Premier of Queensland

For reply please quote: *TF/10/11500 – DOC/10/57004*

Executive Building
100 George Street Brisbane
PO Box 15185 City East
Queensland 4002 Australia
Telephone +61 7 3224 4500
Facsimile +61 7 3221 3631
Email ThePremier@premiers.qld.gov.au
Website www.thepremier.qld.gov.au

- 9 JUN 2010

Mr Neil Laurie
Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Neil,

In accordance with parliamentary procedures, I wish to table correspondence from the Federal Parliament's Joint Standing Committee on Treaties (JSCOT) in the Legislative Assembly.

The attached material for tabling includes:

- a copy of the letter from the Chair of the JSCOT regarding the ten proposed international treaty actions tabled in both houses of Federal Parliament on 12 May 2010, and
- the following ten National Interest Analyses for the proposed treaty actions:
    - *An Exchange of Notes amending the Agreement between the Government of Australia and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam relating to Air Services (done at Canberra, 30 April 1992)*
    - *Agreement between Australia and the Kingdom of Spain relating to Air Services (Canberra, 24 June 2009)*
    - *Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services (Canberra, 28 November 2008)*
    - *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services (London, 10 July 2008)*
    - *Acquisition and Cross-Servicing Agreement (US-AS-03) between the Government of the United States of America and the Government of Australia*
    - *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information (Singapore, 30 May 2009)*

Queensland Government

- *Agreement between Australia and the European Union on the Security of Classified Information*
- *Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion (Santiago, 10 March 2010)*
- *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002 (Canberra, 24 February 2010)*
- *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy done at New York on 4 May 2010*

Thank you for your assistance in arranging the tabling of this material as soon as possible.

Yours sincerely

ANNA BLIGH MP
PREMIER OF QUEENSLAND

PARLIAMENT of AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES
Parliament House, Canberra ACT 2600 | Phone: (02) 6277 4002 | Fax: (02) 6277 2219 | Email: jsct@aph.gov.au

12 May 2010

The Hon Anna Bligh MP
Premier of Queensland
Parliament House
BRISBANE QLD 4002

Dear Premier

Treaties tabled on 12 May 2010

I am writing to advise of the most recent tabling of treaties, and to invite comments as part of the review process undertaken by the Commonwealth Parliament's Joint Standing Committee on Treaties.

Before action is taken to bind Australia to the terms of treaties, the Treaties Committee considers and reports on whether the proposals are in Australia's national interest. The Committee is currently inquiring into the following proposed treaties tabled in both Houses of the Parliament this week:

Treaties tabled on 12 May 2010

- *An Exchange of Notes amending the Agreement between the Government of Australia and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam relating to Air Services (done at Canberra, 30 April 1992)*
- *Agreement between Australia and the Kingdom of Spain relating to Air Services (Canberra, 24 June 2009)*
- *Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services (Canberra, 28 November 2008)*
- *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services (London, 10 July 2008)*
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- *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002 (Canberra, 24 February 2010)*

- *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy done at New York on 4 May 2010*

The subject matter of international treaties can be of interest to State and Territory Governments and Parliaments and we are keen to provide an opportunity for comment on any issues arising from proposed treaties. Treaty texts and copies of the National Interest Analysis (which accompany each treaty tabled) are available from the Committee's website at http://www.aph.gov.au/house/committee/jsct/12may2010/tor.htm.

As the Treaties Committee has periods of 15 and 20 sitting days in which to complete its reviews, it would be helpful if you could forward any comments you might wish to make to the Committee Secretariat by **Friday, 11 June 2010**. If substantial issues of concern are raised about any of the proposed treaties and the Committee's usual period of review is extended, it may be possible to arrange for a submission to be lodged after this date. Your comments may be accepted as a submission to the review and authorised for publication.

Should your officials have any questions about the treaties or about our review procedures, they should contact Jerome Brown, A/g Committee Secretary on telephone (02) 6277 4002, facsimile (02) 6277 2219 or e-mail jsct@aph.gov.au.

Yours faithfully

Kelvin Thomson MP
Chair

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

An Exchange of Notes
amending
the *Agreement between the Government of Australia*
and
the Government of His Majesty the Sultan and Yang Di-Pertuan
of Brunei Darussalam
relating to Air Services (done at Canberra, 30 April 1992)

(Brunei, TBA 2010)

Not yet in force

[2010] ATNIF 21

INITIATING NOTE

The Australian High Commission presents its compliments to the Ministry of Foreign Affairs of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and has the honour to refer to the Agreement between the Government of Australia and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam relating to Air Services, done at Canberra on 30 April 1992 (the Head Agreement).

The Australian High Commission has the further honour to refer to Memorandum of Understanding between the Aeronautical Authorities of Australia and Brunei Darussalam on 16 April 2007 (the Memorandum of Understanding). Pursuant to the provisions of the Memorandum of Understanding, the High Commission has the honour to propose the following amendments to the Head Agreement:

that Article 1(b) in the Head Agreement be replaced by:

> "Agreed services" means scheduled air services on the routes specified in the Annex to this Agreement for the transport of passengers and/or cargo in accordance with agreed capacity entitlements.";

That Paragraph 1(b) of Article 5 (Revocation and Limitation of Authorisation) be replaced by:

> "(b) in the event that the aeronautical authorities of the Contracting Party are not satisfied that the airline is incorporated in and has its principal place of business in the territory of the Contracting Party designating the airline; or"

and the Route Annex to the Head Agreement be replaced by:

"ANNEX

SECTION 1

Route to be operated in both directions by the designated airline or airlines of Brunei Darussalam:

FROM	INTERMEDIATE POINTS	TO	BEYOND
Brunei Darussalam	Any points	Any points in Australia	Any points

SECTION II

Route to be operated in both directions by the designated airline or airlines of Australia:

FROM	INTERMEDIATE POINTS	TO	BEYOND
Australia	Any points	Any points in Brunei Darussalam	Any points

NOTES

1. Points on the specified routes may be omitted, provided that services shall either commence or terminate in the territory of the Contracting Party designating the airline.

2. The traffic rights to be exercised shall be decided between the aeronautical authorities of the Contracting Parties from time to time. ”

If the foregoing proposal is acceptable to the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, the Australian High Commission has the honour to propose that this Note and Note in reply to that effect from the Ministry of Foreign Affairs of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, shall constitute an Agreement between the two Governments amending the Head Agreement, which shall enter into force upon the date of your Note in reply.

The Australian High Commission avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam the assurances of its highest consideration.

National Interest Analysis [2010] ATNIA 18

with attachment on consultation

Amendments to the
Agreement between the Government of Australia and the Government of His Majesty the Sultan of Yang Di-Pertuan of Brunei Darussalam relating to Air Services
Canberra 30 April 1992 [1992] ATS 20

[2010] ATNIF 21

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Amendments to the
Agreement between the Government of Australia and the Government of His Majesty the Sultan of Yang Di-Pertuan of Brunei Darussalam relating to Air Services, done at Canberra 30 April 1992 [1992] ATS 20
[2010] ATNIF 21

Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force amendments to the *Agreement between the Government of Australia and the Government of his Majesty the Sultan of Yang Di-Pertuan of Brunei Darussalam relating to Air Services* (the Agreement) through the exchange of diplomatic notes.

2. The Agreement was signed and entered into force on 30 April 1992.

3. Article 18 specifies that the Agreement may be amended or revised by agreement in writing and amendments shall enter into force on the date specified by the Parties in an exchange of diplomatic notes. Subject to the Joint Standing Committee on Treaties (JSCOT) issuing a report on the proposed treaty action, the Australian Government will arrange an exchange of diplomatic notes agreeing upon the date that the Agreement will enter into force under Article 18 of the Agreement as soon as practicable after the amendments to the Agreement have been tabled in both Houses of Parliament for fifteen sitting days.

4. Aviation arrangements of less than treaty status, in the form of Memorandums of Understanding and Exchanges of Letters (last signed in June 2008), have included provisionally applying the amendments to the Agreement, pending the completion of domestic requirements, before the amendments are brought into force.

Overview and national interest summary

5. The purpose of the amendments to the Agreement is to provide further commercial flexibility for airlines of both Parties operating between Australia and Brunei. There are three amendments to the Agreement:

i) to update the scope of agreed services covered by the Agreement to include cargo-only services;
ii) to liberalise the nationality test for designated airlines; and
iii) to replace the current Annex which specifies particular routes that may be operated by the designated airlines with a new ‘open’ route structure.

Reasons for Australia to take the proposed treaty action

6. By taking the proposed treaty action and liberalising the nationality test for ownership of designated airlines, airlines will be able to increase the scope of both their foreign investment opportunities and their access to capital. Under the new criteria, airlines can be designated based on the location of their incorporation and principle place of business. Australia has pursued a policy of recognising incorporation and principal place of business as the criterion for the designation of airlines in its air services agreements for some years and this criterion (or variations of it) is in place in thirty-two agreements. The inclusion of this test in air services agreements does not diminish the protection provided by the *Qantas Sale Act 1992* and the *Air Navigation Act 1920*, which still apply ownership restrictions to Australian international airlines.

7. Amendment of the definition of 'agreed services' and adoption of the proposed open route schedule will enable the amended Agreement to provide further commercial flexibility for airlines operating between Australia and Brunei, including the ability to operate cargo-only services.

Obligations

8. Australia and Brunei are both parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention).

9. The definition of 'agreed services' in Article 1(b) of the Agreement currently includes only 'transport of passengers and cargo.' This definition will be amended to include 'transport of passengers and/or cargo' services, to confirm that transport of passengers or cargo only, as well as transport of both passengers and cargo, is covered by the Agreement.

10. Article 2 of the Agreement authorises both Parties to designate airlines to operate scheduled international air services between the two countries. The amendments to the nationality test allow each Party to designate an airline to operate the agreed services provided it is incorporated and has its principal place of business in the territory of the Party designating the airline. Either Party may revoke or limit authorisation of a designated airline's operations if the airline fails to meet requirements in relation to its place of business and establishment and regulatory control.

11. The Annex to the Agreement, which is part of the Agreement, contains a route schedule which specifies the routes on which the designated airlines may operate. The existing Route Annex limits the airline designated by Brunei to operating services to Perth via Darwin. The amendment to the Annex entitles the designated airlines of both Parties to operate on any route between any point in Australia and any point in Brunei, via any intermediate (en-route) point and any point beyond, subject to the entitlements settled from time to time between aeronautical authorities. Aeronautical authorities of both sides continue to determine the traffic rights and capacity entitlements of airlines operating on these routes. In Australia, the *Air Navigation Act 1920* restricts all airlines operating international air services to arrival and departure from designated international airports.

Implementation

12. The amendments to the Agreement will be given effect through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the amendments to the Agreement.

Costs

13. No direct financial cost to the Australian Government is anticipated in the implementation of the amendments to the Agreement. There are no financial implications for State or Territory Governments. The amendments to the Agreement reduce the regulatory burden on business and industry.

Regulation Impact Statement

14. The Office of the Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

15. Article 18 of the Agreement provides for amendment or revision of the Agreement by agreement of the Parties. Any amendment to the Agreement, including the Annex to the Agreement, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, of the date that they agree that the amendment should enter into force.

16. Any amendment to the Agreement will be subject to Australia's domestic treaty procedures, including consideration by JSCOT.

Withdrawal or denunciation

17. Article 19 of the Agreement provides that either Party may give notice in writing at any time to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with the International Civil Aviation Organization (ICAO.) The Agreement shall terminate one year after the date of receipt of the notice by the other Party. In default of acknowledgment by one Party of a receipt of a notice of termination from the other Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

18. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty action procedures, including consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure, Transport, Regional Development and Local Government

ATTACHMENT ON CONSULTATION

Amendments to the
Agreement between the Government of Australia and the Government of His Majesty the Sultan of Yang Di-Pertuan of Brunei Darussalam relating to Air Services, done at Canberra 30 April 1992 [1992] ATS 20
[2010] ATNIF 21

CONSULTATION

19. It is the practice ahead of negotiations of an Air Service Agreement for the Department of Infrastructure, Transport, Regional Development and Local Government to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position for the Minister's approval.

20. Prior to the negotiation of the amendments to the Agreement and associated arrangements in 2000 and 2004, extensive consultations were held with industry and Australian and State governments. The following stakeholders were advised by letter and/or email of the proposal to negotiate with Brunei and invited to comment on issues of importance to them. Stakeholders who responded are marked with an * in the list below:

Commonwealth Government Agencies

- Austrade
- Australian Customs and Border Security Service*
- (then) Australian Tourist Commission*
- Civil Aviation Safety Authority
- Department of Agriculture Fishes and Forestry*
- Department of Foreign Affairs and Trade*
- (then) Department of Industry, Science and Resources*
- (then) Department of Industry, Tourism and Resources*
- International Air Services Commission*

State Government Agencies

- ACT Chief Minister's Department
- New South Wales Department of Transport
- Northern Territory Department of Transport and Works*
- Northern Territory Minister for Transport and Infrastructure*
- Northern Territory Tourism Commission*
- Queensland Department of State Development*
- South Australian Air Freight Export Council
- South Australian Department of Transport and Urban Planning*
- South Australian Tourism Commission
- Tasmanian Department of Infrastructure, Energy and Resources*
- Tasmanian Department of Transport
- Tasmanian Export Council
- Tourism Council of Australia
- Tourism NSW*
- Tourism Queensland

- Tourism Tasmania
- Tourism Victoria*
- Western Australian Department of Transport
- Western Australian Tourism Commission

Industry

- Adelaide Airport
- Air Freight Export Council of NSW
- Air Freight Perishables Taskforce of Victoria
- Air Freight Council of Queensland
- Air Freight Council of Western Australia
- Air Freight Council of New South Wales
- Alice Springs Airport
- Ansett International*
- Australian Airports Association*
- Australian Horticultural Corporation
- Australian and International Pilots Association
- Australian Federation of Travel Agents
- Australian Federation of International Forwarders
- Australian Pacific Airports
- Australian Seafood Industry Council
- Brisbane Airport Corporation*
- Broome International Airport
- Cairns International Airport*
- Cairns Port Authority*
- Canberra International Airport
- Darwin International Airport
- Hobart Airport
- Gold Coast Airport
- Inbound Tourism Organisation of Australia
- Melbourne Airport
- Northern Territory Airports*
- Overnight Airfreight Operators Association
- Perth Airport*
- Qantas Airways*
- Regional Airlines Association of Australia
- Supermarket to Asia
- Sydney Airport*
- Tourism Task Force
- Townsville Airport
- Virgin Blue*
- Westralia Airports Corp

21. While not all stakeholders specifically addressed the amendments to the Agreement, there was general support for liberalisation, seeking increased flexibility for the operation of international air services, including rights for airlines to operate to a broader range of Australian cities.

22. The amendments to the Agreement were approved for treaty action by the Federal Executive Council on 8 October 2009.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT BETWEEN

AUSTRALIA

AND

THE KINGDOM OF SPAIN

RELATING TO AIR SERVICES

(Canberra, 24 June 2009)

Not yet in force
[2009] ATNIF 16

Index

ANNEX 1

ANNEX 2

Australia and the Kingdom of Spain (hereinafter, "the Parties");

Being parties to the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace and wishing to encourage airlines to develop and implement innovative and competitive services;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement, unless otherwise stated, the term:

(a) “Aeronautical authorities” means for each Party, the authority or authorities as notified in writing from time to time by one Party to the other Party.

(b) “Agreed services” means services for the uplift and discharge of traffic as defined in Article 3, subparagraph 1 (c);

(c) “Agreement” means this Agreement, its Annexes, and any amendments thereto;

(d) “Air transportation” means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;

(e) “Airline” or “air carrier” means any air transport enterprise marketing or operating air transportation;

(f) “Capacity” is the amount(s) of services provided under the Agreement, usually measured in the number of flights (frequencies), or seats or tonnes of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;

(g) "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:

(i) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time in force for both Parties; and

(ii) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Parties;

(h) "Designated airline" means an airline providing international air services that a Party has designated to operate the agreed services on the specified routes as established in Annex 1 to this Agreement and in accordance with Article 2 (Designation, Authorisation and Revocation) of this Agreement.

(i) "Ground-handling" includes but is not limited to passenger, cargo and baggage handling, and the provision of catering facilities and/or services;

(j) "ICAO" means the International Civil Aviation Organization;

(k) "Intermodal air transportation" means the public carriage by aircraft and by one or more surface modes of transport of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;

(l) "International air transportation" means air transportation which passes through the air space over the territory of more than one State;

(m) "Marketing airline" means an airline that offers air transportation on an aircraft operated by another airline, through code-sharing;

(n) "Member State" means a Member State of the European Community

(o) "Nationals of Member States", in the case of Spain, shall be understood as referring to nationals of European Community Member States

(p) "Operating airline" means an airline that operates an aircraft in order to provide air transportation – it may own or lease the aircraft;

(q) "Slots" means the permission to use the full range of airport infrastructure necessary to operate an air service at an airport on a specific date and time for the purpose of landing or take off.

(r) "Tariffs" means any price, fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in international air transportation, including transportation on an intra-or interline basis, charged by airlines, including their agents, and the conditions governing the availability of such price, fare, rate or charge;

(s) "Territory" and "Stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention; and

(t) "User charges" means a charge made to airlines by a service provider for the provision of airport, airport environmental, air navigation and aviation security facilities and services**.**

ARTICLE 2

Designation, Authorisation and Revocation

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement, and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels.

2. On receipt of such a designation, and of applications from designated air carrier(s), in the form and manner prescribed for operating authorisations and technical permissions, each Party shall, subject to paragraphs 3 and 4 grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(a) in the case of an air carrier designated by the Kingdom of Spain:

(i) the air carrier is established in the territory of the Kingdom of Spain under the Treaty establishing the European Community and has a valid operating licence from a Member State in accordance with European Community law; and

(ii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its Air Operators Certificate and the relevant aeronautical authority is clearly identified in the designation; and

(iii) the air carrier has its principal place of business in the territory of the Member State from which it has received the valid operating licence; and

(iv) the air carrier is owned directly or through majority ownership and is effectively controlled by Member States and/or nationals of Member States, and/or by the Republic of Iceland, the principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation and/or nationals of such other states.

(b) In the case of an air carrier designated by Australia:

(i) Australia has and maintains effective regulatory control of the air carrier; and

(ii) it has its principal place of business in Australia.

3. Either Party may refuse, revoke, suspend or limit the operating authorisation or technical permissions of an air carrier designated by the other Party where:

(a) (A) in the case of an air carrier designated by the Kingdom of Spain:

(i) the air carrier is not established in the territory of the Kingdom of Spain under the Treaty establishing the European Community or does not have a valid operating licence from a Member State in accordance with European Community law; or

(ii) effective regulatory control of the air carrier is not exercised or not maintained by the Member State responsible for issuing its Air Operators Certificate, or the relevant aeronautical authority is not clearly identified in the designation; or

(iii) the air carrier does not have its principal place of business in the territory of the Member State from which it has received its operating licence; or

(iv) the air carrier is not owned directly or through majority ownership and is not effectively controlled by Member States and/or nationals of Member States, and/or by the Republic of Iceland, the principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation and/or nationals of those states; or

(v) the air carrier is already authorised to operate under a bilateral agreement between Australia and another Member State and Australia can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in that other member State, it would be circumventing restrictions on the third or fourth or fifth freedom traffic rights imposed by that other agreement; or

(vi) the air carrier holds an air operators certificate issued by a Member State and there is no bilateral air services agreement between Australia and that Member State and Australia can demonstrate that the necessary traffic rights to conduct the proposed operation are not reciprocally available to the designated air carrier(s) of Australia;

(B) in the case of an air carrier designated by Australia:

(i) Australia is not maintaining effective regulatory control of the air carrier; or

(ii) it does not have its principal place of business in Australia;

(b) that air carrier has failed to comply with the laws and regulations of the Party granting these rights;

(c) air carrier has otherwise failed to operate the agreed services in accordance with the conditions prescribed under this Agreement; or

(d) the other Party has failed to comply with or apply the Safety and Security standards in accordance with Articles 5 and 6 of this Agreement.

4. In exercising its right under paragraph 3, and without prejudice to its rights under sub-paragraph 3(a)(v) and (vi) of this Article, Australia shall not discriminate between air carriers of Member States on the grounds of nationality.

5. Without prejudice to the provisions under Articles 5 (Safety) and 6 (Aviation Security) and unless immediate revocation, suspension or imposition of the conditions mentioned in this Article are essential to prevent further infringement of the laws and regulations, such a right shall be exercised only after consultations with the other Party.

ARTICLE 3

Grant of Rights

1. Each Party grants to the other Party the following rights for the conduct of international air transportation by the designated airlines of the other Party:

(a) the right to fly across its territory without landing;

(b) the right to make stops in its territory for non-traffic purposes;

(c) the rights for designated airlines, to operate services on the route specified in Annex 1 and to make stops in its territory for the purpose of taking on board and discharging passengers, cargo and mail, jointly or separately, hereinafter called the “agreed services”; and

(d) the rights otherwise specified in this Agreement.

2. Airlines of either Party other than the designated airlines shall be ensured the rights specified in sub-paragraphs 1(a) and (b) above.

3. Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to uplift and discharge between points in the territory of the other Party, passengers, their baggage, cargo, or mail carried for compensation.

ARTICLE 4

Application of Laws

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, advance passenger information, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo of the other Party's airlines.

3. Neither Party shall give preference to its own or any other airline over an airline of the other Party engaged in similar international air transportation in the application of its laws, regulations and rules.

4. Passengers, baggage and cargo in direct transit through the territory of either Party and not leaving the area of the airport reserved for such purpose may be subject to examination in respect of aviation security, narcotics control, immigration and customs requirements, or in other special cases where such examination is required having regard to the laws and regulations of the relevant Party and to the particular circumstances.

ARTICLE 5

Safety

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Party and still in force shall be recognised as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licences were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the *Convention on International Civil Aviation* (Doc 7300).

2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.

3. Each Party reserves the right, however, to refuse to recognise for the purpose of flights above or landing within its own territory, certificates of competency and licences granted to its own nationals or in relation to its registered aircraft by the other Party.

4. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight

crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty (30) days of that request.

5. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 4 that meet the standards established at that time pursuant to the Convention, the other Party shall be informed of such findings and of the steps considered necessary to conform with those standards. The other Party shall then take appropriate corrective action within a time period agreed by the Parties.

6. Paragraphs 7 to 10 of this Article supplement paragraphs 1 to 5 of this Article and the obligations of the parties under Article 33 of the Convention.

7. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of the other Party may, while within the territory of the other Party, be the subject of a search by the authorised representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. The purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the standards established at the time pursuant to the Convention.

8. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorisation of an airline or airlines of the other Party.

9. Any action by one Party in accordance with paragraph 8 above shall be discontinued once the basis for the taking of that action ceases to exist.

10. With reference to paragraph 5 of this Article, if the first-mentioned Party determines that the second-mentioned Party remains non-compliant with the relevant standards when the agreed time period has lapsed, the first-mentioned Party should advise the Secretary General of ICAO thereof. The Secretary General should also be advised of the subsequent satisfactory resolution of the situation by the first-mentioned Party.

ARTICLE 6

Aviation Security

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The

Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, as well as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory or, in the case of the Kingdom of Spain, operators of aircraft who are established in its territory under the Treaty establishing the European Community and have valid operating licences in accordance with European Community law, and the operators of airports in their territory act in conformity with such aviation security provisions. Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request consultations with the other Party at any time to discuss any such differences.

4. Such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3 above required by the other Party for entry into, departure from, or while within the territory of that other Party. For departure from, or while within, the territory of Australia, operators of aircraft shall be required to observe aviation security provisions in conformity with the law in force in Australia. For departure from, or while within, the territory of the Kingdom of Spain, operators of aircraft shall be required to observe aviation security provisions in conformity with European Community law. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be

mutually determined by the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.

7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request immediate consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorisations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Party with the security provisions of this Article.

ARTICLE 7

User Charges

1. Each Party shall use its best efforts to ensure that user charges that may be imposed by the competent charging authorities or bodies of each Party on the designated airlines of the other Party are just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users.

2. The charges referred to in the preceding paragraph may include a reasonable return on assets, after depreciation. The facilities and services for which charges are made should be provided on an efficient and economic basis. For such charges to be non- discriminatory, they may not be levied on foreign airlines at a rate higher than the rate imposed on a Party's own airlines operating similar international services.

3. The Parties shall encourage the exchange of such information between the competent charging authorities and the airlines as may be necessary to permit a full assessment of the reasonableness of, justification for, and apportionment of the charges in accordance with paragraphs 1-2 of this Article.

4. In the case of establishing new charges or the modification of existing charges, each Party shall promote contacts between the competent authorities and the designated airline companies using the facilities and services, where possible, through the representatives of those airlines. A proposal for new charges or the modification of existing charges should be notified to users with reasonable advance notice in order to enable them to express their views before the new charges are imposed or the modifications to existing charges are made.

ARTICLE 8

Statistics

The designated airlines of either Party may be required to supply to the Aeronautical Authorities of the other Party, at their request, the information and statistics related to the traffic carried on the agreed services to or from the territory of the other Party. Any additional statistical data related to traffic which the Aeronautical Authorities of one Party may request from the designated airlines of the other Party shall be subject to discussions between the Aeronautical Authorities of both Parties, at the request of either Party.

ARTICLE 9

Customs Duties and Other Charges

1. Aircraft operated in international air transportation by the designated airlines of each Party, shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities. Component parts, normal aircraft equipment and other items intended for or used solely in connection with the operation or for the repair, maintenance and servicing of such aircraft shall be similarly exempt, provided such equipment and items are for use on board an aircraft and are re-exported.

2. (a) Provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of international air transportation by the designated airline concerned, the following items shall be exempt from all import restrictions, customs duties, excise taxes, and similar fees and charges imposed by national authorities, whether they are introduced by an airline of one Party into the territory of the other Party or supplied to an airline of one Party in the territory of the other Party:

(i) aircraft stores (including but not limited to such items as food, beverages and products destined for sale to, or use by, passengers during flight);

(ii) fuel, lubricants (including hydraulic fluids) and consumable technical supplies;

(iii) spare parts including engines, brought into the territory of either Party for the maintenance or repair of aircraft used on international air services by the designated airlines of the other Party; and

(b) The exemptions referred to in sub-paragraphs (i), (ii), and (iii) above shall be granted in accordance with the procedure established in the regulations in force.

(c) These exemptions shall apply even when these items are to be used on any part of a journey performed over the territory of the other Party in which they have been taken on board.

3. The exemptions provided by this Article shall not extend to charges based on the cost of services provided to the airlines of a Party in the territory of the other Party.

4. The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraphs 1 and 2 of this Article retained on board the aircraft operated by the designated airlines of one Party may be unloaded in the territory of the other Party only with the approval of the Customs authorities of that territory. Aircraft stores intended for use on the airlines' services may, in any case be unloaded. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Party.

5. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Party.

ARTICLE 10

Tariffs

1. The provisions in paragraph 2 of this article shall complement the provisions in paragraph 3 of this article.

2. The tariffs to be charged by the air carrier(s) designated by Australia for carriage wholly within the European Community shall be subject to European Community law.

3. Each Party shall allow each designated airline to determine its own tariffs for the transportation of traffic.

ARTICLE 11

Capacity

1. The designated airlines of each Party shall enjoy fair and equal opportunities to operate the agreed services in accordance with this Agreement.

2. In operating the agreed services, the capacity that may be provided by the designated airlines of each Party shall be mutually decided between the respective Aeronautical Authorities.

3. The time-tables established for the operation of the agreed services shall be notified when so required to the Aeronautical Authorities of the other Party at least thirty-five (35) days prior to the start of the operation or such shorter period as the Aeronautical Authorities of the other Party may mutually decide.

ARTICLE 12

Commercial Opportunities

1. The designated airlines of each Party shall have the following rights in the territory of the other Party:

(a) the right to establish offices and representatives, including offline offices, for the promotion, sale and management of air transportation; and

(b) the right to engage in the sale and marketing of air transportation to any person directly and, at its discretion, through its agents or intermediaries, using its own transportation documents; and

(c) the right to use the services and personnel of any organisation, company or airline operating in the territory of the other Party**,** authorised to perform such services in the territory of that Party.

2. In accordance with the laws and regulations relating to entry, residence and employment of the other Party, the airlines of each Party shall be entitled to bring in and maintain in the territory of the other Party those of their own managerial, sales, technical, operational and other specialist staff which the airline reasonably considers necessary for the provision of air transportation. Consistent with such laws and regulations, each Party shall, with the minimum of delay, grant the necessary employment authorisations, visas or other similar documents to the representatives and staff referred to in this paragraph.

3. The airlines of each Party shall have the right to sell air transportation, and any person shall be free to purchase such transportation, in local or freely convertible currencies. Each airline shall have the right to convert their funds into any freely convertible currency and to transfer them from the territory of the other Party at will. Subject to the national laws and regulations of the other Party, conversion and transfer of funds obtained in the ordinary course of their operations shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.

4**.** The designated airlines of each Party shall have the right at their discretion to

pay for local expenses, including purchases of fuel, in the territory of the other Party in local currency or, provided this accords with local currency regulations, in freely convertible currencies.

5. Each designated airline shall have the right to provide their own ground-handling services in the territory of the other Party or otherwise to contract these services out, in full or in part, at its option, with any of the suppliers authorised for the provision of such services. Where or as long as the regulations applicable to the provision of ground-handling in the territory of one Party prevent or limit either the freedom to contract these services out or self-handling, each designated airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground-handling services provided by a supplier or suppliers.

6. Subject to applicable laws and regulations, the designated airlines of each Party shall be permitted to conduct international air transportation using aircraft (or aircraft and crew) leased from any company, including other airlines, provided that the operating aircraft and crew meet the applicable operating and safety standards, and requirements.

7. In respect of the allocation of slots to airlines at their national airports, each Party will ensure that the slots are allocated to the airlines of the other Party on a transparent, neutral and non-discriminatory basis, as for all other airlines, including the airlines of the other Party, in conformity with the provisions of laws and regulations in force in the territory of the respective Party, and in the case of the Kingdom of Spain in conformity with European Community law.

ARTICLE 13

Intermodal Services

The designated airlines of each Party shall be permitted to employ, in connection with international air transport, any surface transport to or from any points in the territories of the Parties or third countries. Airlines may elect to perform their own surface transport or to provide it through arrangements, including code share, with other surface carriers. Such intermodal services may be offered as a through service and at a single price for the air and surface transport combined, provided that passengers and shippers are informed as to the providers of the transport involved.

ARTICLE 14

Competition

1. The competition laws of each Party, as amended from time to time, shall apply to the operation of the designated airlines within the jurisdiction of the respective Party. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines from the application of its

domestic competition law. This does not obligate a Party or its competition authority to provide a reciprocal exemption.

2. Without limiting the application of competition and consumer law by either Party, if the aeronautical authorities of either Party consider that the airlines of either Party are being subjected to discrimination or unfair practices in the territory of either Party, they may give notice to this effect to the aeronautical authorities of the other Party. Consultations between the aeronautical authorities shall be entered into as soon as possible after notice is given unless the first Party is satisfied that the matter has been resolved in the meantime.

3. In undertaking the consultations outlined in this Article the Parties shall:

(a) coordinate their actions with the relevant authorities;

(b) consider alternative means which might also achieve the objectives of action consistent with general competition and consumer law; and

(c) take into account the views of the other Party and the other Party's obligations under other international agreements.

4. Notwithstanding anything in paragraphs 1 to 3 above, this Article does not preclude unilateral action by the airlines or the competition authorities of either Party.

ARTICLE 15

Consultations

1. Either Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement.

2. Without prejudice to the provisions in Articles 2 (Designation, Authorisation and Revocation), 5 (Safety) and 6 (Aviation Security), such consultations, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually decided.

ARTICLE 16

Amendment of Agreement

1. This Agreement may be amended or revised by agreement in writing between the Parties.

2. Any such amendment or revision shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been met.

3. If a multilateral convention concerning air transportation comes into force in respect of both Parties, this Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

ARTICLE 17

Settlement of Disputes

1. Any dispute between the Parties concerning the interpretation or application of this Agreement, with the exception of any dispute concerning the application of national competition laws, which cannot be settled by consultations or negotiations, or, where agreed, by mediation in accordance with Annex 2, shall, at the request of either Party, be submitted to an arbitral tribunal.

2. Within a period of thirty (30) days from the date of receipt by either Party from the other Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Party shall nominate an arbitrator. Within a period of thirty (30) days from the appointment of the arbitrator last appointed, the two arbitrators shall appoint a president who shall be a national of a third State. If within thirty (30) days after one of the Parties has nominated its arbitrator, the other Party has not nominated its own or, if within thirty (30) days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Party may request the President of the Council of the International Civil Aviation Organization to appoint an arbitrator or arbitrators as the case requires. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise determined by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within thirty (30) days after the tribunal is fully constituted. Replies shall be due within thirty (30) days. The tribunal shall hold a hearing at the request of either Party, or at its discretion, within thirty (30) days after replies are due.

4. The tribunal shall attempt to give a written award within thirty (30) days after completion of the hearing, or, if no hearing is held, after the date both replies are submitted. The award shall be taken by a majority vote.

5. The Parties may submit requests for clarification of the award within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

6. The award of the arbitral tribunal shall be final and binding upon the parties to the dispute.

7. The expenses of arbitration under this Article shall be shared equally between the Parties.

8. If and for so long as either Party fails to comply with an award under paragraph 6 of this Article, the other Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of this Agreement to the Party in default.

ARTICLE 18

Termination

1. Either Party may at any time give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization (ICAO). The Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first yearly anniversary of the date of receipt of notice by the Party, unless the notice is withdrawn by mutual decision of the Parties before the end of this period.

2. In default of acknowledgement of receipt of a notice of termination by the other Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

ARTICLE 19

Registration with ICAO

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

ARTICLE 20

Entry into Force

This Agreement shall enter into force when the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been satisfied.

IN WITNESS THEREOF, the undersigned, duly authorised thereto by their respective governments, have signed this Agreement.

DONE at Canberra, 24 June 2009, in the Spanish and English languages, each text being equally authentic.

For Australia	For the Kingdom of Spain
The Hon. Anthony Albanese	The Hon. Cristina Garmendia Mendizábal
Minister for Infrastructure, Transport	Minister for Science and Innovation
Regional Development and	
Local Government	

ANNEX 1

Section 1

ROUTE SCHEDULE

The designated airlines of each Party shall be entitled to perform international air transportation between points on the following routes:

Route for the designated airlines of Spain:

Points in Spain	Intermediate Points	Points in Australia	Beyond Points
Any	Any	Any	Any

Route for the designated airlines of Australia:

Points in Australia	Intermediate Points	Points in Spain	Beyond Points
Any	Any	Any	Any

Notes:

1. The designated airlines of each Party may at their option change the order or omit one or more points on any of the above routes, in whole or in part of their services, provided that the services commence or terminate at a point within the territory of the Party which has designated such airlines.

2. The traffic rights which may be exercised at the above points by the designated airlines, shall be jointly determined between the Aeronautical Authorities.

Section 2

OPERATIONAL FLEXIBILITY

1. Subject to Section 1 of this Annex, the designated airlines of each Party may, on any or all services and at the option of each airline:

(a) perform services in either or both directions;

(b) combine different flight numbers within one aircraft operation;

(c) transfer traffic from any aircraft to any other aircraft at any point on the route,

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

2. (a) In operating or holding out international air transportation the designated airlines of each Party shall have the right, over all or any part of their route in Annex 1 to enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with any other airline, including airlines of the same Party and of third parties. Subject to 2(b) of this Section, the airlines participating in such arrangements must hold the appropriate authority or authorities to conduct international air transportation on the routes or segments concerned.

(b) The aeronautical authority of one Party shall not withhold code sharing permission for an airline of the other Party to market code share services on flights operated by airlines of third parties on the basis that the third party airlines concerned do not have the right from the first Party to carry traffic under the code of the marketing airline.

(c) Unless otherwise mutually determined by the aeronautical authorities of the Parties, the volume of capacity or service frequencies which may be held out and sold by the airlines of each Party, when code sharing as the marketing airline, shall not be subject to limitations under this Agreement.

(d) The airlines of each Party may market code share services on domestic flights operated within the territory of the other Party provided that such services form part of a through international journey.

(e) The airlines of each Party shall, when holding out international air transportation for sale, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the journey and with which airline or airlines the purchaser is entering into a contractual relationship and shall also meet the regulatory requirements normally applied to such operations by the Parties, such as security and liability.

Section 3

CHANGE OF GAUGE

On any sector or sectors of the routes in Section 1 of this Annex, any airline shall be entitled to perform international air transportation, including under code sharing arrangements with other airlines**,** without any limitation as to change at any point or points on the route, in the type, size or number of aircraft operated.

