promotion of Aviation Safety between the Government of Australia and the Government of the United States of America – BASA* (entered into force for the Executive Agreement (EA), 24 December 1974 and Implementation Procedures, 11 June 1975).

2 *National Interest Analysis (NIA)*, [2010] ATNIA 29, Amendments to the Implementation Procedures for Airworthiness Covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between

- 3.3 The IPA was the first of a number of the technical Implementation Procedures to be developed under Article 4 of the EA.³ It identifies the civil aeronautical parts and appliances eligible for import between United States and Australia and establishes safety requirements and obligations of the implementing authorities.⁴
- 3.4 The proposed IPA amendments will enable mutual recognition of aviation certification standards for identified products. In particular, Australian Parts Manufacturers Approval (APMA) standards for aircraft parts, endorsed by Australia's Civil Aviation Safety Authority (CASA), will be accepted and recognised by the United States' (US) Federal Aviation Administration (FAA).⁵

Benefits of the proposed amendments

- 3.5 The primary purpose of the amendments is to ensure that Australian new made products and replacement parts are accepted by the FAA for instalment in an FAA approved aircraft, irrespective of the aircraft design.⁶
- 3.6 Under current arrangements, certain Australian products and parts for export into US aeronautical markets must undergo a comprehensive two stage certification process: first, provision of extensive supporting documentation for certification by CASA and then recognition by the FAA.⁷ This dual certification process is time consuming, costly and labour intensive with the result that there are no known Australian manufacturers with both CASA and FAA approvals.⁸
- 3.7 The proposed amendments aim to streamline certification processes so that Australian certification will be sufficient for FAA authorities to accept for import the range of new and used aircraft and engines, propellers and specified replacement and modification parts identified in the IPA.⁹

Authorities (IPA amendments), done at Gold Coast on 26 September 2005 [2006] ATS 17; [2010] ATNIF 30, para. 2.

3 The Implementation Procedures were signed in May 2006 and came into effect, along with the EA framework, for both parties in November 2006.

4 NIA, para. 6.

5 *Regulation Impact Statement (RIS)*, para. 13.

6 RIS, para. 13.

7 NIA, para. 10, RIS, paras 8, 21.

8 RIS, para. 21.

9 See IPA amendments text, Tables 1 and 2, pp. 13 and 14 for full lists.

- 3.8 The IPA amendments will thus address an ‘imbalance’ in the original process, whereby Australian regulations recognised and accepted US manufactured and FAA certified aviation parts, but the FAA did not accept CASA certified products.¹⁰
- 3.9 The *Regulation Impact Statement* (RIS) for the agreement noted that these arrangements resulted from FAA concerns about CASA’s oversight and auditing of manufacturing approval holders, concerns that have since been resolved.¹¹ The RIS concluded that continuation of the current arrangements pose ‘significant obstacles for the viability of Australian aviation design, manufacturing and maintenance businesses which have the potential to service the global market’.¹²
- 3.10 CASA representative Ms Louise Brooks confirmed the timeliness of the reforms, foreshadowing:
- ...significant benefits for Australian manufacturers of aeronautical parts and appliances by enabling them to export Australian certified civil aeronautical parts directly to the United States. These amendments will remove regulatory hurdles that require Australian parts and appliances to undergo additional, often duplicated, manufacturing certification by American authorities when exporting to the United States.¹³
- 3.11 The United States is the largest market for Australia’s export of aircraft parts, but Australian exports of parts to the US (at \$AUD579 million per annum) is roughly half that of US imports to Australia (at \$ AUD1055 million).¹⁴
- 3.12 Supplementary advice from the Department of Infrastructure and Transport supported the view that the amendments have the potential to enhance competitiveness of Australian products, given favourable trade conditions for Australian originated aircraft and parts under the Australia–United States Free Trade Agreement (AUSFTA).¹⁵
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10 Ms Louise Brooks, *Transcript of Evidence*, Canberra, 25 February 2011, p. 31.

11 RIS, para. 12.

12 RIS, para. 14.

13 Ms Brooks, *Transcript of Evidence*, Canberra, 25 February 2011, pp. 30–31.

14 Estimates for 2008–09, Department of Infrastructure and Transport, *Supplementary Submission 3.1*, p. [1].

15 Department of Infrastructure and Transport, *Supplementary Submission 3.1* with reference to Question on Notice, Civil Aviation Safety Authority, *Transcript of Evidence*, Canberra, 25 February 2011, pp. 30, 31.

