

Documents tabled on 9 May 2007:

National Interest Analysis [2007] ATNIA 11

with attachment on consultation

**Agreement on Social Security between the Government of Australia
and the Government of the Republic of Korea
(Canberra, 6 December 2006)
[2006] ATNIF 27**

Background information

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NATIONAL INTEREST ANALYSIS – CATEGORY 1 TREATY

SUMMARY PAGE

Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (Canberra, 6 December 2006) [2006] ATNIF 27

Nature and timing of proposed treaty action

1. It is proposed that Australia enter into a Social Security Agreement with the Republic of Korea (hereinafter referred to as Korea). This treaty was signed in Canberra on 6 December 2006.
2. Pursuant to Article 29, the Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by Australia and Korea through diplomatic channels. It is proposed that the exchange of notes takes place in April 2008 to enable entry into force on 1 July 2008.

Overview and national interest summary

3. Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. They do this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions record, past residence record and current country of residence.
4. The Agreement provides for enhanced access to Australian and Korean retirement benefits and greater portability of these benefits between countries. Portability of benefits allows for the payment of a benefit from one country into another country. Enhanced access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared. Under the Agreement, residents of Australia and Korea will be able to move between Australia and Korea with the knowledge that their right to benefits is recognised in both countries.
5. The Agreement will bring economic and political benefits to Australia. It will assist in maximising the foreign income of Australian residents and there will be flow-on effects of these funds into the Australian economy. The Agreement will serve to reinforce Australia's political, business and strategic interests. The Agreement will also further strengthen bilateral relations between Australia and Korea and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Korea during or after their working lives.

Reasons for Australia to take the proposed treaty action

6. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are, or have been, split between Australia and the country with which Australia has entered into a social security agreement. Most of the people benefiting from these agreements are age pensioners.
7. The Agreement with Korea incorporates the same principles as Australia's other agreements on social security. A key element of this Agreement, and the other social security agreements, is the sharing of responsibility between the Parties in providing adequate social security coverage for current and former residents of their countries.
8. Under the Agreement individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working lives. Residents of Australia and Korea will be able to move between Australia and Korea knowing that their right to benefits is recognised in both countries.
9. In December 2006, the Australian Government was paying pensions under the *Social Security Act 1991* (the Act) to 2,699 Korean-born pensioners, the vast majority of whom are resident in Australia. As at 2 March 2007, under domestic portability provisions in the Act, Australia was paying pensions to 11 people (not necessarily Korean born) residing in Korea.
10. The Department of Families, Community Services and Indigenous Affairs estimates that, through the Agreement, approximately 57 people residing in Australia and Korea will benefit when the Agreement comes into force, in the first full year, by being able to claim payments from Australia and Korea to which they currently do not have access.
11. Also, Australian citizens who have worked in Korea and paid contributions will be able to receive a refund under the same conditions as Korean nationals. This will also apply in respect of periods prior to the start of the Agreement.
12. Double coverage provisions have also been included to ensure that Australian and Korean employers do not have to make compulsory (superannuation) contributions into both countries' systems when an employee is seconded to work in the other country temporarily. Under current arrangements the employer would be required to make contributions under both Australian and Korean legislation. The Agreement will provide that, generally, where compulsory contributions are required, the employer, and the employee, need to contribute only to the relevant superannuation scheme in their home country.

Obligations

13. Part I of the Agreement sets out general obligations, including to treat people covered by the Agreement equally with respect to the payment of benefits (Article 4) and to remove restrictions on the payment of benefits based on residency in the other country (Article 5).

14. Part II (Articles 6 to 12) elaborates an arrangement to ensure that an employer will only have to make single contributions for superannuation and similar liabilities with respect to the same work of an employee. Australia will be obliged to implement this arrangement accordingly.

15. Part III applies to benefits paid by Korea, and therefore creates no obligations for Australia.

16. Part IV applies to benefits paid by Australia. It obliges Australia to accept certain people as eligible for an Australian benefit based on their combined residence and working life in Australia and Korea (and in some instances, third States) (Articles 15-16), and sets out the method of calculating such benefits that Australia must utilise for people covered by the Agreement (Article 17).