ANNEX 2

MEDIATION PROCESS

1. The rules set out in this Annex apply where the parties seeking an amicable settlement of their dispute have agreed to submit the dispute to mediation. The parties to the dispute may agree to exclude, supplement or vary any of the rules contained in this Annex at any time.

The party initiating mediation shall send to the other party a written invitation to mediate under this Annex. The mediation commences following the receipt, by the party initiating the mediation, of written notification by the other party accepting the offer to mediate.

2. There shall be one mediator unless the parties agree that there shall be two or three mediators. Where there is more than one mediator, they ought, as a general rule, to act jointly.

The parties to the dispute shall seek to agree on the appointment of the sole mediator or mediators to be chosen preferably from the roster of suitably qualified aviation experts maintained by ICAO. The appointment of mediators shall be completed within twenty-one (21) days of receipt of the notification referred to at paragraph 1. Where the parties fail to agree on the appointment of the mediator or mediators within that period, the party initiating the mediation may terminate the mediation proceedings by notification addressed to the other party or request the President of the Council of ICAO to make the appointments.

3. The mediator shall hear the parties, examine their claims and make proposals to the parties with a view to reaching an amicable settlement. The mediator may draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute.

4. The Parties shall cooperate in good faith with the mediator and, in particular, will endeavour to comply with requests by the mediator to submit written materials, provide evidence and attend meetings.

5. The cost of the mediation shall be borne equally by the parties to the dispute.

6. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or termination under Article 18.

7. The mediation process is terminated when a settlement has been reached or when one party to the dispute terminates the mediation by written notification to the other party

ACUERDO SOBRE SERVICIOS AÉREOS
ENTRE
AUSTRALIA
Y
EL REINO DE ESPAÑA

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ANEXO 1

ANEXO 2

Australia y el Reino de España (en adelante, “las “Partes”),

Siendo Partes en el Convenio sobre Aviación Civil Internacional, abierto a la firma en Chicago el 7 de Diciembre de 1944;

Deseando promover un sistema de aviación internacional basado en la competencia en el mercado entre las compañías aéreas y animar a las compañías aéreas a desarrollar y prestar servicios innovadores y competitivos;

Deseando garantizar el máximo grado de seguridad en el transporte aéreo internacional y reafirmando su gran preocupación por los actos o amenazas contra la seguridad de las aeronaves que ponen en peligro la seguridad de las personas o los bienes, afectan negativamente a la operación del transporte aéreo y socavan la confianza del público en la seguridad de la aviación civil;

Han convenido en lo siguiente:

ARTÍCULO 1

Definiciones

A los efectos del presente Acuerdo, y a menos que en el mismo se declare otra cosa:

a) por “Autoridades Aeronáuticas” se entenderá, para cada Parte, la autoridad o autoridades notificadas por escrito en cada momento por una Parte a la otra Parte;

b) por “servicios convenidos” se entenderán los servicios de carga y descarga de tráfico según se define en el apartado 1 c) del artículo 3;

c) por “Acuerdo” se entenderá el presente Acuerdo, sus Anexos y cualquier enmienda a los mismos;

d) por “transporte aéreo” se entenderá el transporte público en avión de pasajeros, equipaje, carga y correo, de manera separada o conjunta, a cambio de una remuneración o en régimen de alquiler;

e) por “compañía aérea” o “transportista aéreo” se entenderá toda empresa dedicada al transporte aéreo que comercialice o realice transporte aéreo;

f) por **“**capacidad” se entenderá el número de servicios prestados en virtud del Acuerdo, cuantificados normalmente en función del número de vuelos (frecuencias), o de asientos o toneladas de carga que se ofrecen en un mercado (entre dos ciudades o de país a país) o en una ruta, durante un determinado periodo de tiempo, con carácter diario, semanal, por temporadas o anual;

g) por “Convenio” se entenderá el Convenio sobre Aviación Civil Internacional, abierto a la firma en Chicago el 7 de diciembre de 1944, e incluirá:

i) cualquier Anexo o cualquier enmienda del mismo adoptado en virtud del artículo 90 del Convenio, siempre que dicho anexo o enmienda esté en vigor para las Partes en un momento determinado; y

ii) cualquier enmienda que haya entrado en vigor en virtud del artículo 94 (a) del Convenio y haya sido ratificada por ambas Partes;

h) por “compañía aérea designada” se entenderá toda compañía aérea que preste servicios aéreos internacionales que cada Parte haya designado para explotar los servicios convenidos en las rutas especificadas conforme a lo establecido en el Anexo 1 y de conformidad con el artículo 2 (Designación, autorización y revocación) del presente Acuerdo;

i) por “servicios de asistencia en tierra” se entenderá, aunque no exclusivamente, la asistencia a pasajeros y la gestión de la carga y los equipajes, así como la prestación de instalaciones y/o servicios de catering;

j) por “OACI” se entenderá la Organización de Aviación Civil Internacional;

k) por “transporte aéreo intermodal” se entenderá el transporte público en avión y por uno o varios modos de transporte terrestre de pasajeros, equipaje, carga y correo, de forma separada o conjunta, a cambio de remuneración o en régimen de alquiler;

l) por “transporte aéreo internacional” se entenderá el transporte aéreo que atraviesa el espacio aéreo del territorio de más de un Estado;

m) por “compañía aérea comercializadora” se entenderá cualquier compañía aérea que ofrezca transporte aéreo en una aeronave operada por otra compañía aérea en régimen de código compartido;

n) por “Estado miembro” se entenderá un Estado miembro de la Comunidad Europea;

o) por “nacionales de los Estados miembros” se entenderán, en el caso de España, los nacionales de los Estados miembros de la Comunidad Europea;

p) por “compañía aérea operadora” se entenderá toda compañía que opere una aeronave, de su propiedad o en régimen de alquiler, con el fin de prestar servicios de transporte aéreo;

q) por “franjas horarias” se entenderá el permiso para utilizar toda la infraestructura aeroportuaria necesaria con fines de aterrizaje o despegue en una fecha y hora determinadas para la prestación de un servicio aéreo en un aeropuerto;

r) por “tarifas” se entenderán los precios, tarifas, tasas o cargos que las compañías aéreas, incluidos sus agentes, cobren por el transporte de pasajeros (y su equipaje) y/o mercancías (excepto el correo), en el transporte aéreo internacional, incluida la combinación de pasajes de una misma compañía y de distintas compañías, así como las condiciones que regulan la disponibilidad de dichos precios tarifas, tasas o cargos;

s) los términos “territorio” y “escala para fines no comerciales” tendrán el mismo significado que les dan los artículos 2 y 96 del Convenio; y

t) por “tasas de usuario” se entenderá todo cargo que un proveedor de servicios cobre a las compañías aéreas por la utilización de un aeropuerto y de las instalaciones y servicios de un aeropuerto relacionados con el medio ambiente, la navegación aérea y la protección de la seguridad.

ARTÍCULO 2

Designación, autorización y revocación

1. Cada Parte tendrá derecho a designar el número de compañías aéreas que desee para la realización de transporte aéreo internacional de conformidad con el presente Acuerdo, así como a retirar o modificar dichas designaciones. Dichas designaciones se comunicarán a la otra Parte en forma escrita por conducto diplomático.

2. Al recibir dicha designación y las solicitudes de las compañías aéreas designadas con arreglo a la forma prescrita para las autorizaciones de explotación y permisos técnicos, cada Parte, con arreglo a las disposiciones de los apartados 3 y 4 del presente artículo, deberá conceder, con la mínima demora en los procedimientos, las correspondientes autorizaciones y permisos, siempre que:

a) cuando se trate de una compañía aérea designada por el Reino de España:

i) esté establecida en el territorio del Reino de España con arreglo al Tratado constitutivo de la Comunidad Europea y disponga de una licencia de explotación válida de un Estado miembro de conformidad con la legislación comunitaria ; y

ii) el Estado miembro responsable de la expedición del Certificado de Operador Aéreo ejerza y mantenga el control

reglamentario efectivo de la compañía aérea y la autoridad aeronáutica pertinente esté claramente identificada en la designación; y

iii) la compañía aérea tenga su centro principal de actividad en el territorio del Estado miembro del que haya recibido la Licencia de Explotación válida; y

iv) la compañía aérea sea propiedad, directamente o mediante participación mayoritaria, y se encuentre efectivamente bajo el control de Estados miembros, y/o de nacionales de Estados miembros, y/o de la República de Islandia, el Principado de Liechtenstein, el Reino de Noruega y la Confederación Suiza y/o de nacionales de estos Estados.

b) En el caso de las compañías aéreas designadas por Australia:

i) que Australia ejerza y mantenga un control reglamentario efectivo de la compañía aérea; y

ii) que ésta tenga su centro principal de actividad en Australia.

3. Cada Parte Contratante podrá denegar, revocar, suspender o limitar la autorización de explotación o los permisos técnicos de una compañía aérea designada por la otra Parte, cuando:

a) A) en el caso de una compañía aérea designada por el Reino de España:

i) no esté establecida en el territorio del Reino de España con arreglo al Tratado Constitutivo de la Comunidad Europea o no sea titular de una licencia de explotación válida otorgada por un Estado miembro con arreglo a la legislación comunitaria; o

ii) cuando el Estado miembro responsable de la expedición del Certificado de Operador Aéreo no ejerza o mantenga un control reglamentario efectivo de la compañía aérea o la autoridad aeronáutica pertinente no esté claramente identificada en la designación; o

iii) cuando la compañía aérea no tenga su centro principal de actividad en el territorio del Estado miembro del que ha recibido su licencia de explotación; o

iv) cuando la compañía aérea no sea propiedad, directamente o mediante participación mayoritaria, ni se encuentre efectivamente bajo el control de Estados miembros y/o de nacionales de Estados miembros y/o de la República de Islandia, el

Principado de Liechtenstein, el Reino de Noruega y la Confederación Suiza y/o de nacionales de esos Estados; o

v) la compañía aérea esté ya autorizada a operar en virtud de un acuerdo bilateral entre Australia y otro Estado miembro y Australia pueda demostrar que, al ejercer derechos de tráfico en virtud del presente Acuerdo en una ruta que incluya un punto en ese otro Estado miembro, la compañía aérea estaría eludiendo restricciones de derechos de tráfico de tercera, cuarta o quinta libertades impuestas mediante ese otro acuerdo; o

vi) cuando la compañía aérea sea titular de un Certificado de Operador Aéreo expedido por un Estado miembro y no exista un acuerdo bilateral sobre servicios aéreos entre Australia y ese Estado miembro, y Australia pueda demostrar que las compañías aéreas designadas de Australia no tienen un acceso recíproco a los derechos de tráfico necesarios para efectuar la operación propuesta;

B) en el caso de una compañía aérea designada por Australia:

i) cuando Australia no mantenga un control reglamentario efectivo de la compañía aérea; o

ii) cuando ésta no tenga su centro principal de actividad en Australia.

b) cuando dicha compañía aérea no cumpla las leyes y reglamentos de la Parte que haya otorgado esos derechos, o

c) cuando dicha compañía aérea deje de explotar de otro modo los servicios convenidos con arreglo a las condiciones establecidas en el presente Acuerdo, o

d) cuando la otra Parte no cumpla o no aplique las normas sobre seguridad de conformidad con los artículos 5 y 6 del presente Acuerdo.

4. Al ejercer su derecho en virtud del apartado 3, y sin perjuicio de sus derechos en virtud de los subapartados 3 a) v) y vi) del presente artículo, Australia no discriminará entre las compañías aéreas de los Estados miembros por motivos de nacionalidad.

5. Sin perjuicio de lo establecido en los artículos 5 (Seguridad operacional) y 6 (Protección de la seguridad) y a menos que la revocación, suspensión o imposición inmediata de las condiciones previstas en este artículo sean esenciales para impedir nuevas infracciones de las leyes y reglamentos, tal derecho se ejercerá solamente después de consultar a la otra Parte Contratante.

ARTÍCULO 3

Concesión de derechos

1. Cada Parte concederá a la otra Parte los siguientes derechos para la realización de transporte aéreo internacional por las compañías aéreas designadas de la otra Parte:

a) sobrevolar su territorio sin aterrizar;

b) hacer escalas en su territorio para fines no comerciales;

c) los derechos de las compañías aéreas designadas de prestar servicios en las rutas especificadas en el Anexo 1 y de hacer escalas en su territorio con el fin de embarcar o desembarcar pasajeros, correo y carga, conjunta o separadamente, denominados en adelante los “servicios convenidos”; y

d) otros derechos especificados en el presente Acuerdo.

2. Se garantizará a las compañías aéreas de cada Parte que no sean compañías aéreas designadas los derechos especificados en los anteriores subapartados 1 a) y b).

3. Ninguna disposición del presente Acuerdo podrá interpretarse en el sentido de que se confiera a la compañía o compañías aéreas designadas de una Parte derechos de carga y descarga de pasajeros, su equipaje, carga o correo, a cambio de remuneración, entre puntos situados dentro del territorio de la otra Parte.

ARTÍCULO 4

Aplicación de las leyes

1. Durante la entrada, permanencia o salida del territorio de una Parte, las compañías aéreas de la otra Parte deberán cumplir las leyes, normas y reglamentos de la primera que regulen la explotación y la navegación de aeronaves.

2. Durante la entrada, permanencia y salida del territorio de una Parte, deberán cumplirse sus leyes, reglamentos y normas relativos a la admisión o la salida de su territorio de pasajeros, tripulación, carga y aeronaves (incluidos los reglamentos y normas relativos a la entrada, despacho de aduanas, protección de la aviación, inmigración, pasaportes, información previa sobre los pasajeros, aduanas o cuarentenas o, cuando se trate de correo, la normativa postal), por parte de las compañías aéreas de la otra Parte, en relación con los pasajeros y la tripulación implicados y con respecto a la carga de que se trate.

3. En la aplicación de sus leyes, reglamentos y normas, ninguna de las Partes dará preferencia a sus propias compañías aéreas, ni a cualesquiera otras, sobre una compañía aérea de la otra Parte que preste servicios aéreos internacionales similares.

4. Los pasajeros, equipajes y carga en tránsito directo por el territorio de cualquiera de las Partes y que no abandonen el área del aeropuerto reservada a tal efecto podrán ser objeto de revisión respecto de los requisitos en materia de protección de la seguridad, control de estupefacientes, inmigración y aduanas, o en otros casos especiales, cuando las leyes y reglamentos de la Parte correspondiente y las circunstancias concretas así lo requieran.

ARTÍCULO 5

Seguridad operacional

1. Los certificados de aeronavegabilidad, los títulos de aptitud y las licencias expedidos o convalidados por una Parte y no caducados serán reconocidos como válidos por la otra Parte para la explotación de los servicios convenidos, siempre que los requisitos con arreglo a los cuales se hubieran expedido o convalidado esos certificados y licencias fueran iguales o superiores a los niveles mínimos que puedan establecerse en virtud del *Convenio sobre Aviación Civil Internacional* (Doc 7300).

2. Si los privilegios o condiciones de las licencias o los certificados mencionados en el anterior apartado 1 expedidos por las autoridades aeronáuticas de una Parte a una persona o compañía aérea designada o respecto de una aeronave utilizada en la explotación de los servicios convenidos permitieran una diferencia respecto de las normas mínimas establecidas en virtud del Convenio y dicha diferencia hubiera sido notificada a la Organización de la Aviación Civil Internacional, la otra Parte podrá solicitar consultas entre las autoridades aeronáuticas con vistas a aclarar la práctica en cuestión.

3. No obstante, cada Parte se reserva el derecho a no reconocer, a efectos del sobrevuelo de su propio territorio o el aterrizaje en el mismo, los títulos de aptitud y las licencias expedidos a sus propios nacionales o en relación con aeronaves de su matrícula por la otra Parte.

4. Cada una de las Partes podrá solicitar, en todo momento, consultas sobre las normas de seguridad operacional adoptadas por la otra Parte en cualquier materia relativa a las instalaciones aeronáuticas, la tripulación de vuelo, las aeronaves o su explotación. Dichas consultas tendrán lugar en el plazo de treinta (30) días a partir de la solicitud.

5. Si, después de las citadas consultas, una Parte llega a la conclusión de que la otra Parte no mantiene eficazmente y no aplica, en cualquiera de las materias mencionadas en el apartado 4, normas de seguridad que se ajusten a las establecidas en ese momento en aplicación del Convenio, deberán notificarse a la otra Parte las conclusiones y las medidas que se consideran necesarias para ajustarse a las citadas normas. La otra Parte tomará las medidas correctoras adecuadas en el plazo que acuerden las Partes.

6. Los apartados 7 a 10 del presente artículo complementan los párrafos 1 a 5 del mismo y las obligaciones de las Partes derivadas del artículo 33 del Convenio.

7. De conformidad con el artículo 16 del Convenio, se acuerda asimismo que toda aeronave explotada por una compañía aérea de una Parte, o en su nombre, en servicio con

destino o procedencia en el territorio de la otra Parte podrá, mientras permanezca en el territorio de esa otra Parte, ser inspeccionada por los representantes autorizados de esa otra Parte, siempre y cuando ello no ocasione una demora injustificada en la explotación de la aeronave. El objeto de dicha inspección es verificar la validez de la documentación pertinente relativa a la aeronave y de las licencias de su tripulación, así como que los equipos y estado de la aeronave se ajusten a las normas establecidas en ese momento con arreglo al Convenio.

8. Cuando sea esencial una actuación inmediata para garantizar la seguridad de una operación aérea, cada Parte se reserva el derecho a suspender o modificar inmediatamente la autorización de explotación de una compañía o compañías aéreas de la otra Parte.

9. Toda medida tomada por una Parte en virtud del anterior apartado 8 se suspenderá una vez que cesen los motivos para la adopción de dicha medida.

10. En relación con el apartado 5 de este artículo, si la primera Parte llegara a la conclusión de que la segunda Parte persiste en el incumplimiento de las normas correspondientes una vez expirado el plazo acordado, la primera Parte deberá informar de ello al Secretario General de la OACI. Deberá notificarse asimismo al Secretario General la posterior resolución satisfactoria de la situación por la primera Parte.

ARTÍCULO 6

Protección de la seguridad

1. De conformidad con sus derechos y obligaciones en virtud del derecho internacional, las Partes reafirman que su obligación recíproca de proteger la seguridad de la aviación civil contra actos de interferencia ilícita constituye parte integrante del presente Acuerdo. Sin limitar el carácter general de sus derechos y obligaciones en virtud del derecho internacional, las Partes actuarán, en particular, de conformidad con las disposiciones del Convenio sobre infracciones y ciertos actos cometidos a bordo de aeronaves, firmado en Tokio el 14 de septiembre de 1963, el Convenio para la represión del apoderamiento ilícito de aeronaves, firmado en La Haya el 16 de diciembre de 1970, y el Convenio para la represión de actos ilícitos contra la seguridad de la aviación civil, firmado en Montreal el 23 de septiembre de 1971, su Protocolo Complementario para la represión de actos ilícitos de violencia en los aeropuertos que presten servicio a la aviación civil internacional, firmado en Montreal el 24 de febrero de 1988, así como de cualquier otro convenio y protocolo en materia de protección de la seguridad de la aviación civil a que se hayan adherido ambas Partes.

2. Las Partes se prestarán mutuamente, previa solicitud, toda la ayuda necesaria para impedir actos de apoderamiento ilícito de aeronaves civiles y otros actos ilícitos contra la seguridad de dichas aeronaves, sus pasajeros y tripulación, aeropuertos e instalaciones de navegación aérea, y cualquier otra amenaza contra la seguridad de la aviación civil.

3. Las Partes actuarán, en sus relaciones mutuas, de conformidad con las disposiciones sobre seguridad de la aviación establecidas por la OACI, y designadas como Anexos al Convenio; exigirán que los operadores de aeronaves de su matrícula o los

operadores de aeronaves que tengan su centro principal de actividad o residencia permanente en su territorio o, en el caso del Reino de España, los operadores de aeronaves que estén establecidos en el territorio del Reino de España con arreglo al Tratado constitutivo de la Comunidad Europea y sean titulares de una licencia de explotación válida otorgada con arreglo al derecho comunitario, así como los operadores de aeropuertos en su territorio, actúen de conformidad con dichas disposiciones en materia de seguridad de la aviación. Cada Parte informará a la otra sobre cualquier diferencia entre sus reglamentos y prácticas nacionales y las normas sobre protección de la seguridad de la aviación contenidas en los Anexos. Cualquiera de las Partes podrá solicitar consultas con la otra Parte en cualquier momento con el fin de debatir cualesquiera diferencias de este tipo.

4. Podrá exigirse a dichos operadores de aeronaves que observen las disposiciones sobre protección de la seguridad de la aviación que se mencionan en el apartado 3 anterior, exigidas por la otra Parte para la entrada, salida o permanencia en el territorio de esa otra Parte. Para la salida del territorio de Australia o la permanencia en el mismo, se exigirá a los operadores de aeronaves que observen las disposiciones sobre protección de la seguridad de la aviación de conformidad con la legislación vigente en Australia. Para la salida del territorio del Reino de España o la permanencia en el mismo, se exigirá a los operadores de aeronaves que observen las disposiciones sobre protección de la seguridad de la aviación de conformidad con la legislación de la Comunidad Europea. Cada Parte Contratante se asegurará de que en su territorio se apliquen efectivamente medidas adecuadas para proteger a la aeronave e inspeccionar a los pasajeros, la tripulación, los efectos personales, el equipaje, la carga y provisiones de la aeronave antes y durante el embarque o la carga. Cada Parte estará también favorablemente predispuesta a atender toda solicitud de la otra Parte Contratante de que adopte las medidas especiales de seguridad que sean razonables con el fin de afrontar una amenaza determinada.

5. Cuando se produzca un incidente o amenaza de incidente de apoderamiento ilícito de aeronaves civiles u otros actos ilícitos contra la seguridad de tales aeronaves, sus pasajeros y tripulación, aeropuertos o instalaciones de navegación aérea, las Partes se prestarán asistencia mutua facilitando las comunicaciones y otras medidas apropiadas destinadas a poner término, de forma rápida y segura, a dicho incidente o amenaza.

6. Cada una de las Partes tendrá derecho, en el plazo de sesenta (60) días a partir de la notificación (o en el plazo más breve que acuerden las autoridades aeronáuticas), a que sus autoridades aeronáuticas lleven a cabo una evaluación en el territorio de la otra Parte de las medidas de protección de la seguridad que se estén aplicando o vayan a aplicarse por los operadores aéreos respecto de sus vuelos con llegada o salida en el territorio de la primera Parte. Los aspectos administrativos de la realización de dichas evaluaciones se determinarán de mutuo acuerdo por las autoridades aeronáuticas y se aplicarán sin demora con el fin de garantizar que las evaluaciones se lleven a cabo expeditivamente.

7. Cuando una Parte tenga motivos fundados para creer que la otra Parte se ha desviado de las disposiciones del presente artículo, la primera Parte podrá solicitar la celebración inmediata de consultas. Tales consultas se iniciarán en un plazo de quince (15) días a partir de la recepción de la solicitud por cualquiera de las Partes. El hecho de que no se llegue a un acuerdo satisfactorio dentro de los quince (15) días siguientes al comienzo de las consultas será motivo para denegar, revocar, suspender o someter a condiciones las

autorizaciones de la compañía o compañías aéreas designadas de la otra Parte. Cuando así lo exija una emergencia o para evitar ulteriores incumplimientos de las disposiciones del presente artículo, la primera Parte podrá tomar medidas provisionales en cualquier momento. Cualquier medida tomada en virtud del presente apartado cesará en el momento en que la otra Parte cumpla las disposiciones sobre protección de la seguridad contenidas en el presente artículo.

ARTÍCULO 7

Tasas de usuario

1. Cada Parte hará todo lo posible por garantizar que las tasas de usuario que puedan imponer las autoridades o los organismos competentes de una Parte a las compañías aéreas designadas de la otra Parte sean justas y razonables, no discriminen indebidamente y estén repartidas equitativamente entre las distintas categorías de usuarios.

2. Las tasas mencionadas en el apartado anterior podrán comprender un rendimiento razonable de los activos tras la amortización. Las instalaciones y servicios por los que se cobren tasas se proveerán de manera eficiente y económica. Para que las mencionadas tasas no se consideren discriminatorias, no podrán aplicarse a las compañías aéreas extranjeras en una cuantía superior a la impuesta a las propias compañías aéreas de una Parte que exploten servicios internacionales similares.

3. Las Partes favorecerán el intercambio de toda la información necesaria entre las autoridades competentes respecto de la aplicación de las tasas y las compañías aéreas para que se pueda determinar si las tasas son razonables y si están justificadas y repartidas equitativamente de conformidad con los apartados 1 y 2 del presente artículo.

4. En caso de que se introduzcan nuevas tasas o se modifiquen las ya existentes, cada Parte favorecerá, siempre que sea posible, los contactos entre las autoridades competentes y las compañías aéreas designadas que utilicen las instalaciones y servicios a través de los representantes de dichas compañías. Toda propuesta de nuevas tasas o de modificación de las ya existentes deberá notificarse a los usuarios con suficiente antelación para que éstos puedan expresar su opinión antes de que se introduzcan las nuevas tasas o se efectúen dichas modificaciones.

ARTÍCULO 8

Estadísticas

Podrá solicitarse a las compañías aéreas de cualquiera de las Partes que faciliten a las Autoridades Aeronáuticas de la otra Parte, a petición de éstas, la información y estadísticas relacionadas con el tráfico transportado en los servicios convenidos con destino o procedencia en el territorio de la otra Parte. Cualquier dato estadístico adicional relacionado con el tráfico que las Autoridades Aeronáuticas de una de las Partes soliciten a

las compañías aéreas designadas de la otra Parte será objeto de conversaciones entre las Autoridades Aeronáuticas de las dos Partes, a petición de cualquiera de ellas.

ARTÍCULO 9

Derechos aduaneros y otros gravámenes

1. Las aeronaves utilizadas en el transporte aéreo internacional por las compañías aéreas designadas de cada una de las Partes estarán exentas de todo tipo de restricción a la importación, derechos aduaneros, impuestos especiales y otros derechos y exacciones similares impuestos por las autoridades nacionales. Los componentes, el equipo habitual de las aeronaves y otros objetos destinados o utilizados únicamente en la operación o la reparación, mantenimiento y revisión de dichas aeronaves estarán exentos de igual manera, siempre que dichos equipos y objetos se utilicen a bordo de la aeronave y sean reexportados.

2. a) Los siguientes artículos, siempre que, en cada caso, se utilicen a bordo de la aeronave en relación con la realización o el mantenimiento de transporte aéreo internacional por las compañías aéreas designadas de que se trate, estarán exentos de todo tipo de restricciones a la importación, derechos aduaneros, impuestos especiales y otros derechos y exacciones similares impuestos por las autoridades nacionales, tanto si son introducidos por una compañía aérea de una Parte en el territorio de la otra Parte como si se proporcionan a una compañía aérea de una Parte en el territorio de la otra Parte:

i) las provisiones de a bordo de la aeronave (incluidos, aunque no exclusivamente, la comida, bebida y los productos destinados a su venta a los pasajeros o consumo por los mismos durante el vuelo);

ii) el combustible, los lubricantes (incluidos los fluidos hidráulicos) y las existencias de consumibles de tipo técnico;

iii) las piezas de recambio, incluidos los motores, introducidas en el territorio de una de las Partes para el mantenimiento o reparación de las aeronaves utilizadas en los servicios aéreos internacionales por las compañías aéreas designadas de la otra Parte;

b) Las exenciones a que se hace referencia en los anteriores subapartados i), ii) y iii) se concederán de conformidad con el procedimiento establecido en la reglamentación vigente.

c) Estas exenciones se aplicarán incluso cuando los artículos vayan a ser utilizados en cualquier parte de un viaje realizada sobre el territorio de la otra Parte en que hayan sido cargadas a bordo.

3. Las exenciones previstas en el presente artículo no serán extensivas a las tasas basadas en el coste de los servicios prestados a las compañías aéreas de una Parte en el territorio de la otra Parte

4. El equipo habitual de las aeronaves, así como las piezas de repuesto (incluidos los motores), las provisiones de combustible, los aceites lubricantes (incluidos los fluidos hidráulicos) y los lubricantes y otros artículos mencionados en los apartados 1 y 2 del presente artículo, mantenidos a bordo de las aeronaves operadas por las compañías aéreas designadas de una Parte, únicamente podrán desembarcarse en el territorio de la otra Parte con la aprobación de las Autoridades Aduaneras de dicho territorio. Las provisiones de las aeronaves destinadas al consumo durante los servicios de la compañía aérea podrán descargarse en cualquier caso. Podrá exigirse que los equipos y suministros mencionados en los apartados y 1 y 2 del presente artículo queden bajo la supervisión o control de las autoridades correspondientes hasta que sean reexportados o hayan recibido otro destino de conformidad con la legislación y los procedimientos aduaneros de esa Parte.

5. Las exenciones previstas en el presente artículo serán asimismo de aplicación en las situaciones en que la compañía o compañías aéreas designadas de cualquiera de las Partes hayan celebrado acuerdos con otra u otras compañías aéreas relativos al préstamo o la transferencia en el territorio de la otra Parte de los artículos mencionados en los apartados 1 y 2 del presente artículo, siempre que la otra compañía o compañías aéreas se beneficien de las mismas exenciones otorgadas por esa otra Parte.

ARTÍCULO 10

Tarifas

1. Lo dispuesto en el apartado 2 del presente artículo complementará las disposiciones del apartado 3 del presente artículo.

2. Las tarifas que apliquen los transportistas aéreos designados por Australia al transporte que se realice exclusivamente dentro de la Comunidad Europea se regirán por la legislación de la Comunidad Europea.

3. Cada Parte Contratante permitirá que cada compañía aérea designada fije sus propias tarifas para el transporte de tráfico.

ARTÍCULO 11

Capacidad

1. Las compañías aéreas designadas de cada Parte disfrutarán de igualdad de oportunidades para explotar los servicios convenidos de conformidad con el presente Acuerdo.

2. En la explotación de los servicios convenidos, la capacidad que vayan a ofrecer las compañías aéreas designadas de cada Parte se decidirá mutuamente entre las Autoridades Aeronáuticas respectivas.

3. Los horarios establecidos para la explotación de los servicios convenidos se notificarán, si así se exige, a las Autoridades Aeronáuticas de la otra Parte al menos treinta

y cinco (35) días antes del comienzo de dicha explotación o en el plazo más breve que decidan las Autoridades Aeronáuticas de la otra Parte.

ARTÍCULO 12

Oportunidades comerciales

1. Las compañías aéreas designadas de cada Parte tendrán los siguientes derechos en el territorio de la otra Parte:

a) el derecho a establecer oficinas y representantes, incluidas oficinas fuera de línea, para la promoción, venta y gestión del transporte aéreo; y

b) el derecho a dedicarse a la venta y comercialización de transporte aéreo a cualquier persona, directamente y, a su discreción, a través de sus agentes o intermediarios, utilizando sus propios documentos de transporte; y

c) el derecho a recurrir a los servicios y al personal de cualquier organización, sociedad o compañía aérea que opere en el territorio de la otra Parte y que esté autorizada para prestar dichos servicios en el territorio de esa Parte.

2. De conformidad con las leyes y reglamentos de la otra Parte relativos a la entrada, residencia y trabajo, las compañías aéreas de cada Parte tendrán derecho a introducir y mantener en el territorio de la otra Parte a su propio personal de gestión, comercial, técnico, de operaciones y cualesquiera otros especialistas que la compañía aérea considere razonablemente necesarios para la realización del transporte aéreo. De conformidad con tales leyes y reglamentos, cada Parte deberá conceder, con un mínimo de demora, las necesarias autorizaciones de trabajo, visados u otros documentos similares a los representantes y al personal a que se refiere el presente apartado.

3. Las compañías aéreas de cada Parte tendrán derecho a vender servicios de transporte aéreo y toda persona tendrá libertad para adquirir dichos servicios en moneda local o en otra moneda libremente convertible. Cada compañía aérea tendrá libertad para convertir sus fondos a cualquier moneda libremente convertible y para transferirlos desde el territorio de la otra Parte, a su discreción. Con sujeción a las leyes y reglamentos nacionales de la otra Parte, se permitirá la conversión y la transferencia de los fondos obtenidos en el curso normal de las operaciones, a los tipos de cambio de mercado para pagos vigentes en el momento de presentación de las solicitudes de conversión o transferencia, y éstas no estarán sujetas a ningún cargo a excepción de las comisiones normales cobradas respecto de tales transacciones.

4. Las compañías aéreas designadas de cada Parte tendrán derecho, a su discreción, a abonar los gastos locales que realicen en el territorio de la otra Parte, incluida la

adquisición de carburante, en la moneda local o, siempre que así lo permitan los reglamentos locales en materia de divisas, en otras monedas libremente convertibles.

5. Cada compañía aérea designada tendrá derecho a prestar sus propios servicios de asistencia en tierra dentro del territorio de la otra Parte Contratante o bien a contratar dichos servicios, en todo o en parte, a su elección, con cualquiera de los agentes autorizados para prestarlos. Cuando los reglamentos aplicables a la prestación de servicios de asistencia en tierra en el territorio de una Parte impidan o limiten ya sea la libertad de contratar estos servicios o la autoasistencia, cada compañía aérea designada recibirá un tratamiento no discriminatorio en cuanto al acceso a la autoasistencia o a los servicios de asistencia en tierra prestados por uno o varios agentes.

6. Con sujeción a las leyes y reglamentos aplicables, se permitirá a las compañías aéreas designadas de cada Parte la realización de transporte aéreo internacional utilizando aeronaves (o aeronaves y tripulación) alquiladas a cualquier compañía, incluidas otras compañías aéreas, siempre que la aeronave y la tripulación con que se preste el servicio cumplan las normas y requisitos aplicables en materia de explotación y seguridad.

7. En relación con la asignación de franjas horarias a las compañías aéreas en los aeropuertos nacionales, cada Parte garantizará que las mismas se asignen a las compañías aéreas de la otra Parte de forma transparente, neutral y no discriminatoria en comparación con el resto de compañías aéreas, incluidas las compañías aéreas de la otra Parte, de conformidad con lo dispuesto en las leyes y reglamentos en vigor en el territorio de cada Parte y, en el caso del Reino de España, de conformidad con la legislación de la Comunidad Europea.

ARTÍCULO 13

Servicios intermodales

Se permitirá a las compañías aéreas designadas de cada Parte emplear, en relación con el transporte aéreo internacional, cualquier transporte de superficie con origen o destino en cualesquiera puntos de los territorios de las Partes o de terceros países. Las compañías aéreas podrán optar por realizar ellas mismas su propio transporte de superficie u ofrecerlo a través de acuerdos, incluidos los de código compartido, con otros transportistas de superficie. Estos servicios intermodales podrán ofrecerse como servicio directo a un único precio que incluya el transporte aéreo y terrestre combinados, siempre que se informe a los pasajeros y transportistas sobre los agentes que vayan a prestar el servicio.

ARTÍCULO 14

Competencia

1. La actividad de las compañías aéreas designadas dentro de la jurisdicción de las respectivas Partes se regirá por la legislación en materia de competencia de cada una de las

Partes, modificada oportunamente. Cuando así lo permita dicha legislación, una Parte o su autoridad en materia de competencia podrá, no obstante, eximir unilateralmente a los acuerdos comerciales entre compañías aéreas de la aplicación de su legislación interna en materia de competencia. Esto no obligará a ninguna de las Partes ni a su autoridad competente a conceder una exención recíproca.

2. Sin limitar la aplicación de la legislación en materia de competencia y defensa de los consumidores por cualquiera de las Partes, si las autoridades aeronáuticas de cualquiera de las Partes consideran que las compañías aéreas de cualquiera de ellas están siendo objeto de discriminación o de prácticas desleales en el territorio de una de las Partes, podrán comunicarlo a las autoridades aeronáuticas de la otra Parte. Las consultas entre las autoridades aeronáuticas se celebrarán lo antes posible después de esa comunicación, a menos que la primera Parte compruebe que la cuestión se ha resuelto mientras tanto.

3. Al celebrar las consultas mencionadas en el presente artículo, las Partes:

a) coordinarán sus acciones con las autoridades correspondientes;

b) estudiarán medios alternativos con los que también podrían alcanzarse los objetivos de una intervención conforme con la legislación general en materia de competencia y defensa de los consumidores; y

c) tomarán en consideración los puntos de vista de la otra Parte y las obligaciones de ésta en virtud de otros acuerdos internacionales.

4. No obstante lo dispuesto en los anteriores apartados 1 a 3, el presente artículo no impide la acción unilateral por parte de las compañías aéreas o de las autoridades en materia de competencia de cada una de las Partes.

ARTÍCULO 15

Consultas

1. Cada una de las Partes podrá solicitar consultas, en cualquier momento, en relación con la ejecución, interpretación, aplicación o enmienda del presente Acuerdo.

