

**National Interest Analysis [2011] ATNIA 35**

**with attachment on consultation**

**Exchange of Notes constituting an Agreement to extend the  
Agreement between the Government of Australia and the  
Government of the United States of America  
concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes  
of 16 February 2006**

**done at Canberra on [date to be confirmed]**

**[2011] ATNIF 26**

## NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

### SUMMARY PAGE

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to extend, through an exchange of notes, the *Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning the Conduct of Scientific Balloon Flights for Civil Research Purposes*, done at Canberra on 16 February 2006 ([2006] ATS 8, hereinafter referred to as ‘the 2006 Agreement’), which is due to expire on 12 June 2012.
2. The proposed extension to the 2006 Agreement is intended to enter into force with effect from 12 June 2012 provided that Australia has advised the United States that all domestic requirements for entry into force have been met. It is anticipated that Australia would be able to provide that advice after the Joint Standing Committee on Treaties (JSCOT) issues its report on the proposed extension. In order to ensure continuity of the 2006 Agreement, the proposed extension may enter into force with retrospective effect. The executive power of the Commonwealth is sufficient to negotiate and enter into an agreement with retrospective application.

#### **Overview and national interest summary**

3. The 50<sup>th</sup> anniversary of treaty-level cooperation between the United States (US) and Australia in civil space vehicle tracking was celebrated in 2010. Operational-level 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 civil space 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 instruments, NASA has spent in excess of \$740 million on space-related activities in Australia since 1960. Australia has derived significant scientific and economic benefits from activities conducted under the 2006 Agreement, especially through encouraging collaboration between Australian and NASA scientists. The treaty action under consideration extends the 2006 Agreement, which provides NASA the use of facilities and services for balloon launchings and

recoveries in Australian territory, tracking and telemetering of information from each balloon, and the recording and sharing of information from these flights.

5. The proposed extension will ensure the continuation of benefits flowing from the establishment, operation and maintenance of NASA scientific balloon activities in Australia under the 2006 Agreement.

6. The purpose of extending the 2006 Agreement is to allow NASA to conduct scientific balloon launchings and recoveries in Australia and to continue the long-standing and fruitful cooperation in space-related activities between the two countries.

### **Reasons for Australia to take the proposed treaty action**

7. Australia has a long relationship with the US in the area of space science. Our established cooperation with NASA on balloon flights to date has proven advantageous on a number of political, scientific and economic grounds.

8. Australia first entered into an agreement with the Government of the United States regarding the conduct of scientific ballooning activities in Australia in 1984 ([1984] ATS 32). In 1985, a further agreement was concluded that related to the launching of long duration balloon flights beyond Australia ([1985] ATS 23). In 1992 these two agreements were merged ([1992] ATS 26) and renewed for a further ten years. Following the expiry of the 1992 Agreement in 2002, a new and updated agreement was concluded in 2006 at the request of the US Government (the 2006 Agreement). It is the 2006 Agreement that is the subject of the proposed extension.

9. In accordance with these agreements, over the last three decades many ballooning campaigns have been conducted by NASA from the Alice Springs Ballooning Facility, allowing Australian scientists to be involved in, and take advantage of, the conduct of such flights being launched in Australia. Individual ballooning campaigns have included the launch of up to six different scientific experimental payloads involving the convergence on Alice Springs of six different scientific teams from around the world, sometimes for up to three to four months. The teams launch experiments to study matters such as black holes and quasars, and conduct experimental research into atmospheric and environmental science. At times Australian scientists have flown their own experiments or have been collaborators in experiments with other scientists. Extension of the 2006 Agreement would enable Australian scientists to continue to reap the benefits of this research and will further ensure that Australia remains entitled to receive data and other results from any such experiments conducted. For these reasons, the Australian scientific community is highly supportive of continued Australian participation in NASA's balloon launch program.

10. The scientists involved in each balloon campaign are supported by a NASA launch team, which in turn receives local support from the Australian Government agency responsible for managing NASA's deep space tracking and scientific ballooning activities (the Commonwealth Scientific and Industrial Research Organisation (CSIRO)), and the University of New South Wales's Australian Defence Force Academy. Each balloon campaign can involve up to forty people domiciled in

Alice Springs for the campaign duration. The direct economic benefits to Australia of this activity are considerable. CSIRO estimates that each campaign attracts up to \$5 million to the domestic economy.

