

National Interest Analysis [2010] ATNIA 29

with attachment on consultation

**Amendments to the
Implementation Procedures for Airworthiness
Covering
Design Approval, Production Activities, Export Airworthiness Approval,
Post Design Approval Activities, and Technical Assistance between Authorities,
done at Gold Coast on 26 September 2005 [2006] ATS 17**

[2010] ATNIF 30

Regulation Impact Statement

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. It is proposed to bring into force a number of amendments to 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*, better known as the Bilateral Aviation Safety Agreement (BASA).
2. The BASA is a technical cooperation agreement on safety oversight which facilitates recognition of aviation safety certification between the United States and Australia. It is made up of two parts: an umbrella Agreement known as the Executive Agreement (EA) and a series of Implementation Procedures (IPs) on specific topics. Both the EA and all the IPs are treaty level documents.
3. The IPA is the first of a number of technical IPs developed under Article 4 of the EA.
4. The IPA defines the civil aeronautical products, parts and appliances eligible for import into the United States and Australia and the procedures for their import. The IPA was signed on 26 September 2005 and entered into force on 28 November 2006.
5. Article 6 of the EA also specifies that IPs shall enter into force on the date Australia advises the United States that its domestic requirements necessary for entry into force of the IP have been completed. Subject to the recommendations of the Joint Standing Committee on Treaties, Australia intends to notify the United States as soon as practicable after the tabling period so as to bring into force the proposed IPA amendments.

Overview and national interest summary

6. The purpose of the IPA is to set out the civil aeronautical products, parts and appliances eligible for import into the United States and to define the safety oversight requirements and activities between the implementing authorities for the import and continued support of those civil aeronautical products.
7. The IPA assists in providing new trade opportunities through easier access to US markets for Australian manufacturers and exporters of aeronautical products and services. It aids in reducing costs imposed on the aviation industry by duplicate safety technical inspections, evaluations and testing. The proposed amendments will

further enhance these opportunities by the incorporation of the Civil Aviation Safety Authority's (CASA's) Australian Manufacturers Parts Approval (APMA) process. This will enable recognition by the US Federal Aviation Administration (FAA) of CASA-certified Australian manufactured products, parts and appliances.

Reasons for Australia to take the proposed treaty action

8. The IPA amendments will strengthen bilateral cooperation in a variety of areas including: design approval activities; export airworthiness approval activities; and technical assistance between authorities.

9. The negotiation of the IPA amendments is consistent with the Government's trade policy, which seeks to pursue new trade opportunities and provide greater access to overseas markets for Australian business. These amendments are also consistent with commitments contained in the National Aviation Policy White Paper, launched in December 2009, in which the Australian Government undertook to "continue to seek opportunities to achieve greater recognition of Australia's safety system and acceptance of CASA's certification by other aviation authorities" (p.113).

10. The proposed IPA amendments have potential benefits for Australia by facilitating the export of Australian aeronautical products and services. Certification by CASA through the APMA process permits Australian manufacturers of aeronautical parts and appliances to manufacture and trade aircraft engines, propellers, materials, parts and appliances within Australia. Australian manufacturers seeking an APMA submit an extensive array of data and compliance statements to CASA, upon which certification is granted. The current arrangement for Australian designed and produced parts to be certified for import into the United States is a two-stage process. An Australian manufacturer must be granted certification from CASA, then obtain recognition from the FAA. This process repeats much of the work undertaken in receiving an Australian approval, further increasing timeframes and costs involved in getting the part onto the international market. The proposed amendments will streamline this process.

11. Representatives from the FAA conducted a comprehensive review of Australia's legislation, procedures, policies and methods relating to APMA in 2007 and found CASA's certification meets FAA requirements for recognition.

12. Revised text has now been agreed and both the Australian and the United States Governments are willing to set in place FAA acceptance of CASA's certification of aeronautical parts.

13. Through Australian regulations, CASA already accepts the FAA equivalent certification. The proposed amendments therefore address an imbalance in requirements for Australian export to the United States when compared to the United States' exports to Australia.

14. Enhanced access to the US market by Australian parts manufacturers will foster economies of scale, generate cost efficiency and develop business capability. Greater productivity by Australian manufacturers will in turn develop a higher level of competition in the global marketplace; stimulate exports, creating less reliance on imports; and create Australian jobs.

15. Additionally, the proposed amendments will assist with implementing the IPA more generally through correction of identified errors, inconsistencies in the use of terms and outdated information.