17. Part V sets out various administrative obligations, including:

- for the 'Competent Authority' of each Party to conclude an administrative arrangement (Article 18)
- a general obligation to cooperate and share information (Article 19)
- confidentiality requirements for information received (Article 20)
- to exempt documents submitted pursuant to the Agreement from fees and certification requirements (Article 21)
- to accept, for the purpose of lodgement deadlines, the date a document is lodged in the other country as the relevant lodgement date (Article 23), and
- to ensure payment of benefits in the event that currency controls are imposed (Article 24).

18. Dispute settlement under the Agreement is by consultation (Article 26), and either Party may request a review of the Agreement at any time (Article 27).

Implementation

19. A new Schedule containing the full text of the Agreement will be added to the Social Security (International Agreements) Act. The regulation making powers contained in sections 8 and 25 of that Act will be used to implement the Agreement.

20. Relevant provisions of social security agreements relating to double superannuation coverage are automatically given effect, in domestic law, once the agreement is scheduled to the Social Security (International Agreements) Act. This is pursuant to the *Superannuation Guarantee (Administration) Act 1993* (paragraph 27(1)(e)) and the *Superannuation Guarantee (Administration) Regulations 1993* (regulation 7AC), which have the effect that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided that a scheduled social security agreement is in place.

Costs

21. The Agreement is expected to result in an increase in administered outlays of around \$1.064 million (cumulative cost) over the period 2008-2011. The Department of Families, Community Services and Indigenous Affairs, and Centrelink departmental costs of \$1.996 million (cumulative) over the same period represent the cost of implementing this Agreement.

Regulation Impact Statement

22. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

23. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although, as noted above, Article 27 obliges the Parties to review the Agreement when requested to do so by either Party. The 'Administrative Arrangement' to be entered into by the relevant Competent Authorities pursuant to Article 18 will be an instrument of less than treaty status, and therefore will not be subject to Australia's domestic treaty-making process.

24. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties in accordance with Article 39 of the Vienna Convention. Any such amendment would constitute a treaty action, and would therefore be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

25. Article 30 provides that the Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through diplomatic channels indicating its intention to terminate the Agreement. In the event of termination, Article 30 also preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive

benefits under the Agreement, and those people affected by the double coverage provisions of Part II.

26. Any withdrawal by Australia from this treaty would be subject to Australia's domestic treaty-making process.

Contact details

International Agreements

International Branch

Department of Families, Community Services and Indigenous Affairs.

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CONSULTATION

1. Four separate groups (listed below) were consulted by the Department of Families, Community Services and Indigenous Affairs (FaCSIA) and the Department of the Treasury as part of the treaty process.
2. FaCSIA sent letters and an information sheet outlining the Agreement was sent to each group on 5 March 2007 seeking their views and asking for a response by 23 March 2007.
3. One formal response was received. The NSW Government advised that it was in 'caretaker' mode and could not provide any comment. No other comments were received.
4. The Korean community groups consulted were:

Korean Community Groups	
The Korean Society of Victoria	The Korean Association of Western Australia
The Korean Community of South Australia	The ACT Korean Community Inc
The Korean Society Sydney	The Korean Society Queensland
The Korean Society Gold Coast	The Advisory Council on Democratic & Peaceful Unification
The Korean Society of Science & Technology in Australia	KAITA
Korean Chamber of Commerce & Industry in Australia	Women's Place
The Korean Business Association of Australia	The Korean Nurses Association in Australia
World OKTA Sydney	The Korean Australian Building & Construction Industry
The Korean Elderly Friendship Association	The Korean Women's Forum
The Korean Women's Network in Australia	The Korean Elderly Friendship Association Inc
The Korean Welfare Association	MOSAIC Korean Social Group
The Korean Hibiscus Society of Australia Inc	The Korean Lawyers Association
CAS Heng Bok Hae Counselling Inc	Korean Language Ethnic Schools Association
The Australian Korean School	Lindfield Korean School

Korean Sports Council	Korean Literary Artists Association
Korean Writer's Association	Korean Artists Association in Australia
Korean Musician's Association	Korean Veterans Association
Korean Vietnam War Veterans Association in Australia	Korean Marine Corps Veterans Association
Korean Reserve Officers Training Corps Australia	Choongmoo Society of ROK Navy Veterans
Korean Naval Officer's Association	Korean War Memorial Committee
United Association of Five North Korean Provinces in Australia	

The welfare organisations consulted were:

