

National Interest Analysis [2010] ATNIA 54

with attachment on consultation

**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**

done at Tokyo on 19 May 2010

[2010] ATNIF 29

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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

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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force 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* (the proposed Agreement).
2. The proposed Agreement was signed on 19 May 2010. Pursuant to Article VII, the proposed Agreement will enter into force on the date upon which 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 proposed Agreement have been completed.
3. It is proposed that Australia will send written notification to Japan as soon as practicable after the tabling of the proposed Agreement in Parliament and following a recommendation by the Joint Standing Committee on Treaties (JSCOT) that binding treaty action be taken.

Overview and national interest summary

4. The purpose of the proposed Agreement is to establish basic terms and conditions for the reciprocal provision of supplies and services between the Australian Defence Force (ADF) and the Self-Defense Forces of Japan necessary for: exercises and training with participation by the ADF and the Self-Defense Forces of Japan; United Nations peacekeeping operations; humanitarian international relief operations; operations in response to large scale disasters in Australia, Japan or a third country; emergency evacuation of Australian or Japanese nationals, or others from third countries; and communication and coordination or other routine activities including visits of ships or aircraft of the ADF or the Self-Defense Forces of Japan.
5. The proposed Agreement would benefit Australia by formalising and enhancing the quality of, and potential for, defence cooperation with Japan.

Reasons for Australia to take the proposed treaty action

6. The proposed Agreement will facilitate the reciprocal provision of supplies and services in the field of logistic support and will promote cooperation between the Self-Defense Forces of Japan and the ADF.

7. The proposed Agreement does not raise any domestic or international defence policy concerns.

Obligations

8. Article I of the proposed Agreement outlines the bilateral activities covered by the proposed Agreement and emphasises the principle of reciprocity. The activities covered by the proposed Agreement are:

- a) exercises and training with participation by the Self-Defense Forces of Japan and the ADF;
- b) United Nations peacekeeping operations;
- c) humanitarian international relief operations;
- d) operations in response to large scale disasters in Australia, Japan or a third country;
- e) emergency evacuation of Australian or Japanese nationals, or others from third countries; and
- f) communication and coordination, or other routine activities, including visits to the territory of either Party of ships or aircraft of the forces of the other Party.

9. Exercises and training conducted unilaterally by the forces of either Party are excluded from the scope of the proposed Agreement.

10. Article II of the proposed Agreement lists the categories of supplies and services that may be provided by either Party, within each Party's competence. The specific items falling within each of these categories are set out in the Annex to the proposed Agreement. Article II excludes from the operation of the proposed Agreement the provision of weapons or ammunition by the ADF or the Self-Defense Forces of Japan. In providing the supplies and services, each Party must act in accordance with its national laws and regulations.

11. Article III provides that supplies and services provided under the proposed Agreement must be used consistently with the Charter of the United Nations (the UN Charter). Notably, Article 2(4) of the UN Charter prohibits the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN. Article III of the proposed Agreement also provides that supplies and services are not to be transferred outside of the forces of the receiving Party without the prior written consent of the providing Party.

12. Article IV of the proposed Agreement sets out the possible settlement (reimbursement) procedures for the provision of supplies. Where possible, the receiving Party must return the supplies in a condition and manner satisfactory to the providing Party. Where the supplies provided are consumable or cannot be returned in a satisfactory condition, the receiving Party must give the providing Party supplies of the same type, quality and quantity and in a condition and manner that is satisfactory to the providing Party. Where neither option is

possible, the receiving Party must reimburse the providing Party in a currency specified by the providing Party.

13. Article IV also sets out settlement procedures for the provision of services. The receiving Party may either reimburse the providing Party in its chosen currency, or provide services of the same type and equivalent value. The manner of settlement in relation to the provision of services must be agreed between the Parties prior to the provision of the services.

14. Article IV also provides that, to the extent permitted by their national laws, the Parties will not charge internal duties and taxes on the provision of supplies and services under the proposed Agreement.

15. Article V of the proposed Agreement provides that provision and receipt of supplies and services under the proposed Agreement must be carried out in accordance with the Procedural Arrangement. The Procedural Arrangement is a less-than-treaty status document concluded between competent authorities of the Parties (the Australian Department of Defence and the Japanese Ministry of Defense) that specifies procedures and supplementary detail to implement the proposed Agreement.

