

Agreement between the Government of Australia and the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources

Introduction

- 5.1 The *Agreement between the Government of Australia and the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources* (Canberra, 30 August 2004) (the Agreement) provides a cooperative framework to pursue areas of mutual benefit and interest with regard to energy and minerals products.¹
- 5.2 The Agreement will formalise the Memorandum of Understanding (MOU) that currently exists between the Government of the Republic of Korea and the Government of Australia and will also demonstrate Australia's regard for bilateral cooperation.²

1 National Interest Analysis (NIA), para. 4.

2 NIA, paras 6 and 10.

Features of the Agreement

- 5.3 The obligations contained in the Agreement do not commit Australia to specific or detailed actions but rather are designed to encourage and facilitate particular activities and broad goals relating to energy and mineral resources.³
- 5.4 Article 1 of the Agreement includes provisions on:
- exchange of energy and mineral resources information between Australia and the Republic of Korea in accordance with their respective laws and regulations and taking full account of the need to ensure personal privacy and commercial confidentiality. This may include information on energy policies and regulations, current and future trends of the coal, oil, gas and electricity industries, trade in the fields of energy and mineral resources and scientific and technological data
 - promotion and facilitation of technical cooperation in the fields of energy and mineral resources between Australia and the Republic of Korea. This may include exchanging relevant public and private sector personnel, organising seminars, symposiums and exhibitions and promoting and undertaking joint research for the exploration, exploitation, development, processing or transportation of energy and mineral resources
 - cooperation and facilitation of bilateral trade and investment in energy and mineral resources, including value added products and services, between Australia and the Republic of Korea. This may include facilitating administrative procedures for investment in major projects dealing with energy and mineral resources, which includes governmental coordination and access to any governmental programs on an equitable and transparent basis, fostering partnerships for the exploration, development and processing of energy and mineral resources among the business circles of both countries and promoting the conclusion of contracts or other agreements which promote long term certainty for the business and organisations of each country
 - development and implementation of greenhouse gas mitigation projects in the context of the United Nations Framework Convention on Climate Change (UNFCCC)

3 NIA, para. 15.

- 5.5 Under Article 2 of the Agreement, Australia and the Republic of Korea will each retain intellectual property rights of any information provided pursuant to the Agreement. Any restrictions or conditions placed on information exchanged under the Agreement will be enforced in accordance with the respective laws and regulations of Australia and the Republic of Korea. Each Party is also obliged to take all reasonable measures to protect personal privacy and commercial confidentiality.
- 5.6 A Joint Committee will be established under Article 3 to ensure the effective implementation of the Agreement. A Joint Committee, which is administered by the Australian Government Department of Industry, Tourism and Resources and the Government of the Republic of Korea, currently exists under the MOU.⁴

Consultation

- 5.7 The National Interest Analysis states that extensive consultation was undertaken in consideration of the Agreement and that all state, federal and industry stakeholders consulted support the Agreement.⁵
- 5.8 The Queensland Government expressed concern that the reference to uranium in the Agreement was inconsistent with its policy. The Department of Industry, Tourism and Resources advised that the Agreement did not require Queensland to amend its legislation to allow mining or uranium treatment of processing.⁶
- 5.9 A number of industry leaders responded that they were in favour of the Agreement and welcomed stronger relations with the Republic of Korea.⁷
- 5.10 The Committee wrote to the industry leaders who had responded to the consultation in consideration of the Agreement, inviting the corporations/organisations to comment further on the level and

4 NIA, para. 16.

5 NIA, Consultation Annex, para. 2.

6 NIA, Consultation Annex, para. 3.

7 NIA, Consultation Annex, para. 4. Industry corporations/groups that responded: Rio Tinto, Australia LNG, Australian Magnesium Corporation, Pritchard Vdovenya-International Lawyers, Minerals Council of Australia, Exxon Coal and Minerals.

adequacy of the consultation that occurs during the treaty negotiation phase.⁸ The Committee also invited further comments on the Agreement itself.

- 5.11 A response was received from Rio Tinto informing the Committee of its satisfaction with the level of consultation concerning the Agreement.⁹ Rio Tinto supports the Agreement, noting that its trade with the Republic of Korea has been successful and that Rio Tinto has excellent relations with its Korean customers.¹⁰

Costs and implementation

- 5.12 There are no additional costs associated with Australia's entry into the Agreement. Pre-existing costs, arising as a result of the current MOU, are likely to carry over into the operation of the Agreement. This may include, for instance, the operating costs associated with holding periodic Joint Committee meetings (Article 3). These would be met through existing departmental resources that currently facilitate cooperation under the MOU.¹¹
- 5.13 No changes to Australia's regulatory framework or new legislation will be required to give effect to Australia's obligations under the Agreement.

Entry into force

- 5.14 The Agreement will enter into force when Australia and the Republic of South Korea exchange diplomatic notes informing each other that domestic requirements for its entry into force have been fulfilled.

Conclusion and recommendation

- 5.15 The Committee recognises the Agreement is an effective means of strengthening and developing the existing cooperation between
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8 The Committee wrote to Rio Tinto, Australia LNG, Australian Magnesium Corporation, Resources Law International, Minerals Council of Australia, Exxon Coal and Minerals.

9 Rio Tinto Australia, *Submission 10*, p. 1.

10 Rio Tinto Australia, *Submission 10*, p. 1.

11 NIA, para. 19.

Australia and the Republic of South Korea. The Agreement will provide both government and industry with the opportunity and information to make decisions that are in Australia's national interest.

Recommendation 6

The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources (Canberra, 30 August 2004)* and recommends that binding treaty action be taken.

