

National Interest Analysis [2013] ATNIA 18

with attachment on consultation

Exchange of Notes, done at Canberra on 21 November 2013, 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 Communication Facilities of 29 May 1980, as amended

(Canberra, 21 November 2013)

[2013] ATNIF 27

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 Space Vehicle Tracking and Communication Facilities*, done at Canberra on 29 May 1980 ([1980] ATS 15, as amended, hereinafter referred to as “the Agreement”), which is due to expire on 26 February 2014.
2. The proposed extension will enter into force with effect from 26 February 2014, 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 after the Joint Standing Committee on Treaties (JSCOT) issues its report on the proposed extension. In order to ensure continuity of the 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. 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 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 approximately AUD \$800 million on space-related activities in Australia since 1960. Australia has derived significant scientific and economic benefits from activities conducted under the Agreement, especially through encouraging collaboration between Australian and NASA scientists. In addition, the Agreement has provided direct employment for several hundred Australian engineering, scientific, technical and administrative staff, and indirectly provided a pool of trained personnel for high-end engineering, scientific and technical roles in the public and private sectors. Outreach activities at the Canberra Deep Space Communication Complex (CDSCC) attract some seventy thousand visitors per year, including some ten thousand school children.

5. The proposed extension will ensure the continuation of benefits flowing from the establishment, operation and maintenance of NASA facilities in Australia under the Agreement. Most notably, NASA is currently investing a further \$110 million in the construction of two new 34-metre antennas at the facility. The first antenna is due to come on line in late 2014, with the second scheduled to be completed in 2016.

Reasons for Australia to take the proposed treaty action

6. Australia and the United States first concluded an *Exchange of Notes constituting an Agreement relating to Space Vehicle Tracking and Communications* in 1960 ([1960] ATS 2). The 1960 agreement was superseded by a similar agreement concluded in 1970 ([1970] ATS 4), which was in turn replaced in 1980 by the current Agreement ([1980] ATS 15). Since 1980, the Agreement has been reviewed and amended every 10 years.

7. The Agreement consists of a base document and multiple subsequent Exchanges of Notes. In 2009, it was agreed by both Parties to conclude a new agreement to consolidate the provisions contained in previous Exchanges of Notes into one document. Both Parties also agreed to extend the Agreement for two years until 2012, and then for a further two years until 2014 to allow the new agreement to be developed.

8. The Agreement will expire on 26 February 2014. Unfortunately, due to extended consultation processes on the draft of the new agreement in the US, the new agreement will not be finalised before the expiry of the Agreement. Due to this delay, both Parties have agreed to extend the Agreement for a further four year period until the new agreement can be brought into force.

NASA's Deep Space Network

9. 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 CDSCC located at Tidbinbilla in the Australian Capital Territory. NASA also maintains Tracking and Data Relay Satellite (TDRS) ranging system facilities at Alice Springs in the Northern Territory, and at Dongara in Western Australia.

10. All activities conducted in Australia under the 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.

11. Direct management and operation of the CDSCC is conducted by CSIRO. Approximately 100 engineers, technicians, operators and support staff are presently employed at the CDSCC. 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 Agreement.

The proposed extension

12. The proposed extension simply provides for the continuation of the Agreement until 26 February 2018, or until a further agreement between the Australian and US Governments enters

into force, whichever is earlier. The proposed extension confirms Australia's long-standing relationship with NASA and provides for continuing cooperation in space vehicle tracking and communication support.

Obligations

13. The proposed extension amends Article 13(1) of the Agreement to extend the period of operation of the Agreement to either 26 February 2018, or until a further agreement between the Governments of the US and Australia concerning space vehicle tracking and communication is concluded (whichever is earlier).

14. The proposed extension does not otherwise increase the scope or operation of the Agreement, nor impose new obligations on Australia.

15. The proposed extension continues existing arrangements under the current Agreement for exchange of scientific data (Article 4), facilitation of the entry and exit of US personnel through immigration barriers (Article 7(1)), and duty-free import of personal and household effects of US personnel (Article 7(2)). In accordance with Article 8 of the 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), as amended.

16. The Agreement explicitly provides for further (non-treaty) arrangements between NASA and the CSIRO, as the cooperating agencies, in respect of the establishment and operation of the facilities (Article 3). 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 (Article 9).

Implementation

17. No changes are required to existing legislation to implement the proposed extension. Exemptions from duties and taxes as set out in Article 9 of the Agreement are covered by existing legislation, as described in paragraph 19 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 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 Agreement as further amended would not impose any costs on the Australian Government or the respective state and territory governments.

19. Under the 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 Agreement (Article 9). 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 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* entitle NASA (amongst other organizations) 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 10 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

21. The Office of Best Practice Regulation has been consulted and has advised that a regulation impact statement is not required, as the proposed treaty action will not have a regulatory impact on businesses, community organisations or individuals.

Future treaty action

22. Article 13 of the Agreement (as amended by this proposed extension) provides that treaty-level cooperation can be further extended by agreement of the two Governments.

23. The Agreement will expire on 26 February 2014. Both parties have agreed to the proposed extension prolonging the Agreement for four years until a new agreement can be brought into force. A new agreement is intended to be negotiated for entry into force by 26 February 2018.

24. Conclusion and entry into force of the new agreement would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT. A mandate to negotiate the new agreement was obtained prior to the September 2013 Federal election. The Department of Industry will seek reaffirmation of this mandate with the Government in due course.

Withdrawal or denunciation

25. Article 13(2) of the 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 Agreement would be subject to domestic treaty processes.

Contact details

Space Coordination Office
Department of Industry

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CONSULTATION

26. The Department of Industry, in the normal course of business and in discussions on the development of a new agreement, discussed the proposed extension to the existing Agreement with the following agencies:

The Department of Defence

The Department of Foreign Affairs and Trade

The Department of Prime Minister and Cabinet

The Department of Communications

The Treasury

The Australian Communications and Media Authority (ACMA)

The Commonwealth Science and Industrial Research Organisation (CSIRO)

27. As the proposal was merely to extend the status quo for a further 4 years, and noting the Agreement had been in place for many years prior to the proposed extension, no substantive concerns were raised on the proposed extension.

28. Given the lack of impact on infrastructure or significant amendment to existing arrangements under the Agreement, the views of state and territory governments and agencies were not sought in relation to the proposed extension. State and territory governments and agencies will be consulted on the development of the new agreement.