2. Sin perjuicio de lo dispuesto en los artículos 2 (Designación, autorización y revocación), 5 (Seguridad operacional) y 6 (Protección de la seguridad), tales consultas podrán celebrarse verbalmente o por correspondencia y se iniciarán en un plazo de sesenta (60) días a partir de la fecha de recepción de la solicitud, a menos que se decida otra cosa de mutuo acuerdo.

ARTÍCULO 16

Enmiendas al Acuerdo

1. El presente Acuerdo podrá enmendarse o revisarse mediante acuerdo por escrito entre las Partes.

2. Toda enmienda o revisión entrará en vigor cuando las Partes se hayan notificado mutuamente, en forma escrita, el cumplimiento de sus correspondientes requisitos para la entrada en vigor de una enmienda o revisión.

3. En caso de que entrara en vigor para ambas Partes un convenio multilateral sobre transporte aéreo, se considerará que el presente Acuerdo queda enmendado en la medida necesaria para que se ajuste a lo dispuesto en dicho convenio.

ARTÍCULO 17

Solución de controversias

1. Toda controversia entre las Partes relativa a la interpretación o la aplicación del presente Acuerdo, a excepción de cualquier controversia relativa a la aplicación de las leyes nacionales en materia de competencia, que no pueda solucionarse mediante consultas o negociaciones o, cuando así se haya acordado, por mediación con arreglo al Anexo 2, deberá someterse, a petición de cualquiera de las Partes, a un tribunal de arbitraje.

2. Dentro de un plazo de treinta (30) días a partir de la fecha en que cualquiera de las Partes reciba de la otra Parte una nota por conducto diplomático solicitando el arbitraje de la controversia por un tribunal, cada una de las Partes designará a un árbitro. Dentro de un plazo de treinta (30) días a contar desde la designación del último árbitro, los dos árbitros designarán a un Presidente, que será nacional de un tercer Estado. Si dentro del plazo de 30 días desde que una de las Partes haya nombrado a su árbitro, la otra Parte no ha nombrado al suyo o, si dentro de los treinta (30) días siguientes a la designación del segundo árbitro, ambos árbitros no han alcanzado un acuerdo sobre la designación del presidente, cualquiera de las Partes podrá solicitar al Presidente del Consejo de la Organización de Aviación Civil Internacional que nombre un árbitro o árbitros, según el caso. Si el Presidente del Consejo fuera nacional de alguna de las Partes, dicha designación correrá a cargo del Vicepresidente de mayor antigüedad que no esté excluido por el mismo motivo.

3. Salvo que las Partes o el tribunal determinen otra cosa, cada Parte presentará un memorando dentro de un plazo de treinta (30) días a partir de la plena constitución del tribunal. Deberá contestarse a los mismos en un plazo de treinta (30) días. El tribunal celebrará una vista a petición de cualquiera de las Partes, o a su discreción, en un plazo de treinta (30) días a partir de la fecha límite para la presentación de las contestaciones.

4. El tribunal procurará emitir un laudo en forma escrita en un plazo de treinta (30) días a partir de la celebración de la vista o, en caso de que no haya vista, a partir de la fecha en que se hayan presentado las dos contestaciones. El laudo se aprobará por mayoría de votos.

5. Las Partes podrán presentar solicitudes de aclaración del laudo en un plazo de quince (15) días desde su recepción y la correspondiente aclaración se emitirá en un plazo de quince (15) días a partir de la solicitud.

6. El laudo del tribunal arbitral será definitivo y vinculante para las partes en la controversia.

7. Los gastos derivados del arbitraje en virtud del presente artículo se sufragarán a partes iguales entre las Partes.

8. En caso de que cualquiera de las Partes incumpla un laudo dictado de conformidad con el apartado 6 del presente artículo y mientras se mantenga dicho incumplimiento, la otra Parte podrá limitar, suspender o revocar cualesquiera derechos o privilegios concedidos en virtud del presente Acuerdo a la Parte incumplidora.

ARTÍCULO 18

Denuncia

1. Cualquiera de las Partes podrá notificar por escrito a la otra Parte en cualquier momento su decisión de denunciar el presente Acuerdo. Esta notificación se comunicará simultáneamente a la Organización de Aviación Civil Internacional (OACI). El Acuerdo se extinguirá en la medianoche (hora local del lugar de recepción de la notificación a la otra Parte) inmediatamente anterior a la fecha en que se cumpla el primer aniversario de la recepción de la notificación por la otra Partes, a menos que dicha notificación se retire de mutuo acuerdo antes de la expiración de dicho plazo.

2. Si la otra Parte no acusa recibo de dicha notificación de denuncia, ésta se considerará recibida catorce (14) días después de la fecha en que la OACI acusó recibo de la misma.

ARTÍCULO 19

Registro ante la OACI

El presente Acuerdo y toda enmienda al mismo se registrarán ante la Organización de Aviación Civil Internacional.

ARTÍCULO 20

Entrada en vigor

El presente Acuerdo entrará en vigor en el momento en que las Partes se hayan notificado mutuamente por escrito el cumplimiento de sus respectivas formalidades para su entrada en vigor.

EN FE DE LO CUAL, los abajo firmantes, debidamente autorizados a ello por sus respectivos Gobiernos, firman el presente Acuerdo.

HECHO en en español e inglés, siendo ambos textos igualmente auténticos.

POR AUSTRALIA: POR EL REINO DE ESPAÑA:

A N E X O 1

Sección 1

CUADRO DE RUTAS

Las compañías aéreas designadas de cada Parte tendrán derecho a realizar transporte aéreo internacional entre puntos de las siguientes rutas:

Ruta para las compañías aéreas designadas de España:

Puntos en allá España	Puntos intermedios	Puntos en Australia	Puntos más
Cualquiera	Cualquiera	Cualquiera	Cualquiera

Ruta para las compañías aéreas designadas de Australia:

Puntos en allá Australia	Puntos intermedios	Puntos en España	Puntos más
Cualquiera	Cualquiera	Cualquiera	Cualquiera

Notas:

1. Las compañías aéreas designadas de cada Parte podrán cambiar el orden u omitir uno o más puntos en cualquiera de las rutas arriba indicadas, a su elección, en la totalidad o en parte de sus servicios, siempre que los servicios comiencen o terminen en un punto situado en el territorio de la Parte que haya designado a dichas compañías aéreas.

2. Los derechos de tráfico que podrán ejercer las compañías aéreas designadas en los puntos arriba indicados se determinarán de común acuerdo entre las Autoridades Aeronáuticas.

Sección 2

FLEXIBILIDAD DE LAS OPERACIONES

1. Con sujeción a la Sección 1 del presente Anexo, las compañías aéreas designadas de cada Parte podrán, en alguno o en todos los servicios y a elección de cada una de ellas:

a) realizar servicios en una o en ambas direcciones;

b) combinar diferentes números de vuelo en una operación de una aeronave;

c) transferir el tráfico de una aeronave a cualquier otra aeronave en cualquier punto de la ruta,

sin limitación geográfica ni en cuanto a la dirección y sin pérdida de derecho alguno a transportar tráfico permitido en virtud del presente Acuerdo.

2. a) Las compañías aéreas designadas de cada Parte, al explotar u ofrecer trasporte aéreo internacional, tendrán derecho a establecer acuerdos de código compartido, espacio bloqueado u otros acuerdos de cooperación en materia de comercialización, como compañía aérea comercializadora y/o explotadora, con cualquier otra compañía aérea, incluidas las de la misma Parte o de terceras partes, en la totalidad o en parte de su ruta según el Anexo 1. De conformidad con la letra b) del apartado 2 de la presente sección, las compañías aéreas que participen en dichos acuerdos deberán poseer la autorización o autorizaciones pertinentes para realizar transporte aéreo internacional en las rutas o segmentos de ruta de que se trate.

b) La autoridad aeronáutica de una Parte no podrá denegar el permiso de código compartido para que una compañía aérea de la otra Parte comercialice servicios de código compartido en vuelos explotados por compañías aéreas de terceras partes sobre la base de que la primera Parte no ha otorgado a las compañías aéreas afectadas de la tercera parte el derecho a transportar tráfico con el código de la compañía aérea comercializadora.

c) A menos que las autoridades aeronáuticas de las Partes determinen de común acuerdo otra cosa, el volumen de capacidad o las frecuencias de servicio que las compañías aéreas de cada Parte podrán ofrecer y vender, cuando actúen en régimen de código compartido como compañía aérea comercializadora, no estarán sujetos a limitaciones en virtud del presente Acuerdo.

d) Las compañías aéreas de cada Parte podrán comercializar servicios de código compartido en vuelos nacionales explotados en el territorio de la otra Parte siempre que dichos servicios formen parte de un viaje internacional.

e) Las compañías aéreas de cada Parte, cuando ofrezcan transporte aéreo internacional para su venta, deberán dejar claro al comprador en el punto de venta qué compañía aérea va a ser la compañía aérea de explotación en cada sector del viaje y con qué compañía o compañías aéreas está entablando el comprador una relación contractual, y asimismo deberán cumplir los requisitos reglamentarios normalmente aplicados en estas operaciones por las Partes, tales como seguridad y responsabilidad.

Sección 3

CAMBIO DE CALIBRE

Toda compañía aérea tendrá derecho a realizar transporte aéreo internacional, incluso en virtud de acuerdos de código compartido con otras compañías aéreas, sin limitación alguna por lo que se refiere a cambios en cualquier punto o puntos de la ruta, o en el tipo, tamaño o número de las aeronaves explotadas, en cualquier sector o sectores de las rutas indicadas en la sección 1 del presente Anexo.

A N E X O 2

PROCEDIMIENTO DE MEDIACIÓN

1. Las reglas que se establecen en el presente Anexo serán de aplicación cuando las Partes, en busca de un arreglo amistoso de sus controversias, hayan convenido en someter la controversia a la mediación. Las Partes en la controversia podrán convenir en eliminar, completar o modificar en cualquier momento alguna de las normas contenidas en el presente Anexo.

La Parte que inicie el procedimiento de mediación enviará a la otra Parte una invitación por escrito a someterse a mediación con arreglo al presente Anexo. La mediación comenzará tras la recepción, por la Parte que haya iniciado el procedimiento, de una notificación escrita de la otra Parte aceptando el ofrecimiento de recurrir a la mediación.

2. Habrá un mediador a menos que las Partes acuerden que haya dos o tres mediadores. En el caso de que haya más de un mediador éstos deberán actuar, como norma, de forma conjunta.

Las Partes en la controversia tratarán de acordar que la designación del único mediador o de los mediadores se realice con preferencia de entre los expertos en aviación con la formación necesaria que figuran en la lista elaborada por la OACI. La designación de los mediadores deberá llevarse a cabo dentro de los veintiún (21) días siguientes a la recepción de la notificación a la que se hace referencia en el apartado 1. Si las Partes no llegaran a un acuerdo sobre la designación del mediador o mediadores en el mencionado plazo, la Parte que haya iniciado la mediación podrá dar por terminado el procedimiento de mediación mediante una notificación dirigida a la otra Parte o solicitar al Presidente del Consejo de la OACI que efectúe las designaciones.

3. El mediador oirá a las Partes, examinará sus reivindicaciones y hará propuestas a las Partes con vistas a alcanzar un arreglo amistoso. El mediador podrá sugerir a las Partes determinadas medidas que puedan facilitar el arreglo amistoso de la controversia.

4. Las Partes colaborarán de buena fe con el mediador y, en particular, se esforzarán por cumplir las solicitudes del mediador de aportar material escrito y pruebas y asistir a las reuniones.

5. Los gastos que origine la mediación se sufragarán a partes iguales por las Partes en la controversia.

6. El presente mecanismo se entiende sin perjuicio del uso continuado del procedimiento de consultas, de la posterior utilización del arbitraje o de la terminación con arreglo al artículo 18.

7. El procedimiento de mediación finalizará cuando se llegue a un acuerdo o cuando una Parte en la controversia dé por terminada la mediación mediante notificación escrita dirigida a la otra Parte.

National Interest Analysis [2010] ATNIA 14

with attachment on consultation

Agreement between Australia and the Kingdom of Spain relating to Air Services
Canberra, 24 June 2009

[2009] ATNIF 16

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between Australia and the Kingdom of Spain relating to Air Services, done at Canberra on 24 June 2009
[2009] ATNIF 16

Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force the *Agreement between Australia and the Kingdom of Spain relating to Air Services* (the Agreement).

2. The Agreement was signed on 24 June 2009.

3. Article 20 specifies that the Agreement will enter into force when the Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied. Subject to the Joint Standing Committee on Treaties (JSCOT) issuing a report on the proposed treaty action, the Australian Government will provide its notification to the Government of the Kingdom of Spain (Spain) under Article 20 as soon as practicable after the Agreement has been tabled in both Houses of Parliament for 15 sitting days.

4. The Agreement will establish for the first time a treaty level air services relationship between Australia and Spain. It will allow the airlines of Australia and Spain to develop international air services between the two countries.

5. Aviation arrangements of less than treaty status, in the form of a Memorandum of Understanding (MOU) signed in February 2007, have preceded the Agreement. In accordance with customary international law, and established Australian practice these arrangements have included applying the provisions of the Agreement, pending the completion of domestic requirements, before the Agreement is brought into force.

Overview and national interest summary

6. The purpose of the Agreement is to allow air services to operate between Australia and Spain, which will facilitate trade and tourism between the two countries and provide greater air travel options for consumers. The Agreement will provide a binding legal framework supporting the operation of air services currently provided by Qantas Airways and Iberia Airlines.

Reasons for Australia to take the proposed treaty action

7. The Agreement provides a legal framework for the operation of scheduled air services between Australia and Spain by the designated airlines of both countries.

8. This framework grants access for Australian airlines to the Spanish aviation market and allows for the establishment of air services between the two countries, providing Australian and Spanish carriers with freedom to provide services between any point in Australia and any point in Spain based on capacity levels decided from time to time between the aeronautical authorities of the Parties. The Agreement provides opportunities for the Australian business interests, in particular the tourism and export industries, to develop and market products.

Obligations

9. Australia and Spain are both Parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention).

10. The Agreement obliges Australia and Spain to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on specified routes in accordance with the provisions of the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

11. Article 2 of the Agreement allows each Party to designate any number of airlines to operate the agreed services. Either Party may revoke or limit authorisation of an airline's operations if the airline fails to meet, or operate in accordance with, the conditions prescribed in the Agreement, including with respect to its principal place of business and establishment, ownership and regulatory control. Article 2 is consistent with the *Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services* ([2009] ATS 7) (the Horizontal Agreement), which recognises airlines of individual Member States of the European Union (the EU) as air carriers of the EU, for the purposes of airline designation. The inclusion of these provisions provides security from legal challenge. The European Court of Justice found that certain provisions in bilateral air services agreement negotiated by EU Member States conflict with the European Community law. The Horizontal Agreement contains provisions which resolve those inconsistencies.

12. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the right to overfly its territory and to make stops in its territory for non-traffic purposes. Article 3 also provides the right for designated airlines to operate on the routes specified in Annex 1 for the purpose of taking on board and discharging passengers, cargo and mail.

13. Article 4 of the Agreement confirms that each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Party. Article 4 also provides that each Party's laws, regulations and rules relating to the operation and navigation of aircraft as well as the admission to or departure from its territory of passengers, crew, cargo and aircraft

shall be complied with. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.

14. Under Article 5, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Party may request consultations at any time concerning safety standards maintained by the other Party. Each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the aircraft equipment and the condition of the aircraft conform to ICAO standards. Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.

15. Under Article 6, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. A Party may require that the designated airlines of the other Party observe the Party's aviation security provisions for entry into, departure from or sojourn in the territory of that Party and shall ensure that adequate measures are applied to protect the aircraft and to inspect passengers, crew and carry-on items, as well as baggage, cargo and aircraft stores prior to and during boarding or loading.

16. Article 7 requires each Party to encourage their charging authorities to ensure that the charges imposed on the other Party's designated airlines for the use of aviation facilities be reasonable and not unjustly discriminatory.

17. Article 8 provides that a Party may request, from the other Party's designated airlines, statistics relating to the agreed services.

18. In accordance with international practice, Article 9 sets out the equipment and stores used in the operation of the agreed services that the Parties are required to exempt from customs and excise duties and other related charges.

19. Article 10 allows the designated airlines to set their own fares without government intervention. Article 10 confirms that fares for air transportation wholly within the European Community are subject to European Community law.

20. Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services on the specified routes. The capacity that can be operated between the two countries shall be decided between the aeronautical authorities. The capacity was settled in the MOU signed at the date when the Agreement was negotiated, as specified in paragraph 8 above. These capacity arrangements will continue once the Agreement enters into force.

21. Article 12 provides a framework that allows designated airlines of one Party to conduct business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in, employ and maintain staff, sell tickets to the public, convert and move currency freely and perform ground handling. The Article also allows airlines to utilise leased aircraft, or leased aircraft and crew, to provide their services, provided they meet the applicable operating and safety standards and requirements of the Parties.

22. Article 13 provides that the designated airlines of each Party can utilise surface transport to connect with their international air services, within the territory of the Parties of third countries, provided that passengers and shippers of cargo are informed of who will provide the transport involved.

23. Article 14 confirms that each Party's competition laws apply to the operation of designated airlines within their respective jurisdictions. It also requires each Party to coordinate their actions with the relevant authorities and take into account views and international obligations of the other Party when undertaking consultations on the issues of discrimination and unfair practices.

24. Article 15 provides that each Party may at any time request consultations on the implementation, interpretation, application or amendment of the Agreement.

25. Dispute resolution is provided for in the Agreement at Article 17. If the Parties fail to resolve any dispute by negotiation there is provision for compulsory settlement through submitting the dispute to arbitration.

26. The Annex, which is part of the Agreement, contains a route schedule which specifies the routes that may be operated by designated airlines.

Implementation

27. The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the Agreement.

Costs

28. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments and the Agreement reduces the regulatory burden on business and industry.

Regulation Impact Statement

29. The Department of Infrastructure, Transport, Regional Development and Local Government has self-assessed the Agreement as having no or low impact and the Office of Best Practice Regulation has been consulted.

Future treaty action

30. Article 15 provides that either Party may request consultations on amendment of the Agreement. Article 16 provides that any amendment to the Agreement, including the Annex, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, that they have completed their domestic procedures for entry into force of the amendment. Article 16 also provides that the Agreement will be deemed to be amended

so far as is necessary to comply with any multilateral air transportation instrument that may come into force for both Parties.

31. Any amendment to the Agreement will be subject to Australia's domestic treaty procedures, including consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

32. Article 18 provides for termination of the Agreement. Either Party may give notice in writing at any time to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with ICAO. The Agreement shall terminate one year after the date of receipt of the notice of termination. In default of acknowledgment by one Party of a receipt of a notice of termination from the other Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

33. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty processes, including consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure, Transport, Regional Development and Local Government

ATTACHMENT ON CONSULTATION

Agreement between Australia and the Kingdom of Spain relating to Air Services, done at Canberra on 24 June 2009
[2009] ATNIF 16

CONSULTATION

34. It is the practice ahead of negotiations of an Air Service Agreement for the Department of Infrastructure, Transport, Regional Development and Local Government to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position for the Minister's approval.

35. Prior to the negotiation of the Agreement, extensive consultations were held with industry and Commonwealth and State and Territory government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an Agreement between Australia and Spain and invited to comment on issues of importance to them:

Commonwealth Government Agencies

- Attorney-General's Department
- Australian Quarantine and Inspection Service
- Austrade
- Civil Aviation Safety Authority
- Australian Customs and Border Security Service
- Department of Foreign Affairs and Trade
- Department of Finance and Administration
- Department of Immigration and Citizenship
- Department of Industry, Tourism and Resources
- Department of Prime Minister and Cabinet
- International Air Services Commission
- The Treasury
- Tourism Australia (formally the Australian Tourism Commission)

State Government Agencies

- ACT Government Chief Minister's Department
- Queensland Government Department of Employment, Economic Development and Innovation, Aviation Steering Committee
- NSW Government Ministry of Transport and Department of State and Regional Development
- South Australian Government Department of Transport and Urban Recourses
- Tasmanian Department of Infrastructure, Energy & Resources
- Victorian Government Department of Innovation, Industry and Regional Development
- Western Australian Government Department of Transport
- NT Government Department of Planning and Infrastructure
- Tourism New South Wales
- Tourism Queensland

- Tourism Tasmania
- Tourism Victoria
- Tourism NT
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Air Freight Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Air Freight Council of Western Australia
- Alice Springs Airport
- Australian Airports Association
- Australian and International Pilots Association
- Australian Aviation Council
- Australian Local Government Association
- Australian Tourism Export Council
- Australia's North West Tourism
- Avalon Airport Australia Pty Ltd & Essendon Airport Pty Ltd
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Burnie Airport Corporation Pty Ltd/Wynyard Aerodrome
- Cairns Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Essendon Airport
- Global Aviation Services
- Gold Coast Airport Ltd
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- Moorabbin Airport
- National Food Industry Strategy Ltd
- National Jet Systems Pty Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Northern Territory Transport
- Perth Airport
- Qantas Airways Ltd
- Queensland Airports Ltd
- Queensland Tourism Industry Corporation
- Queensland Transport
- South Australian Freight Export Council Inc
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council
- Tourism and Transport Forum (TTF) Australia
- Tourism Top End
- Tropical Tourism North Queensland

- Virgin Blue
- Westralia Airports Corporation Pty Ltd

36. Comments were received from: Qantas, Virgin Blue, Melbourne Airport, the South Australian Department of Transport and Urban Planning, Tourism Victoria, the (then) Australian Government Departments of Industry, Tourism and Resources, Treasury and the Australian Customs Service.

37. All stakeholders supported the negotiation of a new air services agreement to open market access for airlines of both sides.

38. Comments provided by Melbourne Airport, the Department of Industry, Tourism and Resources and Tourism Victoria were all confidential.

39. Qantas provided support for the negotiations seeking to negotiate arrangements which would include liberal cooperative marketing provisions and route rights. Virgin Blue provided overall support for the negotiations.

40. The South Australian Department of Transport and Urban Planning indicated that it would welcome the agreement which would provide flexibility to Australian and foreign carriers to serve the State.

41. Comments on the Agreement were received from the Attorney-General's Department, the Department of Foreign Affairs and Trade, Treasury, Customs and the Department of Immigration and Citizenship. These agencies cleared the text of the Agreement prior to its approval by Executive Council.

42. The Agreement was included in the Schedule of Treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties in February 2006, July 2006, February 2007 and on 1 February 2008 prior to signature of the Agreement.

43. The Agreement was approved for signature by the Federal Executive Council on 18 June 2009.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

Agreement between

the Government of Australia and

the Swiss Federal Council

relating to Air Services

(Canberra, 28 November 2008)

Not yet in force
[2008] ATNIF 22

The Government of Australia and the Swiss Federal Council (hereinafter, "the Contracting Parties");

Being Contracting Parties to the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace and wishing to encourage airlines to develop and implement innovative and competitive services;

Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Have agreed as follows:

Article 1 Definitions

For the purpose of this Agreement, unless otherwise stated, the term:

(a) "Aeronautical authorities" means, in the case of Switzerland, the Federal Office for Civil Aviation and, in the case of Australia, the Department of Infrastructure, Transport, Regional Development and Local Government or in both cases any person or body, authorised to exercise the functions presently assigned to the said authorities;

(b) “Agreed services” means air services on the specified routes for the carriage of passengers, baggage, cargo and mail, separately or in combination;

(c) “Agreement” means this Agreement, its Annexes, and any amendments thereto;

(d) “Air transportation” means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;

(e) “Airline” means any air transport enterprise marketing or operating air transportation;

(f) “Cargo” includes cargo and mail;

(g) “Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, and includes:

(i) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time in force for both Contracting Parties; and

(ii) any amendment which has entered into force under Article 94(a) of the Convention and has been ratified by both Contracting Parties;

(h) “Designated airline” means an airline or airlines designated and authorised in accordance with Article 2 (Designation, Authorisation and Revocation) of this Agreement;

(i) “International air transportation” means air transportation which passes through the air space over the territory of more than one State;

(j) “Specified route” means a route specified in the Annex to this Agreement;

(k) “Tariffs” means any price, fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in international air transportation, including transportation on an intra- or interline basis, charged by designated airlines, including their agents, and the conditions governing the availability of such price, fare, rate or charge;

(l) “Stop for non-traffic purposes” has the meaning assigned to it in Article 96 of the Convention;

(m) “Territory” means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of a State whose government is a Contracting Party to this Agreement;

(n) “User charges” means a charge made to airlines by a service provider for the provision of airport, airport environmental, air navigation and aviation security facilities, for aircraft, their crews, passengers and cargo.

Article 2 Designation, Authorisation and Revocation

1. Each Contracting Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement, and to withdraw or alter such designations. Such designations shall be transmitted to the aeronautical authorities of the other Contracting Party in writing.

2. On receipt of such a designation, and of applications from a designated airline, in the form and manner prescribed for operating authorisations and technical permissions relating to the operation and navigation of the aircraft, the other Contracting Party shall grant appropriate authorisations without delay, provided that:

   (a) the airline is incorporated and has its principal place of business in the territory of the Contracting Party designating the airline, and the

operating airline holds a valid Air Operator's Certificate issued by the said Contracting Party**;**

(b) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally and reasonably applied to the operation of international air transportation by the Contracting Party considering the application or applications, in conformity with the provisions of the Convention;

(c) the Contracting Party designating the airline is maintaining and administering the standards set forth in Article 5 (Safety) and Article 6 (Aviation Security) of this Agreement.

3. When an airline has been so designated and authorised it may commence international air transportation, provided that the airline complies with the applicable provisions of this Agreement.

4. Either Contracting Party may withhold, revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Contracting Party, at any time, if the conditions specified in paragraph 2 of this Article are not met, or if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

5. Unless immediate action is essential to prevent further non-compliance with subparagraphs 2 (b) or 2 (c) of this Article, the rights established by this Article shall be exercised only after consultation with the other Contracting Party.

6. This Article does not limit the rights of either Contracting Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline or airlines of the other Contracting Party in accordance with the provisions of Article 5 (Safety) or Article 6 (Aviation Security) of this Agreement.

Article 3 Grant of Rights

1. Each Contracting Party grants to the other Contracting Party the following rights for the conduct of international air transportation by the designated airlines of the other Contracting Party:

   (a) the right to fly across its territory without landing;

   (b) the right to make stops in its territory for non-traffic purposes; and

   (c) the right to embark and disembark in the territory of one Contracting Party at the points specified in the Annex of this Agreement passengers, baggage, cargo and mail destined for or coming from points in the territory of the other Contracting Party; and

   (d) the right to embark and disembark in the territory of third countries at points specified in the Annex passengers, baggage, cargo and mail destined for or coming from points on that specified route in the territory of the other Contracting Party.

2. Nothing in this Article shall be deemed to confer on the designated airline or airlines of one Contracting Party the rights to take on board, in the territory of the other Contracting Party, passengers, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Contracting Party.

3. If because of armed conflict, political disturbances or developments, or special and unusual circumstances, the designated airlines of one Contracting Party are unable to operate a service on its normal routing, the other Contracting Party shall use its best efforts to facilitate the continued operation of such service through appropriate rearrangements of such routes, including the grant of rights for such time as may be necessary to facilitate viable operations.

Article 4 Application of Laws and Regulations

1. While entering, within, or leaving the territory of one Contracting Party, its laws, regulations and rules relating to the operation and navigation of

aircraft shall be complied with by the other Contracting Party's designated airlines.

2. While entering, within, or leaving the territory of one Contracting Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo or aircraft of the other Contracting Party's designated airlines.

3. Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air services in the application of its entry, clearance, aviation security, immigration, passports, customs and quarantine, postal and similar regulations.

Article 5 Safety

1. Each Contracting Party shall recognise as valid, for the purposes of operating the international air transport provided for in this Agreement, certificates of airworthiness, certificates of competency and licences issued or validated by the other Contracting Party that are still in force, provided that the requirements for such certificates or licences at least equal the minimum standards that may be established pursuant to the Convention. Each Contracting Party may, however, refuse to recognise as valid for the purpose of flights undertaken pursuant to rights granted under Article 3 (Grant of Rights), of this Agreement certificates of competency and licences granted to or validated for its own nationals by the other Contracting Party.

2. Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party including, but not limited to, the safety standards relating to aeronautical facilities, aircrews, aircraft and their operation. Such consultations shall take place within thirty (30) days of that request.

3. If, following such consultations, one Contracting Party finds that the other Contracting Party does not effectively maintain and administer safety standards and requirements in these areas that are at least equal to the minimum standards established at that time pursuant to the Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and that other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within a reasonable time, or in any case within fifteen (15) days, shall be grounds for the application of paragraph 4 of Article 2 (Designation, Authorisation and Revocation) of this Agreement.

4. Notwithstanding the obligations mentioned in Article 33 of the Convention, it is agreed that any aircraft operated by the designated airline or airlines of one Contracting Party on services to or from the territory of another Contracting Party may, while within the territory of the other Contracting Party, be made the subject of any examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called “ramp inspection”), provided this does not lead to unreasonable delay.

5. If any such ramp inspection or series of ramp inspections gives rise to:

   (a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Convention, or

   (b) serious concerns that there is a lack of effective maintenance and administration of the safety standards established at that time pursuant to the Convention,

   the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that the requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Convention.

6. In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by a designated airline or airlines of one Contracting Party in accordance with paragraph 4 of this Article is denied by the representative of that designated airline or airlines the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph 5 of this Article arise and draw the conclusions referred to in that paragraph.

7. Each Contracting Party reserves the right to suspend or vary the operating authorisation of a designated airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access to a ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

8. Any action by one Contracting Party in accordance with paragraphs 3 or 7 of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

Article 6 Aviation Security

1. Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, opened for signature at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, and any other multilateral agreement governing civil aviation security binding upon the Contracting Parties.

2. The Contracting Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to security of civil aviation.

3. The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by the International Civil Aviation Organization and set out in Annexes to the Convention to the extent that such security provisions and requirements are applicable to the Contracting Parties.

4. The Contracting Parties shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions.

5. Each Contracting Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraphs 3 and 4 of this Article required by the other Contracting Party for entry into, departure from, or while within the territory of that other Contracting Party. Each Contracting Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Contracting Party shall also give positive consideration to any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

6. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate such incident or threat thereof as rapidly as possible commensurate with minimum risk of life.

7. When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the aeronautical authorities of the first Contracting Party may request

immediate consultations with the aeronautical authorities of the other Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the date of such request shall constitute grounds for the application of paragraph 4 of Article 2 (Designation, Authorisation and Revocation) of this Agreement. When required by an emergency, a Contracting Party may take action under paragraph 4 of Article 2 (Designation, Authorisation and Revocation) prior to the expiry of fifteen (15) days. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

8. With regard to aviation security, the aeronautical authorities of either Contracting Party may request immediate consultations with the aeronautical authorities of the other Contracting Party.

Article 7 Leasing

1. The designated airlines of each Contracting Party may use aircraft (or aircraft and crew) leased from any company, including other airlines, provided that this would not result in an operating airline exercising traffic rights it does not have, and providing the leased aircraft and crew comply with Articles 5 (Safety) and 6 (Aviation Security).

2. It is not a pre-requisite of either Party that the company or airline (the lessor) leasing out the aircraft has the right to carry traffic into or out of the territory of either Party.

Article 8 User Charges

1. Charges applied in the territory of either Contracting Party to the operations of the airline or airlines designated by the other Contracting Party for the use of airports open to public use and other aviation facilities in the territory of the first Contracting Party shall be just and reasonable and collected in accordance with uniform conditions applicable without discrimination as to the nationality of the aircraft concerned.

2. Each Contracting Party shall encourage charging authorities or bodies in its territory to consult with, and provide reasonable notice of any proposed changes in user charges to, the designated airlines using the services and facilities. The Contracting Parties shall also encourage the charging authorities and designated airlines to exchange such information as may be necessary to permit an accurate assessment of the reasonableness of the charges.

3. Reasonable charges reflect the full cost to the charging authority of providing the relevant services and facilities including a reasonable return on assets after depreciation.

Article 9 Statistics

1. The aeronautical authorities of one Contracting Party may require a designated airline of the other Contracting Party to provide statements of statistics related to the traffic carried on the agreed services by that designated airline.

2. The aeronautical authorities of each Contracting Party may determine the nature of the statistics required to be provided by airlines under the above paragraph, and shall apply these requirements on a non-discriminatory basis.

Article 10 Exemption from Duties and Other Charges

1. Aircraft operated in international air transportation by the designated airline or airlines of either Contracting Party shall be exempt from: all import restrictions; customs duties; excise taxes; and similar fees and charges imposed by national authorities. Component parts and normal aircraft equipment for the repair, maintenance and servicing of such aircraft shall be similarly exempt.

2. The following items shall be exempt from all import restrictions; customs duties; excise taxes; and similar fees and charges imposed by national authorities, whether they are introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party or

supplied to a designated airline of one Contracting Party in the territory of the other Contracting Party. These exemptions shall apply even when these supplies are to be used on any part of a journey performed over the territory of the other Contracting Party in which they have been taken on board:

(a) aircraft stores (including but not limited to such items as food, beverages and tobacco) whether introduced into or taken on board in the territory of the other Contracting Party;

(b) fuel, lubricants (including hydraulic fluids) and consumable technical supplies;

(c) spare parts including engines;

provided in each case that they are for use on board an aircraft in connection with the establishment or maintenance of an international air service by the designated airline concerned.

3. The exemptions provided by this Article shall not extend to charges based on the cost of services provided to the designated airlines of a Contracting Party in the territory of the other Contracting Party.

4. The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricants (including hydraulic fluids) and other items mentioned in paragraphs 1 and 2 of this Article retained on board the aircraft operated by the designated airlines of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that Party. Aircraft stores intended for use on the designated airlines' services may, in any case be unloaded. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities until they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Contracting Party.

5. Advertising materials having no commercial value used by the designated airline or airlines of one Contracting Party in the territory of the other Contracting Party shall be exempt from all import restrictions, customs

duties, excise taxes and similar fees and charges imposed by national authorities.

6. The exemptions provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraphs 1 and 2 of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

7. Passengers, hold baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control or in special circumstances. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.

Article 11 Tariffs

1. Each Contracting Party shall allow each designated airline to determine its own tariffs for the transport of traffic.

2. Unless required by national laws and regulations, tariffs charged by designated airlines shall not be required to be filed with the aeronautical authorities of either Contracting Party.

3. Tariffs charged by designated airlines shall be subject to the competition and consumer laws of both Contracting Parties.

Article 12 Capacity

1. The designated airlines shall enjoy fair and equal opportunities to operate the agreed services covered by this Agreement.

2. The capacity which may be operated by the designated airlines of each Contracting Party, on air services performed for the carriage of international traffic to and from the territory of the other Contracting Party,

in accordance with paragraph 1 (c) and (d) of Article 3 of this Agreement, shall be such as is decided between the aeronautical authorities of the Contracting Parties.

Article 13 Commercial Opportunities

1. Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airlines of the other Contracting Party in the exercise of their rights and entitlements set out in this Agreement, including, but not limited to, restrictions upon the sale of air transportation, the payment for goods, services or transactions, or the repatriation of excess currencies by designated airlines.

2. To the extent that the aeronautical authorities of either Contracting Party believe that their designated airlines are being subjected to discrimination or unfair practices, they shall give notice to this effect to the aeronautical authorities of the other Contracting Party. Consultations, which may be through the diplomatic channel, shall be entered into as soon as possible after notice is given unless the first Contracting Party is satisfied that the matter has been resolved in the meantime.

3. The designated airlines of each Contracting Party shall be entitled in accordance with the laws and regulations of the other Contracting Party relating to entry, stay, and employment, to bring in and maintain in the territory of the other Contracting Party managerial and other highly skilled specialist staff required for the provision of air transportation.

4. The designated airlines of each Contracting Party shall have the right to establish offices, representations and/or branches in the territory of the other Contracting Party for the purposes of provision, promotion and sale of air services in accordance with the applicable national laws and regulations of the other Contracting Party. Each designated airline shall have the right to engage in the sale of air transportation in the territory of the other Contracting Party directly and, at its discretion, through its agents. Each designated airline shall have the right to use for this purpose its own transportation documents.

5. The designated airlines of each Contracting Party shall have the right to sell air transportation in local or freely convertible currencies, and to convert their funds into any freely convertible currency and to transfer them from the territory of the other Contracting Party at will. Subject to the national laws and regulations and policy of the other Contracting Party, conversion and transfer of funds obtained in the ordinary course of their operations shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.

6. The designated airlines of each Contracting Party shall have the right at their discretion to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Party in local currency, or provided this accords with local currency regulations, in freely convertible currencies.

