

National Interest Analysis [2010] ATNIA 21

with attachment on consultation

**Agreement between the Government of Australia and the Government of the United
States of America Concerning Acquisition and Cross-Servicing,
Canberra, 27 April 2010**

[2010] ATNIF 22

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Agreement between the Government of Australia and the Government of the United States of America Concerning Acquisition and Cross-Servicing,
done at Canberra on 27 April 2010
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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 the United States of America concerning Acquisition and Cross-Servicing* ('the proposed Agreement').
2. The proposed Agreement was signed on 27 of April 2010. Pursuant to Article X, the proposed Agreement will enter into force on the date Australia notifies the United States in writing that it has fulfilled its domestic processes necessary for the proposed Agreement to enter into force. It is proposed that Australia will send this written notification to the United States as soon as practicable after the tabling period and following consideration by the Joint Standing Committee on Treaties (JSCOT) that binding treaty action be taken. It is anticipated that this written notification will be sent prior to 22 September 2010.

Overview and national interest summary

3. The purpose of the proposed Agreement is to replace the current *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* done at Canberra on 9 December 1998 (the 1998 Agreement). The 1998 Agreement was to expire on 22 September 2009, but its operation was extended until 22 September 2010 by the *Agreement to Amend the Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing*, done at Washington DC on 30 July 2009. This extension allowed Australia and the United States to complete negotiations on the proposed Agreement.
4. The proposed Agreement continues the operation of basic terms, conditions and procedures under the 1998 Agreement to facilitate the reciprocal provision of logistic support, supplies and services to the military forces of one Party by the other Party. The provision of logistic support, supplies and services is undertaken in return for either cash payment or the reciprocal provision of logistic support, supplies and services to the military forces of the other Party. The proposed Agreement applies to such logistics cooperation between the military forces of Australia and the United States to be used primarily during combined exercises, training, deployments, operations, or other cooperative efforts and for unforeseen circumstances or exigencies.
5. The differences between the proposed Agreement and the 1998 Agreement reflect changes in the national laws of both Parties as well as changes to the defence organisations of both Parties.

Reasons for Australia to take the proposed treaty action

6. The replacement of the 1998 Agreement will ensure the continuation of means through which the provisions of reciprocal logistic support, supplies and services can be facilitated between Australia and the United States. The *Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistic Support* done at Sydney on 4 November 1989 provides that the Parties to that Agreement shall seek to enter into an appropriate cross-servicing agreement to facilitate mutual logistic support between the two countries.

7. The proposed Agreement is uncontroversial, raises no international defence policy issues and is substantially the same as the 1998 Agreement.

Obligations

8. The proposed Agreement, like its predecessor, is designed to facilitate reciprocal logistic support between the Parties. Under Article IV, each Party is required to make its best efforts, consistent with national priorities, to satisfy requests from the other Party for logistic support, supplies and services.

9. Article III of the proposed Agreement provides that all activities of the Parties under the proposed Agreement must be carried out in accordance with their respective national laws and obligations.

10. Article III of the proposed Agreement specifically excludes the transfer of weapons, major end items of equipment and the initial quantities of replacement and spare parts associated with the initial order quantity of major items. Also excluded from transfer by either Party under this proposed Agreement are any items the transfer of which is prohibited by its national laws or regulations, including guided missiles, naval mines and torpedoes, nuclear ammunition and chemical munitions or ammunition (excluding riot control agents).

11. The remaining provisions of the proposed Agreement set out defined terms, terms and conditions relating to logistics support, processes for reimbursement, standards for dealing with claims arising under the proposed Agreement and the protection of classified information exchanged between the Parties. It has been necessary to agree to minor amendments to some of these processes in order to reflect changes in the national laws of both Parties as well as changes to the defence organisations of both parties.

12. The proposed Agreement does not create any new obligations for Australia.

Implementation

13. 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

14. The proposed Agreement replaces the existing 1998 Agreement. There are no foreseeable financial costs to the Australian Government in the implementation of the proposed Agreement except those described in paragraph 15.

15. Article III of the proposed Agreement provides that all obligations under the proposed Agreement or any implementing arrangements made pursuant to the proposed Agreement are subject to the availability of funds for such purposes. Each Party must ensure that it has the funds to pay for support requested from the other Party for logistic support, supplies and services and must notify the other Party if it discovers it has insufficient funds to fulfill its obligations.

16. Where the transfer of logistic support, supplies and services occurs, Article V of the proposed Agreement provides that the Parties will mutually determine whether payment for the transfer will be made by cash or by supplying logistic support, supplies and services that are substantially identical or agreed to be of equal monetary value.

17. Article VI provides that, to the extent permitted by national laws and regulations, identifiable duties, taxes and similar charges are not imposed on activities conducted under the proposed Agreement.

Regulation Impact Statement

18. 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

19. The proposed Agreement does not provide for the negotiation of any future legally binding instruments. Article IV provides that supplementary less-than-treaty status implementing arrangements may be concluded between the Parties and may specify details, terms and conditions to implement the proposed Agreement.

20. Article IX provides that the proposed Agreement can only be amended by written agreement between the Parties. Each Party may request amendment of the proposed Agreement by written notice to the other Party. Where such a request is made, the Parties will enter into negotiations. Any amendment 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

21. Pursuant to Article X, the proposed Agreement will remain in force unless terminated by the mutual written consent of the Parties, or by either Party giving not less than 180 days notice in writing to the other Party of its notice to terminate. If the proposed Agreement is terminated, all obligations incurred pursuant to the proposed Agreement will remain binding until satisfied. Termination by Australia would be subject to the normal treaty-making process.

Contact Details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

22. 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.

23. The Department of Defence has consulted with the Department of Foreign Affairs and Trade and the Attorney General's Department in relation to the text of the National Interest Analysis for the proposed Agreement.