



Submission No 20

Inquiry into Australia's trade and investment relationship with Japan and the Republic of Korea

Supplementary Submission

Organisation: Ministerial and Executive Support
Department of Defence

**Parliamentary Joint Committee on Foreign Affairs, Defence and
Trade**

**Inquiry into Australia's Trade and Investment Relationship with
Japan and the Republic of Korea**

Department of Defence

QUESTIONS ON NOTICE

Q1 – Japan's Policy and Legal Restrictions

Ms Saffin asked on Wednesday, 21 September 2011, Hansard page. 5:

Are you able to elaborate on those restrictions? Just some background information would be helpful.

Response:

The Japanese Government has policy restrictions placed on defence arms, technology and industry cooperation in accordance with the Three Principles on Arms Exports. The Three Principles are not law and are not embedded in Japan's constitution. Introduced in 1967, the Three Principles prohibit weapon exports to communist-bloc countries, countries which under United Nations-resolutions arms exports are prohibited, and countries involved or likely to be involved in conflict.

In 1976 these restrictions were expanded to include all nations, and the arms export restrictions are now a long-standing convention of Japanese defence policy. The restrictions were modified in 1983 to allow for defence technology exports to the United States, and Japan has made some exemptions to the restrictions, including the transfer of patrol boats to Indonesia for counter-piracy purposes in 2006. In addition, in June 2011 the Government of Japan announced that it may ease some restrictions around the export of the SM-3 Block IIA missile, components of which have been co-developed between the United States and Japan.

Q2 - Request for Documents in Submission

Ms Saffin asked on Wednesday, 21 September 2011, Hansard page. 6:

If we could have the documents that are public which are mentioned in your submission, and any arising out of it, that would be useful.

Response:

The following documents are provided:

- Joint Statement on Enhanced Global and Security Cooperation – Attachment 1.
- Memorandum of Understanding on Defence Industry Cooperation – Attachment 2.
- Agreement on Protection of Classified Military Information – Attachment 3.
- Joint Declaration on Security Cooperation – Attachment 4.

Joint Statement on Enhanced Global and Security Cooperation between Australia and the Republic of Korea

by the Prime Minister of Australia, Kevin Rudd, and the President of the Republic of Korea, Lee Myung-bak

Joint Statement

On 5 March 2009, Prime Minister Kevin Rudd of Australia and President Lee Myung-bak of the Republic of Korea met in Canberra.

The two leaders:

Acknowledging that the Australia-Korea relationship, forged during the Korean War, had developed into a broad-based partnership, including substantial trade and investment links and strong people-to-people ties;

Committing to further strengthen the relationship on the basis of shared democratic values, commitment to human rights, freedom and the rule of law, and mutual respect, trust and deep friendship;

Recognising that Australia and the Republic of Korea share key security interests in Northeast Asia, the Asia-Pacific region and beyond, with peace and stability on the Korean Peninsula and in East Asia, including the early resolution of the North Korean nuclear issue, critical to the prosperity and security of both countries; and, in this context, confirming the strategic importance of their respective alliance partnerships with the United States;

Affirming the two countries' common purpose in working actively together, and with other countries through fora such as APEC, the ASEAN Regional Forum, the East Asia Summit, and the G20, to advance the development, stability and security of the Asia-Pacific region, particularly in the face of the international financial crisis;

Affirming also the two countries' commitment to cooperate together and with other countries through the United Nations and other multilateral institutions to promote and help ensure global security;

Recalling that during their meeting in August 2008, they agreed to explore opportunities to expand global and security cooperation;

Reflecting the extent to which Australia and the Republic of Korea already cooperate on a wide range of issues;

Have agreed to a comprehensive Action Plan for Enhanced Global and Security Cooperation between Australia and the Republic of Korea (attached), under which the governments of Australia and the Republic of Korea will:

1. Consult closely and meet regularly, including at ministerial level, to discuss matters of common strategic interest in the Asia-Pacific region and beyond and to continuously explore and develop opportunities for cooperation.
2. Cooperate more closely on law enforcement to combat transnational crime, including trafficking in illegal narcotics and precursors, people smuggling and trafficking, money-laundering, counterfeiting currency and arms smuggling, piracy and armed robbery against ships, and on border security issues.
3. Consult and cooperate bilaterally, and in regional and multilateral fora, on counter-terrorism issues, including on cyber-security and cyber-terrorism, and to advance the Global Initiative to Combat Nuclear Terrorism.
4. Continue to expand cooperation on global disarmament and non-proliferation of weapons of mass destruction and their means of delivery through a range of mechanisms including the United Nations and its associated agencies and the International Commission for Nuclear Non-proliferation and Disarmament.
5. Build on the established good level of strategic dialogue and cooperation between the two countries' defence forces by exploring opportunities for defence engagement in areas such as peacekeeping, civil-military cooperation, defence management, joint exercises, training and exchange programs and the establishment of linkages between the Asia-Pacific Civil-Military Centre of Excellence and Korean institutions.
6. Conclude a bilateral agreement on the protection of classified military information that will enable the secure exchange of classified military information between defence organisations and related industry contractors, thereby facilitating further opportunities for practical defence and defence industry cooperation.
7. Promote greater cooperation between the Australian and Republic of Korea defence industries, including by exploring cooperation on Airborne Early Warning and Control aircraft, including through sharing information to assist in developing future enhancements; and by examining possibilities for cooperation on other defence industry and materiel procurement and maintenance activities.
8. Enhance cooperation on development and humanitarian assistance, including to promote achievement of the Millennium Development Goals and improve aid effectiveness.
9. Cooperate more closely on disaster and emergency preparedness, response and management.