7. At its option, each designated airline shall, in the territory of the other Contracting Party, have the right to perform, in accordance with the internal laws and regulations of the other Contracting Party, its own ground handling or contract with a competing agent of its choice, including any other airlines which perform ground handling, for such services in whole or in part. These rights shall be subject to restrictions resulting from considerations of airport safety or security. Where such considerations preclude a designated airline from performing its own ground-handling or contracting with an agent of its choice for ground handling services, these services shall be made available to that designated airline on a non-discriminatory basis with all other airlines.

Article 14 Time-table submission

Each Contracting Party may require notification to its aeronautical authorities of the envisaged time-tables by the designated airlines of the other Contracting Party in conformity with its national laws and regulations.

Article 15 Consultations

1. Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement.

2. Except as otherwise provided in Articles 5 (Safety), and 6 (Aviation Security), such consultations, which may be through discussion or correspondence, shall begin within a period of sixty (60) days of the date of receipt of such a request, unless otherwise mutually decided.

Article 16 Amendment of Agreement

1. Subject to paragraph 3, this Agreement may be amended or revised by agreement in writing between the Contracting Parties.

2. Any such amendment or revision shall enter into force on the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of an amendment or revision have been fulfilled.

3. Modifications to the Annex of this Agreement may be agreed directly between the aeronautical authorities of the Contracting Parties. They shall be applied provisionally from the date they have been agreed upon and enter into force when confirmed by an exchange of diplomatic notes.

4. If a multilateral convention concerning air transport comes into force in respect of both Contracting Parties, this Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

Article 17 Settlement of Disputes

1. Any disputes relating to the interpretation or application of this Agreement which cannot be settled by negotiations between the Contracting Parties, either through discussion, correspondence or the use of diplomatic

channels, shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

2. Within a period of sixty (60) days from the date of receipt by either Contracting Party from the other Contracting Party of a note through the diplomatic channel requesting arbitration of the dispute by a tribunal, each Contracting Party shall nominate an arbitrator. Within a period of sixty (60) days from the appointment of the arbitrator last appointed, the two arbitrators shall appoint a president who shall be a national of a third State. If within sixty (60) days after one of the Contracting Parties has nominated its arbitrator, the other Contracting Party has not nominated its own or, if within sixty (60) days following the nomination of the second arbitrator, both arbitrators have not agreed on the appointment of the president, either Contracting Party may request the President of the Council of the International Civil Aviation Organization to appoint an arbitrator or arbitrators as the case requires. If the President of the Council is of the same nationality as one of the Contracting Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. The arbitral tribunal shall determine its own procedure.

4. The tribunal shall attempt to give a written decision within thirty (30) days after completion of the hearing, or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

5. The Contracting Parties may submit requests for clarification of the decision within fifteen (15) days after it is received and such clarification shall be issued within fifteen (15) days of such request.

6. Any arbitration decision reached pursuant to this Article is binding on both Contracting Parties.

7. Each Contracting Party shall pay the expenses of the arbitrator it has nominated. The remaining expenses of the arbitral tribunal shall be shared equally between the Contracting Parties.

8. If and for so long as either Contracting Party fails to comply with a decision under paragraph 6 of this Article, the other Contracting Party may limit, suspend or revoke any rights or privileges which it has granted by virtue of

this Agreement to the Contracting Party in default, informing the other Contracting Party of its decision.

Article 18 Termination

1. Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be communicated simultaneously to the International Civil Aviation Organization (ICAO). The Agreement shall terminate at midnight (at the place of receipt of the notice to the other Contracting Party) immediately before the first anniversary of the date of receipt of notice by the Contracting Party, unless the notice is withdrawn by agreement of the Contracting Parties before the end of this period.

2. In default of acknowledgment of receipt of a notice of termination by the other Contracting Party, the notice shall be deemed to have been received fourteen (14) days after the date on which ICAO acknowledged receipt thereof.

Article 19 Registration with the International Civil Aviation Organization

This Agreement and any amendment thereto shall be registered with the International Civil Aviation Organization.

Article 20 Entry into Force

1. This Agreement shall enter into force when the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been satisfied.

2. Upon entry into force, this Agreement shall supersede the Agreement between the Swiss Federal Council and the Government of Australia relating to Air Services, done at Canberra on 17 October 1990.

IN WITNESS THEREOF, the undersigned, duly authorised thereto by their respective governments, have signed this Agreement.

DONE at Canberra, this 28th day of November 2008, in duplicate in the English and German languages, both texts being equally authentic. In case of any divergence the English text shall prevail.

For the Government of Australia	For the Swiss Federal Council
Michael John Taylor	Daniel Woker
Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government	Ambassador

ANNEX

ROUTE SCHEDULES

Part I

Routes to be operated in either or both directions by the designated airline(s) of Switzerland:

Points in Switzerland	Intermediate Points	Points in Australia	Points Beyond
Any	Any	Any	Any

Part II

Routes to be operated in either or both directions by the designated airline(s) of Australia:

Points in Australia	Intermediate Points	Points in Switzerland	Points Beyond
Any	Any	Any	Any

Notes:

1. Points on the specified routes may, at the option of the designated airlines concerned, be omitted on any or all flights provided that the service either begins or terminates at a point in the territory of the Contracting Party designating the airline.

2. The designated airlines may at their option, on any or all flights:

   (a) combine different flight numbers within the one aircraft operation; and

   (b) transfer traffic from any of its aircraft to any of its other aircraft at any points on the routes.

3. On any segment or segments of the specified routes, any designated airline may perform agreed services, including with other airlines under code share and other cooperative marketing arrangements, without any limitation as to change, at any point on the route, in type of aircraft operated.

4. Intermediate and beyond points not listed in the above routes may be served at the option of the designated airlines provided that no traffic is uplifted or discharged between such points and points in the territory of the other Contracting Party.

5. The traffic rights to be exercised shall be as decided between the aeronautical authorities of the Contracting Parties from time to time.

A B K O M M E N

ZWISCHEN

DER REGIERUNG VON AUSTRALIEN

UND

DEM SCHWEIZERISCHEN BUNDESRAT

ÜBER

DEN LUFTVERKEHR

Die Regierung von Australien und der Schweizerische Bundesrat (nachfolgend die "Vertragsparteien");

als Vertragsparteien des am 7. Dezember 1944 in Chicago zur Unterzeichnung aufgelegten Übereinkommens über die internationale Zivilluftfahrt;

vom Wunsche geleitet, ein internationales Luftverkehrssystem auf der Grundlage des Wettbewerbs unter Luftverkehrsunternehmen im Markt zu fördern und die Luftverkehrsunternehmen zu ermutigen, innovative und konkurrenzfähige Dienste zu entwickeln und durchzuführen;

vom Wunsche geleitet, ein Höchstmass an technischer Sicherheit und Schutz im internationalen Luftverkehr sicherzustellen und in Bekräftigung ihrer tiefen Besorgnis über Handlungen oder Bedrohungen gegen die Sicherheit von Luftfahrzeugen, welche die Sicherheit von Personen oder Eigentum gefährden, sich nachteilig auf den Betrieb des Luftverkehrs auswirken und das öffentliche Vertrauen in die Sicherheit der Zivilluftfahrt untergraben;

haben folgendes vereinbart:

Artikel 1 Begriffe

Für die Anwendung dieses Abkommens, sofern nicht anders festgelegt, bedeutet der Ausdruck:

a. "Luftfahrtbehörden" im Fall der Schweiz, das Bundesamt für Zivilluftfahrt und im Fall von Australien, das Departement für Infrastruktur, Transporte, Regionale Entwicklung und Kommunalregierung, oder in beiden Fällen jede Person oder Organisation, die ermächtigt ist, die gegenwärtig diesen Behörden obliegenden Aufgaben auszuüben;

b. "Vereinbarte Linien" Luftverkehrslinien auf den festgelegten Strecken für die Beförderung von Fluggästen, Gepäck, Fracht und Postsendungen, getrennt oder in Kombination;

c. „Abkommen“ dieses Abkommen, seine Anhänge und alle Änderungen dazu;

d. „Luftverkehr“ die öffentliche Beförderung mit Luftfahrzeugen von Fluggästen, Gepäck, Fracht und Postsendungen, getrennt oder in Kombination, gegen Entschädigung oder in Miete;

e. „Luftverkehrsunternehmen“ jedes Luftverkehrsunternehmen, das Luftverkehr vermarktet oder betreibt;

f. „Fracht“ erfasst die Fracht und Postsendungen;

g. "Übereinkommen" das am 7. Dezember 1944 in Chicago zur Unterzeichnung aufgelegte Übereinkommen über die internationale Zivilluftfahrt, einschliesslich

   (i) jedes nach Artikel 90 des Übereinkommens angenommenen Anhangs oder jeder Änderung, soweit ein solcher Anhang oder eine solche Änderung zu jedem gegebenen Zeitpunkt für beide Vertragsparteien in Kraft ist; und

   (ii) jeder Änderung, welche nach Artikel 94(a) des Übereinkommens in Kraft ist und von beiden Vertragsparteien ratifiziert wurde;

h. "Bezeichnetes Luftverkehrsunternehmen" ein oder mehrere Luftverkehrsunternehmen, die in Übereinstimmung mit Artikel 2 dieses Abkommens (Bezeichnung, Bewilligung und Widerruf) bezeichnet und zugelassen sind;

i. "Internationale Luftverkehrslinie" Luftverkehr, der durch den Luftraum über dem Gebiet von mehr als einem Staat führt;

j. „Festgelegte Strecke“ die Strecke, die im Anhang zu diesem Abkommen festgelegt ist;

k. "Tarife" die Preise, das Entgelt, die Raten oder Gebühren für die Beförderung von Fluggästen (und ihrem Gepäck) und/oder Fracht (unter Ausschluss von Postsendungen) im internationalen Luftverkehr, einschliesslich Beförderungen auf der Grundlage von intra- oder interline-Abmachungen, die von den bezeichneten Luftverkehrsunternehmen einschliesslich ihrer Vermittler in Rechnung gestellt werden, und die Bedingungen, welche die Verfügbarkeit solcher Preise, Entgelte, Raten oder Gebühren regeln;

l. „Landung für nicht gewerbsmässige Zwecke“ hat diejenige Bedeutung, die ihr Artikel 96 des Übereinkommens zuweist;

m. „Gebiet“ die Landgebiete und die angrenzenden territorialen Gewässer unter der Staatshoheit, Oberhoheit, dem Schutz oder Mandat eines Staates, dessen Regierung eine Vertragspartei dieses Abkommens ist;

n. „Benutzergebühren“ eine Gebühr, die Luftverkehrsunternehmen von einem Dienstleistungsanbieter für die Bereitstellung von Flughafeneinrichtungen, Einrichtungen im Bereich Umweltschutz, der Flugsicherung und Flugsicherheit für die Luftfahrzeuge, ihre Besatzungen, die Fluggäste und Fracht in Rechnung gestellt werden.

Artikel 2 Bezeichnung, Bewilligung und Widerruf

1. Jede Vertragspartei hat das Recht, so viele Luftverkehrsunternehmen für die Durchführung internationaler Luftverkehrslinien in Übereinstimmung mit diesem Abkommen zu bezeichnen, wie sie wünscht, und diese

Bezeichnungen zurückzuziehen oder zu ändern. Solche Bezeichnungen werden den Luftfahrtbehörden der anderen Vertragspartei schriftlich übermittelt.

2. Bei Erhalt einer solchen Bezeichnung und von Gesuchen eines bezeichneten Luftverkehrsunternehmens in der für Betriebsbewilligungen und technische Zulassungen für den Betrieb und die Navigation von Luftfahrzeugen vorgeschriebenen Form und Weise, erteilt die andere Vertragspartei ohne Verzug die entsprechenden Bewilligungen, vorausgesetzt, dass:

   a. das Luftverkehrsunternehmen im Gebiet der Vertragspartei, welche das Luftverkehrsunternehmen bezeichnet, eingetragen ist und es dort den Hauptsitz seiner geschäftlichen Tätigkeiten hat, und das Luftverkehrsunternehmen im Besitz ein gültiges Luftverkehrsbetreiberzeugnisses ist, das von der besagten Vertragspartei ausgestellt ist;

   b. das Luftverkehrsunternehmen in der Lage ist, die von den Gesetzen, Verordnungen und Vorschriften aufgestellten Bedingungen zu erfüllen, die üblicherweise und in vernünftiger Weise für den Betrieb internationaler Luftverkehrslinien von der Vertragspartei, die das Gesuch oder die Gesuche prüft, in Übereinstimmung mit den Bestimmungen des Übereinkommens angewandt werden;

   c. die Vertragspartei, welche das Luftverkehrsunternehmen bezeichnet, die in Artikel 5 (Technische Sicherheit) und Artikel 6 (Sicherheit der Luftfahrt) dieses Abkommens festgelegten Anforderungen aufrechterhält und sie vollzieht.

3. Wenn ein Luftverkehrsunternehmen so bezeichnet und zugelassen ist, kann es die internationalen Luftverkehrslinien betreiben, vorausgesetzt, dass das Luftverkehrsunternehmen die anwendbaren Bestimmungen dieses Abkommens einhält.

4. Jede Vertragspartei kann jederzeit die Betriebsbewilligungen oder technischen Zulassungen eines von der anderen Vertragspartei bezeichneten Luftverkehrsunternehmens zurückhalten, widerrufen, aussetzen oder beschränken, wenn die in Absatz 2 dieses Artikels festgelegten Bedingungen nicht eingehalten werden oder wenn es das

Luftverkehrsunternehmen anderweitig unterlässt, die vereinbarten Linien in Übereinstimmung mit den in diesem Abkommen aufgestellten Bedingungen zu betreiben.

5. Soweit nicht sofortige Massnahmen erforderlich sind, um die weitere Nichteinhaltung der Unterabsätze 2(b) oder 2(c) dieses Artikels zu verhindern, werden die in diesem Artikel festgelegten Rechte nur nach Beratungen mit der anderen Vertragspartei ausgeübt.

6. Dieser Artikel schränkt die Rechte jeder Vertragspartei nicht ein, die Betriebsbewilligung oder die technische Zulassung eines Luftverkehrsunternehmens oder von Luftverkehrsunternehmen der anderen Vertragspartei in Übereinstimmung mit den Bestimmungen von Artikel 5 (Technische Sicherheit) oder Artikel 6 (Sicherheit der Luftfahrt) dieses Abkommens zurückzuhalten, zu widerrufen, zu beschränken oder Bedingungen aufzuerlegen.

Artikel 3 Erteilung von Rechten

1. Jede Vertragspartei gewährt der anderen Vertragspartei die folgenden Rechte für die Durchführung internationaler Luftverkehrslinien durch die von der anderen Vertragspartei bezeichneten Luftverkehrsunternehmen:

   a. das Recht, ihr Gebiet ohne Landung zu überfliegen;

   b. das Recht, in ihrem Gebiet Landungen für nicht gewerbsmässige Zwecke vorzunehmen; und

   c. das Recht, im Gebiet einer Vertragspartei an den im Anhang zu diesem Abkommen festgelegten Punkten Fluggäste, Gepäck, Fracht und Postsendungen aufzunehmen und abzusetzen, die für Punkte im Gebiet der anderen Vertragspartei bestimmt sind oder von solchen Punkten kommen; und

   d. das Recht, im Gebiet von Drittstaaten an den im Anhang festgelegten Punkten Fluggäste, Gepäck, Fracht und Postsendungen aufzunehmen und abzusetzen, die für Punkte auf dieser festgelegten Strecke im Gebiet der anderen Vertragspartei bestimmt sind oder von solchen Punkten kommen.

2. Keine Bestimmung dieses Artikels berechtigt das bezeichnete Luftverkehrsunternehmen oder die bezeichneten Luftverkehrsunternehmen einer Vertragspartei, auf dem Gebiet der anderen Vertragspartei gegen Entgelt Fluggäste, ihr Gepäck, Fracht oder Postsendungen aufzunehmen, die für einem anderen Punkt im Gebiet dieser anderen Vertragspartei bestimmt sind.

3. Wenn die bezeichneten Luftverkehrsunternehmen einer Vertragspartei aufgrund eines bewaffneten Konfliktes, politischer Unruhen oder Entwicklungen oder besonderer und ungewöhnlicher Umstände nicht in der Lage sind, eine Linie auf der üblicherweise beflogenen Strecke zu betreiben, so bemüht sich die andere Vertragspartei, die Weiterführung einer solchen Linie durch entsprechende Anpassungen solcher Strecken zu erleichtern sowie während der als notwenig erachteten Zeit die Rechte zur Erleichterung eines lebensfähigen Betriebes zu gewähren.

Artikel 4 Anwendung von Gesetzen und Verordnungen

1. Beim Einflug, Aufenthalt oder Wegflug vom Gebiet einer Vertragspartei befolgen die bezeichneten Luftverkehrsunternehmen der anderen Vertragspartei die Gesetze, Verordnungen und Vorschriften, die für den Betrieb und die Navigation von Luftfahrzeugen anwendbar sind.

2. Beim Einflug, Aufenthalt oder Wegflug vom Gebiet einer Vertragspartei befolgen die Fluggäste und Besatzungen und in Bezug auf Fracht oder Luftfahrzeuge die von der anderen Vertragspartei bezeichneten Luftverkehrsunternehmen die Gesetze, Verordnungen und Vorschriften über die Einreise oder Ausreise aus ihrem Gebiet von Fluggästen, Besatzungen, Fracht und Luftfahrzeugen (einschliesslich der Verordnungen und Vorschriften über Einreise, Abfertigung, Flugsicherheit, Einwanderung, Pass-, Zoll- und Quarantänevorschriften oder im Fall von Postsendungen postalische Vorschriften) oder sie werden in ihrem Namen befolgt.

3. Keine Vertragspartei darf ihrem eigenen oder irgend einem anderen Luftverkehrsunternehmen im Vergleich mit einem bezeichneten Luftverkehrsunternehmen der anderen Vertragspartei, das auf gleichartigen internationalen Luftverkehrslinien eingesetzt ist, bei der

Anwendung der Verordnungen über die Einreise, Abfertigung, Flugsicherheit, Einwanderung, Pass-, Zoll- und Quarantänevorschriften, Postverordnungen und gleichartigen Verordnungen eine Vorzugsstellung einräumen.

Artikel 5 Technische Sicherheit

1. Jede Vertragspartei hat die Lufttüchtigkeitszeugnisse, die Fähigkeitszeugnisse und Ausweise, die von der anderen Vertragspartei ausgestellt oder anerkannt wurden und noch gültig sind, für den Betrieb der in diesem Abkommen vorgesehenen internationalen Luftverkehrslinien als gültig anzuerkennen, vorausgesetzt, dass die Anforderungen für diese Zeugnisse oder Ausweise zumindest den Mindestanforderungen entsprechen, die aufgrund des Übereinkommens festgelegt sind. Jede Vertragspartei kann jedoch für Flüge, die gemäss den in Artikel 3 dieses Abkommens (Ausübung von Rechten) gewährten Rechten unternommen werden, die Anerkennung der Gültigkeit von Fähigkeitszeugnissen und Ausweisen verweigern, die ihren eigenen Staatsangehörigen von der anderen Vertragspartei ausgestellt oder als gültig anerkannt worden sind.

2. Jede Vertragspartei kann jederzeit Beratungen über die von der anderen Vertragspartei aufrechterhaltenen Sicherheitsanforderungen verlangen, unter Einschluss von, aber nicht beschränkt auf Sicherheitsanforderungen bezüglich Luftfahrteinrichtungen, Besatzungen, Luftfahrzeugen und deren Betrieb. Solche Beratungen müssen innerhalb von dreissig (30) Tagen nach Erhalt dieses Gesuchs stattfinden.

3. Stellt eine Vertragspartei nach solchen Beratungen fest, dass die andere Vertragspartei die Sicherheitsanforderungen und Erfordernisse in diesen Bereichen, welche mindestens den zu dieser Zeit aufgrund des Übereinkommens festgelegten Anforderungen entsprechen, nicht wirksam aufrechterhält und vollzieht, wird die erste Vertragspartei der anderen Vertragspartei diese Feststellung und die als notwendig erachteten Schritte zur Erfüllung der Mindestanforderungen bekannt geben, und diese andere Vertragspartei hat geeignete Massnahmen zu deren Abhilfe zu ergreifen. Unterlässt es die andere Vertragspartei, innerhalb zumutbarer Zeit oder in jedem Fall innerhalb von fünfzehn (15) Tagen geeignete

Massnahmen zu ergreifen, stellt dies einen Grund dar, Absatz 4 von Artikel 2 (Bezeichnung, Bewilligung und Widerruf) dieses Abkommens anzuwenden.

4. Ungeachtet der in Artikel 33 des Übereinkommens erwähnten Verpflichtungen ist vereinbart, dass jedes Luftfahrzeug, das von einem bezeichneten Luftverkehrsunternehmen oder von bezeichneten Luftverkehrsunternehmen einer Vertragspartei auf Luftverkehrslinien von und nach dem Gebiet der anderen Vertragspartei betrieben wird, von den zuständigen Vertretern der anderen Vertragspartei irgendeiner Überprüfung an Bord und um das Luftfahrzeug herum unterzogen werden kann, während es sich im Gebiet dieser anderen Vertragspartei aufhält, um die Gültigkeit der Luftfahrzeugdokumente und derjenigen der Besatzungen und den sichtbaren Zustand des Luftfahrzeuges und seiner Ausrüstung (in diesem Artikel „Rampinspektion“ genannt) abzuklären, vorausgesetzt, dass dies zu keiner ungebührlichen Verzögerung führt.

5. Wenn irgendeine solche Rampinspektion oder eine Serie von Rampinspektionen Anlass gibt zu:

   a. ernsthaften Bedenken, dass ein Luftfahrzeug oder der Betrieb eines Luftfahrzeuges nicht den zu dieser Zeit aufgrund des Übereinkommens festgelegten Mindestanforderungen entspricht, oder

   b. ernsthaften Bedenken, dass ein Mangel an wirksamer Aufrechterhaltung und am Vollzug der zu dieser Zeit aufgrund des Übereinkommens festgelegten Sicherheitsanforderungen besteht,

   steht es der Vertragspartei, welche die Inspektion ausführt, zum Zwecke von Artikel 33 des Übereinkommens frei anzunehmen, dass die Erfordernisse, nach welchen die Zeugnisse oder Ausweise für dieses Luftfahrzeug oder für die Besatzung dieses Luftfahrzeuges ausgestellt oder anerkannt worden sind oder die Erfordernisse, nach welchen dieses Luftfahrzeug betrieben wird, nicht den Mindestanforderungen entsprechen oder höher sind als diejenigen, welche in Übereinstimmung mit dem Übereinkommen aufgestellt sind.

6. Für den Fall, dass der Zutritt im Rahmen einer Rampinspektion eines Luftfahrzeuges, das von einem bezeichneten Luftverkehrsunternehmen

oder von bezeichneten Luftverkehrsunternehmen einer Vertragspartei in Übereinstimmung mit Absatz 4 dieses Artikels betrieben wird, vom Vertreter dieses bezeichneten Luftverkehrsunternehmens oder dieser bezeichneten Luftverkehrsunternehmen verweigert wird, steht es der anderen Vertragspartei frei anzunehmen, dass ernsthafte Bedenken der in Absatz 5 dieses Artikels erwähnten Art vorhanden sind, und sie kann die in diesem Absatz vorgesehenen Schlussfolgerungen ziehen.

7. Jede Vertragspartei behält sich vor, die Betriebsbewilligung eines bezeichneten Luftverkehrsunternehmens oder bezeichneter Luftverkehrsunternehmen der anderen Vertragspartei sofort auszusetzen oder abzuändern für den Fall, dass die erste Vertragspartei aufgrund der Rampinspektion, einer Serie von Rampinspektionen, einer Zutrittsverweigerung zur Vornahme einer Rampinspektion, von Gesprächen oder anderweitig zum Schluss kommt, dass dringliche Massnahmen zur Sicherheit des Betriebes eines Luftverkehrsunternehmens erforderlich sind.

8. Jede in Übereinstimmung mit den Absätzen 3 oder 7 dieses Artikels von einer Vertragspartei getroffene Massnahme wird aufgehoben, sobald die Gründe, welche diese Massnahme ausgelöst haben, nicht mehr gegeben sind.

Artikel 6 Sicherheit der Luftfahrt

1. In Übereinstimmung mit ihren Rechten und Pflichten nach internationalem Recht bekräftigen die Vertragsparteien, dass ihre gegenseitige Verpflichtung, die Sicherheit der Zivilluftfahrt gegen widerrechtliche Eingriffe zu schützen, Bestandteil dieses Abkommens bildet. Ohne die Gesamtheit ihrer Rechte und Pflichten nach internationalem Recht zu beschränken, handeln die Vertragsparteien insbesondere in Übereinstimmung mit den Bestimmungen des Abkommens über strafbare und bestimmte andere an Bord von Luftfahrzeugen begangene Handlungen, unterzeichnet am 14. September 1963 in Tokio, des Übereinkommens zur Bekämpfung der widerrechtlichen Inbesitznahme von Luftfahrzeugen, unterzeichnet am 16. Dezember 1970 in Den Haag, des Übereinkommens zur Bekämpfung widerrechtlicher Handlungen

gegen die Sicherheit der Zivilluftfahrt, unterzeichnet am 23. September 1971 in Montreal, des Zusatzprotokolls zur Bekämpfung gewalttätiger Handlungen auf Flughäfen, die der internationalen Zivilluftfahrt dienen, unterzeichnet am 24. Februar 1988 in Montreal, sowie aller weiteren mehrseitigen Abkommen, welche die Sicherheit der Zivilluftfahrt regeln und die beiden Vertragsparteien verpflichten.

2. Die Vertragsparteien gewähren sich gegenseitig auf Ersuchen hin jede erforderliche Unterstützung, um Handlungen zur widerrechtlichen Inbesitznahme von Luftfahrzeugen und andere widerrechtliche Handlungen gegen die Sicherheit solcher Luftfahrzeuge, ihrer Fluggäste und Besatzungen, gegen Flughäfen und Einrichtungen der Flugsicherung sowie jede andere Bedrohung der Sicherheit der Zivilluftfahrt zu verhindern.

3. Die Vertragsparteien handeln in ihren gegenseitigen Beziehungen in Übereinstimmung mit den von der Internationalen Zivilluftfahrt-Organisation aufgestellten und als Anhänge zum Übereinkommen bezeichneten Sicherheitsbestimmungen, soweit solche Sicherheitsbestimmungen und Erfordernisse für die Vertragsparteien anwendbar sind.

4. Die Vertragsparteien verlangen, dass bei ihnen eingetragene Luftfahrzeughalter oder Luftfahrzeugbetreiber, die den Hauptsitz ihrer geschäftlichen Tätigkeiten oder ihren dauernden Aufenthalt in ihrem Gebiet haben, und Flughafenhalter in ihrem Gebiet in Übereinstimmung mit solchen Bestimmungen über die Sicherheit der Luftfahrt handeln.

5. Jede Vertragspartei erklärt sich damit einverstanden, dass solche Luftfahrzeugbetreiber zur Einhaltung der in den Absätzen 3 und 4 dieses Artikels aufgeführten Bestimmungen über die Sicherheit der Luftfahrt aufgefordert werden können, die von der anderen Vertragspartei für die Einreise, die Ausreise oder den Aufenthalt im Gebiet dieser anderen Vertragspartei verlangt werden. Jede Vertragspartei stellt sicher, dass in ihrem Gebiet zweckmässige Massnahmen wirkungsvoll angewandt werden, um Luftfahrzeuge zu schützen und Fluggäste, Besatzungen, Handgepäck, Gepäck, Fracht und Bordvorräte vor und während des Besteigens der Luftfahrzeuge oder der Beladung zu kontrollieren. Jede Vertragspartei überprüft des Weiteren wohlwollend jedes Begehren der

anderen Vertragspartei für vernünftige Sondersicherheitsmassnahmen, um eine bestimmte Gefahr abzuwenden.

6. Bei einem Zwischenfall oder der Gefahr eines Zwischenfalls einer widerrechtlichen Inbesitznahme eines zivilen Luftfahrzeuges oder bei anderen widerrechtlichen Handlungen gegen die Sicherheit solcher Luftfahrzeuge, ihrer Fluggäste und Besatzungen, der Flughäfen oder Flugsicherungsanlagen unterstützen sich die beiden Vertragsparteien gegenseitig, indem sie die Kommunikation und andere zweckmässige Massnahmen erleichtern, die geeignet sind, einen solchen Zwischenfall oder eine solche Bedrohung schnell und sicher zu beenden, unter Berücksichtigung eines möglichst geringen Risikos für Leib und Leben.

7. Wenn eine Vertragspartei vernünftige Gründe zur Annahme hat, dass die andere Vertragspartei von den Sicherheitsbestimmungen dieses Artikels abweicht, können die Luftfahrtbehörden der ersten Vertragspartei um sofortige Beratung mit den Luftfahrtbehörden der anderen Vertragspartei nachsuchen. Kommt keine zufrieden stellende Einigung innerhalb von fünfzehn (15) Tagen vom Zeitpunkt eines solchen Gesuches zustande, stellt dies einen Grund für die Anwendung von Absatz 4 des Artikels 2 dieses Abkommens (Bezeichnung, Bewilligung und Widerruf) dar. Wenn eine Notlage dies erfordert, kann eine Vertragspartei vor Ablauf der fünfzehn (15) Tage Massnahmen nach Absatz 4 von Artikel 2 (Bezeichnung, Bewilligung und Widerruf) ergreifen. Jede Massnahme, die in Überstimmung mit diesem Absatz getroffen wird, wird aufgehoben, wenn die andere Vertragspartei die Sicherheitsbestimmungen dieses Artikels befolgt.

8. Die Luftfahrtbehörden einer Vertragspartei können mit den Luftfahrtbehörden der anderen Vertragspartei sofort Beratungen über Sicherheit der Luftfahrt verlangen.

Artikel 7 Leasing

1. Die bezeichneten Luftverkehrsunternehmen jeder Vertragspartei können Luftfahrzeuge (oder Luftfahrzeuge und Besatzungen) von jedem Unternehmen, einschliesslich von anderen Luftverkehrsunternehmen,

leasen, vorausgesetzt, dass dies nicht dazu führt, dass ein Luftverkehrsunternehmen Verkehrsrechte ausübt, welche ihm nicht zustehen, und vorausgesetzt, dass das geleaste Luftfahrzeug und die Besatzung die Artikel 5 (Technische Sicherheit) und Artikel 6 (Sicherheit der Luftfahrt) einhalten.

2. Es ist keine Voraussetzung für eine der Vertragsparteien, dass das Unternehmen oder das Luftverkehrsunternehmen (der Leasinggeber), der das Luftfahrzeug verleast, berechtigt ist, Verkehr von oder nach dem Gebiet einer der Vertragsparteien zu befördern.

Artikel 8 Benützungsgebühren

1. Gebühren, die im Gebiet einer der Vertragsparteien für den Betrieb eines Luftverkehrsunternehmens oder der Luftverkehrsunternehmen, welche von der anderen Vertragspartei für die Benutzung der dem öffentlichen Verkehr zugänglichen Flughäfen und anderer Einrichtungen für die Luftfahrt im Gebiet der ersten Vertragspartei bezeichnet worden sind, erhoben werden, haben gerecht und angemessen zu sein und werden in Übereinstimmung mit einheitlichen Bedingungen erhoben, die ohne Diskriminierung bezüglich der Nationalität des fraglichen Luftfahrzeuges anwendbar sind.

2. Jede Vertragspartei ermuntert die Gebühren erhebenden Behörden und Organe in ihrem Gebiet, sich mit den bezeichneten Luftverkehrsunternehmen, welche die Dienstleistungen und Einrichtungen in Anspruch nehmen, zu beraten, und sie benachrichtigt diese in angemessener Weise über alle vorgeschlagenen Änderungen bezüglich Benützungsgebühren. Die Vertragsparteien ermuntern die Gebühren erhebenden Behörden und die bezeichneten Luftverkehrsunternehmen ebenfalls, solche Informationen auszutauschen, welche es erlauben, eine präzise Einschätzung der Angemessenheit der Gebühren zu erstellen.

3. Angemessene Gebühren widerspiegeln die vollen Kosten, welche bei den Gebühren erhebenden Behörden für das Bereitstellen der entsprechenden Dienste und Einrichtungen entstehen, unter Einschluss einer vernünftigen Anlagerendite nach Abschreibungen.

Artikel 9 Statistische Angaben

1. Die Luftfahrtbehörden einer Vertragspartei können von einem bezeichneten Luftverkehrsunternehmen der anderen Vertragspartei verlangen, Statistiken über den auf den vereinbarten Linien durch dieses bezeichnete Luftverkehrsunternehmen beförderten Verkehr zu übermitteln.

2. Die Luftfahrtbehörden jeder Vertragspartei können die Art der Statistiken bestimmen, die unter dem vorangehenden Absatz zur Übermittlung verlangt werden, und sie wenden diese Erfordernisse auf der Grundlage der Nichtdiskriminierung an.

Artikel 10 Befreiung von Abgaben und anderen Gebühren

1. Die vom bezeichneten oder von den bezeichneten Luftverkehrsunternehmen einer Vertragspartei auf den internationalen Luftverkehrslinien eingesetzten Luftfahrzeuge sind von allen Einfuhrbeschränkungen, Zollabgaben, Verbrauchssteuern und ähnlichen Gebühren und Abgaben, die von den nationalen Behörden auferlegt werden, befreit. Ersatzteile und ordentliche Bordausrüstung für die Instandstellung, den Unterhalt oder die Wartung solcher Luftfahrzeuge sind ebenfalls befreit.

2. Die folgenden Gegenstände sind von allen Einfuhrbeschränkungen, Zollabgaben, Verbrauchssteuern und ähnlichen, von den nationalen Behörden auferlegten Gebühren und Abgaben befreit, ob sie von einem bezeichneten Luftverkehrsunternehmen einer Vertragspartei in das Gebiet der anderen Vertragspartei eingeführt werden oder einem bezeichneten Luftverkehrsunternehmen einer Vertragspartei im Gebiet der anderen Vertragspartei bereitgestellt werden. Diese Befreiungen kommen auch zur Anwendung, wenn diese Vorräte auf demjenigen Teil der Reise verbraucht werden, der über dem Gebiet der anderen Vertragspartei ausgeführt wird, in welchem sie an Bord genommen wurden:

a. die Bordvorräte (unter Einschluss von, aber nicht beschränkt auf solche Gegenstände wie Lebensmittel, Getränke und Tabak), ob eingeführt oder im Gebiet der anderen Vertragspartei an Bord genommen;

b. die Treib- und Schmierstoffe (unter Einschluss von hydraulischen Flüssigkeiten) und verbrauchbare technische Vorräte;

c. die Ersatzteile, einschliesslich Motoren;

vorausgesetzt in jedem Fall, dass sie für den Gebrauch an Bord von Luftfahrzeugen in Verbindung mit der Errichtung oder der Aufrechterhaltung einer internationalen Luftverkehrslinie durch das betroffene bezeichnete Luftverkehrsunternehmen bestimmt sind.

3. Die in diesem Artikel vorgesehenen Befreiungen sind nicht auf Gebühren anwendbar, die auf den Kosten für Dienstleistungen beruhen, die an die bezeichneten Luftverkehrsunternehmen einer Vertragspartei im Gebiet der anderen Vertragspartei erbracht werden.

4. Die ordentliche Bordausrüstung sowie Ersatzteile (unter Einschluss von Motoren), Vorräte an Treibstoffen, Schmierstoffen (unter Einschluss von hydraulischen Flüssigkeiten) und andere in Absatz 1 und 2 dieses Artikels erwähnte Gegenstände, die sich an Bord der von den bezeichneten Luftverkehrsunternehmen einer Vertragspartei eingesetzten Luftfahrzeuge befinden, können im Gebiet der anderen Vertragspartei nur mit Zustimmung der Zollbehörden dieser Vertragspartei ausgeladen werden. Bordvorräte, die für den Verbrauch auf den Linien der bezeichneten Luftverkehrsunternehmen vorgesehen sind, können in jedem Fall ausgeladen werden. Die in den Absätzen 1 und 2 dieses Artikels erwähnte Ausrüstung und Vorräte können unter die Aufsicht oder Kontrolle der entsprechenden Behörden gestellt werden, bis sie wieder ausgeführt werden oder bis darüber in Übereinstimmung mit den Zollgesetzen und Verfahren dieses Vertragspartei verfügt worden ist.

5. Werbematerial ohne kommerziellen Wert, das vom bezeichneten oder von den bezeichneten Luftverkehrsunternehmen einer Vertragspartei im Gebiet der anderen Vertragspartei gebraucht wird, ist von allen Einfuhrbeschränkungen, Zollabgaben, Verbrauchssteuern und ähnlichen Gebühren und Abgaben, die von den nationalen Behörden erhoben

werden, befreit.

