

**CONSULAR AGREEMENT BETWEEN AUSTRALIA
AND
THE SOCIALIST REPUBLIC OF VIETNAM
(HANOI, 29 JULY 2003)**

[2003] ATNIF 14

Documents tabled on 2 March 2004:

National Interest Analysis

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NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Consular Agreement between Australia and the Socialist Republic of Vietnam (Hanoi, 29 July 2003) [2003] ATNIF 14

Date of Tabling of Proposed Treaty Action

1. 2 March 2004.

Nature and Timing of Proposed Treaty Action

2. Pursuant to Article 22, the proposed Consular Agreement between Australia and Vietnam ATNIF 14 (the Agreement) shall take effect on the thirty-first day after notification by each Party of the completion of the procedures required by their national laws for giving effect to the Agreement.
3. It is proposed that Australia's instrument of notification be lodged as soon as practicable after completion of the Joint Standing Committee on Treaties (JSCOT) review.

Overview and National Interest Summary

4. The consular relationship between Australian and the Socialist Republic of Vietnam has to date, been governed by the provisions of the multilateral Vienna Convention on Consular Relations (VCCR) of 24 April 1963 [1973] ATS 7 to which both Australia and Vietnam are Parties.
5. The Agreement confirms and amplifies the VCCR, but also expands its provisions in some respects. It establishes a framework for consular relations between Australia and Vietnam and should deliver more certainty for Australian citizens, including dual nationals, seeking consular assistance in Vietnam.
6. The Australian Government regards consular access to its citizens arrested or detained overseas as vital to the discharge of its consular rights and duties. In the past, the Australian Government has encountered particular difficulties in securing consular access to arrested or detained Australian citizens who also possess Vietnamese citizenship. The Agreement sets out clearly defined time limits for the notification of a detained citizen to consular officials and also guarantees monthly consular visits to citizens of each country detained or arrested in the other country.

Reasons for Australia to Take the Proposed Treaty Action

7. Consuls are representatives of a country placed in another country to discharge various duties and services on behalf of their country. These services include, amongst other things, protection of the rights and interests of nationals residing or travelling in the other country, the issuing of passports and other travel documents and the registration of births and deaths of nationals in that other country.

8. The Australian Government regards consular access to its citizens arrested or detained overseas as vital to the discharge of its consular rights and duties. The Australian Government has, from time to time, encountered difficulties in securing consular access to arrested or detained Australian citizens in Vietnam.

9. Under current arrangements, which rely on the provisions of the VCCR, the time limit for notification of the arrest or detention of citizens of each country is not explicitly defined. By contrast, the Agreement establishes such time limits. For example, if officials in either Australia or Vietnam detain or arrest a citizen of the other country, they must notify the relevant consular officials of the arrest within three working days and a consular visit to the detainee must be permitted within two working days thereafter unless the detained individual expressly requests that the consular post of the relevant country should not be informed.

10. The provisions of the VCCR are not specific in detailing the regularity of consular visits to detained nationals. The Agreement guarantees monthly consular visits to citizens of each country detained or arrested in the other country. In addition, both countries will be obliged to provide reasons for the detention of a national of the other and the details of any charges. Consular representation at trials is also guaranteed.

11. The Australian Government has encountered particular difficulties in securing consular access to arrested or detained Australian citizens who also possess Vietnamese citizenship. This is because Vietnam's nationality law does not recognise dual (or plural) nationalities. The Agreement reaffirms that a person, regardless of his or her nationality, who possesses an Australian passport is entitled to consular access and assistance from Australian consular posts.

12. The Agreement allows for annual consultations on the consular relationship including any issues of concern to either Party, as well as consultation on individual difficult consular cases as required from time to time. These may involve Australian-Vietnamese citizens who choose to enter Vietnam on Vietnamese documentation.

