

DOCUMENTS TABLED ON 2 FEBRUARY 2010:

- **National Interest Analysis [2010] ATNIA 1**
with attachment on consultation

- **Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communications Facilities of 29 May 1980, as amended [2009] ATNIF 3**

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communications Facilities of 29 May 1980, as amended

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Nature and timing of proposed treaty action

1. The proposed amendment and extension (the 2010 Amendment) of the 1980 Agreement with the United States of America (US) concerning Space Vehicle Tracking and Communication Facilities (the Program Agreement) will enter into force once Australia has advised the US that all domestic requirements for entry into force have been met. It is anticipated that Australia would be able to provide that advice as soon as practicable after JSCOT issues its report on the 2010 Amendment.
2. The 2010 Amendment will enter into force on 26 February 2010 to ensure continuity of the Program Agreement. The executive power of the Commonwealth is sufficient to negotiate and enter into an Agreement with retroactive application; so the 2010 Amendment may enter into force with retrospective effect.

Overview and national interest summary

3. 2010 will mark the 50th anniversary of treaty-level cooperation between the US and Australia in space vehicle tracking. Australia's cooperation with the US on space-related activities began in 1957 with the establishment of facilities at Woomera in South Australia, to track US satellites. This was broadened to include additional scientific facilities set up by the US National Aeronautics and Space Administration (NASA) in 1960.
4. Since then, the space vehicle tracking and communication relationship between Australia and the US has been the subject of a succession of Agreements and Exchanges of Notes between the two countries. Under these treaties, NASA has spent in excess of \$A610 million on space-related activities in Australia since 1960. Significant scientific and economic benefits have been derived from activities conducted under the Agreement, especially through encouraging collaboration between Australian and NASA scientists. The treaty action under consideration further amends and extends the 1980 Program Agreement, which provides for the establishment, operation and maintenance of NASA facilities in Australia that will provide commensurate benefits for Australia.

Reasons for Australia to take the proposed treaty action

5. Australia first entered into the Program Agreement with the US Government in 1960. Since then, the Program Agreement has been reviewed and amended every 10 years, most recently in 2000. Facilities currently covered under the Program Agreement include the Canberra Deep Space Communications Complex at Tidbinbilla and a facility at Alice Springs.

6. The Program Agreement consists of a base document and multiple subsequent Exchanges of Notes. Both parties have agreed to form a new Program Agreement to consolidate the provisions contained in previous Exchanges of Notes into one document.

7. The current Program Agreement will end 26 February 2010. Both parties have agreed to the 2010 Amendment extending the Program Agreement for two years until a new Program Agreement can be brought into force.

NASA's Deep Space Network

8. NASA's scientific investigations of the solar system are accomplished primarily through the use of robotic spacecraft. The Deep Space Network (DSN) provides a two-way communications link for the guidance and control of spacecraft and the relay of data and images. It consists of three complexes strategically located around the world: at Goldstone in California, near Madrid in Spain, and at the Canberra Deep Space Communication Centre (CDSCC) located at Tidbinbilla in the Australian Capital Territory. NASA also maintains Tracking and Data Relay Satellite Ranging System Facilities at Alice Springs in the Northern Territory and at Dongara in Western Australia.

9. All activities conducted in Australia under the Program Agreement are managed to ensure that they are consistent with Australian interests. The Commonwealth Scientific and Industrial Research Organisation (CSIRO) manages the facilities on behalf of NASA, with operational and maintenance activities contracted out as required to Australian industry.

10. Approximately 130 engineers, technicians, operators and support staff are presently employed at the CDSCC by Raytheon Australia (the current contractor), with direct management and operation of the CDSCC to transfer to the CSIRO when the current Operations and Maintenance (O&M) contract held by Raytheon Australia ends in February 2010. NASA funds the total cost of the facilities, including the salaries and administrative costs of Australian Government personnel involved in the management of activities under the Program Agreement.

The 2010 Amendment

11. The 2010 Amendment provides for the continuation of the Program Agreement until 26 February 2012, or until a further agreement between the Australian and US governments enters into force, whichever is earlier. The 2010 Amendment confirms Australia's long-standing relationship with NASA and provides for continuing cooperation in space vehicle tracking and communication support.

12. The Amendment does not otherwise increase the scope or operation of the Program Agreement, nor impose new obligations on Australia except in terms of an amendment to paragraph 1 of Article 2 of the Agreement.

13. The change to paragraph 1 of Article 2 is the inclusion of an additional NASA Tracking and Data Relay Satellite Ranging System Facility at Dongara, Western Australia. The Dongara facility is currently covered by a commercial contract between NASA and CSIRO. A former facility at the same location, but no longer used by NASA, had been included in previous iterations of the Program Agreement between 1970 and 2000, but was removed from the 2000 Amendment.

14. For all practicable purposes this does not impose new obligations on Australia, but rather updates and legally formalises the existing arrangements, confirming the basis for cooperation between Australia and the US, which is relevant to contemporary realities and future space development.

15. The 2010 Amendment also continues existing arrangements for exchange of scientific data, facilitation of the entry and exit of US personnel through immigration barriers, and duty-free import of personal and household effects of US personnel. Taxation of US personnel continues to be governed by the 1982 Double Tax Agreement between Australia and the US.