6. Die in diesem Artikel vorgesehene Befreiung kommt auch in denjenigen Fällen zur Anwendung, in denen das bezeichnete oder die bezeichneten Luftverkehrsunternehmen einer Vertragspartei mit einem anderen Luftverkehrsunternehmen oder anderen Luftverkehrsunternehmen Vereinbarungen über die Leihe oder die Überführung der in den Absätzen 1 und 2 dieses Artikels aufgeführten Gegenstände ins Gebiet der anderen Vertragspartei abgeschlossen haben, vorausgesetzt, dass einem solchen anderen Luftverkehrsunternehmen oder solchen anderen Luftverkehrsunternehmen von der anderen Vertragspartei ebenfalls derartige Erleichterungen gewährt werden.

7. Fluggäste, mitgeführtes Gepäck und Fracht, die sich im direktem Durchgang durch das Gebiet einer der Vertragsparteien befinden und die für diesen Zweck vorbehaltene Zone des Flughafens nicht verlassen, werden keiner Überprüfung unterzogen, ausgenommen aus Gründen der Flugsicherheit, zur Betäubungsmittelkontrolle oder unter speziellen Umständen. Gepäck und Fracht in direktem Durchgang sind von Zollgebühren und anderen ähnlichen Steuern befreit.

Artikel 11 Tarife

1. Jede Vertragspartei gestattet jedem bezeichneten Luftverkehrsunternehmen, seine eigenen Tarife für die Beförderung des Verkehrs zu bestimmen.

2. Sofern nicht nationale Gesetze und Verordnungen es erfordern, verlangen die Luftfahrtbehörden der Vertragsparteien nicht, dass ihnen die Tarife, die von den bezeichneten Luftverkehrsunternehmen in Rechnung gestellt werden, unterbreiten werden.

3. Die von den bezeichneten Luftverkehrsunternehmen in Rechnung gestellten Tarife unterstehen den Wettbewerbs- und Konsumentengesetzen der beiden Vertragsparteien.

Artikel 12 Beförderungsangebot

1. Die bezeichneten Luftverkehrsunternehmen geniessen beim Betrieb der vereinbarten Linien, die von diesem Abkommen erfasst werden, gleiche und angemessene Möglichkeiten.

2. Das Beförderungsangebot, welches von den bezeichneten Luftverkehrsunternehmen jeder Vertragspartei auf Luftverkehrslinien für die Beförderung von internationalem Verkehr von und nach dem Gebiet der anderen Vertragspartei in Übereinstimmung mit Absatz 1 (c) und (d) von Artikel 3 dieses Abkommens angeboten wird, ist so, wie es zwischen den Luftfahrtbehörden der Vertragsparteien bestimmt wurde.

Artikel 13 Geschäftstätigkeit

1. Jede Vertragspartei unternimmt alle geeigneten Massnahmen innerhalb ihrer Zuständigkeit, um alle Formen von Diskriminierung oder unfairen Wettbewerbspraktiken auszuschalten, welche die Wettbewerbsstellung der bezeichneten Luftverkehrsunternehmen der anderen Vertragspartei bei der Ausübung ihrer in diesem Abkommen vereinbarten Rechte und Ansprüche nachteilig beeinflussen, unter Einschluss von, aber nicht beschränkt auf Einschränkungen des Verkaufs von Luftbeförderungen, die Bezahlung von Gütern, Dienstleistungen oder Transaktionen oder die Rückführung von überschüssigen Devisen durch die bezeichneten Luftverkehrsunternehmen.

2. In dem Ausmass, wie die Luftfahrtbehörden einer Vertragspartei glauben, dass ihre bezeichneten Luftverkehrsunternehmen der Diskriminierung oder unfairen Praktiken ausgesetzt sind, teilen sie dies den Luftfahrtbehörden der anderen Vertragspartei mit. Beratungen, welche auf diplomatischem Weg erfolgen können, sind baldmöglichst nach erfolgter Mitteilung aufzunehmen, ausser die erste Vertragspartei ist befriedigt, dass die Angelegenheit in der Zwischenzeit gelöst wurde.

3. Die bezeichneten Luftverkehrsunternehmen jeder Vertragspartei haben in Übereinstimmung mit den Gesetzen und Verordnungen der anderen Vertragspartei über die Einreise, den Aufenthalt und die Beschäftigung das Recht, in das Gebiet der anderen Vertragspartei leitendes und anderes hoch qualifiziertes und spezialisiertes Personal, welches für die Bereitstellung des Luftverkehrs notwendig ist, zu bringen und zu

beschäftigen.

4. Die bezeichneten Luftverkehrsunternehmen jeder Vertragspartei haben in Übereinstimmung mit den anwendbaren nationalen Gesetzen und Verordnungen der anderen Vertragspartei das Recht, im Gebiet der anderen Vertragspartei zum Zwecke des Anbietens, der Förderung und des Verkaufs von Luftverkehrsdiensten Büros, Vertretungen und/oder Zweigniederlassungen zu errichten. Jedes bezeichnete Luftverkehrsunternehmen hat das Recht, sich am Verkauf von Beförderungen im Gebiet der anderen Vertragspartei direkt und, nach seinem Belieben, mittels Agenten zu beteiligen. Jedes bezeichnete Luftverkehrsunternehmen ist berechtigt, zu diesem Zweck seine eigenen Beförderungsscheine zu gebrauchen.

5. Die bezeichneten Luftverkehrsunternehmen jeder Vertragspartei sind berechtigt, Beförderungen in lokalen oder frei konvertierbaren Währungen zu verkaufen und ihre Geldmittel in jede frei konvertierbare Währung umzurechnen und diese nach Belieben aus dem Gebiet der anderen Vertragspartei zu überweisen. Unter Vorbehalt der nationalen Gesetze und Verordnungen und der Politik der anderen Vertragspartei ist die Umrechnung und Überweisung der Geldmittel, die im üblichen Rahmen ihres Betriebes erworben werden, zu den Sätzen des offiziellen Devisenkurses zulässig, welcher zum Zeitpunkt der Einreichung der Gesuche um die Umrechnung oder Überweisung für Zahlungen anwendbar ist, und sie unterliegt mit Ausnahme normaler Dienstleistungsgebühren, welche für solche Transaktionen gelten, keinerlei Gebühren.

6. Die bezeichneten Luftverkehrsunternehmen jeder Vertragspartei haben das Recht, nach eigenem Belieben lokale Ausgaben, unter Einschluss von Treibstoffkäufen, im Gebiet der anderen Vertragspartei in lokaler Währung zu bezahlen oder, soweit dies örtlichen Währungsvorschriften entspricht, in frei konvertierbaren Währungen.

7. Jedes bezeichnete Luftverkehrsunternehmen hat das Recht, nach seinem Belieben im Gebiet der anderen Vertragspartei in Übereinstimmung mit den inländischen Gesetzen und Verordnungen der anderen Vertragspartei seine eigene Bodenabfertigung durchzuführen oder einen Mitbewerber seiner Wahl ganz oder teilweise für solche Dienste unter Vertrag zu

nehmen, unter Einschluss aller anderen Luftverkehrsunternehmen, welche solche Bodenabfertigungsdienste als Ganzes oder teilweise betreiben. Diese Rechte unterliegen Beschränkungen, die auf Sicherheits- oder personenschutzbezogenen Überlegungen von Seiten des Flughafens beruhen. Falls solche Überlegungen die Eigenabfertigung eines bezeichneten Luftverkehrsunternehmens ausschliessen oder es nicht zulassen, dass ein Mitbewerber eigener Wahl für Bodenabfertigungsdienste unter Vertrag genommen werden kann, sind diese Dienste diesem bezeichneten Luftverkehrsunternehmen auf der Grundlage der Nichtdiskriminierung mit allen anderen Luftverkehrsunternehmen verfügbar zu machen.

Artikel 14 Unterbreitung der Flugpläne

Jede Vertragspartei kann verlangen, dass die von den bezeichneten Luftverkehrsunternehmen der anderen Vertragspartei vorgesehenen Flugpläne ihren Luftfahrtbehörden in Übereinstimmung mit ihren nationalen Gesetzen und Verordnungen mitgeteilt werden.

Artikel 15 Beratungen

1. Jede Vertragspartei kann jederzeit Beratungen über die Umsetzung, Auslegung, Anwendung oder die Änderung dieses Abkommens verlangen.

2. Mit Ausnahme anderweitiger Regelungen in den Artikeln 5 (Technische Sicherheit) und 6 (Sicherheit der Luftfahrt) beginnen solche Beratungen, die durch Gespräche oder Korrespondenz geführt werden können, innerhalb einer Frist von sechzig (60) Tagen vom Zeitpunkt des Erhalts eines solchen Begehrens, sofern nicht gegenseitig etwas anderes entschieden wird.

Artikel 16 Änderung des Abkommens

1. Unter Vorbehalt von Absatz 3 kann dieses Abkommen durch schriftliche Vereinbarung zwischen den Vertragsparteien geändert oder überarbeitet

werden.

2. Jede solche Änderung oder Überarbeitung tritt zu dem Zeitpunkt in Kraft, an welchem sich die Vertragsparteien gegenseitig schriftlich mitgeteilt haben, dass die entsprechenden Erfordernisse für das Inkrafttreten einer Änderung oder Überarbeitung erfüllt sind.

3. Änderungen des Anhanges zu diesem Abkommen können direkt zwischen den Luftfahrtbehörden der beiden Vertragsparteien vereinbart werden. Sie sind vom Zeitpunkt an vorläufig anwendbar, an dem sie vereinbart wurden und treten in Kraft, nachdem sie durch einen Austausch diplomatischer Noten bestätigt worden sind.

4. Falls ein mehrseitiges Übereinkommen über den Luftverkehr für beide Vertragsparteien in Kraft tritt, gilt dieses Abkommen soweit als geändert, dass es mit den Bestimmungen dieses Übereinkommens übereinstimmt.

Artikel 17 Beilegung von Meinungsverschiedenheiten

1. Jede Meinungsverschiedenheit über die Auslegung oder Anwendung dieses Abkommens, die nicht durch Verhandlungen zwischen den Vertragsparteien gelöst werden kann, sei es durch Gespräche, Korrespondenz oder auf diplomatischem Weg, wird auf Ersuchen einer Vertragspartei einem Schiedsgericht unterbreitet.

2. Innerhalb einer Frist von sechzig (60) Tagen vom Zeitpunkt des Erhalts durch eine Vertragspartei einer auf diplomatischem Weg erfolgten Note der anderen Vertragspartei, welche den Entscheid über die Meinungsverschiedenheit durch eine Schiedsgericht verlangt, bezeichnet jede Vertragspartei einen Schiedsrichter. Innerhalb einer Frist von sechzig (60) Tagen nach der Bezeichnung des letztbezeichneten Schiedsrichters bezeichnen die beiden Schiedsrichter einen Vorsitzenden, der Angehöriger eines Drittstaates ist. Wenn nach Ablauf von sechzig (60) Tagen, nachdem eine der Vertragsparteien ihren Schiedsrichter bezeichnet hat, die andere Vertragspartei den ihrigen nicht bezeichnet hat, oder wenn sich innerhalb einer Frist von sechzig (60) Tagen nach der Bezeichnung des zweiten Schiedsrichters die beiden Schiedsrichter über die Wahl des Vorsitzenden nicht einig werden, kann jede Vertragspartei

den Präsidenten des Rates der Internationalen Zivilluftfahrt-Organisation ersuchen, einen Schiedsrichter oder mehrere Schiedsrichter zu bezeichnen, wie immer es der Fall erfordert. Wenn der Präsident des Rates die gleiche Nationalität wie eine der Vertragsparteien besitzt, nimmt der dienstälteste Vizepräsident, welcher nicht aus demselben Grund ausfällt, die Bezeichnung vor.

3. Das Schiedsgericht bestimmt seine Verfahrensvorschriften selbst.

4. Dieses Gericht bemüht sich, seinen schriftlichen Entscheid innerhalb von dreissig (30) Tagen nach Abschluss der Anhörung abzugeben, oder, wenn keine Anhörung stattfindet, nach dem Zeitpunkt, an dem beide Antworten eingereicht wurden. Der Entscheid wird mit Mehrheitsbeschluss gefällt.

5. Die Vertragsparteien können innerhalb von fünfzehn (15) Tagen nach Erhalt des Entscheides Anfragen zur Klarstellung unterbreiten, und eine solche Klarstellung ist innerhalb von fünfzehn (15) Tagen nach einem solchem Begehren abzugeben.

6. Jeder schiedsgerichtliche Entscheid, der in Anwendung dieses Artikels erfolgt, ist für die beiden Vertragsparteien bindend.

7. Jede Vertragpartei bezahlt die Auslagen des von ihr bezeichneten Schiedsrichters. Die verbleibenden Kosten des Schiedsgerichtes werden gleichmässig zwischen den Vertragparteien aufgeteilt.

8. Wenn und solange sich eine Vertragspartei nicht einem nach Absatz 6 dieses Artikels gefällten Entscheid unterzieht, kann die andere Vertragspartei alle Rechte oder Vorrechte, welche sie aufgrund dieses Abkommens der säumigen Vertragspartei gewährt hat, beschränken, aussetzen oder widerrufen, wobei sie die andere Vertragspartei über ihren Entscheid informiert.

Artikel 18 Kündigung

1. Jede Vertragspartei kann der anderen Vertragspartei jederzeit schriftlich ihren Entschluss zur Kündigung dieses Abkommens anzeigen. Eine solche

Anzeige ist gleichzeitig der Internationalen Zivilluftfahrt-Organisation (ICAO) mitzuteilen. Das Abkommen endet um Mitternacht (am Ort des Erhalts der Mitteilung an die andere Vertragspartei) unmittelbar vor dem ersten Jahrestag des Zeitpunktes des Erhalts der Mitteilung durch die andere Vertragspartei, sofern die Mitteilung nicht im Einvernehmen der Vertragsparteien vor Ende dieser Frist zurückgezogen wird.

2. Liegt keine Empfangsanzeige der Kündigungsmitteilung der anderen Vertragspartei vor, wird angenommen, dass ihr die Kündigung vierzehn (14) Tage nach dem Zeitpunkt zugekommen ist, an dem die ICAO davon Kenntnis erhalten hat.

Artikel 19 Hinterlegung bei der Internationalen Zivilluftfahrt-Organisation

Dieses Abkommen und jede Änderung dazu werden bei der Internationalen Zivilluftfahrt-Organisation hinterlegt.

Artikel 20 Inkrafttreten

1. Dieses Abkommen tritt in Kraft, sobald sich die Vertragsparteien einander schriftlich mitgeteilt haben, dass die entsprechenden Erfordernisse für das Inkrafttreten dieses Abkommens erfüllt sind.

2. Mit dem Inkrafttreten dieses Abkommens wird das Abkommen zwischen dem Schweizerischen Bundesrat und der Regierung von Australien über den Luftlinienverkehr, unterzeichnet am 17. Oktober 1990 in Canberra, aufgehoben.

Zu Urkund dessen haben die durch ihre Regierungen entsprechend bevollmächtigten Unterzeichnenden dieses Abkommen unterzeichnet.

Geschehen in doppelter Urschrift in Canberra am 28. November 2008, in englischer und deutscher Sprache, wobei beide Wortlaute gleichermassen verbindlich sind. Im Falle von Meinungsverschiedenheiten geht der englische Text vor.

Für die Regierung von Australien	Für den Schweizerischen Bundesrat
Michael John Taylor	Daniel Woker
Generalsekretär im Departement für Infrastruktur, Transporte, Regionale Entwicklung und Kommunalregierung	Botschafter

A N H A N G

Linienpläne

Abschnitt I

Strecken, die von dem/den bezeichneten Luftverkehrsunternehmen der Schweiz in einer oder beiden Richtungen betrieben werden:

Punkte in der Schweiz	Zwischenlandepunkte	Punkte in Australien	Punkte darüber hinaus
Jeder Punkt	Jeder Punkt	Jeder Punkt	Jeder Punkt

Abschnitt II

Strecken, die von dem/den bezeichneten Luftverkehrsunternehmen Australiens in einer oder beiden Richtungen betrieben werden:

Punkte in Australien	Zwischenlandepunkte	Punkte in der Schweiz	Punkte darüber hinaus
Jeder Punkt	Jeder Punkt	Jeder Punkt	Jeder Punkt

Anmerkungen:

1. Punkte auf den festgelegten Strecken können nach Belieben der betroffenen bezeichneten Luftverkehrsunternehmen auf allen oder einem Teil der Flüge ausgelassen werden, vorausgesetzt, dass die Luftverkehrslinie entweder an einem Punkt im Gebiet der Vertragspartei, die das Luftverkehrsunternehmen bezeichnet, beginnt oder dort endet.

2. Die bezeichneten Luftverkehrsunternehmen können nach Belieben auf allen oder einem Teil der Flüge:

    a. verschiedene Flugnummern bei der Durchführung eines Fluges

kombinieren; und

b. Verkehr von jedem ihrer Luftfahrzeuge zu jedem ihrer Luftfahrzeuge an allen Punkte

3. Jedes bezeichnete Luftverkehrsunternehmen kann auf jedem Abschnitt oder auf allen Abschnitten der festgelegten Strecken die vereinbarten Linien durchführen, einschliesslich mit anderen Luftverkehrsunternehmen gestützt auf Code-Share- und andere zusammenwirkende Marketing-Vereinbarungen, ohne irgendwelche Einschränkung mit Bezug auf den Wechsel des eingesetzten Luftfahrzeugtyps an jedem Punkt auf der Strecke.

4. Zwischenlandepunkte und Punkte darüber hinaus, die nicht in den obigen Strecken aufgeführt sind, können nach Belieben der bezeichneten Luftverkehrsunternehmen bedient werden, vorausgesetzt, dass kein Verkehr zwischen diesen Punkten und Punkten im Gebiet der anderen Vertragspartei aufgenommen oder abgesetzt wird.

5. Die Verkehrsrechte, die ausgeübt werden, sind so, wie sie zwischen den Luftfahrtbehörden der Vertragsparteien von Zeit zu Zeit vereinbart werden.

National Interest Analysis [2010] ATNIA 16

with attachment on consultation

Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services
Canberra, 28 November 2008

[2008] ATNIF 22

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services,
done at Canberra on 28 November 2008
[2008] ATNIF 22

Nature and timing of proposed treaty action

1. The treaty action proposed is the entry into force of the *Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services* (the Agreement).

2. The Agreement was signed on 28 November 2008.

3. Article 20 specifies that the Agreement will enter into force when the Parties have notified each other in writing that their respective internal procedures for its entry into force have been satisfied. Subject to the Joint Standing Committee on Treaties (JSCOT) issuing a report on the proposed treaty action, the Australian Government will provide its notification to the Swiss Federal Council under Article 20 as soon as practicable after the Agreement has been tabled in both Houses of Parliament for 15 sitting days.

4. Upon entry into force, the Agreement will supersede the *Agreement between the Government of Australia and the Government of the Swiss Federal Council relating to Civil Air Transport* ([1993] ATS 9). Aviation arrangements of less than treaty status, in the form of a Memorandum of Understanding (MOU) signed in June 2003, have preceded the Agreement. In accordance with customary international law and established Australian practice these arrangements have included applying the provisions of the Agreement, pending the completion of domestic requirements, before the Agreement is brought into force.

Overview and national interest summary

5. The purpose of the Agreement is to allow air services to operate between Australia and Switzerland, which will facilitate trade and tourism between the two countries through freight and passenger transportation and provide greater air travel options for consumers.

Reasons for Australia to take the proposed treaty action

6. The Agreement provides an updated framework for the operation of scheduled air services between Australia and Switzerland by the designated airlines of both countries.

7. This framework improves access for Australian airlines to the Australia-Switzerland aviation market and provides for the development of air services between the two countries based on capacity levels decided from time to time between the aeronautical authorities of the Parties. The Agreement removes restrictions on the number of Australian and Swiss airlines that can enter the market and allows airlines to serve any international airport in Australia. The Agreement increases opportunities for Australian business interests, in particular the tourism and export industries, to develop and market products.

Obligations

8. Australia and Switzerland are both parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention).

9. The Agreement obliges the Parties to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on specified routes in accordance with the provisions of the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

10. Article 2 of the Agreement allows each Party to designate as many airlines as they wish to operate the agreed services and obliges each Party to grant the necessary operating authorisations without delay. Either Party may revoke, suspend or limit authorisation of an airline's operations if the airline does not comply with conditions. Authorisations may also be revoked or limited if either Party is not satisfied that a designated airline of the other Party is incorporated and has its principle place of business in the territory of the other Party, or if airline operations are not in accordance with the Agreement.

11. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the rights to overfly its territory, to make stops in its territory for non-traffic purposes and to embark and disembark passengers, baggage, cargo and mail in its territory. It also allows the designated airlines of one party to fly to third countries from the territory of the other party, as provided for in the route schedules in the Annex. Article 3 obliges the parties to use their best efforts to facilitate continued operation of air services if conflict or other disruptions prevent the other Party's airlines from operating the agreed services.

12. Article 4 of the Agreement provides that each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Party. Article 4 also provides that each Party's laws, regulations and rules shall be complied with as they relate to the operation and navigation of aircraft as well as the admission to or departure from its territory of passengers, crew, cargo and aircraft shall be complied with. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.

13. Under Article 5, each Party is required to recognise the validity of certificates of airworthiness, competency and licences issued by the other Party provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Party may request consultations at any time concerning safety standards maintained by the other Party. Each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the aircraft equipment and the condition of the aircraft conform to ICAO standards. Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.

14. Under Article 6, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. Each Party may require that the designated airlines of the other Party observe its aviation security provisions for entry into, departure from or sojourn in the territory of that Party and take adequate measures to protect the aircraft and to inspect passengers, crew and carry-on items, as well as baggage, cargo and aircraft stores prior to and during boarding or loading. Article 6 also provides that each Party shall have the right to request immediate consultations with the aeronautical authorities of the other Party and, in case of emergency, to withhold, suspend, revoke or limit authorisations of other Party's airlines if there are grounds to believe that provisions of Article 6 are not being complied with by the other Party.

15. Article 7 provides that the designated airlines of both Parties may lease aircraft (or aircraft and crew) from any company, providing the leased aircraft and crew comply with the aviation safety and security provisions of this Agreement and an airline does not exercise any traffic rights to which it is not entitled.

16. Article 8 requires that the charges imposed on designated airlines by the charging authorities for the use of aviation facilities be just, reasonable and non-discriminatory in relation to the nationality of the aircraft concerned.

17. Article 9 provides that the aeronautical authorities of each Party may require a designated airline of the other Party to provide statements of statistics related to the traffic carried on the agreed services.

18. Article 10 provides that both Parties are required to exempt aircraft operated by designated airlines in international air transportation, as well as component parts and equipment for the repair, maintenance and services of aircraft, from import restrictions, customs and excise duties and similar fees and charges. Aircraft stores, fuel, lubricants and consumable technical supplies and spare parts, including engines, are similarly exempt when they are for use on aircraft in connection with the establishment or maintenance of an international air service by a designated airline. Article 10 also provides that passengers, baggage and cargo in direct transit through the territory of either Party will not undergo any examination except for reasons of aviation security, narcotics control or other special circumstances.

19. Article 11 provides that each Party shall allow each designated airline to determine its own tariffs for air transportation between the territories of the Parties. These tariffs shall be subject to the competition and consumer laws of both Parties.

20. Under Article 12, the Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services. The capacity entitlements available to airlines are to be decided between the aeronautical authorities from time to time.

21. Article 13 provides a framework that allows designated airlines of one Party to conduct their business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in, employ and maintain staff, sell tickets to the public, convert and move currency freely and perform ground handling.

22. Under Article 14, each Party may require a designated airline of the other Party to provide the timetables of a planned service to the aeronautical authorities of the requesting Party. The Australian Government requires timetables to be submitted for approval under the framework of the *Air Navigation Act 1920.*

23. Article 15 provides that either Party may at any time request consultations on implementation, interpretation, application or amendment of the Agreement.

24. Dispute resolution is provided for in the Agreement at Article 17. If the Parties fail to resolve any dispute by negotiation there is provision for compulsory settlement through submitting the dispute to arbitration.

25. The Annex, which is part of the Agreement, contains route schedules which specify the routes that may be operated by designated airlines of each Party.

Implementation

26. The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the Agreement.

Costs

27. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments and the Agreement reduces the regulatory burden on business and industry.

Regulation Impact Statement

28. The Department of Infrastructure, Transport, Regional Development and Local Government has self-assessed the Agreement as having no or low impact and the Office of Best Practice Regulation has been consulted.

Future treaty action

29. Article 15 provides that either Party may request consultations on amendment of the Agreement. Article 16 provides that any amendment to the Agreement, including the Annex, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, that they have completed their domestic procedures for entry into force of the amendment.

30. Article 16 also provides that if a multilateral convention concerning air transport comes into force in respect of both Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

31. Any amendment to the Agreement will be subject to Australia's domestic treaty procedures, including consideration by JSCOT.

Withdrawal or Denunciation

32. Article 18 provides for termination of the Agreement. Either Party may give notice in writing at any time through the diplomatic channel to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with the ICAO. The Agreement shall terminate one year after the date of receipt of the notice of termination.

33. In default of acknowledgment by one Party of a receipt of a notice of termination from the other Party, the notice shall be deemed to have been received 14 days after the date on which the ICAO acknowledged receipt thereof.

34. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty processes.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure, Transport, Regional Development and Local Government

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services,
done at Canberra on 28 November 2008
[2008] ATNIF 22

CONSULTATION

35. It is the practice ahead of negotiations of an Air Service Agreement for the Department of Infrastructure, Transport, Regional Development and Local Government to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position for the Minister's approval.

36. Prior to the negotiation of the Agreement, extensive consultations were held with industry, State and Territory Governments and agencies within the Commonwealth Government. The following stakeholders were advised by letter and/or email of the proposal to negotiate an Agreement between Australia and Switzerland and invited to comment on issues of importance to them:

Commonwealth Government Agencies

- Agriculture, Fishery and Forestry Australia
- Airservices Australia
- Attorney-General's Department
- Austrade
- Australian Customs and Border Security Service
- Civil Aviation Safety Authority
- Department of Finance and Deregulation
- Department of Immigration and Citizenship (formally the Department of Immigration and Multicultural Affairs)
- Australian Quarantine and Inspection Service
- Department of Finance and Administration
- Department of Foreign Affairs and Trade
- Department of Prime Minister and Cabinet
- International Air Services Commission
- The Treasury
- Tourism Australia (formally the Australian Tourism Commission)

State Government Agencies

- ACT Government Chief Minister's Department
- NSW Government Ministry of Transport and Department of State and Regional Development
- Queensland Government of Employment, Economic Development and Innovation, Aviation Steering Committee
- South Australian Government Department of Transport and Urban Planning
- Tasmanian Government Department of Infrastructure, Energy and Resources
- Victorian Government Department of Innovation, Industry and Regional Development

- Western Australian Government
- Northern Territory Government
- Tourism NSW
- Tourism Queensland
- Tourism Tasmania
- Tourism Western Australia
- Tourism NT

Industry

- Adelaide Airport Ltd
- Alice Springs Airport
- Australian Federation of International Forwarders Ltd
- Australian Federation of Travel Agents
- Australian Seafood Industry Council
- Australian Tourism Export Council
- Brisbane Airport Corporation Pty Ltd
- Broome International Airport Holdings
- Cairns Port Authority
- Capital Airport Group
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- NT Airports
- New Castle Airport
- Perth Airport
- Qantas Airways
- Queensland Airports Limited
- Regional Aviation Association of Australia
- Sydney Airport Corporation Limited
- Tourism Taskforce
- Tropical Tourism North Queensland
- Virgin Blue Airlines

37. The Commonwealth-State/Territory Standing Committee on Treaties (SCOT) provided information about the Agreement to the States and Territories. The Agreement was included in the Schedule of Treaties provided to SCOT on 27 July 2006 prior to signature.

38. In response to the Department's request, industry comments were received from Qantas and Virgin Blue. Qantas supported liberalisation of treaty provisions relating to airline designation, air fares, routes and the inclusion of new provisions that would expand its commercial opportunities. Virgin Blue supported liberalising the Agreement to encourage more inbound tourism.

39. Federal Government input was received from the Department of Foreign Affairs and Trade, Treasury, the Department of Immigration and Citizenship and from Australian Customs and Border Security Service. All comments were taken into account in developing Australia's negotiating position and integrated into the draft text.

40. No submissions from State or Territory Governments were received.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

CONCERNING AIR SERVICES

(London, 10 July 2008)

Not yet in force
[2008] ATNIF 13

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING AIR SERVICES

PREAMBLE

The Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland hereinafter referred as the "Contracting Parties";

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944;

Desiring to promote an international aviation system based on competition among airlines in the marketplace and wishing to encourage scheduled and non-scheduled airlines to develop and implement innovative and competitive services;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation;

Noting the agreement between the European Community and Australia initialled on 7 April 2005 on certain aspects of air services;

Have agreed as follows:

ARTICLE 1
Definitions

For the purpose of this Agreement, unless the context otherwise requires:

(a) the term "the Chicago Convention" means the Convention on International Civil Aviation, open for signature at Chicago on 7 December 1944 and includes: (i) any amendment thereof which has been ratified by both Contracting Parties; and (ii) any Annex or any amendment thereto adopted under Article 90 of that Convention, insofar as such amendment or annex is at any given time effective for both Contracting Parties;

(b) the term "aeronautical authority" means in the case of the United Kingdom, the Secretary of State for Transport and in the case of Australia, the Minister for Transport and Regional Services, or, in both cases, any person or body who may be authorized to perform any functions at present exercisable by the above-mentioned authority or similar functions;

(c) the term "designated airline" means an airline which has been designated and authorized in accordance with Article 4 of this Agreement;

(d) the term “territory” in relation to a State has the meaning assigned to it in Article 2 of the Chicago Convention;

(e) the terms “air service”, “international air service”, “airline” and “stop for non-traffic purposes” have the meanings respectively assigned to them in Article 96 of the Chicago Convention;

(f) The term “this Agreement” means this Agreement, its Annexes and any amendments thereto;

(g) the term “Air Operator’s Certificate” means a document issued to an airline which affirms that the airline in question has the professional ability and organisation to secure the safe operation of aircraft for the aviation activities specified in the certificate;

(h) the term “tariffs” means the prices to be paid for the carriage of passengers, baggage and freight and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration or conditions for the carriage of mail;

(i) the term “EC Member State” means a State that is a contracting party to the Treaty establishing the European Community; and

(j) the term “airlines of each Contracting Party” shall include, in the case of airlines of the United Kingdom, airlines that meet the conditions for designation in Article 4(2)(a) of this Agreement.

ARTICLE 2
Applicability of the Chicago Convention

The provisions of this Agreement shall be subject to the provisions of the Chicago Convention insofar as those provisions are applicable to international air services.

ARTICLE 3
Grant of Rights

(1) Each Contracting Party grants to the other Contracting Party the following rights in respect of its international air services:

(a) the right to fly across its territory without landing;

(b) the right to make stops in its territory for non-traffic purposes.

(2) The designated airlines of each Contracting Party shall be entitled to perform international air services, whether for the carriage of passengers, cargo, mail or in combination, as follows:

Routes to be operated by the designated airline or airlines of the United Kingdom:

Points in the United Kingdom – Intermediate Points – Points in Australia – Points Beyond

Routes to be operated by the designated airline or airlines of Australia:

Points in Australia – Intermediate Points – Points in the United Kingdom – Points Beyond

These services and routes are hereinafter called "the agreed services" and "the specified routes" respectively.

(3) While operating an agreed service on a specified route the airline or airlines designated by each Contracting Party may, in addition to the rights specified above, on any or all flights and at the option of each airline:

(a) operate flights in either or both directions;

(b) combine different flight numbers within one aircraft operation;

(c) serve intermediate and beyond points and points in the territories of the Contracting Parties on the routes in any combination and in any order;

(d) omit stops at any point or points, including points within the territory of the Contracting Party designating the airline provided that, except as may from time to time be jointly determined by the aeronautical authorities of the Contracting Parties, the services commence or terminate in the territory of that Contracting Party;

(e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and

(f) exercise own stop-over rights at any point, including points in the territory of the other Contracting Party;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

(4) The designated airlines of one Contracting Party may not pick up traffic at an intermediate point to be set down in the territory of the other Contracting Party nor pick up traffic in the territory of the other Contracting Party to be set down at a point beyond, and vice versa, except as may from time to time be jointly determined by the aeronautical authorities of the Contracting Parties.

(5) Nothing in this Article shall be deemed to confer on the designated airline or airlines of one Contracting Party the right to uplift, in the territory of the other Contracting Party, passengers, their baggage, cargo, or mail carried for remuneration or hire and destined for another point in the territory of that other Contracting Party.

ARTICLE 4
Designation, Authorisation and Revocation

(1) Each Contracting Party shall have the right to designate airlines for the purpose of operating the agreed services on each of the specified routes and to withdraw or alter such designations. Such designations shall be made in writing and shall be transmitted to the other Contracting Party.

(2) On receipt of such a designation, and of applications from the designated airline(s), in the form and manner prescribed for operating authorisations and technical permissions, the other Contracting Party shall grant the appropriate authorisations and permissions with minimum procedural delay, provided that:

(a) In the case of an airline designated by the United Kingdom of Great Britain and Northern Ireland:

(i) it is established in the territory of the United Kingdom under the Treaty establishing the European Community and has a valid operating licence from an EC Member State in accordance with European Community law;

(ii) effective regulatory control of the airline is exercised and maintained by the EC Member State responsible for issuing its Air Operator's Certificate and the relevant aeronautical authority is clearly identified in the designation;

(iii) the airline has its principal place of business in the territory of the EC Member State from which it has received the operating licence; and

(iv) the airline is owned, directly or through majority ownership, and effectively controlled by EC Member States and/or nationals of EC Member States, and/or other states listed in Annex 1 and/or nationals of such other states.

(b) in the case of an airline designated by Australia:

(i) Australia has and maintains effective regulatory control of the airline; and

(ii) it has its principal place of business in Australia.

(3) Either Contracting Party may refuse, revoke, suspend or limit the operating authorisation or technical permissions of an airline designated by the other Contracting Party where:

(a) in the case of an airline designated by the United Kingdom of Great Britain and Northern Ireland:

(i) the airline is not established in the territory of the United Kingdom under the Treaty establishing the European Community or does not have a valid operating licence from an EC Member State in accordance with European Community law; or

(ii) effective regulatory control of the airline is not exercised or not maintained by the EC Member State responsible for issuing its Air Operator's Certificate or the relevant aeronautical authority is not clearly identified in the designation; or

(iii) the airline does not have its principal place of business in the territory of the EC Member State from which it has received the operating licence; or

(iv) the airline is not owned, directly or through majority ownership, and effectively controlled by EC Member States and/or nationals of EC Member States, and/or by other states listed in Annex 1 and/or nationals of such other states; or

(v) The airline is already authorised to operate under a bilateral agreement between Australia and another EC Member State and Australia can demonstrate that, by exercising traffic rights under this Agreement on a route that includes a point in that other EC Member State, it would be circumventing restrictions on the third or fourth or fifth traffic rights imposed by that other agreement; or

(vi) The airline holds an Air Operators Certificate issued by an EC Member State and there is no bilateral air services agreement between Australia and that EC Member State and Australia can demonstrate that the necessary traffic rights to conduct the proposed operation are not reciprocally available to the designated airline(s) of Australia; or

(b) in the case of an airline designated by Australia:

(i) Australia is not maintaining effective regulatory control of the airline; or

(ii) it does not have its principal place of business in Australia;

(c) in the case of failure by that airline to comply with the laws, regulations or rules normally and reasonably applied by the Contracting Party granting those rights; or

(d) if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement; or

(e) in the case of failure by the other Contracting Party to take appropriate action to improve safety in accordance with paragraph (3) of Article 11; or

(f) in accordance with paragraph (7) of Article 11 (Safety).

(4) In exercising its rights under paragraph (3), and without prejudice to its rights under paragraph (3)(a), (v) and (vi) of this Article, Australia shall not discriminate between airlines of EC Member States on the grounds of nationality.

(5) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (3) of this Article is essential to prevent further infringements of laws, regulations or rules or to improve safety, such right shall be exercised only after consultation with the other Contracting Party.

(6) This Article does not limit the rights of either Contracting Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permissions of a designated airline or airlines of that other Contracting Party, in accordance with the provisions of Article 12 (Aviation Security).

ARTICLE 5
Fair Competition and State Aids

(1) There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to compete in operating the agreed services on the specified routes.

(2) The competition laws of each Contracting Party, as amended from time to time, shall apply to the operation of the airlines within the jurisdiction of the respective Contracting Party.

(3) Neither Contracting Party shall unilaterally restrict the operations of the designated airlines of the other, except according to the terms of this Agreement or by such uniform conditions as may be contemplated by the Chicago Convention.

(4) Neither Contracting Party shall allow its designated airline or airlines, either in conjunction with any other airline or airlines or separately, to abuse market power in a way which has or is likely or intended to have the effect of severely weakening a competitor or excluding a competitor from a route.