Obligations

13. The Agreement establishes a clear set of obligations relating to the conduct of consular functions in accordance with each Party's laws and regulations, and international agreements in force between the sending State and the receiving State.

a) Article 2 concerns notifications about the appointments, arrivals and departures of consular staff.

b) Article 3 requires each Party to take appropriate measures to ensure the smooth performance of functions by a consular post.

c) Under Article 4, the Parties undertake to facilitate the purchase or lease of a building or land for use as the consular premises and the residences of consular staff. Article 4 provides also

that the sending State or its representatives are required to comply with land and planning laws of the receiving State.

d) Articles 5-9 describe functions which can be undertaken by consular officers. These include: protecting the rights and interests of the Parties and their nationals (Article 5); accepting applications relating to citizenship, registering nationals for consular access purposes, registering births and deaths, and handling procedures relating to marriages (Article 6); issuing of passports and other travel documents (Article 7); notarisational and authentication of documents (Article 8); and transmission of judicial and extrajudicial documents (Article 9).

e) Article 10 concerns consular protection and assistance to persons who may have a claim simultaneously to the nationality of Australia and another country, including the Socialist Republic of Vietnam. It ensures any person who has a valid travel document issued by the sending State, regardless of nationality, has the right to consular access and protection provided for a national of the sending State.

f) Article 11 concerns communication and contact between consular officers and the nationals of the sending State. It ensures that consular officers shall be free to communicate with their nationals. It provides for consular officers to request the authorities of the receiving State to ascertain the whereabouts of a national of the sending State. It also provides formal guidelines to be followed when the nationals of the sending State are arrested or detained by the receiving State. The authorities of the receiving State shall within three working days inform the consular post of the sending State if, within its consular district, a national of the sending State is arrested or committed to prison or custody pending trial, unless the individual expressly requests that the consular post of the sending State should not be informed. A consular visit to the detainee must be permitted within two working days thereafter.

g) Article 12 of the Agreement deals with the exchange of information in cases of deaths. It provides that where relevant information is available to the authorities of the receiving State, such authorities have a duty to inform the sending State in the case of a death of the national of the sending State. The authorities of the receiving State are also required to provide to the consular post death certification upon request (Article 12(2)).

h) Article 13 concerns consular functions relating to the handling of the estate of a deceased national. It establishes guidelines for the handling of the estate of a deceased person who has left an estate in the receiving State and there is no heir or testamentary executor in the receiving State. It also ensures that consular officers can represent their nationals at inheritance proceedings if the nationals are unable to attend the proceedings.

i) Article 14 requires the Parties to protect the interests and rights of minors or other nationals who have no capacity or limited capacity to act on their own behalf.

j) Article 15 provides that consular officers shall be entitled to render assistance to vessels of the sending State which are in the territorial waters of the receiving State. Such assistance might include: the settlement of disputes between master and crew; authentication of documents with regard to a vessel; and investigation of incidents which occurred during the voyage.

k) Article 16 ensures that whenever the authorities of the receiving State take compulsory action, or start an official investigation with regard to a vessel or board a vessel of the sending State, those authorities shall notify the consular post in advance so as to enable a consular officer to be present when action is taken.

- l) Article 17 entitles a consular officer to take measures, to the extent permitted by the laws and regulations of the receiving State, to render assistance to any wrecked vessel of the sending State and its crew and passengers and to request assistance from the authorities of the receiving State in this connection.
- m) Under Article 18, the provisions concerning vessels of the sending State are extended to cover aircraft of the sending State, on the condition that such application does not contravene the provisions of other bilateral agreements in force between the sending State and the receiving State or multilateral agreements to which both States are signatories, for example, the air services agreement between Australia and Vietnam.
- n) Article 19 allows consular posts to levy fees and charges for consular acts and exempts such fees and charges from dues and taxes of the receiving State.
- o) Article 20 provides that the provisions and definitions of the Agreement supplement or amplify those of the Vienna Convention on Consular Relations, and do not derogate from them in any way.
- p) Under Article 21, the Parties undertake to consult not less than once a year on the consular relationship, any issues of concern to either Party, and on individual difficult consular cases as required from time to time.

Implementation

14. No amendment to legislation is required to give effect to Australia's obligations under the Agreement. The obligations under the Agreement can be implemented under existing legislation, including the *Consular Privileges and Immunities Act 1972*.

Costs

15. There are no foreseeable direct financial costs for Australia for complying with the Agreement. Australian consular officers will carry out the functions described in the Agreement as part of their normal consular duties.

Consultation

16. The proposed Consular Agreement with Vietnam was notified to the State and Territory Governments through the Standing Committee on Treaties' Schedule of Treaty Action.

17. To ensure as wide a consultation process as possible with the Vietnamese community in Australia, the proposed Consular Agreement was advertised in Vietnamese and Australian media inviting submissions from individuals or organisations who wished to propose issues for inclusion in the Agreement.

18. One submission was received from the Vietnamese Community in Australia (VCA) organisation. The VCA raised concerns about dual nationality issues, a mechanism for consultation and consular functions in the event of a deceased estate. The concerns expressed by the VCA have to a large extent been met.

