

**AMENDMENTS, AGREED IN SHANGHAI ON 25 MAY 2006, TO THE  
ANNEX TO THE AGREEMENT BETWEEN THE GOVERNMENT OF  
AUSTRALIA AND THE GOVERNMENT OF JAPAN FOR THE PROTECTION  
OF MIGRATORY BIRDS AND BIRDS IN DANGER OF EXTINCTION AND  
THEIR ENVIRONMENT, DONE AT TOKYO ON 6 FEBRUARY 1974  
[1981] ATS 6**

**Documents tabled on 5 September 2006:**

**National Interest Analysis [2006] ATNIA 32**

**with attachment on consultation**

**Text of the proposed treaty action**

**Background information:**

**Country political brief and country fact sheet**

**List of other treaties with that country**

**List of treaties of the same type with other countries**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

#### **Amendments, agreed in Shanghai on 25 May 2006, to the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment, done at Tokyo on 6 February 1974 [1981] ATS 6**

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

1. The treaty action will amend the Annex to the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and Their Environment (JAMBA), which entered into force on 30 April 1981. This change will reflect the amendments agreed upon by both Governments at the 13<sup>th</sup> Consultative Meeting on the Agreement, held in Shanghai, China on 25 May 2006. The amendments include the addition of the roseate tern (*Sterna dougallii*) to the Annex, and the amendment of the scientific nomenclature of 14 species currently listed in the Annex.

2. Paragraph 2(c) of Article I provides that the Annex shall be considered amended three months after the date upon which the two Governments confirm, by an exchange of diplomatic notes, their respective acceptance of the amendments. If the Joint Standing Committee on Treaties (JSCOT) recommends that binding treaty action be taken to amend the Annex to the JAMBA, then the exchange of diplomatic notes will be undertaken as soon as practicable after that decision. Before that can be done, the Minister for Environment and Heritage must amend the list of migratory species pursuant to Section 209(3)(a) of the *Environment Protection and Biodiversity Act 1999* (EPBC Act).

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

3. Australia has a strong interest in maintaining biodiversity generally and in protecting migratory birds, particularly in the Asia-Pacific region. Australia has a bilateral agreement similar to the JAMBA with China (CAMBA) and is in the process of finalising an agreement with the Republic of Korea (ROKAMBA). Australia has provided strong leadership for the conservation of migratory birds throughout the East Asian – Australasian Flyway through the Asia Pacific Migratory Waterbird Conservation Strategy 1996 – 2000 and 2001 – 2005 and continues to do so as one of the initiating Partners of the WSSD Type II Partnership for Migratory Waterbirds in the East Asian – Australasian Flyway. Accepting these amendments will signify Australia's commitment to the conservation of migratory birds.

4. The amendment of the scientific nomenclature in the Annex to the JAMBA reflects progress in taxonomy since the JAMBA entered into force, and ensures that the scientific names of the species reflect the scientific names currently recognised in Australia and Japan for all species in the Annex.

5. The amendments ensure the accuracy of the Annex to the JAMBA and, consequently, the accuracy of the list of migratory species under the EPBC Act.

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

6. The JAMBA is a bilateral agreement that came into force on 30 April 1981. It obliges its Parties to protect bird species which regularly migrate between Australia and Japan, and their environment.
7. Article I(2)(a) provides that the Annex to the JAMBA contains the list of species defined as migratory birds in accordance with Paragraph 1, Article 1. The update of the scientific names of some of the species already listed on the Annex reflects updated knowledge in taxonomy since the JAMBA entered into force. The update does not alter the species which are already afforded protection under the JAMBA.
8. Australia proposed the addition of the roseate tern to the Annex to the JAMBA following a bird banding and colour flagging study which demonstrated that it regularly and predictably migrates between Australia and Japan.
9. Inclusion of the roseate tern in the Annex to the JAMBA will afford it protection as a migratory species under the EPBC Act, as provided for in Section 209(3)(a) of the EPBC Act.
10. The roseate tern is a relatively common species on the islands and cays of tropical Australia. It regularly shares breeding and non-breeding habitat with species which are already included on the list of migratory species under the EPBC Act. The inclusion of the roseate tern on the list of migratory species under the EPBC Act is not anticipated to have any effect on domestic policy, as the obligations acquired through its listing already exist for species with which the roseate tern regularly shares habitat.
11. The amendments ensure the accuracy of the Annex to the JAMBA and, consequently, the accuracy of the list of migratory species under the EPBC Act.

