

**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**

**(Canberra, 8 July 2014)**

**[2014] ATNIF 20**

## **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

### **Agreement between the Government of Australia and the Government of Japan concerning the transfer of Defence Equipment and Technology (Canberra, 8 July 2014) [2014] ATNIF 20**

#### **Nature and timing of proposed treaty action**

1. Australia signed the *Agreement between the Government of Australia and the Government of Japan concerning the transfer of Defence Equipment and Technology* (the Agreement) in Canberra on 8 July 2014. The proposed treaty action is to bring the Agreement into force. Article VII of the Agreement provides that it will enter into force when the Government of Australia and the Government of Japan (the Parties) exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to the Agreement have been completed.
2. It is proposed that Australia notify Japan via diplomatic note of the completion of its internal procedures for entry into force as soon as practicable after the tabling period and consideration by the Joint Standing Committee on Treaties (JSCOT).

#### **Overview and national interest summary**

3. The purpose of the Agreement is to facilitate defence cooperation between the Parties by making available to each other the defence equipment and technology necessary to implement joint research, development and production projects or other projects for enhancing security and defence cooperation. The Agreement states that the Parties will determine the specific projects for cooperation.
4. The Agreement establishes a Joint Committee to determine which defence equipment and technology will be transferred between the Parties, and establishes a framework through which detailed arrangements can be made outlining the circumstances in which technology will be transferred between the Parties. Technology transfers have the potential to strengthen Australia's defence capability and increase the capacity of the Australian Defence Force and Japanese Self-Defense Forces to work together more closely.

#### **Reasons for Australia to take the proposed treaty action**

5. During Japanese Prime Minister Mr Shinzo Abe's visit to Australia from 7 to 10 July 2014, the Australian and Japanese Prime Ministers welcomed the recent growth and deepening of the bilateral defence and security relationship. The two Prime Ministers endorsed a suite of recommendations developed through the Australia-Japan Foreign and

Defence Ministerial (2+2) Consultations. The initiatives agreed by the Prime Ministers are intended to deepen practical defence cooperation between Australia and Japan.

6. The Agreement will facilitate Australian access to Japanese defence technology for practical defence science, technology and materiel cooperation with Japan. Under its domestic legislation, Japan is unable to export defence technology, or engage in joint development, without a legally binding bilateral agreement. The Agreement will allow the Parties to identify, and work together on, areas of future research interest and mutual benefit through the transfer of defence equipment and technology. Should Australia and Japan decide to jointly develop defence capabilities, there may also be significant cost reductions to both countries.

7. The Agreement does not raise any domestic or international policy concerns. Failure by Australia to take binding treaty action could raise doubts as to Australia's commitment to the bilateral defence and security relationship. Delays in taking binding treaty action may also affect the ability of the Parties to pursue collaborative projects in the near future.

### **Obligations**

8. Article I, paragraph 1 of the Agreement requires Australia and Japan to make available to each other, subject to their respective laws and regulations, defence equipment and technology necessary to implement joint research, development and production projects or projects for enhancing security and defence cooperation. Article I, paragraph 2 states that these projects will be mutually determined by the Parties taking into account various factors, including commercial viability or the security of the respective countries.

9. Article II establishes a Joint Committee to determine the defence equipment and technology to be transferred for the projects. Article II, paragraph 2 outlines the composition of both the Japanese and Australian sections of the Committee. Article II, paragraph 3 provides that the information necessary for determining which defence equipment and technology should be transferred shall be communicated to each section of the Committee through diplomatic channels. Detailed subordinate arrangements of less-than-treaty status shall be made between the competent authorities of the Parties in order to implement the Agreement. These arrangements will provide for, inter alia, the defence equipment and technology to be transferred, the persons who shall be party to the transfer and the detailed terms and conditions of the transfer. Article II, paragraph 5 states that the competent authority of Australia will be the Australian Department of Defence, and the competent authorities of Japan will be the Japanese Ministry of Defense and the Japanese Ministry of Economy, Trade and Industry.

10. Article III provides that each Party shall only use equipment or technology transferred under the Agreement in a manner consistent with the Charter of the United Nations and such other purposes as may be determined between the Parties. It also stipulates that the Parties shall not further transfer defence equipment and technology transferred pursuant to the Agreement without the prior consent of the Party which transferred such defence equipment and technology.

11. Article IV states that the Parties will take necessary measures to protect classified information transferred between them pursuant to the Agreement, subject to relevant domestic laws and regulations and in accordance with applicable international agreements between them.

12. Article V states that the Agreement and the subordinate arrangements made under the Agreement will be implemented subject to the relevant laws, regulations and budgetary appropriations of Australia and Japan.

13. Article VI states that any matter relating to the interpretation or application of the Agreement (and all arrangements made thereunder) will be resolved solely through consultation between the Parties.

### **Implementation**

14. No changes to national laws, regulations or policies are required to implement the Agreement. The Agreement will not bring about any change to the existing roles of the Australian Government or the State and Territory governments.

### **Costs**

15. The Agreement does not contain any specific financial commitments. Any costs as a result of the cooperative research, development and production activities pursued by the Parties under the Agreement will be determined in the detailed subordinate arrangements that would govern specific cooperative activities.

### **Future treaty action**

16. Article VII, paragraph 2, provides that the Agreement may be amended by written agreement between the Parties. Any amendment to the Agreement would be subject to Australia's domestic treaty process.

**Withdrawal or denunciation**

17. Pursuant to Article VII, paragraph 3, the Agreement will remain in force for a period of five years and shall be automatically extended annually thereafter unless either Party notifies the other in writing through diplomatic channels 90 days in advance of its intention to terminate the Agreement.

**Contact details:**

Japan Policy Unit  
International Policy Division  
Department of Defence

## ATTACHMENT ON CONSULTATION

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### CONSULTATION

18. The Department of Defence consulted with the Attorney-General's Department, the Department of Foreign Affairs and Trade, and the Department of Prime Minister and Cabinet throughout the negotiation process.

19. The States and Territories were advised about the Agreement through the Commonwealth - State - Territory Standing Committee on Treaties' (SCOT) biannual schedule of treaty action under negotiation, consideration and review in May 2014. No comment has been received from State and Territory governments to date.