19. When signed, a copy of the Agreement was sent to all State and Territory Governments along with a letter seeking comments. To date no comments have been received. A copy was also sent to the VCA.

20. The consultation process is further detailed in the Consultations Annexure.

Regulation Impact Statement

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

Future Treaty Action

22. The Agreement does not require the negotiation of any future related legally binding instruments.

23. The Agreement does not set out procedures for amendments to the Agreement. Consistent with Article 39 of the *Vienna Convention on the Law of Treaties* (VCLT), the Agreement may be amended by agreement between the parties. The rules laid down in Part II of the VCLT would apply to such an agreement. Any amendment to the provisions of the Agreement would be subject to Australia's domestic treaty processes.

Withdrawal or Denunciation

24. Under Article 22(2), either Party may terminate the Agreement on six months notice by written notification to the other Party.

25. Australia's withdrawal from the Agreement would be subject to Australia's domestic treaty process.

Contact Details

Consular Branch
Public Diplomacy, Consular and Passports Division
Department of Foreign Affairs and Trade

**Consular Agreement between Australia and the Socialist Republic of Vietnam
(Hanoi, 29 July 2003)
[2003] ATNIF 14**

Consultation

1. Information on the proposed Consular Agreement was notified to the State and Territory Governments through the Standing Committee on Treaties' Schedule of Treaty Action.
2. The proposed Consular Agreement was advertised in Vietnamese and Australian media (Vietnam News of 2 February 2002 and Weekend Australian of 1 February 2002) inviting submissions from individuals or organisations who wished to propose issues for inclusion in the Agreement. The closing date for submissions was 4 March 2002.
3. One submission was received from the Vietnamese Community in Australia (VCA) organisation on 4 March 2002. The VCA raised a number of views and concerns which included dual nationality issues, a mechanism for consultation and consular functions in the event of a deceased estate.
4. In its reply of 17 May 2002, the Department of Foreign Affairs and Trade (DFAT) acknowledged the concerns about dual nationality issues and advised that the Government's position was that a definition of a national in the proposed Agreement will include any natural person having the nationality of the sending State, and any juridical person of the sending State. DFAT also advised of a provision in the Agreement for annual consultations to review the consular relationship, and for consultations, as required, on individual consular matters. The issue of deceased estate has been addressed in Article 13.
5. The Attorney-General's Department and the Department of Foreign Affairs and Trade provided advice on the Agreement text as it was being developed. The Prime Minister, Attorney-General and the Minister for Foreign Affairs gave the necessary approval prior to signing the Agreement.
6. The Minister for Foreign Affairs announced the signing of the Agreement in a media release on 29 July 2003.
7. A copy of the signed Agreement was sent to all State and Territory Governments on 13 October 2003 along with a letter seeking comments. To date no comments have been received.
8. A copy of the signed Agreement was sent to the President of the Vietnamese Community in Australia organisation on 15 October 2003.

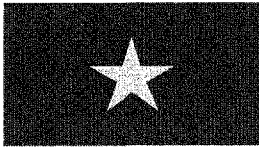
Vietnam - Political Overview

Vietnam is one of the world's five remaining one-party communist states. Decision making in Vietnam is shared by national and provincial government and agencies, slowing the political process and encouraging a cautious approach to major policy issues. Political power lies with the Communist Party of Vietnam. Its peak organ, the fifteen-member Politburo, holds authority over the implementation of social, economic, labour, defence, security and foreign policy. The Politburo is elected by the Party's Central Committee made up of 150 members. The Party is led by the Secretary General, currently Nong Duc Manh. Nong Duc Manh is ethnically Tay and is the first Secretary General to come from an ethnic minority. A Secretariat provides day-to-day policy advice, with membership comprising of some Politburo and Central Committee members. The Secretariat replaced the Standing Board in 2001, whose membership comprised solely the top five Politburo members. Party Congresses are held every five years to ratify major policy changes. Between Congresses, Central Committee Plena are convened three or four times per year to decide on important policy issues.