## **Obligations**

12. The proposed amendments to the Annex would not change Australia's obligations. As a Party to the JAMBA, Australia accepts obligations in relation to the protection of species of birds listed in the Annex to the JAMBA, and their environment. Under Article II, both Governments shall prohibit the take, sale, purchase or exchange of migratory birds or their eggs, except in the following cases:
  - (a) for scientific, educational, propagative or other specific purposes not inconsistent with the objectives of this Agreement;
  - (b) for the purpose of protecting persons and property;
  - (c) during hunting seasons established in accordance with Article II(3); and
  - (d) to allow the hunting and gathering of specified birds or their eggs by the inhabitants of certain regions who have traditionally carried on such activities for their own food, clothing or cultural purposes, provided that the population of each species is maintained in optimum numbers and that adequate preservation of the species is not prejudiced.
13. Articles II, IV(3), V and VI of the JAMBA impose upon Australia and Japan the obligation to protect the species listed in its Annex and to take measures to preserve and enhance their environment.

14. Article IV of the JAMBA obliges Australia and Japan to undertake joint research programs and to exchange data and publications relating to species listed on the Annex.

### **Implementation**

15. The EPBC Act enables Australia to give domestic effect to its obligations arising out of amendments to the Annex to the JAMBA. The obligations imposed by the listing of the roseate tern will not extend beyond the protection already afforded to species listed as migratory under the EPBC Act.

16. The EPBC Act provides for protection of migratory species as a matter of National Environmental Significance. Division 2 of Part 13 of the EPBC Act provides for the preservation, conservation and protection of migratory species in or on a Commonwealth area, including to the outer limits of the exclusive economic zone, but excluding State and Northern Territory waters. Section 209(3)(b) specifies that the list of migratory species must include all species that are from time to time included in lists established under JAMBA and CAMBA. As a result of the listing of the roseate tern on the Annex to the JAMBA, Australia will be required to update the list of migratory species pursuant to Division 2 of Part 13 of the EPBC Act.

17. Division 1 of Part 3 of the EPBC Act prohibits the taking of actions that are likely to have a significant impact on matters of National Environmental Significance without approval from the Minister for the Environment and Heritage. Under sections 20(1) and 20A(1), a person must not take an action that has, will have, or is likely to have a significant impact on a listed migratory species unless that Minister has given approval. There are exceptions to this prohibition, including those set out in Part 4 of the EPBC Act and an exception for certain actions requiring separate authorisation by an Australian Government agency.

### **Costs**

18. The amendments to the Annex to the JAMBA are not expected to impose any additional costs on Australia in terms of meeting its obligations under the Agreement. The roseate tern, while relatively common in tropical waters, shares habitat with species already afforded protection as listed migratory species under the EPBC Act. The amendments will therefore not require any domestic agencies or management arrangements to be put in place and therefore no additional costs in this regard are anticipated.

### **Regulation Impact Statement**

19. The Office of Regulation Review (Productivity Commission) has been consulted and has advised that a Regulation Impact Statement is not required.

### **Future treaty action**

20. Article I(2)(b) provides that the competent authorities of the two Governments shall, from time to time review the Annex. If they consider it necessary, the two Governments may amend it by mutual arrangement. Amendments may add to the Annex species for which there is reliable evidence of migration between the two countries. Any future amendments, of this or any other kind, to the Annex of the JAMBA will constitute a separate treaty action and be subject to the usual domestic treaty making

process including the tabling of a National Interest Analysis and consideration by JSCOT and Federal Executive Council.