- 3.13 The CASA informed the Committee that Australia is pursuing similar reciprocal agreements with seven other countries from which we accept aeronautical parts under similar terms to that set out in the BASA. The end objective will be to negotiate collectively with the European Aviation Safety Agency to open up a number of markets in Europe.¹⁶

Obligations

- 3.14 The IPA is composed of six sections, four providing obligations and detailed process for the implementation procedures, and two providing support arrangements and listing agency details:
- Section I – covers the general principles, obligations and definitions;
 - Section II – sets out the scope of the IPA, indicating aircraft and parts eligible for import by the Parties;
 - Section III – establishes the working principles of the agreement, such as the design approval process;
 - Section IV – makes provision for each Party to provide the other with technical assistance; and
 - Section V – provides for special arrangements to respond to situations not specified by implementing authorities, as listed in the appendices in Section VI.
- 3.15 The following principal obligations govern the mutual recognition of safety standards and procedures under the amended IPA, requiring that:
- certification and other decisions of implementing authorities in Australia and the US be recognised as valid by each Party;¹⁷
 - the importing and exporting authorities of each Party to provide timely advice on any changes to aircraft certification requirements;¹⁸
 - the Parties accept Export Certificates of Airworthiness, Authorised Release Certificates and standard parts for all products, parts and appliances made in the country of the exporting authority;¹⁹

16 Mr David Villiers, Civil Aviation Safety Authority, *Transcript of Evidence*, Canberra, 25 February 2011, p. 34.

17 Section I, para. 1.2; NIA, para. 18.

18 Section I, para. 1.3.0; NIA, para. 21.

19 Section II, paras 2.1.1, 2.1.2 and 2.1.3; NIA para. 24.

- Parties are under reciprocal obligations to accept respective aviation authorities' specific standards for Design Approval, including certificates and Technical Standard Order authorisations;²⁰ and
 - there be agreed working procedures for Design Approval, surveillance activities, Export Airworthiness Approval and Post Design.²¹
- 3.16 The General Principles to the IPA (Section I. 1. 2) state that the new streamlined compliance regime will require a 'high degree of mutual confidence' in both the technical competence and regulatory capabilities of the implementing authorities of both Parties.
- 3.17 Section IV in particular contains safeguards for this, requiring implementing authorities of both Parties to ensure protection of confidentiality of data under intellectual property laws, and that approval holders (CASA and the FAA) be informed of and consulted about Freedom of Information requests.²²
- 3.18 The amended IPA will supersede the original IPA, with no change to the executive document.²³

Implementation

- 3.19 Amendments to Australian legislation are not required as Australia already accepts US certification for the items covered in the original IPA.²⁴
- 3.20 The Australian Government has designated CASA as the implementing authority but under Article 2 of the BASA's Executive Agreement it is possible to delegate another authority for a particular technical area. There will be no other consequent changes to existing Federal or State government roles.²⁵
- 3.21 The IPA will enter force on the date Australia advises the US that necessary domestic requirements to support the IPA are in place.²⁶

20 Section II, para. 2.3.0; NIA para. 27.

21 Section III, paras 3.0, 3.1. 3.3.

22 Sections 1, 1.0.1; NIA, paras 30 and 33.

23 Section 1, 1.0.1.

24 NIA, para. 35.

25 NIA, para. 34.

26 Article 6, NIA para. 5.

Conclusion

- 3.22 The Committee supported the ratification of the BASA and the associated IPA in its *Report 73, Treaties tabled in February 2006*.²⁷
- 3.23 Australia's aeronautical manufacturers have since benefited under the BASA. However, duplication in certification requirements have continued to apply to Australian made and certified parts for certain FAA designed aircraft. To date Australia has not had a competitive opportunity to trade its aeronautical parts and products into US markets.
- 3.24 The Committee considers the proposed amendments to the IPA should remedy that problem, reducing regulatory hurdles and opening markets to Australian aeronautical suppliers. The Committee supports binding treaty action being taken.

Recommendation 1

The Committee supports the *Amendments to the Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities* and recommends that binding treaty action be taken.

27 Recommendation 1.