Although still conservatively communist, Vietnam has embarked upon a program of limited market-based economic reforms aimed at a shift towards "market economy with socialist orientation". The reforms are known as *doi moi* (renovation). Under *doi moi*, the private sector is permitted to exist in a limited capacity. There is also greater decentralised economic planning and a greater acceptance of market forces as the determinant of prices and production. Foreign investment is encouraged, and agriculture has been partly deregulated to allow individual family farms. As a result, Vietnamese living standards have risen appreciably, particularly in urban areas. The Government's commitment to integration with the global economy is evidenced through its Bilateral Trade Agreement with the United States (ratified in 2001) and WTO accession negotiations. Vietnam hopes to become a member of the WTO by 2005.

The prospect of inequitable development and social disintegration, which some elements of the Party attribute to market forces, has been a source of considerable debate within the Party. The Party's collective ambivalence towards reform is reflected in Vietnam's current leadership, representing a reformist and conservative mix. Vietnam is presently faced with a conjunction of difficult issues such as increasing unemployment, growing income disparities between urban and rural areas, social problems (including drug abuse, prostitution and increasing levels of HIV), occasional pockets of provincial unrest, corruption and declining Party membership. The Party's overriding concern is to maintain political and economic stability, which will ensure its continued existence in the face of a more open economic environment.

Since the end of 1997, there have been a number of instances where members of the Party and the general population have been prepared to express dissent. The Party has responded by introducing measures to address the concerns of the general population. Although political reform has never been articulated as an objective, and the paramount position of the Party has never been under challenge, the National Assembly has taken some cautious steps away from complete dominance by the Party, with unexpectedly heated debate over key provisions of legislation relating to land and citizenship. More recently the Party has been focussing on the eradication of corruption at both the provincial and national level of government in response to public concern.



VIETNAM

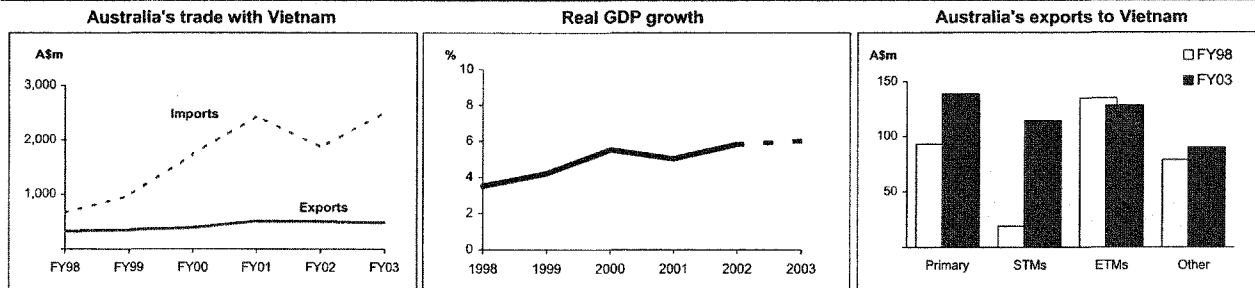
Fact Sheet

General information:

| | | | |
|---------------------------|----------------------------------|----------------------------|----------------------------------|
| Capital: | Hanoi | Head of State: | |
| Surface area: | 332 thousand sq km | Head of Government: | H.E. President Mr Tran Duc Luong |
| Official language: | Vietnamese | | |
| Population: | 80.5 million (2002) | | |
| Exchange rate: | A\$1 = 11,122.94 Dong (Sep 2003) | | |

Recent economic indicators:

| | 1998 | 1999 | 2000 | 2001 | 2002(a) | 2003(b) |
|--|--------|-------|-------|------|---------|---------|
| GDP (US\$bn): | 27.1 | 28.5 | 30.3 | 30.9 | 34.1 | 36.7 |
| GDP per capita (US\$): | 359 | 372 | 391 | 393 | 428 | 455 |
| Real GDP growth (% change YOY): | 3.5 | 4.2 | 5.5 | 5.0 | 5.8 | 6.0 |
| Current account balance (US\$m): | -1,074 | 1,177 | 1,107 | 755 | -215 | -1,369 |
| Current account balance (% GDP): | -4.0 | 4.1 | 3.5 | 2.3 | -0.6 | -3.8 |
| Goods & services exports (% GDP): | 44.8 | 50.0 | 54.7 | 54.3 | 55.8 | 59.2 |
| Inflation (% change YOY): | 7.7 | 4.2 | -1.6 | -0.4 | 4.0 | 4.0 |
| Unemployment rate (%): | 6.9 | 7.4 | 6.7 | 6.4 | 6.3 | 6.0 |



