

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE CANBERRA

Exchange of Notes, done at Canberra on 9 December 2011, constituting an Agreement
between the Government of Australia
and the Government of the United States of America
to amend and extend the Agreement concerning Cooperation in Defense Logistics
Support, done at Sydney on 4 November 1989

(Canberra, 9 December 2011)

Not yet in force
[2011] ATNIF 27



N° ILB 11/267

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of the United States of America and has the honour to refer to the Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistics Support, done at Sydney on November 4, 1989, as amended by an Agreement between the Government of Australia and the Government of the United States of America to Amend and Extend the Agreement concerning Cooperation in Defense Logistics Support, effected by an exchange of notes at Canberra August 7, 2000 and July 30, 2001 (the CDLSA).

Article XVIII of the CDLSA provides that the CDLSA may be amended by written agreement of the Parties.

Therefore, inasmuch as the CDLSA expired on November 4, 2009, and in the spirit and intent of the Security Treaty between Australia, New Zealand and the United States of America (the ANZUS Treaty) done at San Francisco on September 1, 1951, the Department has the honour, on behalf of the Government of Australia, to propose that:

(1) Article V of the CDLSA shall be replaced by the following:

“ARTICLE V
TECHNOLOGY TRANSFER

Subject to the provisions of Article II:

- (a) both Parties recognize the importance of having access to appropriate technology for the self-reliant support of Defense Articles and Defense Services purchased from the other;
- (b) exports and transfers shall be undertaken in accordance with the laws, regulations, and policies of the Parties, including provisions of any relevant agreements between the Parties; and
- (c) when agreed to by the Party having export approval authority, it shall use its best efforts to assist the other Party in negotiations, where appropriate, with private sector firms to transfer those reasonable technologies for which either Government does not have unlimited rights or government purpose license rights.”

(2) Article XI of the CDLSA shall be replaced by the following:

“ARTICLE XI
CLASSIFIED INFORMATION

Classified information provided or generated pursuant to this Agreement shall be protected in compliance with the Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information, done at Canberra on June 25, 2002, and which entered into force November 7, 2002, with exchange of notes.”

(3) Article XIII of the CDLSA shall be replaced by the following:

“ARTICLE XIII
COOPERATIVE MILITARY AIRLIFT

Cooperative military airlift will be undertaken pursuant to the Implementing Arrangement (AIR-IA-001) between the United States Department of Defense and the Australian Department of Defence concerning Airlift Support, which became effective January 4, 2006.”

(4) Article XIV of the CDLSA shall be replaced by the following:

“ARTICLE XIV
QUALITY ASSURANCE

Government quality assurance shall be as specified in the Details of Agreement between the Defense Authorities of the United States of America and the Commonwealth of Australia for Mutual Acceptance of Government Quality Assurance of November 29, 1994.”

(5) Article XX of the CDLSA shall be replaced by the following:

“ARTICLE XX
ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force with an effective date of November 4, 2009, following an exchange of notes between the Parties notifying each other in writing that their domestic procedures required for the entry into force of the Agreement have been satisfied.

This Agreement shall remain in force until November 4, 2020, unless sooner terminated in accordance with Article XIX of the Agreement.”

(6) Insert new Article XXI as follows:

“ARTICLE XXI
LIABILITY AND CLAIMS PROVISIONS

1. Claims arising under this Agreement shall be dealt with as follows:

- (a) As regards issues of liability, the provisions of the Agreement Concerning the Status of United States Forces in Australia, and Protocol, done at Canberra on

May 9, 1963 (the SOFA), or of any other agreement between the Government of Australia and the Government of the United States of America concerning the status of forces of one country when in the other that may be concluded hereafter, shall apply pursuant to their terms.

(b) For issues of liability where the SOFA or any other such agreement does not apply, the following shall apply:

i. Each Party waives all claims against the other for injury or death to its personnel and for damage to or loss of its property arising from the performance of their official duties.

ii. In the event of claims by third parties for injury or death to third persons or damage to or loss of property, arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. The Parties shall mutually determine which Government shall handle such claims.

iii. As to i. and ii. above, if the Parties mutually determine that the damage, injury or death is caused by reckless acts, reckless omission, wilful misconduct, or gross negligence, the costs of any liability shall be borne entirely by the Party of the culpable person.

iv. Claims arising under a contract implementing a written arrangement shall be resolved in accordance with the provisions of that contract, and shall be settled between the national defense organizations in accordance with their written arrangements.”