Welfare	
ACROD (National Office)	ACT Multicultural Community Council
Association of Independent Retirees	Australian Council of Social Services
Combined Pensioners & Superannuants Association	COTA National Seniors
Council of Intellectual Disabilities Agencies	Ethnic Communities' Council of NSW
Ethnic Communities' Council of QLD	Ethnic Communities' Council of Victoria
Ethnic Communities' Council of West Australia	FECCA
Multicultural Council of NT Inc	Multicultural Council of Tasmania
National Ethnic Disability Alliance	National Seniors Association
Physical Disability Council of Australia Ltd	Southern Cross Group
Welfare Rights Centre	Multicultural Communities' Council of SA

The State and Territory Governments consulted were:

ACT Chief Minister's Department
QLD Department of Premier and Cabinet
VIC Department of Premier and Cabinet
NT Department of Chief Minister
SA Department of Premier and Cabinet
TAS Department of Premier and Cabinet
WA Federal Affairs
NSW Intergovernmental & Regulatory Reform Branch

The organisations Treasury consulted were:

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
Industry Funds Forum Inc
A.C.T.U.
Council of Small Business Organisations of Australia
Association of Superannuation Funds of Australia
Investment and Financial Services Association
CPA Australia

5. Since negotiations commenced in 2003, this treaty has been included on the schedule of treaties under negotiation, consideration or review by the Australian Government which schedule the Department of Prime Minister and Cabinet distributes twice a year to representatives of the Commonwealth-State/Territory Standing Committee on Treaties.

Political Brief on the Republic of Korea

Political Overview

1. The Republic of Korea (Korea) is a presidential democracy, with government power shared principally by: the executive (headed by a President elected for a single five year term); the legislative (a single-house National Assembly); and the judiciary. The President holds supreme power regarding all executive functions of government, within the constraints of the Constitution, and appoints public officials, including the Prime Minister, Ministers and the heads of other executive agencies, and is also commander-in-chief of the armed forces. Presidents serve a single five-year term, with the next Presidential elections scheduled for December 2007.

2. Legislative power rests in the unicameral National Assembly, comprising 299 members elected for a four-year term. 243 members are elected by popular vote, with the remaining 56 seats distributed proportionately among political parties according to a second preferential ballot. Next elections are scheduled for April 2008.

3. Judicial power is vested in the courts, constitutionally an independent branch of government, comprising the district courts, appellate courts and the Supreme Court. The Supreme Court is the final court of appeal. A separate Constitutional Court renders judgements regarding the constitutionality of laws, impeachment cases, jurisdictional disputes between state agencies and the dissolution of political parties. There is also a Family Court, empowered to hear cases involving family matters.

Economic Overview

4. Korea has made remarkable economic progress in the last half-century. When the Japanese occupation ended in 1945, the South Korean economy was impoverished and rurally-based. Much of its infrastructure was destroyed during the Korean War, which also had an enormous human cost. As a result, by 1960, South Korea's per capita GDP lagged behind that of Zambia and Bangladesh. Since then, sustained high economic growth has led to South Korea's transformation into a highly industrialised and internationally competitive economy. It is now the 10th largest economy in the world. The Korean economy grew by 5 per cent in 2006 with private sector forecasters expecting the economy to expand by around 4.5 per cent in 2007. While still positive, consumption growth slowed in the second half of 2006 reflecting higher oil prices, weaker consumer sentiment and a small increase in official interest rates. Forecast growth for exports and industrial production remain very solid and will help underpin ongoing demand for Australian goods and services in 2007. Unemployment, inflation and interest rates are expected to remain low in 2007. Key downside risks are ongoing weak consumer sentiment, continued high oil prices, the increasing value of the won and weaker than expected demand from US and Chinese markets.

Bilateral Overview

5. Australia's relations with Korea are longstanding and strong, but continue to develop, as demonstrated by the visit of Korean President Roh Moo-hyun in December 2006, during which the Social Security Agreement was signed. Both countries are strong democracies with market orientated economies; have a common strategic outlook; and co-operate well on issues like terrorism. During President Roh's visit, Trade Minister Truss announced the undertaking of a joint non-government level FTA study. The joint study will be completed by late 2007, and will provide a useful basis for both governments to consider moving towards the commencement of FTA negotiations in the future, which would make a significant development in relations.