MEMORANDUM OF UNDERSTANDING
(MOU)
ON
DEFENCE INDUSTRY COOPERATION
BETWEEN
THE MINISTRY OF NATIONAL DEFENSE OF
THE REPUBLIC OF KOREA
&
THE DEPARTMENT OF DEFENCE OF
AUSTRALIA



Table of Contents

Preamble	
Section 1	Objectives
Section 2	Definitions
Section 3	Scope of Cooperation
Section 4	Principles Governing Defence Industry Cooperation
Section 5	Arrangements
Section 6	Through Life Support
Section 7	Joint Defence Industry Committee
Section 8	Technology/Information Transfer
Section 9	Obligations on Receipt of Technology and Information
Section 10	Intellectual Property Rights
Section 11	Classified Information
Section 12	Cost
Section 13	Resolution of Disputes
Section 14	Validity Amendment and Termination
Signature Page	

PREAMBLE

The Ministry of National Defense of the Republic of Korea (ROK MND) and the Department of Defence of Australia (DoD AUS) (hereinafter referred to as "the Parties"),

Based on the spirit of the friendly relations and cooperation between the two Parties,

Taking into account the national interests of both countries that would benefit from a wider and more efficient cooperation; and

In accordance with respective laws, regulations, and national policies,

Have agreed as follows :

SECTION 1 OBJECTIVES

- 1.1 The purpose of this Memorandum of Understanding (hereinafter referred to as the "MOU") is to promote cooperation between the Parties in defence industry, production and procurement of defence materiel and in the Through Life Support capabilities of both armed forces, on the principle of reciprocity.

SECTION 2 DEFINITIONS

- 2.1 For the purpose of this MOU, the following definitions will apply:
 - a. **Computer Software** means computer programs, computer data bases and source and object codes;
 - b. **Defence Articles** includes any weapon, weapons system or munitions, aircraft, vessel, boat, or other implement of war, computer software, any machinery, facility, tool, material and supplies, publications or other items necessary for the manufacture, production, processing, repair, maintenance, modification, servicing, storage, construction, transportation, operation, or use of any other Defence Article or any component or part of any article listed in this definition;

- c. **Defence Services** includes any service, test, inspection, repair, training, publishing, technical data, technical or other assistance, or defence information;
- d. **Procuring Party** means the Party which is procuring or intending to procure Defence Articles or Defence Services;
- e. **Supplying Party** means the Party whose country's industry is supplying commercially or competing to supply Defence Articles and Defence Services to the Procuring Party;
- f. **Technical Data** means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including Computer Software documentation) but excludes computer software or data incidental to contract administration, such as financial or management information;
- g. **Technology** means the technical information and know-how that can be used to design, produce, manufacture, utilise, or reconstruct Defence Articles, including technical data and computer software, but not the goods themselves;
- h. **Third Party** means any person or entity other than the Parties to this MOU, including any third country government, any national of a third country, and any contractor, whether or not an entity is owned, controlled or influenced by a Party; and
- i. **Through Life Support** includes products, services, information and other assistance required for the operation and maintenance of Defence Articles and Defence Services throughout their service lives.

SECTION 3 SCOPE OF COOPERATION

- 3.1 Each Party will, subject to its national laws, regulations, policies and practices and its international obligations, and as determined on a case-by-case basis, endeavour to promote defence industry cooperation between the two countries.
- 3.2 The areas of mutual cooperation of the defence industry covered by this MOU may include the following :
 - a. Exchange of experiences, information and technologies about design, production, procurement, maintenance and testing of Defence Articles and Defence Services;

- b. Joint or coordinated research and development and use of testing facilities for defence equipment;
 - c. Exchange of Technical Data and experts in the fields of defence industry and Through Life Support;
 - d. Production, co-production and maintenance of Defence Articles and Defence Services;
 - e. Reciprocal procurement, joint procurement and the mutual export of Defence Articles and Defence Services to third countries;
 - f. Transfer of defence technology and exchanges in the field of training;
 - g. Offset programs; and
 - h. Through Life Support
- 3.3 When one Party is acquiring Defence Articles, Defence Services or Through Life Support from a commercial source within the territory of the other Party, the Supplying Party will endeavour, subject to its national laws, regulations, policies and practices and its international obligations, to facilitate the provision of those articles, services or support.
- 3.4 Each Party will endeavour to facilitate entry into and exit from its territory of personnel and equipment of the other Party engaged in cooperation activities under this MOU.