21. In accordance with Article I(2)(c) of the JAMBA, the Annex shall be considered amended three months after the date upon which the two Governments confirm, by an exchange of diplomatic notes, their respective acceptance of such recommendations.

### **Withdrawal or denunciation**

22. Once amendments to the Annex have entered into force, the only way to alter the Annex would be through agreement of both Governments to a further amendment to the Annex. In practice, this would likely require the provision of evidence which definitively countered that used for the original amendment to the Annex.

23. Article IX(2) provides that each Government may, by giving one year's notice in writing, terminate the JAMBA at the end of the initial fifteen year period or at any time thereafter.

### **Contact details**

Migratory and Marine Biodiversity Section  
Marine Division  
Department of the Environment and Heritage.

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[1981] ATS 6**

## **CONSULTATION**

1. The following Federal and State agencies were consulted regarding the recommended amendments to the Annex to the JAMBA:

- Land Water and Coasts Division, Australian Government Department of the Environment and Heritage
- Department of Primary Industries Water and Environment (Tasmania)
- Department of Primary Industries (Victoria)
- Department for Environment and Heritage (South Australia)
- Department of Conservation and Land Management (Western Australia)
- Department of Environment and Conservation (New South Wales)
- Department of Infrastructure, Planning and Natural Resources (New South Wales)
- Environmental Protection Agency (Queensland)
- Department of Natural Resources, Environment and the Arts (Northern Territory)
- Environment ACT

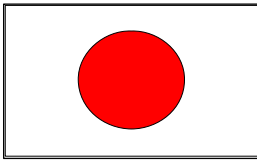
2. Consultation occurred through the NRM Wetlands and Waterbirds Taskforce, which comprises representatives from the agencies listed above. The Migratory and Marine Species Section provided a paper to the Taskforce meeting in November 2004 which summarised the state of affairs for Australia's bilateral migratory bird agreements. This paper included the proposed amendments to the Annex to the JAMBA.

3. The Queensland Environmental Protection Agency had a particular interest in the addition of the roseate tern to the Annex, as it was research carried out by their staff which determined that roseate terns regularly migrate between Australia and Japan. As a result, they were particularly supportive of the addition of the roseate tern to the Annex to the JAMBA.

4. No agencies raised any concerns regarding the proposed amendments.

## **POLITICAL BRIEF ON JAPAN**

1. Australia-Japan relations are in very good shape and evolving with new vigour. The Joint Ministerial Statement signed by Mr Downer and Foreign Minister Aso in March 2006 declared the Australia-Japan comprehensive strategic partnership to be stronger than ever. The Ministers also committed to the highest level of ambition in the future development of the relationship.
2. Our natural partnership with Japan is built on long-established commonalities - we are both industrialised democracies in the same region and key allies of the United States, supporting its strategic engagement in the Asia Pacific region. Cooperation on defence and security issues is becoming an increasingly significant part of the bilateral relationship reflected in our cooperation in Iraq and the raising to Foreign-Minister level of the Trilateral Strategic Dialogue (TSD) between Australia, Japan and the United States. TSD partners are increasingly seeking to implement practical measures to advance common interests, notably in the areas of counter-terrorism and counter-proliferation.
3. Our common interest in regional stability and prosperity has also underwritten our cooperation in regional architecture such as APEC, the ASEAN Regional Forum (ARF) and East Asia Summit (EAS). Australia and Japan are working together to identify new areas to broaden the existing partnership on security matters, including in areas such as humanitarian relief and peace-keeping following our previous cooperation in Cambodia, East Timor and Aceh. Japan's whaling policy is one of the few points of contention in the relationship.
4. Since the signing of the Australia-Japan Commerce Agreement in 1957, both countries have benefited from a dynamic and inter-dependent economic partnership. A joint study into the feasibility of a Free Trade Agreement (FTA) between Australia and Japan is well underway with a view to commencing formal FTA negotiations in 2007 – the 50<sup>th</sup> anniversary of the Commerce Agreement.
5. Japan has been our largest merchandise export market since 1967 – almost 40 years. Merchandise exports to Japan totalled \$28.4 billion in 2005, more than the combined value of goods exports to China and the United States. Japan is Australia's largest market for agricultural products and is the third largest source of foreign investment in Australia. A major component of Australia and Japan's trade relationship is energy exports, with top earners in recent times being coal and LNG.
6. Australia and Japan have a broad and deep bilateral cultural relationship. There are around 45,000 Japanese living in Australia, of whom 25,000 are permanent residents (an increase of 11 per cent from the 1996 Census). Australia ranks fifth in terms of the countries where Japanese reside abroad. There are currently 16 Australia-Japan and 46 Japan-Australia societies providing grass-roots community support for the relationship, and 99 sister city alliances. Japan is Australia's third largest tourist market after New Zealand and the United Kingdom, with 685,000 visitors in 2005. The number of students from Japan enrolled in Australia in November 2005 was over 18,000. The 2006 Australia-Japan Year of Exchange, a joint prime ministerial initiative to mark the 30<sup>th</sup> anniversary of the signing of the 1976 Basic Treaty of Friendship and Cooperation between Australia and Japan, has been an effective means of further strengthening the people-to-people linkages.