6. Australia's merchandise exports to Korea grew by 12 per cent in 2006 to A\$12.3 billion, making Korea Australia's third largest merchandise export market. Major export items include coal, crude petroleum, iron ore and beef. Merchandise imports from Korea increased by 34 per cent in 2006 to A\$6.9 billion, with major items including vehicles, refined petroleum and telecommunications equipment. Services trade is increasingly important, with Australian exports amounting to A\$1.6 billion in 2006, up 9 per cent from 2005. More than 31,000 Korean students were enrolled in Australia in 2006, and 261,000 Korean tourists visited Australia in 2006.



REPUBLIC OF KOREA

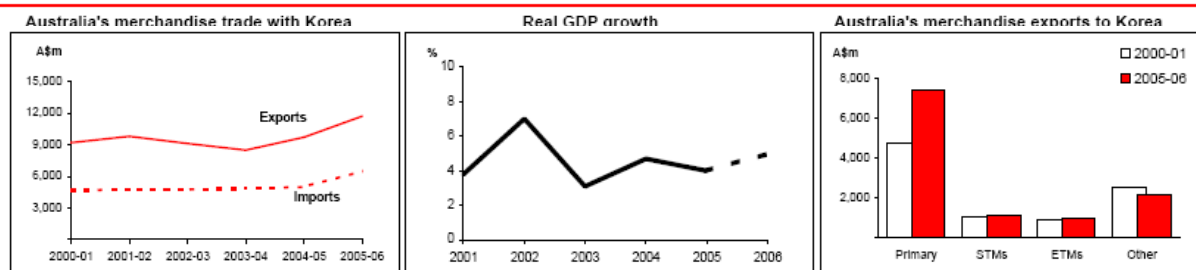
Fact Sheet

General information:

Fact sheets are updated biannually; May and September

Capital:	Seoul	Head of State and Head of Government:
Surface area:	99 thousand sq km	H.E. Mr Roh Moo-Hyun
Official language:	Korean	
Population:	48.3 million (2005)	
Exchange rate:	A\$1 = 721.5734 Won (Sept 2006)	

Recent economic indicators:	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	482.0	546.7	608.2	680.0	787.6	877.2
GDP PPP (US\$bn) (c):	759.8	827.0	869.9	934.2	994.4	1,065.2
GDP per capita (US\$):	10,178	11,482	12,710	14,142	16,308	18,015
GDP per capita PPP (US\$) (c):	16,046	17,368	18,180	19,430	20,590	21,877
Real GDP growth (% change YOY):	3.8	7.0	3.1	4.7	4.0	5.0
Current account balance (US\$m):	8,033	5,394	11,950	28,174	16,559	3,348
Current account balance (% GDP):	1.7	1.0	2.0	4.1	2.1	0.4
Goods & services exports (% GDP):	37.5	35.1	37.9	44.1	42.5	47.2
Inflation (% change YOY):	4.1	2.7	3.6	3.6	2.7	2.5



Australia's trade relationship with Korea (d):

Australian merchandise trade with Korea, 2005-06:		Total share:	Rank:	Growth (yoy):
Exports to Korea (A\$m):	11,715	7.7%	3rd	20.5%
Imports from Korea (A\$m):	6,490	3.9%	7th	29.7%
Total trade (exports + imports) (A\$m):	18,205	5.7%	4th	23.6%

Major Australian merch. exports, 2005-06* (A\$m):		Major Australian merch. imports, 2005-06 (A\$m):	
Coal	2,455	Passenger motor vehicles	1,076
Crude petroleum	1,365	Telecommunications equipment	887
Iron ore	1,278	Refined petroleum	638
Aluminium	741	Ships, boats & floating structures	552

*Includes \$1,980m of confidential exports, mainly LNG, sugar & wheat, 17% of total exports

Australia's trade in services with Korea, 2005-06:		Total share:
Exports of services to Korea (A\$m):	1,494	3.6%
Imports of services from Korea (A\$m):	361	0.9%

Major Australian service exports, 2005-06 (A\$m):		Major Australian service imports, 2005-06 (A\$m):	
Education-related travel	726	Transportation	220
Personal travel excl. education	520	Personal travel excl. education	42

Korea's global merchandise trade relationships:

Korea's principal export destinations, 2005:			Korea's principal import sources, 2005:		
1	China	21.8%	1	Japan	18.5%
2	United States	14.5%	2	China	14.8%
3	Japan	8.4%	3	United States	11.7%
14	Australia	1.3%	6	Australia	3.8%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various other sources.