SECTION 4

PRINCIPLES GOVERNING DEFENCE INDUSTRY COOPERATION

- 4.1 In fulfilling the commitments specified above in Section 3, the Parties will acknowledge and have regard to:
- a. the important contribution made by such cooperative defence industry activities to developing bilateral cooperation; and
 - b. the importance of defence industry collaboration as a means of enhancing the respective industrial capabilities of the Parties.
- 4.2 The Parties will mutually consider international practices on offset trade and will mutually cooperate and support each other in order to smoothly implement the offset conditions agreed between the contracting Parties for

contracts of weapons systems.

- 4.3 To implement the purposes of this MOU, each Party will advise the defence industry within its own country of the basic principles of this MOU. Each Party may establish a set of guidelines for defence industry to follow should they wish to utilise the principles of this MOU.

SECTION 5 ARRANGEMENTS

- 5.1 The Parties may, if required, conclude and execute implementing arrangements under this MOU to facilitate cooperation in areas which fall within the scope of this memorandum as set out in Section 3. These arrangements will be incorporated as appendixes to this MOU.

SECTION 6 THROUGH LIFE SUPPORT

- 6.1 Pursuant to their national laws, regulations and policies the Parties will make best efforts to satisfy each other's requirements for Through Life Support.

SECTION 7 JOINT DEFENCE INDUSTRY COMMITTEE

- 7.1 To effectively pursue the aim of this MOU, the Korea-Australia Joint Defence Industry Committee (hereinafter referred to as the "Joint Committee") will be established and operated to address issues of mutual cooperation in defence industry.
- 7.2 The Joint Committee will be composed of no more than five representatives of each country and will be co-chaired by the Director General of the Acquisition Policy Bureau, ROK MND and Director General International Materiel, DoD AUS.
- 7.3 The Joint Committee may establish subcommittee(s) on an as-required basis to oversee the implementation of specific cooperative activities.
- 7.4 The Joint Committee will meet once every two years or as otherwise mutually determined by the Parties, with meetings to be held alternately in the two countries. The date and agenda for each meeting will be mutually determined by the Parties. The points of contact of the Parties concerning the Joint Committee will be:

contracts of weapons systems.

- 4.3 To implement the purposes of this MOU, each Party will advise the defence industry within its own country of the basic principles of this MOU. Each Party may establish a set of guidelines for defence industry to follow should they wish to utilise the principles of this MOU.

SECTION 5 ARRANGEMENTS

- 5.1 The Parties may, if required, conclude and execute implementing arrangements under this MOU to facilitate cooperation in areas which fall within the scope of this memorandum as set out in Section 3. These arrangements will be incorporated as appendixes to this MOU.

SECTION 6 THROUGH LIFE SUPPORT

- 6.1 Pursuant to their national laws, regulations and policies the Parties will make best efforts to satisfy each other's requirements for Through Life Support.

SECTION 7 JOINT DEFENCE INDUSTRY COMMITTEE

- 7.1 To effectively pursue the aim of this MOU, the Korea-Australia Joint Defence Industry Committee (hereinafter referred to as the "Joint Committee") will be established and operated to address issues of mutual cooperation in defence industry.
- 7.2 The Joint Committee will be composed of no more than five representatives of each country and will be co-chaired by the Director General of the Acquisition Policy Bureau, ROK MND and Director General International Materiel, DoD AUS.
- 7.3 The Joint Committee may establish subcommittee(s) on an as-required basis to oversee the implementation of specific cooperative activities.
- 7.4 The Joint Committee will meet once every two years or as otherwise mutually determined by the Parties, with meetings to be held alternately in the two countries. The date and agenda for each meeting will be mutually determined by the Parties. The points of contact of the Parties concerning the Joint Committee will be:

- a. for Korea, the International Cooperation Division, Acquisition Policy Bureau, ROK MND; and
- b. for Australia, Director General International Materiel, DoD AUS.

7.5 The tasks of the Joint Committee will be:

- a. to identify potential areas for industry cooperation;
- b. to propose items of common interest;
- c. to review defence industry cooperation;
- d. to facilitate the exchange of information on Defence Articles and Defence Services; and
- e. to review implementing arrangements and other arrangements entered into to give effect to this MOU.

7.6 The host Party will:

- a. decide the location of the meeting to be held in its country;
- b. at its own cost, be responsible for secretariat and other administration support of the meeting held in its country; and
- c. maintain a Record of Discussions of the meeting that is to be mutually consented to by both Co-Chairs.

SECTION 8 TECHNOLOGY/INFORMATION TRANSFER

8.1 The Parties recognise the importance to the Procuring Party of it having access to appropriate Technology for the Through Life Support of Defence Articles and Defence Services it acquires from the other Party. Each Party, subject to its national laws, regulations, policies and practices, and international obligations and as determined on a case-by-case basis, may, subject to any necessary safeguards:

- a. facilitate the transfer of Technology necessary to effectively and efficiently support Defence Articles and Defence Services provided to the other Party; and
- b. assist the Procuring Party to acquire the rights to use Technology where those rights are owned by a Third Party.