Obligations

16. Section I of the IPA covers general obligations arising from the IPA and provides definitions.
17. Paragraph 1.0 of Section I details how Article 4 of the EA provides for the Government of Australia and the Government of the United States (the Parties) to be bound by the IPA, once the IPA has entered into force in accordance with Article 6 of the EA.
18. Under Paragraph 1.2 the Australian and US Governments agree that their respective implementing authorities shall give the same validity to a certification made by the other Party's implementing authority as they would if it had been made by their own implementing authority.
19. Also, each Party agrees that when a finding is made by the other Party's implementing authority in accordance with the laws and regulations of the other Party and in accordance with the IPA, that finding is to be given the same validity as if it were made by their own implementing authority.
20. Each Party agrees that findings by the other Party's implementing authority made pursuant to the IPA through aircraft certification systems are to be given the same validity as those made directly by their own implementing authority.
21. Australia and the United States agree that their importing and exporting authorities shall keep each other informed in a timely manner of significant changes within their aircraft certification systems, as outlined in Paragraph 1.3.0.
22. Accordingly, upon notice of changes by one implementing authority, the other implementing authority may request a meeting to review the need for amendment of the IPA.
23. Section II of the IPA covers the scope of the Implementing Procedures in relation to products, parts and appliances.
24. Australia and the United States shall accept Export Certificates of Airworthiness for the import of products, parts and appliances made in the country of the exporting authority as detailed under Paragraphs 2.1.0 and 2.1.2 of Section II.
25. Australia and the United States shall also accept Authorized Release Certificates for the import of some products, parts and appliances made in the country of the exporting authority as detailed under Paragraph 2.1.1 and Paragraph 2.1.3.
26. In accordance with Paragraph 2.1.4 Australia and the United States shall accept standard parts for all products, parts and appliances covered under the IPA when they conform to established specifications.
27. As outlined in paragraph 2.3.0, Australia shall accept the following items as the basis of Civil Aviation Safety Authority (CASA) Design Approval: type certificates and amended certificates for products for which the United States is the state of design; Technical Standard Order authorization; and other approved major design changes to CASA-approved designs for products and appliances for which the

United States is also the State of Design. Paragraph 2.3.2 outlines equivalent, reciprocal obligations for the United States.

28. Paragraph 2.3.1 outlines Australia's obligation to accept (without further investigation) specific US Design Approvals. Paragraph 2.3.3 outlines equivalent, reciprocal obligations for the United States and introduces the proposed amendment for the United States to accept CASA Design Approvals for APMA. The proposed amendment to Table 2 specifies which products, appliances and parts will be eligible for import into the United States as covered by APMA.

29. Under Section III of the IPA, agreed Australian and US working procedures for design approval, production and surveillance activities, export airworthiness approval and post design approval are as outlined in Paragraphs 3.0, 3.1, 3.2 and 3.3.

30. Section IV makes provision for each Party to provide technical assistance to the other. When technical assistance is provided each Party's implementing authority shall use its own policies and procedures. Types of assistance may include but are not limited to Determination of Compliance and Surveillance and Oversight.

31. Under Paragraph 4.2.0 of Section IV, both Parties recognize that data supplied by an approval holder is likely to be protected by intellectual property laws and the implementing authorities of each Party will need to protect the confidentiality of any proprietary data.

32. As detailed under Paragraphs 4.2.1 and 4.2.2, where there is a Freedom of Information (FOI) request that refers to a CASA approval holder located in the United States, CASA will ask the US Federal Aviation Administration (FAA) to contact the approval holder to obtain permission for release of information or justification for any objection to the release of information. Despite any such objection, CASA may disclose information in accordance with the provisions of the FOI Act. The United States shall treat any FOI issues in a similar manner.

33. In accordance with Section V of the IPA, the Parties recognize that special arrangements may be necessary to respond to situations that fall under the scope of the IPs but are not specifically addressed. The special arrangements developed by the Parties' implementing authorities are to be listed in Appendix D of the IPA.

Implementation

34. Article 2 of the EA states the Government of Australia has designated the CASA as its implementing authority. For a particular technical area, the Government of Australia may designate another authority which is authorised under Australian law to perform that function as the relevant implementing authority for that technical area.

35. No amendments to current legislation are required as Australia already accepts US certification for the items covered by the IPA amendments. There will be no change to the existing roles of the Commonwealth Government and the State and Territory Governments as a result of implementation action.