(5) Neither Contracting Party shall provide or permit state subsidy or support for or to its designated airline or airlines in such a way that would adversely affect the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing the international air transportation governed by this Agreement.

(6) State subsidy or support means the provision of support on a discriminatory basis to a designated airline, directly or indirectly, by the state or by a public or private body designated or controlled by the state. Without limitation, it may include the setting-off of operational losses; the provision of capital, non-refundable grants or loans on privileged terms; the granting of financial advantages by forgoing profits or the recovery of sums due; the forgoing of a normal return on public funds used; tax exemptions; compensation for financial burdens imposed by the public authorities; or

discriminatory access to airport facilities, fuel or other reasonable facilities necessary for the normal operation of air services.

(7) Where a Contracting Party provides state subsidy or support to a designated airline in respect of services operated under this Agreement, it shall require that airline to identify the subsidy or support clearly and separately in its accounts.

(8) If the aeronautical authorities of one Contracting Party believe that the airlines of either Contracting Party are being subjected to discrimination or unfair practices, or that a subsidy or support being considered or provided by the other Contracting Party for or to the airlines of that other Contracting Party would adversely affect or is adversely affecting the fair and equal opportunity of the airlines of the first Contracting Party to compete in providing the international air transportation governed by this Agreement, it may request consultations and notify the other Contracting Party of the reasons for its dissatisfaction. These consultations shall be held not later than 15 days after receipt of the request.

ARTICLE 6
Application of Laws, Regulations and Rules

(1) While entering, within, or leaving the territory of one Contracting Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Contracting Party's airlines.

(2) The Contracting Parties recognise that the laws, regulations and rules of each Contracting Party relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, advance passenger information, customs and quarantine or, in the case of mail, postal regulations) are binding upon such passengers and crew and in relation to such cargo of the other Contracting Party's airlines while entering, within, or leaving the territory of that Contracting Party.

(3) Neither Contracting Party shall give preference to its own or any other airline over a designated airline of the other Contracting Party engaged in similar international air transport including, but not limited to, the application of its customs, immigration, quarantine and similar regulations.

(4) Subject to the relevant laws and regulations applying within their respective territories, the Contracting Parties recognise that to give effect to the rights and entitlements embodied in this Agreement the designated airlines of each Contracting Party must have the opportunity to access airports and slots in the territory of the other Contracting Party on a non-discriminatory basis.

(5) Passengers, baggage and cargo in direct transit through the territory of either Contracting Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, immigration requirements or in special circumstances. Baggage and cargo in direct transit shall be exempt from customs and other similar taxes.

ARTICLE 7
Tariffs

(1) Each Contracting Party shall allow each airline to determine its own tariffs for the transportation of traffic.

(2) The tariffs to be charged by the airline(s) designated by Australia for carriage wholly within the European Community shall be subject to European Community law.

ARTICLE 8
Commercial Opportunities

(1) The airlines of each Contracting Party shall have the following rights in the territory of the other Contracting Party:

(a) the right to establish offices, including offline offices, for the promotion, sale and management of air transportation;

(b) the right to engage in the sale and marketing of air transportation to any person directly and, at its discretion, through its agents or intermediaries, using its own transportation documents; and

(c) the right to use the services and personnel of any organisation, company or airline operating in the territory of the other Contracting Party.

(2) In accordance with the laws and regulations relating to entry, residence and employment of the other Contracting Party, the airlines of each Contracting Party shall be entitled to bring in and maintain in the territory of the other Contracting Party those of their own managerial, sales, technical, operational and other specialist staff which the airline reasonably considers necessary for the provision of air transportation. Consistent with such laws and regulations, each Contracting Party shall, with the minimum of delay, grant the necessary employment authorisations, visas or other similar documents to the representatives and staff referred to in this paragraph.

(3) The airlines of each Contracting Party shall have the right to sell air transportation, and any person shall be free to purchase such transportation, in local or freely convertible currencies. Each airline shall have the right to convert their funds into any freely convertible currency and to transfer them from the territory of the other Contracting Party at will. Conversion and transfer of funds obtained in the ordinary course of their operations shall be permitted at the foreign exchange market rates for payments prevailing at the time of submission of the requests for conversion or transfer and shall not be subject to any charges except normal service charges levied for such transactions.

(4) The airlines of each Contracting Party shall have the right at their discretion to pay for local expenses, including purchases of fuel, in the territory of the other Contracting Party in local currency or, provided this accords with local currency regulations, in freely convertible currencies.

(5) (a) In operating or holding out international air transportation the airlines of each Contracting Party shall have the right, over all or any part of their routes in Article 3(2) of this Agreement to enter into code share, blocked space or other cooperative marketing arrangements, as the marketing and/or operating airline, with any other airline, including airlines of the same Contracting Party, the other Contracting Party and of third parties. Subject to sub-paragraph (5)(c) of this Article, the airlines participating in such arrangements must hold the appropriate authority or authorities to conduct international air transportation on the routes or segments concerned.

(b) Unless otherwise mutually determined by the aeronautical authorities of the Contracting Parties, the volume of capacity or service frequencies which may be held out and sold by the airlines of each Contracting Party, when code sharing as the marketing airline, shall not be subject to limitations under this Agreement.

(c) For the avoidance of doubt, the aeronautical authority of one Contracting Party shall not withhold code sharing permission for an airline of the other Contracting Party to market code share services on flights operated by airlines of third parties on the basis that the third party airlines concerned do not have the right from the first Contracting Party to carry traffic under the code of the marketing airline.

(d) The airlines of each Contracting Party may market code share services on domestic flights operated within the territory of the other Contracting Party provided that such services form part of a through international journey.

(e) The airlines of each Contracting Party shall, when holding out international air transportation for sale, make it clear to the purchaser at the point of sale which airline will be the operating airline on each sector of the journey and with which airline or airlines the purchaser is entering into a contractual relationship.

(6) (a) Subject to the laws and regulations of each Contracting Party including, in the case of the United Kingdom, European Community law, each designated airline shall have in the territory of the other Contracting Party the right to perform its own ground handling ("self-handling") or, at its option, the right to select among competing suppliers that provide ground handling services in whole or in part. Where such laws and regulations limit or preclude self-handling and where there is no effective competition between suppliers that provide ground handling services, each designated airline shall be treated on a non-discriminatory basis as regards their access to self-handling and ground handling services provided by a supplier or suppliers.

(b) Subject to the laws and regulations of each Contracting Party including, in the case of the United Kingdom, European Community law, each airline shall also have

the right, in the territory of the other Contracting Party, to offer its services as a ground handling agent, in whole or part, to any other airline.

(7) The airlines of each Contracting Party shall be permitted to conduct international air transportation using aircraft (or aircraft and crew) leased from any company, including other airlines, provided only that the operating aircraft and crew meet the applicable operating and safety standards and requirements.

(8) On any segment or segments of the routes above, any designated airline may perform international air transport, including under code share arrangements, without any limitation as to change in type, size or number of aircraft operated at any point on the route.

(9) The designated airlines of each Contracting Party shall be permitted to employ, in connection with air transport, any intermodal transport to or from any points in the territories of the Contracting Parties or third countries. Airlines may elect to perform their own intermodal transport or to provide it through arrangements, including code share, with other carriers. Such intermodal services may be offered as a through service and at a single price for the air and intermodal transport combined, provided that passengers and shippers are informed as to the providers of the transport involved.

ARTICLE 9
User charges

(1) Neither Contracting Party shall impose or permit to be imposed on the designated airline or airlines of the other Contracting Party user charges higher than those imposed on its own airlines operating similar international air services.

(2) Each Contracting Party shall encourage consultation on user charges between their competent charging authorities and airlines using the services and facilities provided by those charging authorities, where practicable through those airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Contracting Party shall further encourage its competent charging authorities and such users to exchange appropriate information concerning user charges.

(3) Each Contracting Party shall use its best efforts to encourage those responsible for the provision of airport, airport environmental, air navigation and aviation security facilities and services to ensure that charges levied on airlines are reasonable and non-discriminatory. Reasonable charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made should be provided on an efficient and economic basis.

ARTICLE 10
Duties, Taxes and Fees

(1) The Contracting Parties shall relieve from all customs duties, national excise taxes and similar national fees:

(a) aircraft operated in international air services by the designated airline or airlines of either Contracting Party;

(b) the following items introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party: repair, maintenance and servicing equipment and component parts;

(c) the following items introduced by a designated airline of one Contracting Party into the territory of the other Contracting Party or supplied to a designated airline of one Contracting Party in the territory of the other Contracting Party:

(i) aircraft stores (including but not limited to such items as food, beverages and tobacco);

(ii) fuel, lubricants and consumable technical supplies;

(iii) spare parts including engines; and

provided in the case of sub-paragraph (c) they are for use on board an aircraft in connection with the establishment or maintenance of an international air service by the designated airline concerned; and

(d) any other items which qualify for such relief to the extent permitted by the domestic laws in force in the territory of each Contracting Party.

The exemptions in sub-paragraph (c) above shall apply even when these items are to be used on any part of a journey performed over the territory of the other Contracting Party in which they have been taken on board.

(2) The relief from customs duties, national excise taxes and similar national fees shall not extend to charges based on the cost of services provided to the designated airline or airlines of a Contracting Party in the territory of the other Contracting Party.

(3) The normal aircraft equipment, as well as spare parts (including engines), supplies of fuel, lubricating oils (including hydraulic fluids) and lubricants and other items mentioned in paragraph (1) of this Article retained on board the aircraft operated by the airlines of one Contracting Party may be unloaded in the territory of the other Contracting Party only with the approval of the Customs authorities of that territory. Aircraft stores intended for use on the airlines' services may, in any case be unloaded. Equipment and supplies referred to in paragraph (1) of this Article may be required to be kept under the supervision or control of the appropriate authorities until

they are re-exported or otherwise disposed of in accordance with the Customs laws and procedures of that Contracting Party.

(4) The reliefs provided for by this Article shall also be available in situations where the designated airline or airlines of one Contracting Party have entered into arrangements with another airline or airlines for the loan or transfer in the territory of the other Contracting Party of the items specified in paragraph (1) of this Article, provided such other airline or airlines similarly enjoy such reliefs from such other Contracting Party.

ARTICLE 11
Safety

(1) Each Contracting Party shall recognise as valid, for the purposes of operating the international air transport provided for in this Agreement, certificates of airworthiness, certificates of competency and licences issued or validated by the other Contracting Party that are still in force, provided that the requirements for such certificates and licences at least equal the minimum standards that may be established pursuant to the Chicago Convention. Each Contracting Party may, however, refuse to recognise as valid for the purpose of flights undertaken pursuant to rights granted under Article 3(2) of this Agreement certificates of competency and licences granted to or validated for its own nationals by the other Contracting Party.

(2) Each Contracting Party may request consultations at any time concerning the safety standards maintained by the other Contracting Party in any area including, but not limited to, aeronautical facilities, aircrews, aircraft and their operation. Such consultations shall take place within 30 days of that request.

(3) If, following such consultations, one Contracting Party find that the other Contracting Party does not effectively maintain and administer safety standards in any such area that are at least equal to the minimum standards established at that time pursuant to the Chicago Convention, the first Contracting Party shall notify the other Contracting Party of those findings and the steps considered necessary to conform with those minimum standards, and the other Contracting Party shall take appropriate corrective action. Failure by the other Contracting Party to take appropriate action within a reasonable time, or in any case within 15 days, shall be grounds for the application of Article 4(3) (Revocation or suspension of operating authorisation) of this Agreement.

(4) Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, it is agreed that any aircraft operated by or, under a lease arrangement, on behalf of the designated airline or airlines of one Contracting Party on services to or from the territory of the other Contracting Party may, while within the territory of the other Contracting Party, be made the subject of an examination by the authorised representatives of the other Contracting Party, on board and around the aircraft to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment (in this Article called “ramp inspection”), provided this does not lead to unreasonable delay.

(5) If any such ramp inspection or series of ramp inspections gives rise to:

(a) serious concerns that an aircraft or the operation of an aircraft does not comply with the minimum standards established at that time pursuant to the Chicago Convention; or

(b) serious concerns that there is a lack of effective maintenance and administration of safety standards established at that time pursuant to the Chicago Convention;

the Contracting Party carrying out the inspection shall, for the purposes of Article 33 of the Chicago Convention, be free to conclude that the requirements under which the certificate or licences in respect of that aircraft or in respect of the crew of that aircraft had been issued or rendered valid, or that requirements under which that aircraft is operated, are not equal to or above the minimum standards established pursuant to the Chicago Convention.

(6) In the event that access for the purpose of undertaking a ramp inspection of an aircraft operated by a designated airline of one Contracting Party in accordance with paragraph (4) of this Article is denied by a representative of that airline, the other Contracting Party shall be free to infer that serious concerns of the type referred to in paragraph (5) of this Article arise and draw the conclusions referred in that paragraph.

(7) Each Contracting Party reserves the right to suspend or vary the operation authorisation of a designated airline or airlines of the other Contracting Party immediately in the event the first Contracting Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.

(8) Any action by one Contracting Party in accordance with paragraphs (3) or (7) of this Article shall be discontinued once the basis for the taking of that action ceases to exist.

ARTICLE 12
Aviation Security

(1) When a Contracting Party has reasonable grounds to believe that the other Contracting Party has departed from the provisions of this Article, the first Contracting Party may request immediate consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Contracting Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorisations of the airline or airlines designated by the other Contracting Party. When justified by an emergency, the first Contracting Party may take interim action at any time. Any action taken in accordance with this paragraph shall be discontinued upon compliance by the other Contracting Party with the security provisions of this Article.

(2) Consistent with their rights and obligations under international law, the Contracting Parties reaffirm that their obligation to each other to protect the security

of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Contracting Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 and the Montreal Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 and any aviation security agreement that becomes binding on both Contracting Parties.

(3) The Contracting Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Chicago Convention to the extent that such security provisions formally apply to the Contracting Parties; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. Each Contracting Party shall advise the other Contracting Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Contracting Party may request consultations with the other Contracting Party at any time to discuss any such differences.

(4) Each Contracting Party agrees that such operators of aircraft shall be required to observe the aviation security provisions referred to in paragraph (3) above required by the other Contracting Party for entry into the territory of that other Contracting Party. For entry into, departure from, or while within the territory of the United Kingdom of Great Britain and Northern Ireland, operators of aircraft shall be required to observe aviation security provisions in conformity with European Community law. For entry into, departure from, or while within, the territory of Australia, operators of aircraft shall be required to observe aviation security provisions in conformity with the law in force in that country. Each Contracting Party shall ensure that adequate measures are taken within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading and that these measures are adjusted to meet changes in the threat. Each Contracting Party shall also act favourably upon any request from the other Contracting Party for reasonable special security measures to meet a particular threat.

(5) When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Contracting Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

ARTICLE 13
Consultations

Either Contracting Party may at any time request consultations on the implementation, interpretation, application or amendment of this Agreement or compliance with this Agreement. Such consultations, which may be between aeronautical authorities, shall begin, except as otherwise provided elsewhere in this Agreement, within a period of 60 days from the date the other Contracting Party receives a written request, unless otherwise agreed by the Contracting Parties.

ARTICLE 14
Settlement of Disputes

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) within 30 days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a third State, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within 60 days of the appointment of the second;

(b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the International Court of Justice to make the necessary appointment within 30 days. If the President has the nationality of one of the Contracting Parties, the Vice-President shall be requested to make the appointment. If the Vice-President has the nationality of one of the Contracting Parties, the Member of the International Court of Justice next in seniority who does not have the nationality of one of the Contracting Parties shall be requested to make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 30 days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within 45 days after the tribunal is fully constituted. Each Contracting Party may submit a reply within 60 days of submission of the other Contracting Party's memorandum. The tribunal shall

hold a hearing at the request of either Contracting Party, or at its discretion, within 30 days after replies are due.

(5) The tribunal shall attempt to give a written decision within 30 days after completion of the hearing or, if no hearing is held, 30 days after the date both replies are submitted. The decision shall be taken by a majority vote.

(6) The Contracting Parties may submit requests for clarification of the decision within 15 days after it is received and such clarification shall be issued within 15 days of such request.

(7) The decision of the tribunal shall be binding on the Contracting Parties.

(8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President, Vice-President or Member of the International Court of Justice in implementing the procedures in paragraph (2)(b) of this Article.

ARTICLE 15
Amendment

Any amendments to this Agreement agreed by the Contracting Parties shall come into force when confirmed by an Exchange of Notes.

ARTICLE 16
Termination

Either Contracting Party may at any time give notice in writing to the other Contracting Party of its decision to terminate this Agreement. Such notice shall be simultaneously communicated to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice) immediately before the first anniversary of the date of receipt of the notice by the other Contracting Party, unless the notice is withdrawn by agreement before the end of this period. In the absence of acknowledgement of receipt by the other Contracting Party, the notice shall be deemed to have been received 14 days after receipt of the notice by the International Civil Aviation Organization.

ARTICLE 17
Entry into Force

This Agreement shall enter into force on the date of the latter note in an exchange of notes between the Contracting Parties notifying each other of the completion of their respective internal requirements.

The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Commonwealth of Australia for Air Services between and beyond their respective territories signed in London on 7

February 1958 as amended shall terminate from the date of entry into force of this agreement.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at London this tenth day of July two thousand and eight.

For the Government of Australia:	For the Government of the United Kingdom of Great Britain and Northern Ireland:
…….	…….
Hon. Anthony Albanese Minister for Infrastructure, Transport, Regional Development and Local Government	Hon. Jim Fitzpatrick Parliamentary Under Secretary of State for Transport

ANNEX 1

List of other states referred to in Articles 4(2)(a)(iv) and 4(3)(a)(iv) of this Agreement

a) The Republic of Iceland (under the Agreement on the European Economic Area);

b) The Principality of Liechtenstein (under the Agreement on the European Economic Area);

c) The Kingdom of Norway (under the Agreement on the European Economic Area);

d) The Swiss Confederation (under the Agreement between the European Community and the Swiss Confederation on Air Transport).

National Interest Analysis [2010] ATNIA 15

with attachment on consultation

Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services
London, 10 July 2008

[2008] ATNIF 13

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services, done at London on 10 July 2008
[2008] ATNIF 13

Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force the *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services* (the Agreement).

2. The Agreement was signed on 10 July 2008.

3. Article 17 specifies that the Agreement will enter into force when the Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied. Subject to the Joint Standing Committee on Treaties (JSCOT) issuing a report on the proposed treaty action, the Australian Government will provide its notification to the Government of the United Kingdom of Great Britain and Northern Ireland (the UK) under Article 17 as soon as practicable after the Agreement has been tabled in both Houses of Parliament for 15 sitting days.

4. The proposed Agreement will replace the *Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Air Services between and through their Respective Territories* ([1958] ATS 4) with an updated text that provides a flexible and modern legal framework to enable the airlines of both Australia and the United Kingdom to continue to develop international air services.

5. Aviation arrangements of less than treaty status, in the form of a Memorandum of Understanding signed in July 2006, have preceded the Agreement. In accordance with customary international law and established Australian practice, these arrangements have included applying the provisions of the Agreement, pending the completion of domestic requirements, before the Agreement is brought into force.

Overview and national interest summary

6. The purpose of the Agreement is to allow air services to operate between Australia and the UK, which will facilitate trade and tourism between the two countries and provide greater air travel options for consumers. The Agreement will provide a binding legal framework supporting the operation of air services currently provided by Qantas Airways.

Reasons for Australia to take the proposed treaty action

7. The Agreement provides a new legal framework for the operation of scheduled air services between Australia and the UK by the designated airlines of both countries.

8. This framework improves access for Australian airlines to the UK aviation market and allows for the expansion of air services between the two countries. The Agreement provides Australian and UK carriers with freedom to operate services between any point in Australia and any point in the UK. This Agreement also improves the capability of Qantas and other Australian air carriers to compete with hub-based carriers, particularly those based in Asia and the Middle East, who previously had significantly greater access to the UK, Australia's second largest aviation market. The Agreement also provides each airline with freedom to determine its own air fares, removing limitations of the previous Agreement. The Agreement increases the opportunities for the Australian business interests, in particular the tourism and export industries, to develop and market products.

Obligations

9. Australia and the UK are both Parties to the *Convention on International Civil Aviation* ([1957] ATS 5) (the Chicago Convention).

10. The Agreement obliges Australia and the UK to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes in accordance with the provisions of the Agreement. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

11. Article 2 of the Agreement provides that the Agreement is subject to the Chicago Convention, insofar as those provisions are applicable to international air services.

12. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the right to overfly its territory and to make stops in its territory for non-traffic purposes. Article 3 also specifies the routes that may be operated by designated airlines and the conditions of servicing those routes.

13. Article 4 of the Agreement allows each Party to designate any number of airlines to operate the agreed air services. Either Party may revoke or limit authorisation of an airline's operations if the airline fails to meet or operate in accordance with the conditions prescribed in the Agreement, including conditions relating to its principal place of business and establishment, ownership and regulatory control. Article 4 is consistent with the *Agreement between the Government of Australia and the European Community on Certain Aspects of Air Services* ([2009] ATS 7) (the Horizontal Agreement), which recognises airlines of individual Member States of the European Union (the EU) as air carriers of the EU, for the purposes of airline designation. The inclusion of these provisions provides security from legal challenge. The European Court of Justice found that certain provisions in bilateral air services Agreement negotiated by EU Member States conflict with the European Community law. The Horizontal Agreement contains provisions which resolve those inconsistencies.

14. Under Article 5, Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services on the specified routes. It also confirms that each Party's competition laws apply to the operation of designated airlines within their respective jurisdictions. Article 5 prohibits either Party from unilaterally restricting the operations of the other Party's designated airlines or providing state subsidy or support to its own designated airlines in a way that would distort competition in providing air services under this Agreement.

15. Article 6 of the Agreement confirms that each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Party. Article 6 also provides that each Party's laws, regulations and rules relating to the operation and navigation of aircraft as well as the admission to or departure from its territory of passengers, crew, cargo and aircraft shall be complied with. In applying their laws, the Parties are prevented from giving preference to their own or any other airline.

16. Article 7 provides that each Party shall allow the designated airlines to set their own fares without government intervention. Article 7 confirms that fares for air transportation wholly within the European Community are subject to European Community law.

17. Article 8 provides a framework that allows designated airlines of one Party to conduct their business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in, employ and maintain staff, sell tickets to the public and convert and move currency freely, subject to the domestic rules and regulations of the other Party. This Article also gives designated airlines of each Party the right to:

a) provide services by means of cooperative marketing arrangements such as code sharing;
b) perform their own ground handling, or choose from available ground handling providers and to offer their services as a ground handling agent to other airlines;
c) utilise leased aircraft, or leased aircraft and crew, to provide their services, provided they meet the applicable operating and safety standards and requirements; and
d) provide intermodal connecting services utilising surface transport to connect with their international air services, a practice increasingly common in European countries.

18. Article 9 provides that the charges imposed on the other Party's designated airlines by charging authorities for the use of aviation facilities be non-discriminatory in relation to the nationality of the aircraft concerned. Additionally the Parties should encourage the charging authorities to ensure that charges are reasonable.

19. In line with international practice, Article 10 sets out the equipment, aircraft fuel, lubricants, spare parts and stores used in the operation of the agreed services that the Parties are required to exempt from customs and excise duties and other related charges.

20. Under Article 11, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Party may request consultations at any time concerning safety standards maintained by the other Party. Each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the aircraft equipment and the condition of

the aircraft conform to ICAO standards. Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.

21. Under Article 12, both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. A Party may require that the designated airlines of the other Party observe the Party's aviation security provisions for entry into, departure from or sojourn in its territory. Parties shall ensure that adequate measures are applied to protect the aircraft and to inspect passengers, crew and carry-on items, as well as baggage, cargo and aircraft stores prior to and during boarding or loading. Parties are also required to cooperate in addressing each other's requests to meet particular security threats and in terminating security incidents rapidly and safely.

22. Settlement of disputes is provided for in the Agreement at Articles 13 and 14. If the Parties fail to resolve a dispute by negotiation there is provision for compulsory settlement by submitting the dispute to arbitration.

24. The Annex, which is part of the Agreement, contains a list of non-EU Member States referenced in Article 4(2)(iv) and 4(3)(iv). Airlines designated by the UK could be owned and controlled by member States of the EU and/or their nationals, or the States listed in the Annex and/or their nationals, subject to other provisions of Article 4.

Implementation

25. The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the Agreement.

Costs

26. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments and the Agreement reduces the regulatory burden on business and industry.

Regulation Impact Statement

27. The Department of Infrastructure, Transport, Regional Development and Local Government has self-assessed the Agreement as having no or low impact and the Office of Best Practice Regulation has been consulted.

Future treaty action

28. Article 13 provides that either Party may request consultations on amendment of the Agreement. Article 15 provides that any amendment to the Agreement, including the Annex, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, that they have completed their domestic procedures for entry into force of the amendment.

29. Any amendment to the Agreement will be subject to Australia's domestic treaty procedures, including consideration by JSCOT.

Withdrawal or denunciation

30. Article 16 provides for termination of the Agreement. Either Party may give notice in writing at any time to the other Party of its decision to terminate the Agreement and must also lodge a notice of termination with ICAO. The Agreement shall terminate one year after the date of receipt of the notice of termination. In default of acknowledgment by one Party of a receipt of a notice of termination from the other Party, the notice shall be deemed to have been received 14 days after the date on which the ICAO acknowledged receipt thereof.

31. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty processes, including consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure, Transport, Regional Development and Local Government

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services, done at London on 10 July 2008
[2008] ATNIF 13

CONSULTATION

32. It is the practice ahead of negotiations of an Air Service Agreement for the Department of Infrastructure, Transport, Regional Development and Local Government to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position for the Minister's approval.

33. Prior to the negotiation of the Agreement, extensive consultations were held with industry and Commonwealth and State and Territory government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an Agreement between Australia and the UK and invited to comment on issues of importance to them:

Commonwealth Government Agencies

- Attorney-General's Department
- Australian Quarantine and Inspection Service
- Austrade
- Civil Aviation Safety Authority
- Australian Customs and Border Security Service
- Department of Foreign Affairs and Trade
- Department of Finance and Administration
- Department of Immigration and Citizenship
- Department of Industry, Tourism and Resources
- Department of Prime Minister and Cabinet
- International Air Services Commission
- Treasury
- Tourism Australia (formally the Australian Tourism Commission)

State Government Agencies

- ACT Government Chief Minister's Department
- Queensland Government Department of Employment, Economic Development and Innovation, Aviation Steering Committee
- NSW Government Ministry of Transport and Department of State and Regional Development
- South Australian Government Department of Transport and Urban Planning
- Tasmanian Department of Infrastructure, Energy & Resources
- Victorian Government Department of Innovation, Industry and Regional Development
- Government of Western Australia
- Tourism New South Wales
- Tourism Queensland

- Tourism Tasmania
- Tourism Victoria
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Air Freight Council of NSW Inc
- Air Freight Council of Queensland Ltd
- Air Freight Council of Western Australia
- Alice Springs Airport
- Australian Airports Association
- Australian and International Pilots Association
- Australian Aviation Council
- Australian Local Government Association
- Australian Tourism Export Council
- Australia's North West Tourism
- Avalon Airport Australia Pty Ltd & Essendon Airport Pty Ltd
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Broome International Airport Holdings
- Burnie Airport Corporation Pty Ltd/Wynyard Aerodrome
- Cairns Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Essendon Airport
- Global Aviation Services
- Gold Coast Airport Ltd
- Hobart International Airport
- Launceston Airport
- Melbourne Airport
- Moorabbin Airport
- National Food Industry Strategy Ltd
- National Jet Systems Pty Ltd
- National Tourism Alliance
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Northern Territory Transport
- Perth Airport
- Qantas Airways Ltd
- Queensland Airports Ltd
- Queensland Tourism Industry Corporation
- Queensland Transport
- South Australian Freight Export Council Inc
- Sydney Airport Corporation Ltd
- Tasmanian Freight Logistics Council
- Tourism and Transport Forum (TTF) Australia
- Tourism Top End
- Tropical Tourism North Queensland

- Virgin Blue
- Westralia Airports Corporation Pty Ltd

34. Comments were received from: Qantas, Virgin Blue, Sydney Airport Corporation, the South Australian Department of Transport and Urban Planning, the Western Australian Government, the Queensland Government, Tourism Victoria, the (then) Australian Government Departments of Industry, Tourism and Resources, Foreign Affairs and Trade, Attorney-General's, Treasury, Immigration and Multicultural Affairs and the Australian Customs Service.

35. All stakeholders supported the negotiation of a new, modernised air services agreement, to offer more flexibility and improved market access for airlines of both sides.

36. Comments on the Agreement were provided by Sydney Airport Corporation, Qantas, the Department of Industry, Tourism and Resources and Tourism Victoria were all confidential.

37. The South Australian Department of Transport and Urban Planning indicated that the agreement should be modernised, providing additional capacity, removing limitations on access to Australian regional airports and liberalising airline cooperative arrangements. The Government of Western Australia indicated its support for a fully liberalised agreement, or at least an increase in capacity allowance for airlines of both countries. The Queensland Government indicated its support for the increase in capacity allowance for airlines.

38. Virgin Blue provided overall support for the negotiations, including expanding capacity allowance for airlines and increased access to the UK.

39. Comments on were received from the Attorney-General's Department, the Department of Foreign Affairs and Trade, Treasury, Customs and the Department of Immigration and Citizenship. These agencies cleared the text of the Agreement prior to its approval by Executive Council.

40. The Agreement was included in the Schedule of Treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties in February 2006, July 2006, February 2007 and on 1 February 2008 prior to signature of the Agreement.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

ACQUISITION AND CROSS-SERVICING AGREEMENT

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF

THE UNITED STATES OF AMERICA

Done at Canberra on 27 April 2010

Not yet in force
[2010] ATNIF 27

ACQUISITION AND CROSS-SERVICING AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

PREAMBLE

The Government of the Australia and the Government of United States of America, hereinafter referred to as the Parties,

Desiring to further the interoperability, readiness, and effectiveness of their respective military forces through increased logistic cooperation,

Recognizing that Article VII of the Agreement between the Government of Australia and the Government of the United States of America concerning Cooperation in Defense Logistic Support done at Sydney on November 4, 1989, as amended, provides that the Parties shall seek to enter into an appropriate cross-servicing agreement,

Have resolved to conclude this Agreement.

ARTICLE I. PURPOSE

This Agreement is entered into for the purpose of establishing basic terms, conditions, and procedures to facilitate the reciprocal provision of Logistic Support, Supplies, and Services as that term is defined in Article II of this Agreement.

ARTICLE II. DEFINITIONS

1. As used in this Agreement and in any Implementing Arrangements that provide specific procedures, the following definitions apply:

a. Classified Information. Information that is generated by or for the Government of the United States of America or the Government of Australia or that is under the jurisdiction or control of one of them, and which requires protection in the interests of national security of that Government and that is so designated by the assignment of a security classification by that Government. The information may be in oral, visual, electronic, or documentary form, or in the form of material including equipment or technology.

b. Equal Value Exchange. Payment for a transfer conducted under this Agreement in which it is agreed that the Receiving Party shall replace Logistic Support, Supplies, and Services that it receives with Logistic Support, Supplies, and Services of an equal monetary value.

c. Implementing Arrangement. A written supplementary arrangement for Logistic

Support, Supplies, and Services that specifies details, terms, and conditions to implement this Agreement.

d. Invoice. A document from the Supplying Party that requests reimbursement or payment for specific Logistic Support, Supplies, and Services rendered pursuant to this Agreement and any applicable Implementing Arrangements.

e. Logistic Support, Supplies, and Services. Food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communication services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. The term also includes the temporary use of general purpose vehicles and other non-lethal items of military equipment, where such lease or loan is permitted under the national laws and regulations of the Parties. The term "Logistic Support, Supplies, and Services" refers to support, supply, or services from any or all of the foregoing categories.

f. Order. A written request, in a format mutually decided upon and signed by an authorized individual, for the provision of specific Logistic Support, Supplies, and Services pursuant to this Agreement and any applicable Implementing Arrangement.

g. Point of Contact (POC). An office or agency that is authorized by a Party to sign an Order requesting or agreeing to supply Logistic Support, Supplies, and Services under this Agreement, or by collecting or making payments for Logistic Support, Supplies, and Services supplied or received under this Agreement.

h. Receiving Party. The Party ordering and receiving Logistic Support, Supplies, and Services.

i. Replacement-in-Kind. Payment for a transfer conducted under this Agreement in which it is determined that the Receiving Party shall replace Logistic Support, Supplies, and Services that it receives with Logistic Support, Supplies, and Services of an identical, or substantially identical, nature under mutually-determined conditions.

j. Supplying Party. The Party providing Logistic Support, Supplies, and Services.

k. Transfer. Selling (whether for payment in currency, Replacement-in-Kind, or exchange of supplies or services of equal value), leasing, loaning, or temporarily providing Logistic Support, Supplies, and Services under the terms of this Agreement.

ARTICLE III. APPLICABILITY

1. This Agreement is designed to facilitate reciprocal logistic support between the Parties to be used primarily during combined exercises, training, deployments, port calls, operations, or other cooperative efforts, or for unforeseen circumstances or exigencies in which one of the Parties may have a need for Logistic Support, Supplies, and Services.

2. This Agreement applies to the provision of Logistic Support, Supplies, and Services from the military forces of one Party to the military forces of the other Party in return for either cash payment or the reciprocal provision of Logistic Support, Supplies, and Services to the military forces of the Supplying Party.

3. All activities of the Parties under this Agreement and any Implementing Arrangements shall be carried out in accordance with their respective national laws and regulations. All obligations of the Parties under this Agreement and any associated Implementing Arrangements shall be subject to the availability of funds for such purposes. Unless otherwise determined in advance, a Party shall not place an Order and receive Logistic Support, Supplies, or Services under this Agreement or any associated Implementing Arrangement unless it has funds (or agreed-upon in-kind support) available to pay for such support. If a Party discovers that it does not have the funds to fulfill its obligations, it shall promptly notify the other Party, which shall have the right to discontinue its provision of any Logistic Support, Supplies, or Services that was to be paid for with such funds. This shall not affect the obligation of a Party to pay for Logistic Support, Supplies, and Services already received.

4. The following items are not eligible for Transfer under this Agreement, and are specifically excluded from its coverage:

a. weapon systems;

b. major end items of equipment (except for the lease or loan of general purpose vehicles and other non-lethal items of military equipment where such lease or loan is permitted under the national laws and regulations of the Parties); and

c. initial quantities of replacement and spare parts associated with the initial order of major items of organizational equipment; however, individual replacement and spare parts needed for immediate repair and maintenance services may be transferred.

5. Also excluded from Transfer by either Party under this Agreement are any items the Transfer of which is prohibited by its national laws or regulations. In accordance with U.S. law and regulation, the Government of the United States currently may not Transfer the following items under this Agreement:

a. guided missiles;

b. naval mines and torpedoes;

c. nuclear ammunition (including such items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition);

d. guidance kits for bombs or other ammunition;

e. chemical munitions or ammunition (which do not include riot-control agents);

f. source, by-product, or special nuclear materials, or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (Title 42, United States Code, Section 2011, et. seq.); and

g. items of military equipment designated as Significant Military Equipment on the United States Munitions List (Part 121 of Title 22 of the U.S. Code of Federal Regulations), except as allowed under the definition of Logistic Support, Supplies, and Services under U.S. law.

ARTICLE IV. TERMS AND CONDITIONS

1. Each Party shall make its best efforts, consistent with national priorities, to satisfy requests from the other Party under this Agreement for Logistic Support, Supplies, and Services. However, when an Implementing Arrangement contains a stricter standard for satisfying such requests, the standard in the Implementing Arrangement shall apply.

2. Orders may be placed or accepted under this Agreement or an Implementing Arrangement only by the Points of Contact (POCs), or their designees, as designated by the Parties. When military forces of the Government of Australia require Logistic Support, Supplies, and Services outside the U.S. Pacific Command (USPACOM) Area of Responsibility (AOR), they may place orders directly with the cognizant POC or may seek the assistance of USPACOM, or a USPACOM component command, to place an order with a non-USPACOM POC.

3. An Implementing Arrangement under this Agreement may be negotiated on behalf of the Government of the United States of America by Headquarters USPACOM, the Headquarters of other U.S. Combatant Commands, or their designees, successor, or other organizations as mutually determined. Implementing Arrangements may be negotiated on behalf of the Government of Australia by Headquarters Joint Operations Command, Fleet Command, Land Command, Air Command, Special Operations Command, Joint Logistics Command, and the Service Headquarters (Navy, Army, and Air Force).

