

Government Response to the 7th Report of the Joint Standing Committee on Treaties

The Government thanks the Committee for its thorough and timely consideration of another disparate yet significant set of treaty actions. The Report covers two new treaties, one subsidiary instrument, and withdrawal from three obsolete treaties – and the Government would draw attention to this as evidence of its determination to keep Australia's international legal obligations transparent, appropriate, and current. The status of the treaty actions in question is as follows:

- Denunciation of the Constitution of the United Nations Industrial Development Organization (UNIDO)
 - Instrument deposited on 23 December 1996, with effect from 31 December 1997.
- Agreement to amend the Agreement with the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
 - Entered into force on 23 July 1997, after exchange of Notes on 6 March – 23 July 1997.
- Agreement with Hong Kong concerning Mutual Legal Assistance in Criminal Matters
 - Signed on 23 September 1996; continued applicability after 30 June 1997 confirmed by exchange of Notes with People's Republic of China on 9 –26 June 1997; will enter into force thirty days after exchange of Notes with Hong Kong, which awaits Hong Kong implementing legislation.
- Trade & Investment Agreement with the United Mexican States
 - Signed on 13 November 1994; entered into force on exchange of Notes on 3 April 1997.
- Denunciation of the International Convention on Civil Liability for Oil Pollution Damage
 - Instrument deposited on 7 April 1997, with effect from 15 May 1998.
- Denunciation of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
 - Deemed to be denounced with the Liability Convention, with effect from 15 May 1998.

These treaty actions reflect the Committee's tacit or explicit support for Government proposals, as recorded in the Report at Paragraphs 2.40, 3.64, 4.15, 4.27, and 4.37. The Report contains only two formal recommendations, concerning the withdrawal from UNIDO and the Tax Sparing Agreement with Vietnam. It also contains an extensive discussion of consultation, with reference especially to tax treaties; and the establishment through the Australian Taxation Office (ATO) of appropriate consultative mechanisms to respond to the Committee's concerns has delayed the preparation of this response.

2.39 The Joint Standing Committee on Treaties recommends that savings achieved from Australia's withdrawal from the United Nations Industrial Development Organization be redirected to other areas of the aid program where they can be more effectively utilised.

The Government notes and endorses the approach reflected in this recommendation. In doing so, the Government welcomes the Committee's conclusion (Paragraph 2.38) that 'more effective utilisation of Australia's aid budget may be obtained through the funding of other aid programs.' The Government notes, however, that the anticipated savings are part of managing the Australian Agency for International Development's (AusAID) global budget rather than a discrete sum that might be identifiably re-allocated. With reference to Paragraph 2.36, it notes that, at the time the decision to withdraw was made, AusAID wrote to all parties affected by the decision to advise them of the withdrawal and the rationale behind it.

3.63 The Joint Standing Committee on Treaties recommends that the Department of Foreign Affairs & Trade and the Australian Taxation Office keep the exclusion of accounting and audit services from tax sparing incentives in the 1992 Double Taxation Agreement with Vietnam under review and, if Vietnamese legislation is amended, commence negotiations to remove that exclusion.

The Government is pleased that the Committee supported early ratification of the amendments to the Double Taxation Agreement with Vietnam and has given effect to that ratification following the passage of the enabling legislation.

However, the Government is not in a position at this time to provide a positive response to the recommendation in Paragraph 3.63 of the Report. The possible removal of the exclusion of accounting and audit services from the scope of the tax sparing provisions in the Agreement with Vietnam would be a matter for decision by the Government, in the context of its overall policy on the grant of tax sparing, if and when the relevant Vietnamese legislation should be amended.

Trade & Investment Agreement with Mexico

With reference to Paragraph 4.23 and to clarify its final sentence, the International Wool Secretariat has entered into a Co-operation Agreement with the Mexican development bank Nacional Financiera and launched a development plan aimed at developing Mexico's wool textiles industry, with a view to gaining access to North American markets under the North American Free Trade Agreement (NAFTA).

Consultation

Paragraphs 3.46–58 of the Report provide the Committee's views on aspects of the treaty-making process. The Government endorses the importance of National Interest Analyses tabled in Parliament being both comprehensive (3.48–50) and comprehensible (3.51–3) and welcomes the Committee's continuing guidance as to the styles of document most helpful for the Parliamentary consideration of proposed treaty actions.

The Government has provided some comment on the issues of consultation in the concluding of bilateral treaties, in its response to the Committee's 4th Report. The onus remains on line Departments and agencies to identify and consult all significant stakeholders as early as possible in the negotiating and treaty-making processes. In the specific matter of tax treaties, the ATO has been exploring issues related to the establishment of a Tax Treaties Advisory Panel to include tax professionals and representatives of business organisations – notably the

management of industry involvement while respecting international practice that bilateral treaties are confidential to the parties (governments) until signature. The Government reiterates its readiness at a mutually convenient opportunity to provide the Committee with a full briefing on the principles of tax treaties in general, so as to facilitate its consideration of the merits of specific instruments in future.