8.2 The Supplying Party will endeavour to assist the Procuring Party when the Procuring Party requests, as part of its procurement process,

information related to the Defence Articles and Services being procured or supported.

SECTION 9 OBLIGATIONS ON RECEIPT OF TECHNOLOGY AND INFORMATION

- 9.1 The Party which receives Technology from the other Party pursuant to this MOU, or any arrangement made pursuant to this MOU, will not permit the Technology to be used for purposes other than those for which it was provided, nor transfer, allow access, or otherwise disclose such Technology, to a Third Party without the prior written consent of the other Party.
- 9.2 Where a Party receives information from the other Party pursuant to this MOU or any arrangement made pursuant to this MOU, the Party receiving the information will not permit the information to be used for purposes other than those for which it was provided nor transfer, allow access, or otherwise disclose such information, to any Third Party without the prior written consent of the other Party.
- 9.3 Where written consent is given pursuant to clause 9.1 or 9.2 of this Section, it may be subject to conditions governing the use, transfer, access or disclosure of the Technology or information. Where either Party provides Technology or information to a Third Party pursuant to this Section, it will ensure that the same obligations relating to use, transfer, access or disclosure are imposed on the Third Party.

SECTION 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Parties recognise the importance to defence industry cooperation of establishing common understandings about the intellectual property and other rights to which each Party or any Third Party may be entitled and of ensuring the protection of such rights. Accordingly, when appropriate in the context of cooperative activities, the Parties will:
 - a. exchange information concerning their respective laws, policies and procedures relating to intellectual property rights;
 - b. provide such information to their respective defence industries engaged in cooperative activities; and

- c. mutually determine provisions in relation to intellectual property and other rights which may apply to cooperative activities undertaken between them pursuant to this MOU.

SECTION 11 CLASSIFIED INFORMATION

- 11.1 This MOU will be limited to unclassified information pending implementation of a General Security of Information Agreement (or Arrangement) between the Parties. Where there is an earlier requirement to exchange classified information, a set of specific security assurances may be arranged between the Parties.

SECTION 12 COST

- 12.1 Unless otherwise provided for in an implementing arrangement, each Party will bear its own cost in cooperative activities under this MOU. Specific cost-sharing arrangements will be described in a specific implementing arrangement which may be developed pursuant to Section 5 of this MOU.
- 12.2 Cooperative activities under this MOU will be undertaken in accordance with the applicable laws of both countries and subject to the availability of funds.

SECTION 13 RESOLUTION OF DISPUTES

- 13.1 The Parties acknowledge that this MOU is not binding under international law. Disputes concerning the interpretation or application of this MOU will be settled by mutual consultation between the Parties in the frame of the Joint Committee and may not be referred to any outside tribunal or Third Party for settlement.

SECTION 14 VALIDITY, AMENDMENT AND TERMINATION

- 14.1 This MOU will come into effect on the date of last signature on this MOU, and will remain in effect for a period of five (5) years thereafter, and will be automatically extended for a period of five (5) years unless earlier terminated with a termination notice in accordance with clause 14.2 below.

- 14.2 This MOU may be terminated at any time by mutual determination of the parties in writing. Alternatively, either Party may terminate this MOU by providing a written termination notice to the other Party, in which case the MOU will terminate one-hundred eighty (180) days after the giving of termination notice.
- 14.3 Any on-going projects or other implementing arrangements being conducted pursuant to this MOU will remain in effect notwithstanding the termination of this MOU.
- 14.4 This MOU may be amended at any time by mutual determination of the Parties in writing.

Signed in duplicate in the English and Korean languages, each text being equally authentic.



Major General Kim, Jong Chun
For the Ministry of National Defense
of the Republic of Korea



Mr David Learmonth
For the Department of Defence
of Australia

TITLE: Director General
Acquisition Policy Bureau

DATE: 8 August 2001

PLACE: Canberra

TITLE : Head Industry Division

DATE : 8 August 2001

PLACE : Canberra

Japan-Australia Joint Declaration on Security Cooperation

The Prime Ministers of Japan and Australia,

Affirming that the strategic partnership between Japan and Australia is based on democratic values, a commitment to human rights, freedom and the rule of law, as well as shared security interests, mutual respect, trust and deep friendship;

Committing to the continuing development of their strategic partnership to reflect shared values and interests;

Recalling their on-going beneficial cooperation on regional and global security challenges, including terrorism and the proliferation of weapons of mass destruction and their means of delivery, and human security concerns such as disaster relief and pandemics, as well as their contributions to regional peace and stability;

Recognising that the future security and prosperity of both Japan and Australia is linked to the secure future of the Asia-Pacific region and beyond;