11. In addition to the considerable scientific and economic benefits which would arise from continued cooperation under the 2006 Agreement, its extension would also confirm on a political level our strong commitment to continued cooperation and research on space and scientific matters with the US.

12. Extending the 2006 Agreement would enable the established cooperation with NASA to continue as it has over the past three decades.

#### *The proposed extension*

13. The proposed extension provides for the continuation of the 2006 Agreement until 12 June 2022. The proposed extension confirms Australia's long-standing relationship with NASA and provides for continuing cooperation in scientific balloon flights.

#### **Obligations**

14. The proposed extension would extend the operation of the 2006 Agreement until 12 June 2022.

15. The proposed extension continues existing arrangements under the 2006 Agreement for the exchange of technical data (Article 9), facilitation of the entry into and exit from Australia of US personnel (Article 11), and the duty-free import of personal and household effects of US personnel (Article 12). In accordance with Article 14 of the 2006 Agreement, taxation of US personnel continues to be governed by the *Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* ([1983] ATS 16).

16. The 2006 Agreement explicitly provides for further (non-treaty) arrangements between NASA and CSIRO, as the cooperating agencies, in respect of the establishment and operation of scientific balloon activities (Article 1). These arrangements encompass funding procedures, liabilities, the provision of services for balloon launchings and recoveries in Australian territory, tracking and telemetering of information from each balloon and the recording and sharing of information. NASA is currently entitled to an exemption from duties, taxes and like charges, including Goods and Services Tax (GST) (Article 15).

#### **Implementation**

17. No changes are required to existing legislation to implement the proposed extension. Exemptions from duties and taxes as set out in Article 15 of the 2006 Agreement are covered by existing legislation, as described in paragraph 20 below. No further implementation measures are required.

## **Costs**

18. No additional costs are anticipated as a consequence of this treaty action. NASA funds the total cost of the establishment, operation and maintenance of the balloon launching facilities in Australia through its contractual arrangements with CSIRO. NASA is also responsible for remediation work in relation to its facilities. Any additional activities or the set-up of new facilities under the proposed extension would not impose any additional costs on the Australian Government or the respective State and Territory Governments.

19. Under the 2006 Agreement, the Australian Government is obliged to grant NASA an exemption from or refund of duties, taxes and like charges, including GST, on imports to Australia of goods for use in connection with the 2006 Agreement (Article 15). The 2006 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 proposed extension does not change this obligation.

20. 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 2006 Agreement without paying GST or customs duty.

## **Regulation Impact Statement**

21. The Department of Innovation, Industry, Science and Research has assessed the implementation of the 2006 Agreement and its proposed extension against criteria in *The Best Practice Regulation Handbook*. This regulatory option has a 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**

22. Article 18 of the 2006 Agreement (as amended by the proposed extension) provides that treaty-level cooperation can be further extended by the agreement of the two Governments. Any further extension would be subject to Australia's domestic treaty-making process.

## **Withdrawal or denunciation**

23. Article 18(b) of the 2006 Agreement allows either Government to terminate the Agreement by giving written notice of termination through the diplomatic channel after consultations between the Governments have occurred. Termination would take

effect one year after the date of written notice. Termination of the extended 2006 Agreement would be subject to Australia's domestic treaty-making processes.

**Contact details**

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### CONSULTATION

24. The Department of Innovation, Industry, Science and Research (DIISR) sought the views of the following Australian Government departments during the negotiation of the proposed extension of the 2006 Agreement:

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

25. DIISR sought the views of the following Australian Government organisations during the negotiation of the proposed extension:

- Australian Communications and Media Authority ;
- Bureau of Meteorology;
- Geoscience Australia; and
- Commonwealth Scientific and Industrial Research Organisation.

26. To date, there have been no suggestions for amendments or requests for further information concerning the 2006 from the above Australian Government departments or Australian Government organisations.

27. Given the lack of impact of the 2006 Agreement on infrastructure or significant amendment to existing arrangements, the views of State and Territory governments and agencies were not directly sought in relation to the proposed extension. The proposed extension was included in the biannual schedule of treaty actions under negotiation, consideration and review provided to States and Territories through the Standing Committee on Treaties in March and August 2011. No comments were received.