16. The Program Agreement explicitly provides for further arrangements between NASA and the CSIRO, as the cooperating agencies, in respect of the establishment and operation of facilities. These arrangements encompass financing, constructing and installing new facilities, and disposing of or removing infrastructure and remediation work (where a facility is surplus to requirements). NASA is currently entitled to an exemption from duties, taxes and like charges, including Goods and Services Tax.

Obligations

17. The obligations under the Program Agreement are changed by the 2010 Amendment to:

- amend the list of facilities to operate under the Program Agreement to include the Tracking and Data Relay Satellite Ranging System at Dongara (*Article 2(1)*);
- extend the period of operation of the Program Agreement to either 26 February 2012, or a further agreement between the governments of the US and Australia concerning space vehicle tracking and communication is concluded (whichever is earlier) (*Article 13(1)*).

18. The 2010 Amendment does not otherwise increase the scope or operation of the Program Agreement, nor impose new obligations on Australia except in terms of changes to paragraph 1 of Article 2 of the Agreement (which are described in paragraphs 13 and 14 above).

Implementation

19. No further implementation measures are required.

Costs

20. No additional costs are anticipated as a consequence of this treaty action. NASA funds the total cost of the establishment, operation and maintenance of space vehicle tracking and communication facilities in Australia through its contractual arrangements with the CSIRO. NASA is also responsible for remediation work in relation to its facilities. Any additional activities or the set-up of new infrastructure under the Program Agreement as further amended

would not impose any costs on the Australian Government or the respective State and Territory Governments.

21. Under the Program Agreement, the Australian Government is obliged to grant NASA an exemption from or refund of duties, taxes and like charges, including goods and services tax (GST), on imports to Australia of goods for use in connection with the agreement. The agreement also requires Australia to give a refund of Commonwealth indirect taxes (including GST) for goods and services purchased in Australia for use in connection with the agreement. The 2010 Amendment does not change this obligation.

22. Where the Government is under such an obligation, Section 105-125 of Schedule 1 of the *Taxation Administration Act 1953* enables the Commissioner of Taxation to make a refund of the indirect tax for such purchases. The *Taxation Administration Regulations 1976*, as amended by the *Taxation Administration Amendment Regulations 2000 (No 4)* entitle NASA (amongst other organisations) to claim a refund of the GST for their purchases of goods in Australia. Subsection 42-5(1) of the *A New Tax System (Goods and Services Tax) Act 1999* and item 4 of Schedule 4 of the *Customs Tariff Act 1995* allow NASA to import goods into Australia for the purposes of the agreement without paying GST or customs duty.

Regulation Impact Statement

23. The Department of Innovation, Industry, Science and Research has assessed the implementation of the Program Agreement against criteria in *The Best Practice Regulation Handbook*. This regulatory option has low impact on business and individuals and on the economy and a Regulation Impact Statement or Business Cost Calculator report is not required.

Future treaty action

24. *Article 13* provides that treaty-level cooperation can be further extended by agreement of the two Governments. Changes to the list of NASA facilities (*Article 2(1)*) can be made by agreement of the Governments (*Article 2(2)*), as referenced in Paragraph 16 of this National Interest Analysis. This is consistent with previous renewals of the Program Agreement.

25. The current Program Agreement will end on 26 February 2010. Both parties have agreed to the 2010 Amendment extending the Program Agreement for two years until a new Program Agreement can be brought into force. A new Program Agreement will be negotiated for entry into force by 26 February 2012.

26. The proposed treaty action of the new Program Agreement would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

Withdrawal or denunciation

27. Once in force, the 2010 Amendment does not change the previously stated termination clause (*Article 13(2)*) that allows either Government to terminate the Program Agreement. Termination of the Program Agreement under *Article 13(2)* would occur after consultations between both Governments have taken place and one year after written notice of termination is received by one party through the diplomatic channel.

Contact details

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Manufacturing

Department of Innovation, Industry, Science and Research

ATTACHMENT ON CONSULTATION

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CONSULTATION

28. The Commonwealth Department of Innovation, Industry, Science and Research sought the views of the following Commonwealth Departments:

- Department of Foreign Affairs and Trade;
- Australian Government Attorney-General's Department;
- The Treasury;
- Department of Broadband, Communications and the Digital Economy; and
- Department of Immigration and Citizenship.

29. The views of the Minister of Home Affairs were also sought.

30. The Commonwealth Department of Innovation, Industry, Science and Research sought the views of the following government organisations:

- Australian Communications and Media Authority (ACMA);
- Bureau of Meteorology;
- GeoScience Australia; and
- The Commonwealth Scientific and Industrial Research Organisation (CSIRO).

31. These consultations were conducted during the negotiation of the text of the 2010 Amendment. To date, there have been no suggestions for amendments or requests for further information.

32. Given the lack of impact on infrastructure or significant amendment to existing arrangements under the current Program Agreement, the views of State and Territory Governments and Agencies were not sought. It is expected that State and Territory Governments and Agencies will be consulted during the proposed negotiation of a new Program Agreement in 2012.