Australia's trade relationship with Vietnam:

| Major Australian exports, 2002-2003 (A\$m): | | Major Australian imports, 2002-2003 (A\$m): | |
|---|----|---|-------|
| Aluminium | 62 | Crude petroleum | 2,093 |
| Cereal preparations | 51 | Crustaceans | 49 |
| Milk and cream | 31 | Fruit and nuts, fresh or dried | 47 |
| Copper | 30 | Furniture | 43 |
| Fertilizers (excl. crude) | 14 | Footwear | 41 |

| Australian merchandise trade with Vietnam, 2002-2003: | Total share: | Rank: | Growth (yoy): |
|---|--------------|-------|---------------|
| Exports to Vietnam (A\$m): 472 | 0.4% | 28th | -5.1% |
| Imports from Vietnam (A\$m): 2,503 | 1.9% | 15th | 34.9% |
| Total trade (exports + imports) (A\$m): 2,975 | 1.2% | 19th | 26.5% |
| Merchandise trade deficit with Vietnam (A\$m): 2,031 | | | |

| Australia's trade in services with Vietnam, 2002-2003: | Total share: |
|--|--------------|
| Exports of services to Vietnam (A\$m): 200 | 0.6% |
| Imports of services from Vietnam (A\$m): 336 | 1.0% |
| Services trade deficit with Vietnam (A\$m): 136 | |

Vietnam's global trade relationships:

| Vietnam's principal export destinations, 2002: | | | Vietnam's principal import sources, 2002: | | |
|--|---------------|-------|---|-------------|-------|
| 1 | Japan | 14.6% | 1 | Taiwan | 12.9% |
| 2 | United States | 14.5% | 2 | Singapore | 12.8% |
| 3 | China | 9.0% | 3 | Japan | 12.7% |
| 4 | Australia | 8.0% | 4 | South Korea | 11.6% |
| 5 | Singapore | 5.8% | 5 | China | 10.9% |
| | | | 15 | Australia | 1.5% |

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): EIU forecast.

n.a. Data not available.

Fact sheets are updated biannually; next update: May 2004

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List by Subject

You may list treaties by subject and/or Agreement Type. To do this, select a Subject, Agreement Type and Country using the input fields below. A Country may only be selected if the Agreement Type is "Bilateral". To return the selected list click the 'Find' button.

List by the following selections:

Select the Subject to view

Select the Agreement Type

Select the Country to view

Results - 9 Bilateral agreements found for Vietnam. (Displaying treaties 1 to 9)

-
- Exchange of Notes between Australia and the Republic of Vietnam constituting an Agreement relating to the Exchange of Official Publications
[1954] ATS 19
 - Agreement on Postal Relations between the Government of Australia and the Government of the Socialist Republic of Viet Nam.
[1979] ATS 18
 - Agreement on Trade and Economic Co-operation between Australia and the Socialist Republic of Vietnam
[1990] ATS 18

- Agreement with the Socialist Republic of Vietnam on the Reciprocal Promotion and Protection of Investments
[1991] ATS 36
 - Agreement between the Government Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
[1992] ATS 44
 - Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services
[1995] ATS 26
 - Exchange of Notes constituting an Agreement to Amend [Article 23] of 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 of 13 April 1992
[1997] ATS 20
 - Exchange of Letters constituting an 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 of 13 April 1992, as amended by an Exchange of Notes done at Canberra on 22 November 1996
[2003] ATS 9
 - Consular Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam
[2003] ATNIF 14
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List by the following selections: **Consular**

Select the Subject to view

Select the Agreement Type

Select the Country to view

Results - 6 Bilateral agreements on consular matters found for all countries.
(Displaying treaties 1 to 6)

-
- Convention [between United Kingdom and Netherlands] for the Reciprocal Admission of Consuls of the One Party to the Colonies and Foreign Possessions of the Other
[1901] ATS 75
 - Agreement between Australia and the People's Republic of China concerning the Maintenance of the Consulate-General of Australia in the Hong Kong Special Administrative Region of the People's Republic of China
[1997] ATS 7

- Exchange of Letters with France relating to the Movement of Nationals Between the Two Countries
[1999] ATS 11
 - Agreement between the Government of Australia and the Government of the People's Republic of China concerning the Continuation of Consular Functions by Australia in the Macau Special administrative Region of the People's Republic of China
[1999] ATS 33
 - Agreement on Consular Relations between Australia and the People's Republic of China
[2000] ATS 26
 - Consular Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam
[2003] ATNIF 14
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