

# Agreement between the Government of Australia and the Government of Japan concerning the Transfer of Defence Equipment and Technology

## Introduction

- 3.1 According to the Department of Defence, the current global economic environment and emerging security challenges require the close cooperation of likeminded states.<sup>1</sup>
- 3.2 Japan is, according to the Department of Defence, world renowned for its defence science and technology capabilities,<sup>2</sup> and:
- The decision to proceed with negotiations on this agreement took place within the broader context of deepening Australia – Japan defence cooperation, including efforts to enhance training and exercises, increase personnel exchanges and deepen cooperation on humanitarian assistance and disaster relief, maritime security, peacekeeping, capacity building and trilateral security cooperation with the United States.<sup>3</sup>
- 3.3 Australia has a close defence relationship with Japan, but the Department of Defence noted that Japanese domestic legislation prevents it from exporting defence technology and engaging in joint development without a binding bilateral agreement.<sup>4</sup>

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1 Mr Peter Baxter, Deputy Secretary, Strategy, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

2 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

3 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

4 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

- 3.4 Negotiations for the *Agreement between the Government of Australia and the Government of Japan concerning the Transfer of Defence Equipment and Technology* (the Agreement) commenced in April 2014, and negotiations were concluded in June.<sup>5</sup>
- 3.5 The National Interest Analysis (NIA) states that:
- The Agreement will facilitate Australian access to Japanese defence technology for practical defence science, technology and materiel cooperation with Japan.<sup>6</sup>

## Background

- 3.6 Australia's practical defence relationship with Japan is based on a 2007 joint statement on cooperation.<sup>7</sup>
- 3.7 There are also two legally binding treaties covering engagement between the two countries:
- the *Agreement between the Government of Australia and the Government of Japan concerning Reciprocal Provision of Supplies and Services between the Australian Defence Force and the Self-Defense Forces of Japan of 2010*, which enables logistical support between Australian and Japanese forces cooperating in international operations such as peacekeeping and humanitarian assistance and disaster relief.<sup>8</sup> This agreement was examined by the committee in *Report 115*;<sup>9</sup> and
  - the *Agreement between the Government of Australia and the Government of Japan on the Security of Information*, which ensures the mutual protection of classified information between the countries.<sup>10</sup> This agreement was examined by the committee in *Report 132*.<sup>11</sup>
- 3.8 The Department of Defence characterises the Agreement as:

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5 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

6 National Interest Analysis [2014] ATNIA 17, *Agreement between the Government of Australia and the Government of Japan concerning the Transfer of Defence Equipment and Technology* [2014] ATNIF 20 (hereafter referred to as the NIA) para. 6.

7 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

8 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

9 Joint Standing Committee on Treaties (JSCOT), *Report 115*, March 2011, Chapter 2.

10 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

11 JSCOT, *Report 115*, March 2013, Chapter 4.

...a natural development in Australia's defence relationship with Japan and consistent with our efforts to strengthen cooperation more broadly.<sup>12</sup>

- 3.9 Japan already has similar agreements with the United States and the United Kingdom.<sup>13</sup>

## The Agreement

- 3.10 The Agreement is intended to enable defence cooperation between Australia and Japan with the intention of improving security and defence cooperation.<sup>14</sup> Article 1.1 of the agreement states:

Each Party shall, subject to the relevant laws and regulations of its country and in accordance with the provisions of this agreement, make available to the other Party, defence equipment and technology necessary to implement joint research, development and production projects or projects for enhancing security and defence cooperation...<sup>15</sup>

- 3.11 The Department of Defence advised that:

The agreement will allow Australia's Defence Science and Technology Organisation and Japan's Technical Research and Development Institute to work together more closely on areas of common interests and mutual benefit.<sup>16</sup>

- 3.12 The Agreement will also facilitate the reciprocal transfer of defence science, technology and materiel between Australia and Japan.<sup>17</sup>

## Obligations

- 3.13 The Agreement establishes a joint committee comprising Australian representatives from the Department of Defence; the Defence Science and Technology Organisation; the Defence Materiel Organisation and the Department of Foreign Affairs and Trade, and Japanese representatives
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12 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

13 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

14 NIA, para. 3.

15 *Agreement between the Government of Australia and the Government of Japan concerning the Transfer of Defence Equipment and Technology*, [2014] ATNIF 20, (hereafter referred to as the Agreement) Article I.1.