Affirming their common purpose in working together, and with other countries through such fora as Asia Pacific Economic Cooperation (APEC), the ASEAN Regional Forum (ARF), and the East Asia Summit (EAS), to achieve the objective of a prosperous, open and secure Asia-Pacific region, and recognising that strengthened bilateral security cooperation will make a significant contribution in this context;

Committing to increasing practical cooperation between the defence forces and other security related agencies of Japan and Australia, including through strengthening the regular and constructive exchange of views and assessments of security developments in areas of common interest;

Committing to working together, and with others, to respond to new security challenges and threats, as they arise;

Affirming the common strategic interests and security benefits embodied in their respective alliance relationships with the United States, and committing to strengthening trilateral cooperation, including through practical collaboration among the foreign affairs, defence and other related agencies of all three countries, as well as through the Trilateral Strategic Dialogue and recognising that strengthened bilateral cooperation will be conducive to the enhancement of trilateral cooperation;

Desiring to create a comprehensive framework for the enhancement of security cooperation between Japan and Australia;

Have decided as follows:

Strengthening Cooperation

Japan and Australia will strengthen their cooperation and consultation on issues of common strategic interest in the Asia-Pacific region and beyond. This includes cooperation for a peaceful resolution of issues related to North Korea, including its nuclear development, ballistic missile activities, and humanitarian issues including the abduction issue. Japan and Australia also recognise the threat to peace and stability in the Asia-Pacific region and beyond posed by terrorism and will further strengthen cooperation to address this threat.

Japan and Australia will also strengthen their cooperation through the United Nations and other international and regional organisations and fora through activities such as peacekeeping and humanitarian relief operations. Japan and Australia will work towards the reform of the United Nations, including the realization of Japan's permanent membership of the Security Council.

The cooperation will be conducted in accordance with laws and regulations of each country.

Japan and Australia will deepen and expand their bilateral cooperation in the areas of security and defence cooperation with a view to enhancing the effectiveness of their combined contribution to regional and international peace and security, as well as human security.

Areas of Cooperation

The scope of security cooperation between Japan and Australia will include, but not be limited to the following:

- (i) law enforcement on combating transnational crime, including trafficking in illegal narcotics and precursors, people smuggling and trafficking, counterfeiting currency and arms smuggling;
- (ii) border security;
- (iii) counter-terrorism;
- (iv) disarmament and counter-proliferation of weapons of mass destruction and their means of delivery;
- (v) peace operations;
- (vi) exchange of strategic assessments and related information;
- (vii) maritime and aviation security;
- (viii) humanitarian relief operations, including disaster relief;
- (ix) contingency planning, including for pandemics.

As part of the above-mentioned cooperation, Japan and Australia will, as appropriate, strengthen practical cooperation between their respective defence forces and other security related agencies, including through:

- (i) exchange of personnel;
- (ii) joint exercises and training to further increase effectiveness of cooperation, including in the area of humanitarian relief operations;
- (iii) coordinated activities including those in the areas of law enforcement, peace operations, and regional capacity building.

Implementation

Japan and Australia will develop an action plan with specific measures to advance security cooperation in the above areas.

Japan and Australia will further strengthen the strategic dialogue between their Foreign Ministers, on an annual basis.

Japan and Australia will build on their dialogue between Defence Ministers, on an annual basis.

Japan and Australia will enhance joint Foreign and Defence Ministry dialogue, including through the establishment of a regular Ministerial dialogue.

Signed at Tokyo this 13th day of March, 2007

SHINZO ABE
Prime Minister of Japan

JOHN HOWARD
Prime Minister of Australia

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA
ON THE PROTECTION OF
CLASSIFIED MILITARY INFORMATION**

(Singapore, 31 May 2009)

Not yet in force
[2009] ATNIF 12

The Government of Australia and the Government of the Republic of Korea (hereinafter referred to as "the Parties"),

DESIRING to cooperate in the field of defence on the basis of mutual respect for sovereignty, independence and non-interference in each other's internal affairs, and

WISHING to ensure the reciprocal protection of Classified Military Information exchanged between the Parties under this Agreement,

HAVE AGREED AS FOLLOWS:

ARTICLE 1 PURPOSE

The Parties shall ensure the protection of Classified Military Information transmitted or exchanged between the Parties in the field of defence cooperation. Each Party shall implement its obligations under this Agreement subject to its national laws, regulations and policies.

ARTICLE 2 DEFINITIONS

- 2.1 For the purposes of this Agreement:
- 2.1.1 "Classification" means identifying, categorising and assigning a national security classification to information the disclosure of which could have adverse consequences for the Originating Party. The national security classification level assigned to information indicates the minimum level of protection that information must be afforded to safeguard it from loss or compromise.
 - 2.1.2 "Classified Contract" means any contract or subcontract between the Parties or with or between Contractors, which contains, or the performance of which requires access to Classified Military Information of either Party.
 - 2.1.3 "Classified Military Information" means all information and Material of defence interest (including documents, material, equipment, substances, and other items in any form or reproduction or translation of such information or material) which requires protection in the interests of national security and which is assigned a nominated level of national security Classification.
 - 2.1.4 "Contractor" means an individual, organisation or other entity, with the legal capacity to conclude contracts, including a sub-contractor that has entered into a Classified Contract with either of the Parties or with another Contractor.