16. Article VI of the proposed Agreement sets out provisions relating to the implementation of the proposed Agreement. Specifically, paragraph 1 provides that the proposed Agreement will not apply to any ADF activities conducted by the ADF acting as a member of the United Nations Forces under the *Agreement Regarding the Status of the United Nations Forces in Japan* done at Tokyo on 19 February 1954. Paragraphs 2 and 3 require the Parties to consult with each other regarding the implementation of the proposed Agreement and to settle any disputes relating to the interpretation or application of the proposed Agreement and Procedural Arrangement through consultation. Paragraph 4 provides that the competent authorities of the Parties must settle disputes regarding the implementation of the proposed Agreement in accordance with the procedures set out in the Procedural Arrangement. The Procedural Arrangement sets out a dispute resolution mechanism based on consultation between the competent authorities of the Parties. Paragraph 5 of Article VI of the proposed Agreement provides that where disputes between the competent authorities cannot be settled in accordance with the Procedural Arrangement, they must be settled through consultation between the Parties.

17. Paragraph 1 of Article VII of the proposed Agreement provides that the proposed Agreement will enter into force when the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary to give effect to the proposed Agreement have been completed. Paragraph 1 of Article VII also provides that the proposed Agreement will remain in force for ten years and will be automatically extended for successive periods of ten years unless either Party notifies the other of its intention in writing to terminate the proposed Agreement more than six months before the end of each period of ten years. Alternatively, paragraph 2 of Article VII provides that either Party may terminate the proposed Agreement at any time by providing one year's written notice.

18. Paragraph 3 of Article VII provides that the proposed Agreement may be amended by written agreement between the Parties. Paragraph 4 of Article VII provides that Article III, IV, V and paragraphs 3, 4 and 5 of Article VI will remain in force with respect to supplies and services provided under the proposed Agreement, notwithstanding the termination of the proposed Agreement.

Implementation

19. No changes to national laws, regulations or policies are required to implement the proposed Agreement. The proposed Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

Costs

20. There are no foreseeable financial costs to the Commonwealth Government in the implementation of the proposed Agreement.

21. Supplies and services provided by Japan to Australia will be settled in accordance with the provisions of Article IV, including cash payments where necessary.

Regulation Impact Statement

22. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

23. The proposed Agreement does not provide for the negotiation of any future legally binding instruments. A Procedural Arrangement (a less-than-treaty status instrument), foreshadowed by Article V of the proposed Agreement, has been concluded between the competent authorities of the Parties to specify procedures and details of the terms and conditions to implement the proposed Agreement.

24. Under paragraph 3 of Article VII, the proposed Agreement (including the Annex) may be amended by written agreement between the Parties. Amendments to the proposed Agreement would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

25. Under paragraph 1 of Article VII, the proposed Agreement will remain in force for a period of ten years and will be automatically extended for subsequent periods of ten years. The proposed Agreement may be terminated by either Party in writing at least six months before the end of each period of ten years. Alternatively, paragraph 2 of Article VII provides that either Party may terminate the proposed Agreement at any time by providing one year's written notice.

26. Termination by Australia would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT. If the proposed Agreement is terminated, paragraph 4 of Article VII provides that Article III, IV, V and paragraphs 3, 4 and 5 of Article VI will remain in force with respect to supplies and services provided under the proposed Agreement.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

27. The Minister for Foreign Affairs provided approval for the Department of Defence to be the lead negotiating agency for the proposed Agreement. The Department of Defence consulted with the Department of Foreign Affairs and the Attorney-General's Department throughout the negotiation process. Both the Minister for Foreign Affairs and the Attorney-General approved the final text of the proposed Agreement prior to its signature by the Minister for Defence.

28. The State and Territory Governments have been consulted through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the proposed Agreement was provided to State and Territory representatives through the bi-annual SCOT meetings throughout the course of the negotiations concerning the proposed Agreement. No requests for further information or comments on the proposed Agreement have been received to date from the State and Territory Governments.