# JAPAN

Fact Sheet

## General information:

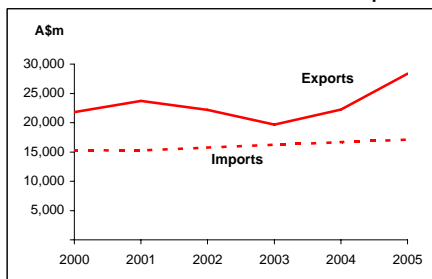
Fact sheets are updated biannually; May and September

<b>Capital:</b>	Tokyo
<b>Surface area:</b>	378 thousand sq km
<b>Official language:</b>	Japanese
<b>Population:</b>	127.5 million (2005)
<b>Exchange rate:</b>	A\$1 = 86.4859 Yen (Jan 2006)

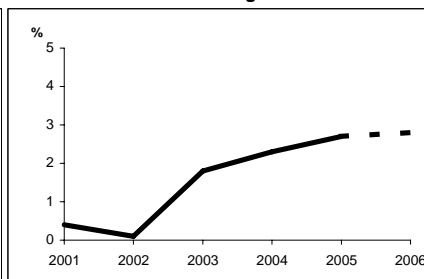
<b>Head of State:</b>	H.M. Emperor Akihito
<b>Head of Government:</b>	H.E. Prime Minister Mr Junichiro Koizumi

<i>Recent economic indicators:</i>	2001	2002	2003	2004	2005(a)	2006(b)
<b>GDP (US\$bn) (current prices):</b>	4,090.2	3,911.6	4,237.1	4,587.1	4,571.3	4,421.0
<b>GDP PPP (US\$bn) (c):</b>	3,383.5	3,432.2	3,549.5	3,740.8	3,910.7	4,069.2
<b>GDP per capita (US\$):</b>	32,173	30,704	33,199	35,914	35,787	34,590
<b>GDP per capita PPP (US\$) (c):</b>	26,614	26,941	27,811	29,288	30,615	31,838
<b>Real GDP growth (% change YOY):</b>	0.4	0.1	1.8	2.3	2.7	2.8
<b>Current account balance (US\$m):</b>	87,794	112,607	136,238	172,070	163,891	140,175
<b>Current account balance (% GDP):</b>	2.1	2.9	3.2	3.8	3.6	3.2
<b>Goods &amp; services exports (% GDP):</b>	10.6	11.4	12.0	13.4	14.3	16.2
<b>Inflation (% change YOY):</b>	-0.7	-0.9	-0.3	0.0	-0.3	0.3