- 2.1.5 "Industrial Operations" means all commercial activities which develop, produce and/or manufacture Material and/or information, including Information and Communications Technology, for or on behalf of the defence organisations of either Party.
- 2.1.6 "Information and Communications Technology" means any communication device or application, including those relating to radio, television, cellular phones, computer and network hardware and software, and satellite systems, as well as the various services and applications associated with them, including video conferencing and distance learning.
- 2.1.7 "Material" means anything (whether visible or not) in which information is recorded, embodied, encoded or stored and anything from which information can be derived, regardless of its physical form or composition including, but not limited to, documents, written records, equipment, instruments, machinery, devices, models, sound records, reproductions, representations, maps, computer programs, compilations and electronic data storage.
- 2.1.8 "Originating Party" means the Party which transmits Classified Military Information to the other Party, and assigns it a national security Classification.
- 2.1.9 "Personnel Security Clearance" means a certification provided by a National Security Authority of either Party concerning the level of Classified Military Information which a national of the country of that Party is authorised to access.
- 2.1.10 "Receiving Party" means the Party to which Classified Military Information is transmitted.
- 2.1.11 "Security Personnel" means personnel of a Party who are appointed by the National Security Authority of that Party to perform the functions of Security Personnel under this Agreement.
- 2.1.12 "Third Party" means any person or entity other than the Parties (including any Contractor, third country government, and any national or legal entity of a third country) whether or not it is owned, controlled or influenced by a Party.
- 2.1.13 "Transmitted Classified Military Information" means Classified Military Information which is transferred between the Parties, regardless of whether it is transmitted orally, visually, electronically, in writing, through the handing over of Material or in any other form or manner.

ARTICLE 3
NATIONAL SECURITY AUTHORITY

3.1 Each Party shall nominate its National Security Authority which shall be responsible for the implementation of this Agreement.

3.2 Unless otherwise advised by a Party in writing, the National Security Authorities for the Parties shall be:

3.2.1 For the Government of the Republic of Korea:

Director, Intelligence Force Development and Security
Korean Defense Intelligence Agency
Ministry of National Defense
22, Itaewon-Ro, Yongsan-Gu, Seoul
Republic of Korea

3.2.2 For the Government of Australia:

Head, Defence Security Authority
Department of Defence
Campbell Park Offices
Canberra ACT 2600
AUSTRALIA

3.3 The Parties may, at any time, make changes to their National Security Authority and shall promptly advise the other Party of such change in writing. Such changes shall not require amendment of this Agreement.

ARTICLE 4
MARKING CLASSIFIED MILITARY INFORMATION

4.1 The Originating Party shall assign and mark all Classified Military Information that can be physically marked with one of the national security Classifications specified in paragraph 5 of this Article before transmission.

4.2 The Receiving Party shall ensure that Transmitted Classified Military Information, and anything incorporating Classified Military Information, received from the Originating Party is assigned and marked if physically possible with a national security Classification no lower than the corresponding Classification specified by the Originating Party.

4.3 Any Material produced by one Party that contains the Transmitted Classified Military Information of the other Party shall be marked KOREA/AUSTRALIA or AUSTRALIA/KOREA followed by the appropriate national security Classification.

4.4 For Classified Military Information where a marking is not physically possible, the Originating Party shall inform the Receiving Party in writing of the national security Classification.

4.5 The corresponding national security Classifications of the Parties are as follows:

In Korea:

군사 Ⅱ급 비밀
군사 Ⅲ급 비밀
군사대외비

to be protected as
to be protected as
to be protected as

In Australia:

SECRET
CONFIDENTIAL
RESTRICTED

**ARTICLE 5
PROTECTION AND USE OF CLASSIFIED MILITARY INFORMATION**

5.1 The Parties shall apply the following rules for the protection and use of Transmitted Classified Military Information:

- 5.1.1 the Originating Party may specify in writing any limitations not included in Article 6 (Access to Classified Military Information) on the use, disclosure, release and access to Transmitted Classified Military Information by the Receiving Party and the Receiving Party shall comply with any such limitations on the use, disclosure, release and access to Transmitted Classified Military Information which has been specified by the Originating Party;
- 5.1.2 the Receiving Party shall not downgrade the national security Classification of the Transmitted Classified Military Information without the prior written consent of the Originating Party;
- 5.1.3 the Originating Party shall inform the Receiving Party in writing of any change in the national security Classification of Transmitted Classified Military Information;
- 5.1.4 the Receiving Party shall accord all Transmitted Classified Military Information a standard of physical and legal protection not less than that which it accords its own information of a corresponding national security Classification;
- 5.1.5 unless otherwise mutually determined by the Parties in writing, the Receiving Party shall not disclose, release or provide access to Transmitted Classified Military Information to any Third Party without the prior written consent of the Originating Party;
- 5.1.6 the Receiving Party shall take all appropriate steps legally available to it to keep Transmitted Classified Military Information free from unauthorised disclosure; and
- 5.1.7 the Receiving Party shall not permit Transmitted Classified Military Information to be used for any purpose other than that for which it is provided without the prior written consent of the Originating Party.

