

# **Government Response to the Eleventh Report of the Joint Standing Committee on Treaties**

In its Eleventh Report the Committee considers in depth eleven proposed treaty actions and makes specific recommendations with respect to two : the *Agreement between the Government of Australia and the Government of the Republic of Kazakhstan on Economic and Commercial Cooperation* and the *Agreement between the Government of Australia and the Government of Malaysia on Trade and Economic Cooperation*.

## **The Agreement on Economic and Commercial Cooperation with Kazakhstan.**

The Committee's specific recommendation in relation to the Kazakhstan Agreement is contained in paragraph 2.60 of the Report, which reads as follows:

**The Joint Standing Committee on Treaties recommends that :**

- **Australia not ratify the proposed Economic and Commercial Agreement [ECCA] with Kazakhstan at this time,**
- **that Agreement should not be considered for ratification unless and until there are demonstrations by Kazakhstan of good faith in its trade and investment relations with Australia, in particular appropriate compensation for Telstra, and**
- **should the situation change in Kazakhstan, and before a decision is made to ratify such an Agreement, a revised National Interest Analysis should be tabled in both Houses of the Parliament including the reasons for the new circumstances.**

The Government notes the JSCOT recommendation of November 1997 that ratification of the Economic and Commercial Cooperation Agreement with Kazakhstan be deferred. At that time the Government agreed with the JSCOT recommendation.

However, since JSCOT published its Report, Telstra's difficulties with Kazakhtelecom have been resolved. Telstra advised that it received final cash debts owing to it from the SATEL joint venture in early 1998. As such Telstra's difficulties in Kazakhstan are no longer an impediment to ratifying the ECCA. Further to this the Government of Kazakhstan advised the Australian Government in early 1999 that Kazakhtelecom and Telstra no longer had "financial liabilities to each other" and that this was no longer an impediment to ratifying the ECCA.

The Government assesses that finalisation of the ECCA would be beneficial to Australia's commercial relations with Kazakhstan (notwithstanding our currently modest commercial interests in Kazakhstan). The Australia-Russia and Newly Independent States Business Council now supports the reactivation of the ratification process for the Agreement.

In accordance with the JSCOT recommendation, as the situation has now changed in our trade relations with Kazakhstan, the Government recommends that the proposal to ratify the Agreement should proceed. The Government will therefore prepare a revised National Interest Analysis proposing this course of action and outlining developments in Australia's trade relations with Kazakhstan.

## **The Trade and Economic Cooperation Agreement with Malaysia**

In paragraph 3.76 of the Report the Committee makes its specific recommendation concerning the Malaysian Trade Agreement, it reads as follows:

### **The Joint Standing Committee on Treaties:**

- **recommends that there be a study to establish what, if any, other trade or financial agreements are required with the Government of Malaysia to extend the relationship, and in particular,**
  - **whether an Investment Protection Agreement is required,**
  - **whether the 1980 Double Taxation Agreement should be revised or replaced,**  
**and**
- **notes the material it has received, and supports ratification of the Trade and Economic Cooperation Agreement with Malaysia as proposed.**

The Government accepted the recommendations of the Committee and formed an Interdepartmental Committee (IDC), chaired by the Department of Foreign Affairs and Trade, to study the two proposals.

In considering the value of an Investment Protection Agreement with Malaysia, the IDC found that there has been little interest shown by the Australian business community in pursuing such an arrangement in recent years. One of the major reasons for this was the fact there already exists a strong bilateral investment relationship between the two countries. Moreover, as far as the IDC is aware, there have not been any difficulties experienced by Australian investors in Malaysia which indicate a need for additional investment protection through an IPPA. The National Executive of the Australia Malaysia Business Council (AMBC) advised the Chair of the IDC that there was no support within that body for Australia to pursue an Investment Protection Agreement. The AMBC represents a broad cross section of businesses with established involvement in Malaysia and the Government is of the opinion that its views are reflective of the relevant sections of the business community.

The Government has therefore decided that an Investment Protection Agreement should not be pursued with Malaysia at this stage.

With respect to the Double Taxation Agreement, the Government is able to advise that a Protocol to amend the 1980 Agreement, which had taken a number of years to negotiate, was signed on 2 August 1999. The Protocol which entered into force on 27 July 2000 amends the 1980 Agreement in a number of important respects. Two of these (the taxation position of fees for technical services and the extension of new tax sparing arrangements in relation to certain designated Malaysian development incentives) have been the subject of Australian business concerns in the past.

As a corollary, on 9 November 1999 there was an exchange of Letters pursuant to the existing provisions of Article 23 of the 1980 Agreement to prolong the effect of the tax sparing provisions in that Agreement until the revised provisions in the Protocol take effect. The Letters entered into force on the date of exchange.