International treaty examination of the Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia

Report of the Foreign Affairs, Defence and Trade Committee

Contents
Recommendation 2
Appendix A 3
Appendix B 4
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Recommendation

The Foreign Affairs, Defence and Trade Committee recommends that the House takes note of its report.

The Foreign Affairs, Defence and Trade Committee has conducted an international treaty examination of the Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia, and recommends that the Government adopts the treaty as amended by the Third Protocol.

The national interest analysis is appended to this report.
Appendix A

Committee procedure
The committee met on 11 and 25 November 2010 to consider the treaty.

Committee members
John Hayes (Chairperson)
Jacqui Dean
Hone Harawira (non-voting member)
Hon Pete Hodgson
Dr Paul Hutchison
Keith Locke
Todd McClay
Hon Maryan Street
Phil Twyford
Appendix B

Ratification of the Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia

National Interest Analysis:

Executive Summary

New Zealand acceded to the Treaty of Amity and Cooperation in Southeast Asia in 2005. The Third Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia will allow regional organisations, namely the European Union, to accede to the Treaty with the consent of the South East Asian parties to the Treaty.

Nature and timing of the proposed treaty action

The Treaty of Amity and Cooperation in Southeast Asia (“TAC”) is a legally binding treaty “to promote perpetual peace, everlasting amity and cooperation” among the peoples of Southeast Asia to “contribute to their strength, solidarity and closer relationship”. It was signed by the five founding ASEAN member countries in 1976 followed by the other ASEAN member countries. New Zealand acceded to the TAC on 28 July 2005 to strengthen its relationship with ASEAN. Accession also served as a prerequisite for EAS membership. Fifteen countries outside the ASEAN bloc have also acceded to the Treaty.

The Third Protocol must be signed and ratified by all parties before it will enter into force.

New Zealand anticipates ratification of the Third Protocol to be complete, subject to the completion of the Parliamentary treaty examination process, by late 2010.

The Third Protocol will not apply to Tokelau, the Cook Islands or Niue, because New Zealand’s original accession to the TAC in 2005 was not extended to these countries.

Reasons for New Zealand becoming party to the treaty

At the 40th ASEAN Ministerial Meeting in Manila in July 2007 it was decided to begin the process of amending the TAC to allow the EU to accede to the TAC. Since then, the ASEAN Chair has consulted with all parties. New Zealand favours the EU’s accession to the TAC as a means of strengthening inter-regional engagement.

New Zealand’s ratification of the Third Protocol to the TAC (together with ratification by all other parties to the TAC) will enable the European Union and any other regional organisations in the future to accede to the Treaty. Accession by the EU and other regional organisations is also subject to the consent of the states in South East Asia as listed in the TAC, namely Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines,
Singapore, Thailand and Viet Nam. Such approval has been required for all accessions, including New Zealand’s accession in 2005. Ratification of the Third Protocol is therefore essentially a technical matter to enable the EU to become a party to the TAC.

**Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force in New Zealand**

If New Zealand ratifies the Third Protocol, organisations such as the European Union will be able to accede to the TAC, strengthening support for the TAC itself. If New Zealand does not ratify the Third Protocol, the Protocol will not enter into force and regional organisations will not be able to accede to the Treaty. The EU attaches a priority to acceding to the Treaty and has sought New Zealand’s support. To refuse to do so would harm New Zealand’s relations with the EU and ASEAN. EU accession would further bolster the credibility of a foundation document in regional architecture.

As stated above, from New Zealand’s perspective there are only advantages to the EU being able to accede as it will increase support for cooperation and friendship between Southeast Asian states. There are no disadvantages to New Zealand ratifying the Third Protocol. As ASEAN operates by consensus, the potential issue of the EU and its separate member countries holding multiple voting rights in international fora does not apply.

**Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms**

No legal obligations are imposed on New Zealand by the ratification of the Third Protocol.

The Third Protocol does not allow for reservations to be made.

The Third Protocol makes a minor change to the dispute resolution provisions in the TAC by ensuring the references in these provisions are changed from “States” to “High Contracting Parties”, to allow for a regional organisation to be covered.

**Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation**

No changes to legislation or regulations are required.

**Economic, social, cultural and environmental costs and effects of the treaty action**

No costs or effects.

**The costs to New Zealand of compliance with the treaty**

No costs.

**Completed or proposed consultation with the community and parties interested in the treaty action**

The Ministry of Defence has been consulted and has no objections.
Subsequent protocols and/or amendments to the treaty and their likely effects

The Third Protocol does not provide for amendments. Amendments to the TAC are regulated by the Vienna Convention on the Law of Treaties. No subsequent protocols or amendments are planned at this stage.

Withdrawal or denunciation provision in the treaty

No withdrawal or denunciation provision in the Third Protocol.