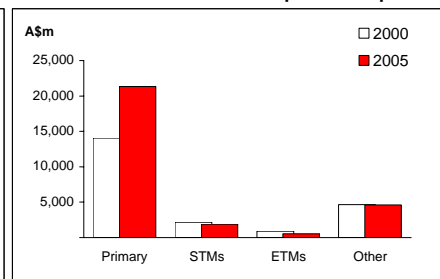
Australia's merchandise trade with Japan



Real GDP growth



Australia's merchandise exports to Japan



## Australia's trade relationship with Japan:

### Australian merchandise trade with Japan, 2005:

Exports to Japan (A\$m):	28,380
Imports from Japan (A\$m):	17,117
Total trade (exports + imports) (A\$m):	45,497

Total share:	Rank:	Growth (yoy):
20.4%	1st	27.7%
11.0%	3rd	2.7%
15.4%	1st	17.0%

### Major Australian merch. exports, 2005 (A\$m):

Coal	9,014
Iron ore	3,309
Bovine meat	2,368
Aluminium	1,449

### Major Australian merch. imports, 2005 (A\$m):

Passenger motor vehicles	6,692
Motor vehicles for transporting goods	1,216
Civil engineering equipment	580
Motor vehicle parts	510

### Australia's trade in services with Japan, 2005:

Exports of services to Japan (A\$m):	3,132
Imports of services from Japan (A\$m):	2,003

### Total share:

8.4%
5.2%

### Major Australian service exports, 2005 (A\$m):

Personal travel excl. education	1,462
Transportation	929

### Major Australian service imports, 2005 (A\$m):

Transportation	1,249
Personal travel excl. education	156

## Japan's global merchandise trade relationships:

### Japan's principal export destinations, 2005:

1	United States	22.6%
2	China	13.5%
3	Korea, South	7.8%
12	Australia	2.1%

### Japan's principal import sources, 2005:

1	China	21.0%
2	United States	12.4%
3	Saudi Arabia	5.6%
5	Australia	4.7%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a) all recent data subject to revision; (b) IMF/EIU forecast; (c) PPP is purchasing power parity.



## **Other bilateral treaties with Japan**

- Exchange of Notes regarding the Revival of pre-War Treaties between Australia and Japan  
**[1953] ATS 9**
- Agreement Relative to the British Commonwealth War Cemetery in Japan and Exchange of Notes  
**[1956] ATS 10**
- Agreement with Japan for Air Services, and Exchange of Notes  
**[1956] ATS 6**
- Agreement with Japan on Commerce, and four Exchanges of Notes  
**[1957] ATS 15**
- Protocol amending the Agreement on Commerce with Japan  
**[1964] ATS 11**
- Agreement with Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income  
**[1970] ATS 9**
- Cultural Agreement with Japan  
**[1976] ATS 3**
- Basic Treaty of Friendship and Co-operation with Japan [NARA], and Protocol  
**[1977] ATS 19**
- Exchange of Notes constituting an Agreement concerning the Commonwealth War Cemetery in Japan  
**[1978] ATS 6**
- Agreement on Fisheries with Japan  
**[1979] ATS 12**
- Agreement with Japan on Cooperation in Research and Development in Science and Technology  
**[1980] ATS 28**
- Agreement with Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA)  
**[1981] ATS 6**

- Exchange of Notes with Japan constituting an Agreement extending the Agreement on Co-operation in Research and Development in Science and Technology of 27 November 1980  
**[1985] ATS 28**
- Exchange of Letters constituting an Agreement with Japan concerning Cooperation on a Project for a Geostationary Meteorological Satellite-4 System  
**[1990] ATS 28**
- Exchange of Notes constituting an Agreement with Japan to further amend the Schedule to the Agreement for Air Services of 19 January 1956  
**[1993] ATS 22**
- Exchange of Notes constituting an Agreement with Japan concerning Cooperation on a Project for a Geostationary Meteorological Satellite-5 System  
**[1997] ATS 32**
- Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Japan to Replace the Delineated and Recorded Japanese Nuclear Fuel Cycle Program  
**[2006] ATNIA ??**

### **Treaties of the same type with other countries:**

- Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment  
**[1988] ATS 22**