5.2 When Transmitted Classified Military Information is no longer required for the purpose for which it was provided, the Receiving Party shall:

- 5.2.1 return the Classified Military Information to the Originating Party; or
- 5.2.2 destroy the Classified Military Information in accordance with the procedures of the Receiving Party for the destruction of such information and confirm in writing to the Originating Party the destruction of the Classified Military Information.

5.3 The Parties may mutually determine in writing such additional requirements for security protection as they consider appropriate for the purpose of facilitating the transmission and protection of Transmitted Classified Military Information.

ARTICLE 6 ACCESS TO CLASSIFIED MILITARY INFORMATION

6.1 Access to Transmitted Classified Military Information shall be limited, subject to the provisions of this Agreement, to those personnel of a Party who:

- 6.1.1 are nationals of the country of either Party, unless the Originating Party has given its prior written consent otherwise;
- 6.1.2 require access to Classified Military Information for the performance of their official duties; and
- 6.1.3 have been given a Personnel Security Clearance to the appropriate level in accordance with the Receiving Party's laws, regulations and policies.

6.2 The Parties acknowledge the special status of elected parliamentary representatives and shall continue to apply their current practices governing access to Classified Military Information to them on a need-to-know basis.

ARTICLE 7 TRANSMISSION, PROCESSING AND STORAGE OF CLASSIFIED MILITARY INFORMATION

7.1 Classified Military Information shall be transmitted in accordance with the national laws, regulations and procedures of the Originating Party and the provisions in this Agreement.

7.2 Classified Military Information shall be transmitted through diplomatic channels. If, in the opinion of the Originating Party, the use of diplomatic channels would be impractical or unduly delay receipt of Classified Military Information, transmissions may be undertaken by authorised personnel who possess the requisite Personnel Security Clearance and are furnished with a courier certificate issued by the

Originating Party, or through other channels mutually determined by the National Security Authorities.

7.3 All Information and Communications Technology networks, systems and infrastructure used to process, transmit and/or store Classified Military Information in an electronic format shall be protected in accordance with methods and standards mutually recognised and settled upon by the National Security Authorities of the Parties.

7.4 The Receiving Party shall acknowledge receipt of Classified Military Information in writing.

7.5 The Originating Party reserves the right to refuse to transmit any of its Classified Military Information.

ARTICLE 8 CLASSIFIED CONTRACTS

8.1 Classified Contracts shall be concluded and implemented in accordance with this Agreement and the relevant laws, regulations and policies of the Party in whose territory the Classified Contract is made.

8.2 The National Security Authorities of the Parties shall be responsible for the administration of the security aspects of Classified Military Information of Classified Contracts.

8.3 The National Security Authorities may mutually determine arrangements to effect this Article between the Parties and Contractors.

ARTICLE 9 PROTECTION OF INTELLECTUAL PROPERTY AND OTHER RIGHTS

Nothing in this Agreement diminishes or limits any existing or acquired intellectual property rights associated with Classified Military Information to which either Party or any Third Party may be entitled.

ARTICLE 10 EXCHANGE OF SECURITY STANDARDS

Each Party shall provide to the other, upon request, information regarding its national security standards, procedures and practices for the protection of Classified Military Information, including those national security standards, practices and procedures which relate to its Industrial Operations. Each Party shall inform the other Party in writing of any changes to its national security standards, procedures and practices that affect the manner in which Transmitted Classified Military Information is protected.

ARTICLE 11
VISITS – GENERAL PRINCIPLES

11.1 Visits by personnel of a Party requiring access to Classified Military Information held by the other Party or requiring access to restricted areas or facilities where Classified Military Information is held shall be undertaken only with the prior written approval of the host Party. Approval for such visits shall be granted only to personnel specified in Article 6.

11.2 Requests for such visits shall be submitted in writing by the National Security Authority of the visiting Party, through diplomatic channels to the National Security Authority of the host Party. Unless otherwise mutually determined, such requests shall be made at least three (3) weeks prior to the date of the requested visit.

11.3 Such requests shall contain the following information:

- 11.3.1 the purpose of the proposed visit;
- 11.3.2 the proposed date and duration of the visit;
- 11.3.3 the names of the organisations or facilities to be visited;
- 11.3.4 the identification and telephone number of a Government official of the visiting Party who can provide additional information concerning the visit;
- 11.3.5 the identification and telephone number of a contact at the organisations or facilities to be visited;
- 11.3.6 the following personal details of the personnel who shall undertake the visit:
 - 11.3.6.1 full name;
 - 11.3.6.2 date and place of birth;
 - 11.3.6.3 citizenship and passport number;
 - 11.3.6.4 the official titles of the visiting personnel and the names of the organisations he/she represents; and
 - 11.3.6.5 the Personnel Security Clearance held, the date of its issue and the period of its validity.