The Department of Foreign Affairs and Trade proposes further that, if the foregoing proposals are acceptable to the Government of the United States of America, then this note and the Embassy’s note in reply to this effect shall constitute an agreement between the Government of Australia and the Government of the United States of America to amend and extend the CDLSA which shall enter into force with effect from November 4, 2009, following an exchange of notes between the Parties notifying each other in writing, via the diplomatic channel, that all domestic procedures as are necessary to give effect to this Agreement have been satisfied.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Canberra
13 October 2011

[NOTE IN REPLY FROM THE UNITED STATES]

No 11-223

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and Trade and has the honor to refer to the Department's Note No ILB 11/267 dated October 13, 2011, regarding the Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistics Support done at Sydney on November 4, 1989, as amended by an Agreement between the Government of Australia and the Government of the United States of America to Amend and Extend the Agreement concerning Cooperation in Defense Logistics Support, effected by an exchange of notes at Canberra, August 7, 2000, and July 30, 2001 (the CDLSA), which reads as follows:

“The Department of Foreign Affairs and Trade presents its compliments to the Embassy of the United States of America and has the honour to refer to the Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistics Support, done at Sydney on November 4, 1989, as amended by an Agreement between the Government of Australia and the Government of the United States of America to Amend and Extend the Agreement concerning Cooperation in Defense Logistics Support, effected by an exchange of notes at Canberra August 7, 2000 and July 30, 2001 (the CDLSA).

Article XVIII of the CDLSA provides that the CDLSA may be amended by written agreement of the Parties.

Therefore, inasmuch as the CDLSA expired on November 4, 2009, and in the spirit and intent of the Security Treaty between Australia, New Zealand and the United States of America (the ANZUS Treaty) done at San Francisco on September 1, 1951, the Department has the honour, on behalf of the Government of Australia, to propose that:

(1) Article V of the CDLSA shall be replaced by the following:

“ARTICLE V
TECHNOLOGY TRANSFER

Subject to the provisions of Article II:

- (d) both Parties recognize the importance of having access to appropriate technology for the self-reliant support of Defense Articles and Defense Services purchased from the other;
- (e) exports and transfers shall be undertaken in accordance with the laws, regulations, and policies of the Parties, including provisions of any relevant agreements between the Parties; and
- (f) when agreed to by the Party having export approval authority, it shall use its best efforts to assist the other Party in negotiations, where appropriate, with private sector firms to transfer those reasonable technologies for which either Government does not have unlimited rights or government purpose license rights.”

(2) Article XI of the CDLSA shall be replaced by the following:

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(5) Article XX of the CDLSA shall be replaced by the following:

“ARTICLE XX
ENTRY INTO FORCE AND DURATION

This Agreement shall enter into force with an effective date of November 4, 2009, following an exchange of notes between the Parties notifying each other in writing that their domestic procedures required for the entry into force of the Agreement have been satisfied.

This Agreement shall remain in force until November 4, 2020, unless sooner terminated in accordance with Article XIX of the Agreement.”

(6) Insert new Article XXI as follows:

“ARTICLE XXI
LIABILITY AND CLAIMS PROVISIONS

2. Claims arising under this Agreement shall be dealt with as follows:

- (c) As regards issues of liability, the provisions of the Agreement Concerning the Status of United States Forces in Australia, and Protocol, done at Canberra on

May 9, 1963 (the SOFA), or of any other agreement between the Government of Australia and the Government of the United States of America concerning the status of forces of one country when in the other that may be concluded hereafter, shall apply pursuant to their terms.

(d) For issues of liability where the SOFA or any other such agreement does not apply, the following shall apply:

i. Each Party waives all claims against the other for injury or death to its personnel and for damage to or loss of its property arising from the performance of their official duties.

ii. In the event of claims by third parties for injury or death to third persons or damage to or loss of property, arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. The Parties shall mutually determine which Government shall handle such claims.

iii. As to i. and ii. above, if the Parties mutually determine that the damage, injury or death is caused by reckless acts, reckless omission, wilful misconduct, or gross negligence, the costs of any liability shall be borne entirely by the Party of the culpable person.

iv. Claims arising under a contract implementing a written arrangement shall be resolved in accordance with the provisions of that contract, and shall be settled between the national defense organizations in accordance with their written arrangements.”

The Department of Foreign Affairs and Trade proposes further that, if the foregoing proposals are acceptable to the Government of the United States of America, then this note and the Embassy’s note in reply to this effect shall constitute an agreement between the Government of Australia and the Government of the United States of America to amend and extend the CDLSA which shall enter into force with effect from November 4, 2009, following an exchange of notes between the Parties notifying each other in writing, via the diplomatic channel, that all domestic procedures as are necessary to give effect to this Agreement have been satisfied.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.”

The Embassy has the further honor to advise that the foregoing proposal is acceptable to the Government of the United States of America and that this reply shall constitute an Agreement between the Government of the United States of America and the Government of Australia to amend and extend the CDLSA, which shall enter into force with effect from November 4, 2009, following an exchange of notes between the Parties notifying each other in writing, via the diplomatic channel, that all domestic procedures as are necessary to give effect to this agreement have been satisfied.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

Embassy of the United States of America
Canberra
December 9, 2011