16 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

17 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 8.

- from the Ministry for Defence; the Ministry for Foreign Affairs and the Ministry for the Economy, Trade and Industry.<sup>18</sup> The joint committee will determine the defence equipment and technology to be transferred.<sup>19</sup>
- 3.14 Specific projects for joint cooperation will be mutually determined, taking into account factors such as commercial viability or the security of the respective countries, and confirmed by the parties through diplomatic channels.<sup>20</sup>
- 3.15 Detailed arrangements for the technology transfer will be agreed between the Australian Department of Defence and the Japanese ministries of Defence and Economy, Trade and Industry.<sup>21</sup>
- 3.16 Detail includes the specific equipment and technology to be transferred, the persons who will be party to the transfer, and the terms and conditions of the transfer.<sup>22</sup>
- 3.17 The use of the transferred technology is limited to the uses allowable under the charter of the United Nations and the purposes determined under the detailed arrangements. The transferred technology cannot be used for any other purpose.<sup>23</sup>
- 3.18 Prior consent from the originating government is required for the technology transferred under this Agreement to be given to a person or Government other than those agreed in the detailed arrangements.<sup>24</sup>
- 3.19 Each party must commit to protect the classified information transferred from the other party under this Agreement.<sup>25</sup>
- 3.20 Matters of interpretation or dispute can only be resolved through consultation between the parties.<sup>26</sup>

## Potential benefits

- 3.21 The Department of Defence believes that the Agreement could result in the sale of Australian defence capabilities to Japan, and gave as an

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18 NIA, para. 4.

19 The Agreement, Article II.

20 The Agreement, Article I.2.

21 The Agreement, Article II.

22 The Agreement, Article II.

23 The Agreement, Article III.

24 The Agreement, Article III.

25 The Agreement, Article IV.

26 The Agreement, Article VI.

example the only recent defence related export from Australia to Japan, the recent sale of Australian Bushmaster vehicles.<sup>27</sup>

- 3.22 Other areas of potential cooperation identified by the Department of Defence included the Joint Strike Fighter program, and a joint research project on hydrodynamics.<sup>28</sup>
- 3.23 The joint research program on hydrodynamics involves looking at water flows around vessels, which may influence future vessel design. The hydrodynamics research program was identified as:
- ... the one project that has progressed significantly in the last year or so, albeit that this is not directly connected to the treaty...<sup>29</sup>
- 3.24 When questioned about the relationship between the Agreement and the recent speculation that Australia would be purchasing Japanese submarines to replace the Collins Class boats, the Department responded:
- That is not the purpose of the treaty...Any arrangement that the government might enter into with Japan on submarines would be governed by its own agreement.<sup>30</sup>
- 3.25 However, the Department did qualify that:
- The hydro-dynamics program is obviously a research program which would have applicability to both countries' submarine programs.<sup>31</sup>

## Implementation

- 3.26 According to the NIA, no changes to laws, regulations or policies will be required to implement the Agreement.<sup>32</sup>
- 3.27 The Agreement contains no specific financial commitments. The costs associated with cooperative research, development and production activities under the Agreement will be determined using the detailed arrangements process discussed above.<sup>33</sup>

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27 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 9. As the Agreement is not in force, this sale occurred outside the agreement's framework.

28 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 9.

29 Mr Clive Dunchue, Executive Director, Science International Engagement, Department of Defence, *Committee Hansard*, 22 September 2014, p. 9.

30 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 10.

31 Mr Baxter, Department of Defence, *Committee Hansard*, 22 September 2014, p. 10.

32 NIA, para. 14.

33 NIA, para. 15.

## Conclusion

3.28 The Committee supports the ratification of this Agreement.

### Recommendation 2

3.29 **The Committee supports the *Agreement between the Government of Australia and the Government of Japan concerning the Transfer of Defence Equipment and Technology* and recommends that binding treaty action be taken.**