11.4 Nothing in paragraph 11.2 of this Article shall restrict the right of either Party to permit visiting personnel of the other Party to have access to Classified Military Information or entry to controlled areas or any other establishments at any time during an approved visit should the host Party wish to grant such access or entry.

ARTICLE 12
VISITS BY SECURITY PERSONNEL

12.1 Each Party shall permit Security Personnel of the other Party to visit organisations, facilities and controlled areas within the territory of the host Party

where Classified Military Information is stored, when mutually convenient and in accordance with the procedures set out in Article 11:

12.1.1 to obtain access to Transmitted Classified Military Information; or

12.1.2 to confer with the National Security Authority of the host Party regarding its national security standards, procedures and practices applied for the protection of Classified Military Information.

12.2 Each Party shall assist the Security Personnel of the visiting Party in the exercise of their functions under paragraph 1 of this Article.

ARTICLE 13 COMPLIANCE AND SECURITY INSPECTIONS

13.1 Each Party shall ensure that facilities, establishments and other organisations that handle or store Transmitted Classified Military Information protect such information in accordance with the provisions of this Agreement.

13.2 Each Party shall ensure that within its territory necessary security inspections are carried out, and appropriate security regulations and procedures shall be complied with in order to protect Transmitted Classified Military Information.

ARTICLE 14 LOSS OR COMPROMISE OF CLASSIFIED MILITARY INFORMATION

14.1 Should Classified Military Information provided by the Originating Party be lost or compromised while in the possession of the Receiving Party, the Receiving Party shall immediately inform the Originating Party. The Receiving Party shall also immediately inform the Originating Party of any suspected loss or compromise of Transmitted Classified Military Information. The Receiving Party shall immediately investigate the circumstances of such loss or compromise, or suspected loss or compromise, and shall promptly inform the Originating Party of the findings of the investigation and corrective action taken or to be taken.

14.2 The Receiving Party, if necessary, may request the Originating Party to send personnel to provide assistance in connection with specific investigations to assess the damage caused by the loss or compromise. Such requests shall be considered favourably.

14.3 Any security incident relating to Transmitted Classified Military Information shall be dealt with in accordance with the policies and laws of the Party in whose territory the security incident occurred which are in force at the time of the security incident.

**ARTICLE 15
COSTS**

Each Party shall be responsible for its own costs incurred in implementing this Agreement.

**ARTICLE 16
SETTLEMENT OF DISPUTES**

Disputes arising from the interpretation or application of this Agreement shall be settled by consultation and negotiation between the Parties and shall not be referred to any third party.

**ARTICLE 17
ENTRY INTO FORCE, REVIEW, AMENDMENT, DURATION
AND TERMINATION**

17.1 This Agreement shall enter into force when the Parties have notified each other in writing that their respective requirements for entry into force have been satisfied. The date of entry into force of the Agreement shall be the date of the last notification.

17.2 This Agreement may be terminated at any time by mutual consent in writing or by either Party giving the other written notice of its intention to terminate, which shall take effect six (6) months after notification.

17.3 This Agreement may be reviewed at the request of either Party and amended by mutual written consent of the Parties. Such amendments shall enter into force when the Parties have notified each other in writing that their respective domestic requirements for the entry into force of the amendment have been satisfied.

17.4 The existing responsibilities and obligations related to the protection and use of Transmitted Classified Military Information and the understanding stated in Article 16 shall continue to apply notwithstanding the termination of this Agreement.

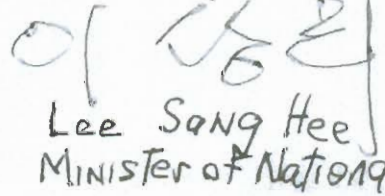
IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Government, have signed this Agreement.

Done in duplicate in Singapore on 30th May 2001 in the Korean and English languages, both texts being equally authentic.

For the
Government of Australia


Joel Fitzgibbon
Minister for Defence

For the
Government of the Republic of Korea


Lee Sang Hee
MINISTER OF NATIONAL DEFENSE

Q3 - Trade Shows

Mr Scott asked on Wednesday, 21 September 2011, Hansard page. 6-7:

Provide information on whether there has been any Australian Defence facilitated representation of any Defence trade shows in South Korea in recent years.

Response:

Defence has not facilitated representation or attended any trade show in South Korea in recent years.

Q4 - Mutual Government Quality Assurance Arrangements with Korea

Ms Saffin asked on Wednesday, 21 September 2011, Hansard page. 7:

Is that a public document?

Response:

The Mutual Government Quality Assurance Arrangement with Korea is not a public document. International practice respecting bilateral international government arrangements, such as this, is that they are private between the participants and not released to any third party, without written agreement between the parties.