4. An Implementing Arrangement shall identify the personnel for each Party's POC who are authorized to issue and accept Orders under such an Implementing Arrangement. The Parties shall notify each other of specific authorizations or limitations on those personnel able to issue or accept Orders directly under this Agreement or under an Implementing Arrangement when the Implementing Arrangement does not state this information. In the case of the United States, these notifications shall go directly to the Component Command concerned. In the case of

Australia, these notifications shall go to the Headquarters (Joint Operations, Fleet, Land, Air, Special Operations, or Joint Logistics Commands or Service) concerned.

5. Prior to submitting a written Order, the ordering Party should initially contact the Supplying Party's POC, including by telephone, fax, or e-mail to ascertain availability, price, and desired method of repayment for required materiel or services. Orders shall include all the data elements in Annex A, as well as any other terms and details necessary to carry out the transfer. A standard Order form is attached at Annex B. The number of this Agreement, US-AS-03, should be annotated on all Orders and related correspondence.

6. Both Parties shall maintain records of all transactions.

7. The Receiving Party is responsible for:

a. Arranging pick-up and transportation of supplies acquired under this Agreement. This does not preclude the Supplying Party from assisting with loading supplies acquired under this Agreement onto the transportation conveyance.

b. Obtaining any applicable customs clearance and arranging other official actions required by national customs regulations.

8. The individual designated by the Receiving Party to receive the Logistic Support, Supplies, and Services on behalf of the Receiving Party shall sign the standard Order form in the appropriate block as evidence of receipt. If the standard Order form is not available at the Supplying Party's point of issue, the individual receiving the Logistic Support, Supplies, and Services shall sign the receipt document provided by the Supplying Party as a substitute. The number of this Agreement, US-AS-03, shall be entered on the receipt document.

9. The Supplying Party shall be responsible for:

a. notifying the Receiving Party when and where Logistic Support, Supplies, and Services are available to be picked up; and

b. forwarding the signed receipt document to the POC authorized to accept Orders under this Agreement. The signed receipt document shall be attached to the original Order Form.

10. Logistic Support, Supplies, and Services received through this Agreement shall not be retransferred, either temporarily or permanently, to any other country, international organization, or entity (other than the personnel, employees, or agents of the military forces of the Receiving Party) without the prior written consent of the Supplying Party obtained through applicable channels.

ARTICLE V. REIMBURSEMENT

1. For Transfers of Logistic Support, Supplies, and Services under this Agreement, the

Parties shall mutually determine the payment either by cash ("reimbursable transaction"), or by Replacement-in-Kind or an Equal Value Exchange (both of which are exchange transactions). The Receiving Party shall pay the Supplying Party as provided in either paragraph 1.a. or paragraph 1.b. of this Article.

a. Reimbursable Transaction. The Supplying Party shall submit Invoices to the Receiving Party after delivery or performance of the Logistic Support, Supplies, and Services. Both Parties shall provide for the payment of all transactions, and each Party shall invoice the other Party at least once every three (3) months for all transactions not previously invoiced. Invoices shall be accompanied by necessary support documentation and shall be paid within sixty (60) days of the date prepared and entered upon the Invoice. Payment shall be made in the currency of the Supplying Party or as otherwise agreed in the Order. In pricing a reimbursable transaction, the Parties agree to the following reciprocal pricing principles:

(1) In the case of a specific acquisition by the Supplying Party from its contractors on behalf of a Receiving Party, the price shall be no less favorable than the price charged to the military forces by the contractor of the Supplying Party for identical items or services, less any amounts excluded by Article VI of this Agreement. The price charged may take into account differentials due to delivery schedules, points of delivery, and other similar considerations.

(2) In the case of Transfer from the Supplying Party's own resources, the Supplying Party shall charge the same price as that charged to its own military forces for identical Logistic Support, Supplies, and Services, as of the date delivery or performance occurs, less amounts excluded by Article VI of this Agreement.

(3) In any case where a price has not been established or charges are not made for one's own military forces, the Parties shall agree on a price in advance, reflecting reciprocal pricing principles, excluding charges that are precluded under these same reciprocal pricing principles.

b. Exchange Transaction. Exchange transactions may be by Replacement-in-Kind or Equal Value Exchange. The Receiving Party shall pay by transferring to the Supplying Party Logistic Support, Supplies, and Services that are mutually determined between the Parties to be identical (or substantially identical) or to be of equal monetary value to the Logistic Support, Supplies, and Services delivered or performed by the Supplying Party. When Equal Value Exchange is the agreed method of payment, prior to the provision of the requested support both Parties will agree on the goods and services that will be accepted for payment. The Receiving Party is responsible for arranging return transportation and delivery of the replacement Logistic Support, Supplies, and Services to the location mutually determined between the Parties at the time the Order is signed. If the Receiving Party does not complete the exchange within the terms of a replacement schedule

agreed to or in effect at the time of the original transaction, which may not exceed one year from the date of the original transaction, the transaction shall be deemed reimbursable and governed by paragraph 1.a. above, except that the price shall be established using actual or estimated prices in effect on the date payment otherwise would have been due.

c. Establishment of Price or Value. The following pricing mechanisms are provided to clarify application of the reciprocal pricing principles. The price established for inventory stock materiel shall be the Supplying Party's stock list price. The price for new procurement shall be the same price paid to the contractor or vendor by the Supplying Party. The price for services rendered will be the Supplying Party's standard price, or, if not applicable, the costs directly associated with providing the services. Prices charged shall exclude all taxes and duties that the Receiving Party is exempted from paying under other agreements that the Governments of the Parties have concluded and costs waived and excluded in accordance with Article VI of this Agreement. Upon request, the Parties agree to provide information sufficient to verify that these reciprocal pricing principles have been followed and that prices do not include waived or excluded costs under Article VI of this Agreement.

2. When a definitive price for the Order is not mutually determined in advance, the Order, pending agreement on final price, shall set forth the maximum liability to the Party ordering the Logistic Support, Supplies, and Services. The Parties shall then enter into negotiations promptly to establish the final price.

3. POCs for payments and collections for each Party shall be exchanged between the Parties and updated as necessary.

4. The price for Logistic Support, Supplies, and Services under this Agreement shall not be higher than the price for the same Logistic Support, Supplies, and Services available under any other agreement or arrangement between the Parties.

ARTICLE VI. WAIVED OR EXCLUDED COSTS

1. Insofar as national laws and regulations permit, the Parties shall ensure that identifiable duties, taxes, and similar charges are not imposed on activities conducted under this Agreement. The Parties shall cooperate to provide proper documentation to maximize tax and customs relief. The provisions of any applicable tax and customs relief agreements also shall apply under this Agreement. The Parties shall inform each other whether the price charged for Logistic Support, Supplies, and Services includes taxes or duties. In determining whether duties, taxes, or similar charges should be levied, the pricing principles in Article V govern the value of the Logistic Support, Supplies, and Services provided by the Supplying Party.

ARTICLE VII. LIABILITY AND CLAIMS PROVISIONS

1. Claims arising under this Agreement will be dealt with as follows:

a. As regards issues of liability, the provisions of the Agreement between the Commonwealth of Australia and the Government of the United States of America Concerning the Status of United States Forces in Australia, and Protocol, done at Canberra on May 9, 1963, (the SOFA) or of any other agreement between the Government of Australia and the Government of the United States of America concerning the status of forces of one country when in the other which may be concluded hereafter, shall apply pursuant to their terms.

b. For issues of liability where the SOFA or any other such agreement does not apply, the following shall apply:

i. Each Party waives all claims against the other for injury or death to its personnel, and for damage to its property arising from the performance of official duties.

ii. In the event of claims from third parties for injury or death to third persons or damage to or loss of property arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined.

iii. As to i. and ii. above, if the Parties mutually determine that the damage, injury or death is caused by reckless acts, reckless omission, willful misconduct or gross negligence, the costs of any liability shall be borne entirely by the Party of the culpable person.

iv. Claims arising under any contract implementing a written arrangement shall be resolved in accordance with the provisions of the contract and shall be settled between the national defense organizations in accordance with their written arrangements.

ARTICLE VIII. SECURITY OF INFORMATION

1. The exchange of all Classified Information and material between the Parties shall be in accordance with their respective laws, regulations, and security and national disclosure policies. Any Classified Information and material provided or generated pursuant to this Agreement shall be protected in compliance with the Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information, which entered into force on November 7, 2002, and the Implementing Arrangement between the Department of Defence of Australia and the Department of Defense of the United States of America concerning Industrial Security, which entered into force on

February 8, 2007, or any successor agreements or arrangements.

ARTICLE IX. INTERPRETATION, AMENDMENTS, AND REVISION OF INFORMATION

1. Any disagreements regarding the interpretation or application of this Agreement, any Implementing Arrangements, or transactions executed hereunder shall be resolved through consultation between the Parties and shall not be referred by the Parties to any national or international tribunal, or third party for settlement.

2. Either Party may, at any time, request amendment of this Agreement by providing written notice to the other Party. In the event such a request is made, the Parties shall enter into negotiations promptly. This Agreement may be amended only by written agreement between the Parties.

ARTICLE X. ENTRY INTO FORCE AND TERMINATION

1. This Agreement, which consists of a Preamble, Articles I-XI, and Annexes A and B, shall enter into force on the date the Government of Australia provides written notification to the Government of the United States of America that it has fulfilled all of its internal procedures necessary for the Agreement to enter into force. This Agreement shall remain in force unless terminated by the mutual written consent of the Parties or by either Party giving not less than 180 days notice in writing to the other Party of its intent to terminate. Notwithstanding termination of this Agreement, all obligations incurred pursuant to its terms shall remain binding on the responsible Party until satisfied.

ARTICLE XI. SUCCESSION

1. The Agreement between the Government of the United States of America and the Government of Australia Concerning Acquisition and Cross-Servicing signed on December 9, 1998 (1999 ACSA) and entered into force on September 22, 1999, as amended, shall terminate on the date that this Agreement enters into force.

2. Upon entry into force, this Agreement applies to all new Orders for Logistic Support, Supplies, and Services. Implementing Arrangements made pursuant to the 1999 ACSA which are in effect on the date this Agreement enters into force shall remain in effect until terminated. Any references in other U.S.-Australia documents to the 1999 ACSA, or Implementing Arrangements between the U.S. and Australia made pursuant to the 1999 ACSA which are in effect on the date this Agreement enters into force, shall be construed as referring to this successor Agreement. Unless otherwise agreed by written amendment to a specific Order, the referenced 1999 ACSA and any Implementing Arrangements made pursuant to the 1999 ACSA which are in effect on the date this Agreement enters into force shall continue to apply to all

Orders issued prior to entry into force of this Agreement. Any financial obligations, transactions, Orders, or requests for Logistic Support, Supplies, or Services executed prior to the effective date of this Agreement under the authority of the 1999 ACSA or any Implementing Arrangements shall remain binding.

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

DONE at Canberra, in duplicate, on the twenty-seventh day of April two thousand and ten.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
_____	_____
ALLAN G. HOUSTON AC AFC Air Chief Marshal Chief of the Defence Force	JAMES E. CARTWRIGHT General, United States Marine Corps Vice Chairman of the Joint Chiefs of Staff

Annexes:

A. Minimum Essential Data Elements
B. Standard Mutual Logistic Support (MLS) Order/Receipt/Invoice Form

ANNEX A

MINIMUM ESSENTIAL DATA ELEMENTS

1. Implementing Arrangements or support Agreement
2. Date of Order
3. Designation and address of office to be billed
4. Numerical listing of stock numbers of items, if any
5. Quantity and description of material/services requested
6. Quantity furnished
7. Unit of Measurement
8. Unit price in currency of billing country, or as otherwise agreed to in the Order
9. Quantity furnished (6) multiplied by unit price (8)
10. Currency of billing country, or as otherwise agreed to in the Order
11. Total Order amount expressed in currency of billing country, or as otherwise agreed to in the Order
12. Name (typed or printed), signature, and title of authorized Ordering or requisitioning representative
13. Payee to be designated on remittance
14. Designation and address of office to receive remittance

15. Recipient's signature acknowledging service or supplies received on the Order or requisition or a separate supplementary document

16. Document number of Order or requisition

17. Receiving organization

18. Issuing organization

19. Transaction type

20. Fund citation or certification of availability of funds when applicable under Parties' procedures

21. Date and place of original transfer; in the case of an exchange transaction, a replacement schedule including time and place of replacement transfer

22. Name, signature and title of authorized acceptance official

23. Additional special requirement, if any, such as transportation, packaging, etc.

24. Limitation of government liability

25. Name, signature, date and title of Supplying Party official who actually issues supplies or services.

ANNEX B

MUTUAL LOGISTIC SUPPORT ORDER/RECEIPT/INVOICE FORM (MLS FORM)

MUTUAL LOGISTIC SUPPORT ORDER/RECEIPT/INVOICE FORM (MLS FORM)	Guidance on completion is in ACSA, IAs, MLS Handbook and Service procedures. . The Requesting Participant must complete areas 1 to 11, 15, 16, 17, 19, 21, 24, and 27. . The Supporting Participant must complete areas 12 to 15, 18, 20, 21, 22, 23, 25, 26. . The financial activity must complete area 28.	**Distribution:** One copy - invoice Two copies – Requesting Participant Two copies – Supporting Participant

1. Request Number:	3. From: (Requesting Participant)	5. ACSA Number: US-AS-03
2. Date of Request:	4. To: (Supporting Participant)	
6. Fund Cite (U.S. use only):	7. Date of Requested Delivery:	

8. Stock Number	9. Description of requested support (Detailed description may be attached):	10. Units	11. Qty Required	12. Qty Delivered	13. Unit Price	14. Total	15. Remarks:

16. Place of Delivery of requested support	17. Method of Reimbursement	Proposed	Agreed	18. Total Amount Claimed	19. Liability Limitations
	Cash			20. Payable to	NONE
	Replacement-in-kind				21. Additional Remarks & Transaction Codes
	Equal Value Exchange			22. Payment forwarded to	
23. Schedule for Replacement/Exchange and Place of delivery of replacement item:					

	24. Authorised Requesting Officer	25. Authorised Supplying Officer	26. Issuing Individual (Supplier's Agent)	27. Received, Inspected & Accepted by (Requester's Agent)
Name/Grade:				
Organisation:				

Signature				

28. Signature block of payment receiving officer.

I certify that I received _____ from _____ _ representing the _____Government on _____.
(Amount, Cash or Exchange Item/Service) *(Official's Name)* *(Country)* *(Date)*

This payment represents the _____ payment due under this invoice. The amount of payment still outstanding is _____.
(Sequence #) *(Amount, Cash or Exchange Item/Service)*

_____
(Signature, Title and Date of (Country) Official)

Australian POC:
Name:
Phone:
E-mail:

USA POC:
Name:
Phone:
E-mail:

EXPLANATION OF ENTRIES ON MLS FORM

1.	Request Number:	Completed by requesting unit (Requisition Number)
2.	Date of Request:	Date form completed by Requesting Participant
3.	From (Requesting Participant):	Unit and person submitting request (include phone number)
4.	To:	Unit of potential Supporting Participant
5.	IA Number:	Number of the IA under which support is to be arranged
6.	Fund Cite (US use only):	Funding citation for reimbursement
7.	Date of Requested Delivery:	Date item or service is needed
8.	Stock Number Item:	Identification number
9.	Description:	Brief description of support requested (attach details if necessary)
10.	Units:	Unit of issue (each, box, feet etc.)
11.	Quantity Required:	Amount of units requested by the Requesting Participant
12.	Quantity Delivered:	Amount of units issued by the Supporting Participant
13.	Unit Price:	Price to be charged to Requesting Participant per unit of issue
14.	Total:	Total price for all like units
15.	Remarks:	Descriptive remarks as required
16.	Place of Delivery:	Address to which requested support is to be delivered
17.	Method of Reimbursement:	Proposed and agreed method of reimbursement - cash or exchange
18.	Total Amount Claimed:	Total amount for all transactions on this MLS form (Shown in the currency of the Supporting Participant)
19.	Liability Limitation:	Amount that this MLS is not to exceed (if price is not known)
20.	Payable To:	Participant to which payment is to be made
21.	Additional Remarks/Transaction Code:	Additional comments or unique codes
22.	Payment Forwarded To:	Finance Office payment should be submitted to
23.	Schedule for Replacement:	Date and address replacement will be made; exchange timeframe not to exceed one year from supply date; delivery place of replacement item
24.	Authorised Requesting Officer:	Appointed official of Requesting Participant authorising transaction (name, rank/grade, signature, and organisation)
25.	Authorised Supplying Officer:	Appointed official of Supporting Participant authorising transaction (name, rank/grade, signature, and organisation)
26.	Issuing Individual:	Issuing individual's name, rank/grade, signature and organisation
27.	Received, Inspected, and Accepted By:	Receiving individual's name, rank/grade, signature and Accepted By (Requesting Participant's agent) organisation
28.	Payment Receiving Official:	Signature and title of official receiving payment for this transaction. Note amount/item/services received, individual/organisation providing payment, name of paying country, number of payment against transaction (1st, 2nd, final etc.) and amount still outstanding (zero if final payment)

National Interest Analysis [2010] ATNIA 21

with attachment on consultation

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

[2010] ATNIF 22

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the United States of America Concerning Acquisition and Cross-Servicing, done at Canberra on 27 April 2010 [2010] ATNIF 22

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* ('the proposed Agreement').

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

Overview and national interest summary

3. The purpose of the proposed Agreement is to replace the current *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* done at Canberra on 9 December 1998 (the 1998 Agreement). The 1998 Agreement was to expire on 22 September 2009, but its operation was extended until 22 September 2010 by the *Agreement to Amend the Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing*, done at Washington DC on 30 July 2009. This extension allowed Australia and the United States to complete negotiations on the proposed Agreement.

4. The proposed Agreement continues the operation of basic terms, conditions and procedures under the 1998 Agreement to facilitate the reciprocal provision of logistic support, supplies and services to the military forces of one Party by the other Party. The provision of logistic support, supplies and services is undertaken in return for either cash payment or the reciprocal provision of logistic support, supplies and services to the military forces of the other Party. The proposed Agreement applies to such logistics cooperation between the military forces of Australia and the United States to be used primarily during combined exercises, training, deployments, operations, or other cooperative efforts and for unforeseen circumstances or exigencies.

5. The differences between the proposed Agreement and the 1998 Agreement reflect changes in the national laws of both Parties as well as changes to the defence organisations of both Parties.

Reasons for Australia to take the proposed treaty action

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

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

Obligations

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

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

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

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

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

Implementation

13. No changes to national laws, regulations or policies are required to implement the proposed Agreement. The proposed Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

Costs

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

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

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

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

Regulation Impact Statement

18. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

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

20. Article IX provides that the proposed Agreement can only be amended by written agreement between the Parties. Each Party may request amendment of the proposed Agreement by written notice to the other Party. Where such a request is made, the Parties will enter into negotiations. Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

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

Contact Details

Director of International Logistics
Strategic Logistics Branch
Department of Defence

ATTACHMENT ON CONSULTATION

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

[2010] ATNIF 22

CONSULTATION

22. The State and Territory Governments have been consulted through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the proposed Agreement was provided to State and Territory representatives through the bi-annual SCOT meetings throughout the course of the negotiations concerning the proposed Agreement. No requests for further information or comments on the proposed Agreement have been received to date from the State and Territory Governments.

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

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:		In Australia:
군사 Ⅱ급 비밀	to be protected as	SECRET
군사 Ⅲ급 비밀	to be protected as	CONFIDENTIAL
군사대외비	to be protected as	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 31 May 2009
in the Korean and English languages, both texts being equally authentic.

For the Government of Australia	For the Government of the Republic of Korea
The Hon. Joel Fitzgibbon	Mr Lee Sang Hee
Minister for Defence	Minister of National Defense

호주 정부와 대한민국 정부 간의
군사비밀정보의 보호에 대한 협정

호주 정부와 대한민국 정부(이하 “ 당사자들” 이라 한다)는

다른 국가의 주권, 독립 및 내정 불간섭 원칙에 따라 국방 분야에서 협력하길 원하며

이 협정에 따라 당사자 간에 교환되는 군사비밀정보의 상호 보호를 보장하기를 희망하며

다음과 같이 합의하였다.

제 1 조

협정의 목적

당사자들은 국방 협력분야에서 당사자들 간에 상호 전송되거나 교환된 군사비밀정보의 보호를 보장한다. 각 당사자는 이 협정에 따라 각 당사자의 의무를 자국의 국내법, 규칙 및 정책에 따라 이행한다.

제 2 조

용어의 정의

2.1 이 협정의 목적상:

2.1.1 “ 비밀분류”란 공개될 경우에 제공 당사자에게 불이익을 초래할 수 있는 정보를 식별, 분류하고 국가보안등급을 지정하는 것을 의미한다. 정보에 부여하는 국가보안등급은 해당 정보가 분실 또는 손상을 입지 않도록 보호하는 데 필요한 최소한의 보호수준을 의미한다.

2.1.2 “ 비밀계약” 이란 당사자 간, 당사자와 계약자 간 또는 계약자 간에 체결한 계약 또는 하도급 계약으로, 어느 한쪽 당사자의 군사비밀정보를 포함하거나 그 계약의 이행이 군사비밀정보에의 접근을 필요로 하는 계약을 의미한다.

2.1.3 “ 군사비밀정보” 란 국가안보를 위해 보호하여야 하며 국가보안등급을 부여받은 국방과 관련된 모든 정보 및 자료(서류, 자료, 장비, 물품, 그 외의 모든 형태의 품목 또는 이러한 정보와 자료의 복제본이나 번역본을 포함한다)를 의미한다.

2.1.4 “ 계약자” 란 계약을 체결할 수 있는 법적 권한을 보유한 개인, 기관 또는 그 외의 주체를 의미하며, 당사자 중 어느 한쪽 또는 다른 계약자와 비밀계약을 체결한 하도급 계약자를 포함한다.

2.1.5 “ 산업적 운용” 이란 각 당사자의 국방당국을 위해 또는 대신하여 자료 및/또는 정보통신기술을 포함한 정보를 개발, 생산 및/또는 제조하는 모든 상업행위를 의미한다.

2.1.6 “ 정보통신기술” 이란 라디오, 텔레비전, 휴대폰, 컴퓨터, 하드웨어 및 소프트웨어 네트워크, 위성장치와 관련된 모든 통신장치 및 응용체계를 의미하며, 이들과 제휴된 다양한 서비스와 응용체계 및 화상회의와 원격교육을 포함한다.

2.1.7 “ 자료”란 물리적 형태나 구성을 불문하고 가시성과 무관하게 서류, 기록, 장비, 기구, 기계, 장치, 모형, 녹음, 복제, 표현물, 지도, 컴퓨터 프로그램, 편집물, 편집물 및 전자정보기억장치 등을 포함하지만 이에 한정되지 않고, 정보를 기록 · 구체화 또는 저장하고 도출할 수 있는 모든 것을 의미한다.

2.1.8 “ 제공 당사자”란 군사비밀정보를 다른 당사자에게 전송하고 국가보안등급을 부여하는 자를 의미한다.

2.1.9 “ 보안허가”란 양 당사자의 국가보안당국이 그 국가의 국민이 접근하도록 허가된 군사비밀정보의 등급에 대해 발급하는 인가를 의미한다.

2.1.10 “ 접수 당사자”란 군사비밀정보가 전송되는 당사자를 의미한다.

2.1.11 “ 보안직원”이란 국가보안당국으로부터 이 협정에 따라 보안직원으로서의 기능을 수행하도록 임명된 당사자의 직원을 의미한다.

2.1.12 “ 제 3 자”란 어느 한 당사자가 소유하거나 통제하거나 영향력을 행사하는지의 여부와 무관하게 계약자, 제 3 국 정부 및 제 3 국의 모든 국가 또는 법적 실체를 포함하여 당사자를 제외한 그 어떤 개인이나 주체를 의미한다.

2.1.13 “ 제공된 군사비밀정보” 란 구두, 영상, 전자, 서면, 자료를 통한 양도 및 그 밖의 그 어떤 형태나 방식으로든 당사자 간에 전송된 군사비밀정보를 의미한다.

제 3 조

국가보안당국

3.1 각 당사자는 이 협정의 이행을 책임지는 국가보안당국을 지정한다.

3.2 별도로 서면으로 통지하지 않는 한, 각 당사자의 국가보안당국은 다음과 같다.

3.2.1 대한민국 정부측: 국방부 정보본부 전력발전보안부장

대한민국 서울 용산구 이태원로 22 가

3.2.2 호주 정부측: 국방부 국방안보본부장

캠벨파크 오피스, 캔버라 ACT 2600 호주

3.3 당사자들은 언제든지 국가보안당국을 변경할 수 있고 다른 쪽 당사자에게 신속히 서면으로 변경사항을 통보해야 한다. 그런 변경은 이 협정의 개정을 요구하지 않는다.

제 4 조

군사비밀정보의 표시

4.1 제공 당사자는 물리적으로 표시가 가능한 모든 군사비밀정보를 제공하기 전에 이 조 제 5 항에 명시된 국가보안등급 중 하나를 부여하고 표시한다.

4.2 접수 당사자는 제공 당사자로부터 접수한 군사비밀정보 및 군사비밀정보를 포함한 모든 것에 대해 제공 당사자가 표시한 국가보안등급보다 낮지 않은 비밀등급이 부여되고 물리적으로 가능할 경우 표시되도록 보장한다.

4.3 다른 쪽 당사자로부터 접수된 군사비밀정보가 포함된 자료를 생산한 어느 한쪽 당사자의 자료는 Korea/Australia 또는 Australia/Korea 로 표기되며 적절한 국가보안등급이 뒤에 명기된다.

4.4 제공 당사자는 국가보안등급을 물리적으로 표시하기 어려운 군사비밀정보에 대해서는 국가보안등급을 접수 당사자에게 서면으로 알려준다.

4.5 당사자의 상응하는 국가보안등급은 다음과 같다.

한국	호주
군사 2 급 비밀	SECRET
군사 3 급 비밀	CONFIDENTIAL
군사 대외비	RESTRICTED

제 5 조

군사비밀정보의 보호와 이용

5.1 당사자는 상호 제공된 군사비밀정보의 보호와 이용을 위하여 다음 원칙을 적용한다:

5.1.1 제공 당사자는 군사비밀정보의 사용, 공개, 유출 및 접근에 대해 군사비밀정보의 접근을 다루는 제 6 조에 포함되지 않은 제한을

서면으로 규정할 수 있으며, 접수 당사자는 제공 당사자가 규정한 군사비밀정보의 사용, 공개, 유출 및 접근에 대한 제한을 준수해야 한다.

5.1.2 접수 당사자는 제공 당사자의 사전 서면 동의 없이는 제공된 군사비밀정보의 비밀등급을 하향 조정하여서는 안 된다.

5.1.3 제공 당사자는 제공된 군사비밀정보의 국가보안등급을 변경할 경우 그 변경내용을 접수 당사자에게 서면으로 통지한다.

5.1.4 접수 당사자는 제공된 군사비밀정보에 대하여 자국의 상응하는 국가보안등급에 해당되는 군사비밀정보에 적용되는 기준보다 낮지 않은 물리적 및 법적 보호기준을 적용한다.

5.1.5 사전에 당사자간 서면으로 합의하지 않은 한, 접수 당사자는 제공 당사자의 사전 서면 허락이 없이 그 어떤 제 3 자에게도 군사비밀정보를 공개, 유출 또는 제공해서는 안 된다.

5.1.6 접수 당사자는 제공된 군사비밀정보를 허가되지 않은 공개로부터 보호하기 위해 법적으로 허용되는 모든 적절한 조치를 취해야 한다.

5.1.7 접수 당사자는 제공 당사자의 사전 서면 허락이 없는 한, 제공된 군사비밀정보가 애초에 제공된 목적 외의 용도로 사용되는 것을 허락해서는 안 된다.

5.2 제공된 군사비밀정보가 애초에 제공된 목적에 비추어 더 이상 필요하지 않을 경우 접수 당사자는 다음과 같은 조치를 취한다:

5.2.1 군사비밀정보를 제공 당사자에게 반환한다. 또는

5.2.2 군사비밀정보를 접수 당사자의 그런 정보를 파기하는 절차에 합치하도록 파기하며, 군사비밀정보를 파기한 사실을 제공 당사자에게 서면으로 확인한다.

5.3 당사자들은 제공된 군사비밀정보의 전송 및 보호를 원활하게 하는 목적하에 적절하다고 생각된다면 보안 보호를 위한 추가적인 요건을 서면으로 상호 결정할 수 있다.

제 6 조

군사비밀정보에의 접근

6.1 제공된 군사비밀정보에 대한 접근은 이 협정의 규정에 따라 양 당사자의 다음에 모두 해당되는 자로 제한된다:

6.1.1 제공 당사자가 사전에 다르게 서면 동의하지 않는 한, 각 당사자의 국민

6.1.2 공무수행을 위하여 군사비밀정보에 접근해야 하는 자, 및

6.1.3 접수 당사자의 법, 규칙과 정책에 따른 적절한 수준의 보안허가를 받은 자

6.2 당사자들은 선출된 의회의 대표들의 특수한 지위를 인정하고, 알 필요가 있는 경우 그들의 군사비밀정보의 접근에 대한 현재 관행을 지속적으로 적용한다.

제 7 조

군사비밀정보의 전송, 처리 및 저장

7.1 군사비밀정보의 전송은 제공 당사자의 국내법, 규칙 및 절차와 이 협정의 조항에 근거하여 이루어져야 한다.

7.2 군사비밀정보는 외교채널을 통하여 전송되어야 한다. 만일 제공 당사자가 외교채널을 통한 군사비밀정보 전송이 비실용적이고 군사비밀정보의 수령을 과도하게 지연한다고 판단할 경우, 필요한 보안허가를 보유하고 제공 당사자가 발행한 전령인증서를 소지한 자를 통하거나 국가보안당국이 상호 합의한 여타 다른 채널을 통해 군사비밀정보를 전송할 수 있다.

7.3 전자적 형태의 군사비밀정보를 처리, 전송 및/또는 저장할 때 사용하는 모든 정보통신기술네트워크, 시스템 및 기반체계는 양 국가보안당국이 상호 인정하고 결정한 방법과 기준에 의해 보호되어야 한다.

7.4 접수 당사자는 군사비밀정보의 수령을 서면으로 알린다.

7.5 제공 당사자는 군사비밀정보의 전송을 거부할 수 있는 권한을 가진다.

제 8 조

비밀계약

8.1 비밀계약은 이 협정과 비밀계약이 체결되는 당사자의 관련 법, 규칙 및 정책에 따라 체결되고 이행되어야 한다.

8.2 당사자들의 국가보안당국은 비밀계약에 포함된 군사비밀정보의 보안 문제에 대한 관리에 대해 책임을 진다.

8.3 국가보안당국은 당사자와 계약자 간 이 조항을 적용하기 위해 상호 약정을 할 수 있다.

제 9 조

지적재산권 보호

이 협정의 어떠한 조항도 당사자 또는 제 3 자에게 소유권이 있는 군사비밀정보와 관련된 지적재산권을 축소하거나 제한하지 않는다.

제 10 조

보안기준의 공유

각 당사자는 다른 당사자에게 그의 요청에 따라 산업적 운용과 관련된 군사비밀정보 보호를 위한 자국의 보안기준, 절차 및 군사비밀정보의 보호 관련 관행에 대한 정보를 제공한다. 각 당사자는 전송된 군사비밀정보가 보호되는 방식에 영향을 미치는 자국의 국가보안기준, 절차 및 관행에 대한 변경사항을 서면으로 통보한다.

제 11 조

방문– 일반원칙

11.1 다른 쪽 당사자가 보유한 군사비밀정보에의 접근을 요하는 어느 한쪽 당사자의 인사의 방문 또는 군사비밀정보가 저장되는 제한 구역 또는 시설에의 접근을 요하는 경우 접수 당사자의 사전 서면 승인 하에 이행되어야 한다. 이런 방문의 승인은 제 6 조에 규정된 인사에게만 수여될 수 있다.

11.2 이런 방문의 요청은 방문하는 당사자의 국가보안당국이 외교채널을 통해 방문자를 접수하는 당사자의 국가보안당국에게 서면으로 제출한다. 상호 다르게 합의하지 않는 한, 그러한 요청은 최소한 방문 예정 날짜보다 3 주 전에 해야 한다.

11.3 방문 신청서에는 다음 사항이 포함되어야 한다:

11.3.1 제안한 방문의 목적

11.3.2 제안한 방문의 날짜와 기간

11.3.3 방문하려는 기관 또는 시설의 이름

11.3.4 방문에 대해 추가 정보를 줄 수 있는 방문 당사자의 정부 공무원의 개인정보 및 연락처

11.3.5 방문하고자 하는 조직 또는 시설 담당자의 개인정보 및 전화번호

11.3.6 방문예정자의 다음과 같은 상세 신상정보

11.3.6.1 성명

11.3.6.2 생년월일 및 출생지

11.3.6.3 국적 및 여권번호

11.3.6.4 방문자의 공식직함 및 그들의 대표하는 기관명

11.3.6.5 보안허가 발급일 및 유효기간

11.4 방문자를 접수하는 당사자가 허가된 방문기간 중 그러한 접근 또는 출입을 허가하려고 할 경우, 이 조 제 2 항의 어떠한 내용도 다른 당사자의 인사가 군사비밀정보에 대한 접근을 갖거나 접근제한구역 또는 그 어떤 다른 시설에 들어가는 것을 허락하는 양 당사자의 권리를 제한하지 않는다.

제 12 조

보안요원의 방문

12.1 각 당사자는 상호 편리하고 제 11 조에 규정된 절차에 따라 접수 당사자의 영토내에 있으며 군사비밀정보가 저장된 기관, 시설 및 통제된 구역에 다른 당사자의 보안요원의 방문을 아래의 경우 허용한다.

12.1.1 제공된 군사비밀정보에의 접근을 얻기 위해 또는

12.1.2 군사비밀정보의 보호에 적용되는 보안기준, 절차 및 관행에 관해 접수 당사자의 국가보안당국과의 협의를 위해

12.2 각 당사자는 방문 당사자의 보안요원으로 하여금 이 조 제 1 항에 명시된 임무를 수행할 수 있도록 지원한다.

제 13 조

보안규정 준수 및 보안점검

13.1 각 당사자는 제공된 군사비밀정보를 취급하거나 보관하는 자국 내 시설, 조직 및 그 밖의 기관이 이 협정에 따라 군사비밀정보를 보호하도록 보장한다.

13.2 각 당사자는 제공된 군사비밀정보를 보호하기 위하여, 자국 내에서 필요한 보안점검이 실시되고 적절한 보안규정과 절차가 준수되도록 보장한다.

제 14 조

군사비밀정보의 분실 또는 손상

14.1 제공 당사자가 제공한 군사비밀정보가 접수 당사자가 소유하는 동안 분실되거나 손상된 경우 접수 당사자는 바로 제공 당사자에게 그 사실을 알린다. 접수 당사자는 제공 당사자에게 분실이나 손상이 의심될 경우 그

사실도 즉시 통보한다. 접수 당사자는 그런 분실과 손상 또는 의심되는 분실과 손상의 상황에 대한 조사를 즉시 개시하며, 그 조사의 결과 및 이미 취해진 또는 향후 취해질 시정조치에 대해 바로 제공 당사자에게 알린다.

14.2 접수 당사자는 필요 시 제공당사자에게 분실 또는 손상으로 발생한 손해 평가를 위한 구체적인 조사를 위해 필요한 인력의 지원을 제공토록 요청할 수 있다. 그런 요청은 호의적으로 고려되어야 한다.

14.3 제공된 군사비밀정보에 관한 그 어떤 보안사고 시 사건이 발생한 당사자 국가의 당시 효력 있는 군사비밀정보 보안규정 위반에 관한 법률이나 정책에 따라 처리한다.

제 15 조

비 용

각 당사자는 이 협정의 이행 시 발생하는 비용을 각자 부담한다.

제 16 조

분쟁의 해결

이 협정의 해석 또는 적용과 관련하여 분쟁이 발생하는 때에는 당사자 간의 협의와 협상에 의하여 해결되어야 하며 제 3 자에게 의뢰하지 않는다.

제 17 조

발효, 검토, 수정, 기간 및 종료

17.1 이 협정은 협정의 발효를 위해 필요한 각 당사국의 국내절차가 완료되었다는 양 당사국의 서면통지서가 교환된 날 발효된다. 이 협정의 발효일자는 마지막 통지의 날이다.

17.2 이 협정은 아무 때나 상호 합의하에 또는 어느 한쪽 당사자의 서면 통지를 통해 종료될 수 있으며 통지한 시점으로부터 6 개월이 경과한 후에 발효한다.

17.3 이 협정은 어느 한쪽의 요청에 따라 검토될 수 있으며, 당사자 간 서면 합의에 의하여 수정할 수 있다. 이 협정을 수정하는 경우, 양 당사자가 상호 서면으로 각자의 국내절차 요건이 충족되었음을 통지할 때 발효한다.

17.4 제공된 군사비밀정보의 보호와 사용에 대한 이미 존재하는 책임과 의무 및 제 16 조의 합의는 이 협정의 종료와 무관하게 계속 적용된다.