(a) all recent data subject to revision; (b) IMF/EIU forecast; (c) PPP is purchasing power parity; (d) Total may not add due to rounding.

List of other treaties with the Republic of Korea

- Cultural Agreement with the Government of the Republic of Korea
[1972] ATS 11
- Agreement with the Republic of Korea on the Development of Trade and Economic Relations
[1975] ATS 22
- Agreement with the Government of the Republic of Korea concerning the Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material
[1979] ATS 5
- Agreement on Fisheries and Exchange of Letters with the Government of the Republic of Korea
[1983] ATS 23
- Convention and Protocol with the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
[1984] ATS 2
- Treaty on Extradition with the Republic of Korea
[1991] ATS 3
- Agreement with the Republic of Korea relating to Air Services
[1992] ATS 16
- Exchange of Notes with the Republic of Korea constituting an Agreement to amend the Schedule to the Agreement relating to Air Services of 26 February 1992
[1993] ATS 33
- Treaty with the Republic of Korea on Mutual Assistance in Criminal Matters
[1993] ATS 34
- Exchange of Notes constituting an Agreement on the Retransfer of Australian Obligated Nuclear Material under the Agreement concerning the Cooperation in Peaceful Uses of Nuclear Energy and the Transfer of Nuclear Material of 2 May 1979
[1997] ATS 26
- Agreement with the Government of the Republic of Korea on Scientific and Technical Cooperation
[2000] ATS 13
- Treaty on Judicial Assistance in Civil and Commercial Matters with the Government of the Republic of Korea.
[2000] ATS 5

- Agreement with the Government of the Republic of Korea on Cooperation in the Fields of Energy and Mineral Resources
[2004] ATNIF 13
- Agreement with the Government of the Republic of Korea on the Protection of Migratory Birds, and Exchange of Notes
[2006] ATNIF 28

Australian Social Security Agreements with Other Countries

1. Agreement with the Republic of Austria on Social Security **[1992] ATS 35**
2. Protocol to the Agreement with the Republic of Austria on Social Security of 10 April 1992 **[2002] ATS 20**
3. Agreement on Social Security with the Kingdom of Belgium **[2005] ATS 14**
4. Agreement on Social Security with Canada **[2003] ATS 4**
5. Agreement on Social Security with the Republic of Chile **[2004] ATS 18**
6. Agreement with the Republic of Croatia on Social Security **[2004] ATS 19**
7. Agreement on Social Security with the Republic of Cyprus **[1993] ATS 5**
8. Agreement with the Kingdom of Denmark on Social Security **[2001] ATS 2**
9. Agreement on Social Security with the Federal Republic of Germany **[2003] ATS 7**
10. Supplementary Agreement, Concluding Protocol and Implementing Arrangement on Social Security with the Federal Republic of Germany **[2007] ATNIF 6**
11. Agreement on Social Security with the Republic of Ireland **[2005] ATS 26**
12. Agreement on Social Security with the Republic of Italy **[2000] ATS 29**
13. Exchange of Notes constituting an Agreement with the Republic of Italy amending and clarifying the Agreement on Social Security of 13 September 1992 **[2000] ATS 29**
14. Agreement on Social Security with Japan **[2007] ATNIF 4**
15. Agreement with Malta on Social Security **[2005] ATS 16**
16. Agreement with the Kingdom of the Netherlands on Social Security **[2003] ATS 12**
17. Agreement on Social Security with New Zealand **[2002] ATS 12**
18. Exchange of Notes amending the Agreement on Social Security with New Zealand of 28 March 2001 **[2002] ATS 12**
19. Agreement on Social Security with the Kingdom of Norway **[2007] ATS 1**
20. Agreement with Portugal on Social Security **[2002] ATS 21**
21. Agreement on Social Security with Slovenia **[2004] ATS 2**
22. Agreement between Australia and Spain on Social Security **[2003] ATS 3**
23. Agreement with the Swiss Confederation on Social Security **[2006] ATNIF 23**
24. Agreement with the United States of America on Social Security **[2002] ATS 18**