Costs

36. The proposed amendments to the IPA impose no additional costs on manufacturers, exporters or on the State or Territory or Commonwealth Governments. On the contrary, the proposed amendments will remove or reduce processes and costs to Australian aviation/aerospace manufacturers seeking access to the US market due to the automatic acceptance of CASA certification by the FAA.

Regulation Impact Statement

37. The regulatory amendment will not restrict competition or impose additional cost on business. Please refer to the Regulation Impact Statement which accompanies this National Interest Analysis.

Future treaty action

38. Article 7 of the EA provides for amendment to the IPA at any time by the written agreement of the Parties. Amendments will be subject to Australia's domestic treaty procedures.

39. Additional opportunities for enhanced recognition of CASA certification have been identified. These include FAA validation of CASA Supplemental Type Certificates (STC) for a number of products and parts (including products for which the State of Design is not the United States or Australia) and FAA acceptance of CASA approved repair data. The technical work for this has commenced but it is expected it will be some time before further amendment to the IPA is agreed.

40. Australia's treaty procedures will be followed to finalise and implement such future amendments to the IPA.

Withdrawal or denunciation

41. Article 8 of the EA provides that the IPA may be terminated in accordance with the termination provisions that are stipulated within the IPA.

42. Paragraph 1.8 of the IPA notes that either Party may terminate the IPA 6 months from the date of written notification to the other Party. Any activities conducted under the IPA prior to termination will remain valid.

43. In the event that the EA is terminated, the IPA executed in accordance with the EA shall also cease to have effect as of the date of its termination.

44. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty procedures.

Contact details

Aviation Environment Branch
Aviation and Airports Business Division.
Department of Infrastructure, Transport, Regional Development and Local
Government

ATTACHMENT ON CONSULTATION

Amendments to the Implementation Procedures for Airworthiness Covering

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CONSULTATION

45. The Australian Government Department of Infrastructure, Transport, Regional Development and Local Government (Department of Infrastructure) has consulted with relevant aviation stakeholders and Commonwealth and State/Territory Departments and Agencies as part of the consultative process for a number of proposed amendments to the IPA under the Agreement on the Promotion of Aviation Safety (also known as the Bilateral Aviation Safety Agreement - BASA) between Australia and the United States.

46. Consultation processes associated with the original IPA in 2005, which at the time included recognition of APMA, found that no respondents opposed the proposed agreement although two commented that existing obligations entered into by the US Government should be protected. Indications are that relevant small businesses anticipated savings in certification costs allied with opportunities for increased markets. It was concluded that only positive impacts on business could be anticipated in the future.

47. On 5 September 2009, the Department of Infrastructure published an Invitation to Comment notice in *The Weekend Australian* which directed interested parties to the Department of Infrastructure and CASA web sites to obtain a Discussion Paper outlining the proposed amendments to the IPA. Interested parties were invited to comment on the content and value of the proposed amendments. Infrastructure allowed one week for comment with written submissions required by midnight 13 September 2009.

48. In conjunction with the public advertisement and website promotion, targeted emails were sent to relevant parties and individuals with an interest in the amendments, directing them to the information published on the Department of Infrastructure and CASA websites. These were:

- Aircraft Owners and Pilots Association (AOPA)
- Australian Industry Group
- Aviation Australia
- Australian Licensed Aircraft Engineering Association (ALAEA)
- Aviation Maintenance, Repair and Overhaul business Association (AMROBA)
- BAE Systems Australia
- Gippsland Aeronautics
- John Cameron Aviation

- Qantas
- Raytheon
- Regional Aviation Association of Australia (RAAA)
- Regional Express
- Virgin Blue

Commonwealth and State/Territory Departments consultation included:

- Business and Industry Development - Chief Minister's Department - Australian Capital Territory
- Department of Infrastructure, Energy & Resources - Tasmania
- Department of Industry, Innovation and Regional Development - Victoria
- Department of Employment, Industry Development and Innovation - Queensland
- Department of State and Regional Development - New South Wales
- Department of Trade and Economic Development - South Australia
- Department of Transport - Western Australia
- Trade and Marketing - Tourism Western Australia
- Department of Business and Employment - Northern Territory

General Public consultation included:

- Advertisement under Public Notices - *The Weekend Australian* on 5 September 2009.
- Topic Introduction and Discussion Paper on Infrastructure's website

Responses

49. While the number of respondents was low (seven), submissions received expressed support for the proposed amendments, emphasizing that such initiatives have the potential to strengthen aviation business in the long term by simplifying processes and reducing costs for Australian manufacturers.