이상의 증거로 아래 서명자는 그들 각자의 정부로부터 정당하게 권한을 위임받아 이 협정에 서명하였다.

년 월 일 에서 동등하게 정본이 한국어, 영어로 2 부씩 작성되었다.

호주 정부를 대표하여 대한민국 정부를 대표하여

National Interest Analysis [2010] ATNIA 20

With attachment on Consultation

Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information
Singapore, 30 May 2009

[2009] ATNIF 12

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information, done at Singapore on 30 May 2009 [2009] ATNIF 12

Nature and timing of proposed treaty action

1. The *Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information* (the proposed Agreement) was signed on 30 May 2009.

2. Article 17 of the proposed Agreement provides that it will enter into force once Australia and the Republic of Korea notify each other in writing that they have completed their domestic requirements for the entry into force of the proposed Agreement. The Republic of Korea provided such notification to the Australian Government on 16 June 2009. The proposed Agreement will therefore enter into force on the date that Australia provides its written notification to the Republic of Korea.

3. Subject to consideration by the Joint Standing Committee on Treaties (JSCOT), it is proposed that the Government of Australia send the above mentioned written notification to the Republic of Korea as soon as practicable after the tabling period expires.

Overview and national interest summary

4. The purpose of the proposed Agreement is to establish a legal framework for the exchange of Classified Military Information between the Government of Australia and the Government of the Republic of Korea. It outlines agreed procedures and protections for exchanging such information between all government departments and agencies in the two countries. This will hold clear benefits for Australia, in particular by improving the sharing of information on important defence capabilities and defence industry cooperation, including our respective Airborne Early Warning and Control aircraft. The proposed Agreement will also facilitate further opportunities for practical defence cooperation in areas such as training and exercising. Finally, it will serve to enhance goodwill between the Defence organisations of both countries.

Reasons for Australia to take the proposed treaty action

5. The proposed Agreement sets out security procedures and practices for the exchange and protection of Classified Military Information between Australia and the Republic of Korea and for visits by personnel of either Party requiring access to Classified Military Information or restricted areas or facilities where Classified Military Information is held. The proposed Agreement will facilitate future cooperation and help strengthen the relationship between Australia and the Republic of Korea. Concluding the proposed Agreement is also a key outcome of the *Joint Statement on Enhanced Global and Security Cooperation* as announced by Prime Minister Rudd and President Lee in March 2009. The proposed Agreement builds on the 2008 Arrangement between the Ministry of National Defense of the Republic of Korea and the Department of Defence of Australia on the Protection of Classified Military Information (the 2008 Arrangement). It is similar to other legally binding information agreements related to the protection of Classified Military Information that Australia has entered into with a wide range of countries.

6. The proposed Agreement ensures that Classified Military Information which the Government of Australia passes to the Government of the Republic of Korea will be afforded protection according to standards of physical and legal protection not less than that which it accords its own information of a corresponding national security classification. Classified Military Information will not be used for a purpose other than that for which it was provided and will not be passed to any third party without the written consent of the Australian Government. Access to Australian Classified Military Information will be limited to those Republic of Korea officers whose official duties require such access. The Australian Defence Security Authority is satisfied that these standards would provide protection to Australian Classified Military Information equivalent to that received under Australian laws, regulations and policies.

7. The Australian Government currently shares Classified Military Information with the Republic of Korea in support of defence capability development. These exchanges occur under the non-legally binding 2008 Arrangement, which was implemented as an interim measure until such time as a legally binding treaty-level agreement could be negotiated. Of particular importance under the 2008 Arrangement is defence industry cooperation on capabilities such as our respective Airborne Early Warning and Control aircraft. The proposed Agreement provides the necessary security assurances to facilitate the exchange of Classified Military Information by ensuring that the information is protected through legally binding obligations.

Obligations

8. The provisions in the proposed Agreement are similar to the other security of classified military information Agreements that Australia has concluded in the past. The proposed Agreement facilitates the exchange of information between the Parties for the purpose of defence cooperation by requiring that the Parties protect each other's Classified Military Information to an agreed equivalent standard. Having examined each other's security policies and standards, both Parties are satisfied that this obligation can be met by the other.

9. The provisions of the proposed Agreement cover the following matters:

a) An obligation to assign all security Classified Military Information with a national security classification before transmission (Article 4.1 and 4.4).

c) A requirement that Classified Military Information received from the other Party is accorded a standard of physical and legal protection no less stringent than that which it accords its own Classified Military Information of corresponding national security classification (Article 5.1.4).

d) An obligation not to disclose Classified Military Information received from the other Party to any third party without the prior written consent of the Originating Party, unless otherwise mutually determined in writing (Article 5.1.5).

e) A requirement that the Parties shall not permit Classified Military Information to be used for any purpose other than that for which it was provided without prior written consent (Article 5.1.7).

f) An obligation to return or destroy Classified Military Information that is no longer required for the purpose for which it was provided. Destruction of the information will be in accordance with the procedures of the Receiving Party, who will confirm in writing to the Originating Party that the information has been destroyed (Article 5.2).

g) An obligation to ensure that access to Classified Military Information be limited to individuals who hold a Personnel Security Clearance to the appropriate level granted under each Party's national laws, regulations and policies (Article 6).

h) A requirement that Classified Military Information be transmitted through diplomatic channels or channels mutually approved in advance by the National Security Authorities. All information and communications technology systems used to transmit or store exchanged Classified Military Information will be protected to standards agreed to by the National Security Authorities. Notably, a Party may refuse to transmit any of its information (Article 7).

i) An obligation to ensure that contracts or subcontracts the performance of which requires access to Classified Military Information are concluded and implemented in accordance with the proposed Agreement and relevant national laws, regulations and policies (Article 8).

j) A requirement that each Party inform the other Party in writing of any changes to its national security standards that would affect the manner in which Classified Military Information is protected under the proposed Agreement (Article 10).

k) A requirement that visits by representatives of a Party requiring access to Classified Military Information held by the other Party or requiring access to restricted areas or facilities where such information is held shall be undertaken only with prior written approval. All visit requests will be forwarded through diplomatic channels (Article 11).

l) An obligation to inform the Originating Party immediately of any suspected loss or compromise of classified material. The Receiving Party shall then investigate the circumstances of such loss or compromise and, without delay, inform the Originating Party of the findings of the investigation and the corrective action taken (Article 14).

m) A requirement that disputes shall be resolved by consultation and negotiation and shall not be referred to any third party for settlement (Article 16).

Implementation

10. No changes to domestic laws or policy are required to implement the proposed Agreement. The proposed Agreement can be implemented in accordance with the Australian Government Protective Security Manual, which sets out procedures for the protection of classified information. The proposed Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

11. The National Security Authorities responsible for implementing the proposed Agreement are the Head, Defence Security Authority, Australian Department of Defence and the Director, Intelligence Force Development and Security, Korean Defence Intelligence Agency, Ministry of National Defence ('the National Security Authorities').

12. The proposed Agreement ensures that the Parties can separately negotiate, through their National Security Authorities, supplementary implementing arrangements concerning Classified Contracts. The Parties may also mutually determine any additional measures for the purposes of facilitating the transmission and protection of Transmitted Classified Military Information.

Costs

13. There are no foreseeable financial costs to the Australian Government in the implementation of the proposed Agreement.

Regulation Impact Statement

14. The Office of Best Practice Regulation, Department of Finance and Deregulation has been consulted and has confirmed that a Regulation Impact Statement is not required.

Future treaty action

15. The proposed Agreement does not provide for the negotiation of any future legally binding treaties, although Article 8.3 provides that the National Security Authorities may mutually determine arrangements to effect 'classified contracts' (described in Article 8) between the Parties and an individual, organisation or other entity. (Article 8 provides that supplementary arrangements in relation to classified contracts may be concluded by the National Security Authorities.) Article 5.3 provides that the parties may mutually determine additional requirements for facilitating the transmission and protection of Transmitted Classified Military Information.

16. Article 17.3 provides that the proposed Agreement may be amended by mutual written consent of the Parties. Amendments to the proposed Agreement would be subject to Australia's domestic treaty approval process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

17. Article 17.2 provides that the proposed Agreement may be terminated at any time:

a) By mutual consent in writing; or

b) By either Party giving the other written notice of its intention to terminate (with termination taking effect six months after notification). Termination by Australia would be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by JSCOT.

18. Pursuant to Article 17.4, if the proposed Agreement were terminated, the responsibilities and obligations of the Parties in relation to the protection, disclosure and use of Classified Military Information already exchanged would continue to apply, notwithstanding the termination of this proposed Agreement. Consequently, the ongoing protection of classified material would be ensured, including its destruction or return to the originator when no longer required for the purpose for which it was exchanged.

Contact details

Director of Security Policy
Defence Security Authority
Department of Defence

ATTACHMENT ON CONSULTATION

**Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Classified Military Information,
done at Singapore on 30 May 2009
[2009] ATNIF 12**

Consultation

19. The Minister for Foreign Affairs provided approval for the Department of Defence to be the coordinating authority for the Commonwealth in the implementation of this proposed Agreement. The Department of Defence has consulted with the Department of Prime Minister and Cabinet, the Attorney-General's Department and the Department of Foreign Affairs and Trade throughout the negotiation process and has confirmed that the proposed Agreement meets the requirements of all Australian Government departments and agencies that deal with national security classified information.

20. The States and Territories were advised about the proposed Agreement through the Treaties Schedule provided to the Commonwealth-State-Territory Standing Committee on Treaties'. No State or Territory comment has been received to date. The proposed Agreement does not require State or Territory action for its domestic implementation.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

AGREEMENT

BETWEEN AUSTRALIA

AND THE EUROPEAN UNION

ON THE SECURITY OF CLASSIFIED INFORMATION

Not yet in force

[2010] ATNIF 1

AUSTRALIA, and THE EUROPEAN UNION, hereinafter referred to as "the EU",
(hereinafter referred to as "the Parties"),

CONSIDERING that the Parties share the objective of strengthening their own security in all ways and to provide their citizens with a high level of safety within an area of security;

CONSIDERING that the Parties agree that consultations and cooperation should be developed between them on questions of common interest relating to security;

CONSIDERING that, in this context, a permanent need therefore exists to exchange Classified Information between the Parties;

RECOGNISING that full and effective consultation and cooperation may require access to Classified Information of Australia and of the EU, as well as the exchange of Classified Information between the Parties;

CONSCIOUS that such access to and exchange of Classified Information requires appropriate security measures;

WHEREAS Australia and the EU launched a Partnership Framework on 29 October 2008 in support of a number of common objectives;

WHEREAS Objective 1 of that Partnership Framework specifically provides for the opening of negotiations for an agreement on the security of classified information,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Scope

1. In order to fulfil the objective of strengthening bilateral and multilateral dialogue and cooperation in support of shared foreign security policy and security interests, the present Agreement applies to Classified Information, as defined in Article 2(a), either provided or exchanged between the Parties.

2. Each Party shall protect Classified Information received from the other Party, in particular against unauthorised disclosure.

3. Each Party shall implement its obligations under this Agreement in accordance with its laws, rules and regulations.

ARTICLE 2

Definitions

For the purposes of this Agreement:

(a) "Classified Information" means all information that is subject to a Security Classification (as provided in Article 4) assigned by either Party, and the unauthorised disclosure of which could cause varying degrees of damage or harm to the interests of either Party. The information may be in oral, visual, electronic, magnetic or documentary form, or in the form of material, including equipment or technology and includes reproductions and translations;

(b) "The EU" shall mean the Council of the European Union (hereafter referred to as "the Council"), the Secretary-General/High Representative and the General Secretariat of the Council, and the Commission of the European Communities (hereafter referred to as "the European Commission");

(c) "Providing Party" means the Party that provides Classified Information to the other Party;

(d) "Receiving Party" means the Party that receives Classified Information from the Providing Party;

(e) "Security Classification" is the designation assigned to information by the Providing Party to indicate the minimum level of protection that information must be afforded to safeguard it from disclosure that could have adverse consequences for the Providing Party. Each Party's Security Classifications are as specified in Article 4;

(f) "Need-to-know" means the principle that access to Classified Information should be limited to those who need to use such information in order to perform their official duties;

(g) "Third Party" means any person or entity other than the Parties;

(h) "Contractor" means an individual (other than those engaged by Australia or the EU under a contract of employment) or legal entity possessing the legal capacity to enter into contracts for the provision of goods or services; this term also refers to a subcontractor.

ARTICLE 3

Level of protection

Each of the Parties, and entities thereof as defined in Article 2(b), shall ensure that it has a security system and security measures in place, based on the basic principles and minimum standards of security laid down in its respective laws, rules and regulations, and reflected in the security arrangements that shall be established pursuant to Article 12, in order to ensure that an equivalent level of protection is applied to Classified Information exchanged under this Agreement.

ARTICLE 4

Security Classifications

1. Classified Information shall be marked with the following Security Classifications:

(a) For Australia, Classified Information shall be marked TOP SECRET, SECRET or HIGHLY PROTECTED, CONFIDENTIAL or PROTECTED, RESTRICTED or X-IN-CONFIDENCE.

(b) For the EU, Classified Information shall be marked TRES SECRET UE / EU TOP SECRET, SECRET UE, CONFIDENTIEL UE or RESTREINT UE.

2. The corresponding Security Classifications are:

For the European Union	For Australia
TRES SECRET UE / EU TOP SECRET	TOP SECRET
SECRET UE	SECRET or HIGHLY PROTECTED
CONFIDENTIEL UE	CONFIDENTIAL or PROTECTED
RESTREINT UE	RESTRICTED or X-IN-CONFIDENCE

3. Prior to providing Classified Information, the Providing Party shall assign a Security Classification to the Classified Information and stamp, mark or designate the Classified Information with the name of the Providing Party.

4. The Providing Party may additionally mark such Classified Information to specify any limitations on its use, disclosure, release and access by the Receiving Party. The Receiving Party shall comply with any such limitations.

ARTICLE 5

Protection of Classified Information

Each Party shall:

(a) ensure the security of facilities where Classified Information released to it by the other Party is kept, and ensure for each such facility that all necessary measures are taken to control, protect and safeguard Classified Information provided by the other Party under this Agreement;

(b) ensure that Classified Information exchanged under this Agreement keeps the Security Classification marking given to it by the Providing Party and is not downgraded or declassified without the prior written consent of the Providing Party;

(c) afford Classified Information received from the Providing Party a degree of protection at least equivalent to that afforded to its own Classified Information of a corresponding Security Classification as specified in Article 4(2);

(d) not use such Classified Information for purposes other than those established by the Providing Party or those for which the Classified Information is provided;

(e) not disclose such Classified Information to third parties, or to any EU institution or entity not mentioned in Article 2(b), without the prior written consent of the Providing Party;

(f) not allow access to such Classified Information to individuals unless they have a Need-to-know in order to perform their official duties and, where required, have been security-cleared to the appropriate level for access to such Classified Information;

(g) ensure that all individuals having access to such Classified Information are informed of their responsibilities to protect the information in accordance with that Party’s internal laws, rules and regulations; and

(h) ensure that the rights of the originator of Classified Information exchanged under this Agreement, as well as intellectual property rights such as patents, copyrights or trade secrets, are adequately protected.

ARTICLE 6

Release of Classified Information

1. Classified Information may be disclosed or released, in accordance with the principle of originator control, by the Providing Party to the Receiving Party.

2. In implementing paragraph 1, no generic release shall be possible unless procedures are agreed between the Parties, pursuant to Article 12, regarding certain categories of Classified Information, relevant to their operational requirements.

ARTICLE 7

Security Clearances

1. Access to Classified Information shall be limited to individuals in Australia and in the EU who:

(a) require access, on a Need-to-know basis, to the Classified Information for the performance of their official duties; and

(b) in case they require access to information classified CONFIDENTIAL, PROTECTED, CONFIDENTIEL UE, or above, have been granted a personnel security clearance at the relevant level or have otherwise been duly authorised by virtue of their functions, in accordance with the relevant laws, rules and regulations.

2. The determination by a Party to grant a personnel security clearance to an individual shall be consistent with that Party’s security interests and shall be based upon all available information indicating whether the individual is of unquestionable loyalty, integrity, honesty and trustworthiness.

3. Each Party's personnel security clearances shall be based on an appropriate investigation conducted in sufficient detail to provide assurance that the criteria referred to in paragraph 2 have been met with respect to any individual to whom access to Classified Information is to be granted.

ARTICLE 8

Security Visits and Procedures

1. The Parties shall provide mutual assistance with regard to the security of Classified Information exchanged under this Agreement.

2. Reciprocal security consultations and assessment visits shall be periodically conducted by the responsible security authorities referred to in Article 12 to assess the effectiveness of measures taken under this Agreement and the security arrangements to be established pursuant to Article 12 for protecting the Classified Information exchanged between the Parties.

3. Each Party shall provide to the other, upon request, information regarding its security standards, procedures and practices for the protection and destruction of Classified Information. Each Party shall inform the other Party in writing of any changes to its security standards, procedures and practices that affect the manner in which Classified Information is protected and destroyed.

ARTICLE 9

Release of Classified Information to Contractors

Classified Information received by the Receiving Party may only be provided to a Contractor or prospective Contractor with the prior written consent of the Providing Party. Prior to the disclosure or release to a Contractor or prospective Contractor of any such Classified Information, the Receiving Party shall ensure that:

(a) such Contractors or prospective Contractors, and their personnel requiring access to Classified Information, have a personnel security clearance in accordance with Article 7; and

(b) their facilities are able to protect the Classified Information appropriately.

ARTICLE 10

Procedures for Exchanging Classified Information

1. For the purpose of this Agreement:

(a) as regards the EU, all Classified Information shall be addressed to the Chief Registry Officer of the Council and shall be forwarded by the Chief Registry Officer of the Council to the Member States and to the European Commission, subject to paragraph 3;

(b) as regards Australia, all Classified Information shall be addressed to the registry office of the relevant Australian Government agency or department, via the Australian Embassy and Mission of the Government of Australia to the European Union, Brussels. The address for the relevant Australian Government agency or department shall be listed in the security arrangements established by the Parties pursuant to Article 12.

2. Classified Information transmitted by electronic means shall be encrypted in accordance with the Providing Party's requirements as outlined in its security policies and regulations. The Providing Party's requirements shall be met when transmitting, receiving, storing and processing Classified Information in internal networks of the Parties.

3. Exceptionally, Classified Information from one Party which is accessible to only specific competent officials, organs or services of that Party may, for operational reasons, be addressed and be accessible to only specific competent officials, organs or services of the other Party specifically designated as recipients, taking into account their competencies and according to the Need-to-know principle. As far as the EU is concerned, this correspondence shall be transmitted through the Chief Registry Officer of the Council, or the Chief Registry Officer of the Secretariat-General of the European Commission when such information is addressed to the European Commission. As far as

Australia is concerned, Classified Information shall be addressed pursuant to paragraph 1(b).

ARTICLE 11

Oversight

1. For the EU, the Secretary-General of the Council and the Member of the European Commission responsible for security matters shall oversee the implementation of this Agreement.

2. For the Government of Australia, the Minister for Foreign Affairs, the Minister for Defence and the Attorney-General shall oversee the implementation of this Agreement.

ARTICLE 12

Security arrangements

1. In order to implement this Agreement, security arrangements shall be mutually determined in writing between the responsible security authorities designated in paragraphs 2, 3 and 4, in order to lay down the standards for the reciprocal protection of Classified Information under this Agreement.

2. The Attorney-General's Department, acting in the name of the Government of Australia and under its authority, shall develop the security arrangements for the protection and safeguarding of Classified Information provided to Australia under this Agreement.

3. The Security Office of the General Secretariat of the Council, under the direction and on behalf of the Secretary-General of the Council, acting in the name of the Council and under its authority, shall develop the security arrangements for the protection and safeguarding of Classified Information provided to the EU under this Agreement.

4. The European Commission Security Directorate, acting under the authority of the Member of the Commission responsible for security matters, shall develop the security arrangements for the

protection of Classified Information transmitted under this Agreement within the European Commission and its premises.

5. For the EU, the security arrangements mentioned in paragraph 1 shall be subject to approval by the Council Security Committee.

ARTICLE 13

Loss or compromise

The Authorities referred to in Article 12 shall establish procedures to be followed:

(a) in the case of proven or suspected loss or compromise of Classified Information provided or exchanged under this Agreement; and

(b) for informing the Providing Party of the results of an investigation and information regarding measures taken to prevent recurrence of loss or compromise to Classified Information provided or exchanged under this Agreement.

ARTICLE 14

Costs

Each Party shall bear its own costs incurred in implementing this Agreement.

ARTICLE 15

Ability to protect

Before Classified Information is provided or exchanged between the Parties under this Agreement, the Authorities referred to in Article 12 shall agree that the Receiving Party is able to protect and

safeguard the information in a way consistent with the security arrangements to be established pursuant to that Article.

ARTICLE 16

Other agreements

This Agreement shall not prevent the Parties from concluding other agreements and arrangements relating to the provision or exchange of Classified Information provided that they do not conflict with the provisions of this Agreement.

ARTICLE 17

Dispute Resolution

Any differences between Australia and the European Union arising out of the interpretation or application of this Agreement shall be settled solely by negotiation between the Parties.

ARTICLE 18

Entry into force and amendment

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.

2. Each Party shall notify the other Party of any changes in its laws, rules or regulations that could affect the protection of Classified Information referred to in this Agreement. In such cases, the Parties shall consult with a view to amending this Agreement as necessary in accordance with paragraph 4.

3. This Agreement may be reviewed for consideration of possible amendments at the request of either Party.

4. Any amendment to this Agreement shall be made in writing only and by common agreement of the Parties. It shall enter into force upon mutual notification as provided in paragraph 1.

ARTICLE 19

Termination

1. Either Party may terminate this Agreement at any time by notification in writing. Termination shall take effect ninety (90) days from the date of the other Party being notified thereof.

2. Notwithstanding termination of this Agreement, all Classified Information received by the Parties pursuant to this Agreement shall continue to be protected in accordance with this Agreement. The Parties shall consult immediately on the handling or disposal of such Classified Information.

IN WITNESS WHEREOF, the undersigned, respectively duly authorised, have signed this Agreement.

Done at Brussels , this thirteenth day of January 2010 in two copies, each in the English language.

FOR AUSTRALIA

Dr Alan Thomas
Ambassador

FOR THE EUROPEAN UNION

Catherine Ashton
EU High Representative for Foreign and Security Policy and EC Vice-President-designate

National Interest Analysis [2010] ATNIA 19

with attachment on consultation

Agreement between Australia and the European Union
on the
Security of Classified Information,
done at Brussels, 13 January 2010

[2010] ATNIF 2

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between Australia and the European Union
on the
Security of Classified Information,
done at Brussels, 13 January 2010
[2010] ATNIF 2

Nature and timing of proposed treaty action

1. The *Agreement between Australia and the European Union on the Security of Classified Information* (the proposed Agreement) was signed on 13 January 2010.

2. Article 18(1) of the proposed Agreement provides that it will enter into force one month after Australia and the European Union (EU) have notified each other of the completion of the internal procedures necessary for the entry into force of the proposed Agreement.

3. It is proposed that the above mentioned notification by Australia will occur as soon as practicable after the expiration of the tabling period for the treaty action and subject to recommendation from the Joint Standing Committee on Treaties (JSCOT) that binding treaty action be taken. Australia anticipates some delay in receiving notification from the EU that its internal procedures have been completed, as new requirements for ratification of treaties by the European Parliament came into effect on 1 January 2010.

Overview and national interest summary

4. The purpose of the proposed Agreement is to establish procedures for the exchange of classified information between Australia and the EU (the Parties). The proposed Agreement will strengthen bilateral and multilateral dialogue and cooperation between Australia and the EU in support of foreign security policy and security interests by facilitating increased information sharing between Australia and the EU. This will be achieved by requiring the Parties to protect classified information received from the other Party in accordance with agreed standards and procedures.

5. Classified information that Australia passes to the EU will, under the proposed Agreement, be protected to an agreed standard. It will not be used for any purpose other than that for which it is provided and will not be passed to any third party without the written consent of Australia. The same conditions apply to classified information supplied by the EU to Australia.

Reasons for Australia to take the proposed treaty action

6. The proposed Agreement sets out security procedures and practices for the exchange and protection of classified information between Australia and the EU and for visits by the security authorities of Australia and the EU to assess the effectiveness of measures taken under the proposed Agreement. The proposed Agreement will facilitate future cooperation and assist in strengthening the relationship between Australia and the EU. The proposed Agreement is not controversial in nature and is substantially similar to other legally binding information sharing agreements that Australia has entered into with a wide range of countries with which Australia exchanges classified information. Concluding the proposed Agreement is an Immediate Action Item in the *Australia-EU Partnership Framework* which underpins the bilateral relationship between Australia and the EU.

Obligations

7. Classified Information is defined in Article 2 to include information that is subject to a security classification assigned by either Party and the unauthorised disclosure of which could cause damage or harm to the interests of either Party. Under the proposed Agreement, each Party is obliged to protect Classified Information received from the other Party, in particular against unauthorised disclosure, by affording it an equivalent level of protection as would be applied in the providing Party (Article 3). Article 4 sets out the security markings of each Party and their equivalent markings in the other Party.

8. Under Article 6, Classified Information may be disclosed or released by the Providing Party to the Receiving Party in accordance with the principle of 'originator control'. This means that the originator of Classified Information must consent to the release or disclosure.

9. Under the proposed Agreement Australia and the EU are required to:

a) ensure the security of facilities where Classified Information released by the other Party is kept, including that all necessary measures are taken to control, protect and safeguard Classified Information provided by the other Party (Article 5(a));

b) ensure that Classified Information exchanged under the proposed Agreement keeps the Security Classification marking given to it by the Providing Party and is not downgraded or declassified without the prior written consent of the Providing Party (Article 5(b)); and

c) afford Classified Information received from the Providing Party a degree of protection at least equivalent to that afforded to its own Classified Information of a corresponding Security Classification as specified in Article 4(2) (Article 5(c)).

10. In addition, the proposed Agreement imposes obligations regarding the use of Classified Information exchanged under the proposed Agreement. Parties are not to use Classified Information for purposes other than those established by the Providing Party or those for which the Classified Information is provided (Article 5(d)). Parties are not permitted to disclose Classified Information to third parties without the prior written consent of the Providing Party

(Article 5(e)). Any EU institution or entity not included in the definition of 'the EU' in Article 2 is considered a third party for the purposes of this provision.

11. Under the proposed Agreement, individuals who access Classified Information must have:

a) a need to know the information in order to perform their official duties (Article 5(f), Article 7);

b) where required, a security clearance at the appropriate level for access to such Classified Information (Article 5(f), Article 7); and

c) been informed by the relevant Party of their responsibilities to protect the information in accordance with that Party's internal laws, rules and regulations (Article 5(g).

12. Australia and the EU are required to ensure that the rights of the originator of Classified Information exchanged under the proposed Agreement, as well as intellectual property rights such as patents, copyrights or trade secrets, are adequately protected (Article 5(h)).

13. Parties are able to assess the effectiveness of security measures and arrangements through reciprocal security consultations and assessment visits. Article 8 sets out the procedures for such visits and requires the Parties to provide mutual assistance and share information regarding the security of Classified Information exchanged under the proposed Agreement.

14. Classified Information passed to the Receiving Party may only be provided to a Contractor or prospective Contractor with the prior written consent of the Providing Party (Article 9). The term 'Contractor' includes sub-contractors (Article 2(h)). In order to be provided with Classified Information, such Contractors or prospective Contractors, as well as any of their personnel who require access to Classified Information, must have a personnel security clearance (Article 9(a)). The Party who wishes to disclose the information to the Contractor must ensure that the Contractor's facilities are able to protect the Classified Information appropriately (Article 9(b)).

15. The proposed Agreement requires the security authorities of the Parties to conclude security arrangements which lay down the standards for the reciprocal protection of Classified Information (Article 12) and situations where there is suspected loss or compromise of material (Article 13). For Australia, the Attorney-General's Department is responsible for developing security arrangements for the protection and safeguarding of Classified Information provided under the proposed Agreement.

16. The proposed Agreement also sets out procedures for:

a) exchanging Classified Information (Article 10);

b) oversight of the implementation of the proposed Agreement (Article 11); and

c) dispute resolution (Article 17).

Implementation

17. No changes to Australia's domestic laws or policy are required to implement the proposed Agreement. The proposed Agreement can be implemented through the Commonwealth's protective security policy, which sets out the procedures necessary for implementing the proposed Agreement. The proposed Agreement will not effect any change to the existing roles of the Commonwealth Government, or the State and Territory Governments.

18. For Australia, the Minister for Foreign Affairs, the Minister for Defence and the Attorney-General shall oversee the implementation of the proposed Agreement. For the EU, the Secretary-General of the European Council and the Member of the European Commission responsible for security matters shall oversee the implementation of the proposed Agreement.

Costs

19. Under Article 14 of the proposed Agreement, each Party is required to bear its own costs in implementing the proposed Agreement. However, there are no foreseeable financial costs to Australia for compliance with the proposed treaty action.

Regulation Impact Statement

20. The Office of Best Practice Regulation, Department of Finance and Deregulation has been consulted and has confirmed that a Regulation Impact Statement is not required.

Future treaty action

21. The proposed Agreement does not provide for the negotiation of future related legally binding instruments.

22. Article 16 provides that the Parties are not prevented from concluding other agreements or arrangements relating to the provision of Classified Information. However, such agreements or arrangements must not conflict with the provisions of this proposed Agreement.

23. Article 18(4) of the proposed Agreement provides that the proposed Agreement may be amended by written agreement between the Parties. Article 18(2) specifically provides that the Parties shall consult with a view to amending the proposed Agreement as necessary where changes are made to the laws, rules or regulations of either Party that could affect the protection of Classified Information. Amendments to the proposed Agreement will enter into force in the same manner as the proposed Agreement. Amendments to the proposed Agreement would be subject to Australia's domestic treaty approval process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

24. Article 19(1) provides that either Party may terminate the proposed Agreement at any time by notification in writing. Termination would take effect 90 days from the date of notification of the Party's intention to terminate. Termination would be subject to Australia's domestic treaty process, including tabling in Parliament and consideration by JSCOT.

25. Under Article 19(2), if the proposed Agreement is terminated, all Classified Information received by the Parties under the Proposed Agreement shall continue to be protected in accordance with the terms of the proposed Agreement. If the proposed Agreement is terminated, the Parties are required to consult immediately on the handling or disposal of such information.

Contact details

European Union Section
Europe Division
Department of Foreign Affairs and Trade.

ATTACHMENT ON CONSULTATION

Agreement between Australia and the European Union on the Security of Classified Information, done at Brussels, 13 January 2010 [2010] ATNIF 2

CONSULTATION

26. The Minister for Foreign Affairs provided approval for the Department of Foreign Affairs and Trade to be the lead negotiating agency for the proposed Agreement. The Department of Foreign Affairs and Trade consulted with the Attorney-General's Department, the Department of Defence and the Office of National Assessments - as an umbrella agency for the views of the Australian Intelligence Community - throughout the negotiation process. Consultations took the form of inter-departmental committee meetings. These agencies have confirmed that the proposed Agreement meets all the requirements for agencies which deal with national security classified information.

27. This proposed action will have no impact on the States and Territories and will not effect any change to the existing roles of the Commonwealth Government, or the State and Territory Governments. The proposed Agreement also does not require State or Territory action for its domestic implementation and none of the information exchanged concerns States or Territories. A pre-brief has been prepared for the States and Territories' Standing Committee on Treaties Meeting, in the event that this Committee wish to seek information about the proposed agreement.

28. No public consultation on the proposed Agreement has taken place, as there are no aspects to the proposed Agreement which impact on issues of public interest. The proposed Agreement simply establishes procedures for the secure exchange of classified information in accordance with agreed standards.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

CONVENTION BETWEEN

AUSTRALIA

AND

THE REPUBLIC OF CHILE

FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION

(Santiago, 10 March 2010)

Not yet in force
[2010] ATNIF 9

CONVENTION BETWEEN AUSTRALIA AND THE REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION

Australia and the Republic of Chile, desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion;

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

1. The existing taxes to which the Convention shall apply are:

a) in Australia:

(i) the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources; and

(ii) the fringe benefits tax,

imposed under the federal law of Australia (hereinafter referred to as "Australian tax"); and

b) in Chile, the taxes imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*", including the specific tax on mining activity (*Impuesto Específico a la Actividad Minera*), (hereinafter referred to as "Chilean tax").

2. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal law of Australia or the law of Chile after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the law of their respective States relating to the taxes to which the Convention applies within a reasonable period of time after those changes.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

b) the term "Chile" means the Republic of Chile and, when used in a geographical sense, includes any area outside the territorial sea designated under the laws of the Republic of Chile and in accordance with international law as an area within which the Republic of Chile may exercise sovereign rights with regard to the seabed and subsoil and their natural resources;

c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Australia or Chile respectively;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;

f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;

h) the term "competent authority" means:

(i) in Australia, the Commissioner of Taxation or an authorised representative of the Commissioner ; and

(ii) in Chile, the Minister of Finance or an authorised representative of the Minister;

i) the term "national" in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any company deriving its status as such from the laws in force in that Contracting State;

j) the term "tax" means Australian tax or Chilean tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State concerning the taxes to which the Convention applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein as a resident of that State or by reason of domicile in that State, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 a person, being an individual is a resident of both Contracting States, then the person’s status shall be determined as follows:

a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual’s personal and economic relations are closer (centre of vital interests);

b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State of which that individual is a national.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the person shall not be entitled to any benefits provided by the Convention except that the provisions of Article 24 shall apply.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources; and

g) an agricultural, pastoral or forestry property.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

a) performs services (other than activities to which subparagraphs *b)* or *c)* apply) in the other Contracting State, for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed through one or more individuals who are present and performing such services in that other State;

b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any twelve month period; or

c) operates substantial equipment in the other State (including as provided in subparagraph *b)*) for a period or periods exceeding in the aggregate 183 days in any twelve month period,

such activities shall be deemed to be performed through a permanent establishment that the enterprise has in that other State, unless the activities are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5. *a)* The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are substantially the same as the activities carried on in that State by its associate.

b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by the same person or persons.

6. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or carrying out scientific research for the enterprise, or any other similar activity, if such activity is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2 where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts on behalf of the enterprise or manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a person who is a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE (REAL) PROPERTY

1. Income derived by a resident of a Contracting State from immovable (real) property (including income from agriculture or forestry) may be taxed in the Contracting State in which the immovable (real) property is situated.

2. For the purposes of this Convention, the term "immovable (real) property":

a) in the case of Australia, means real property according to the law of Australia, and shall also include:

(i) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

(ii) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or the right to explore for or exploit, mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources; and

b) in the case of Chile, means such property which, according to the law of Chile, is immovable property and shall in any case include:

(i) property accessory to immovable property;

(ii) livestock and equipment used in agriculture and forestry;

(iii) rights to which the provisions of the general law respecting land apply, including a lease of land and any other interest in or over land, whether improved or not, including a right to explore for mineral, oil or gas deposits or other natural resources, and a right to mine those deposits or resources; and

(iv) usufruct of immovable property and rights to variable or fixed payments either as consideration for or in respect of the exploitation of or the right to exploit mineral deposits, mineral sources and other natural resources.

Ships and aircraft shall not be regarded as immovable (real) property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, mineral, oil or gas deposits or sources, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable (real) property.

5. The provisions of paragraphs 1 and 4 shall also apply to profits from immovable (real) property of an enterprise or immovable (real) property used for the performance of independent personal services. Where such profits are attributable to a permanent establishment or a

fixed base in the Contracting State in which the immovable (real) property is situated, the profits shall be determined in accordance with principles of paragraphs 2 and 3 of Article 7.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income or gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

6. Notwithstanding the preceding provisions of this Article, premiums in respect of insurance policies issued by an enterprise of a Contracting State may be taxed in the other State in accordance with its domestic law. However, except where the premium is attributable to a permanent establishment of the enterprise situated in that other State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the premiums in the case of policies of reinsurance; and

b) 10 per cent of the gross amount of the premiums in the case of all other policies of insurance.

7. Where:

a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and

b) in relation to that enterprise, that trustee would, in accordance with the principles of Article 5, have a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

8. No adjustments to the profits attributable to a permanent establishment of an enterprise for a year of income shall be made by a Contracting State after the expiration of seven years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of seven years, an audit into the profits of the enterprise has been initiated by either State.

9. Nothing in this Convention shall affect the taxation in Chile of a resident of Australia in respect of profits attributable to a permanent establishment, or a fixed base, situated in Chile, under both the First Category Tax and the Additional Tax provided that the First Category Tax is fully creditable in computing the amount of the Additional Tax.

Article 8

SHIPS AND AIRCRAFT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, profits of an enterprise of a Contracting State derived from the operation of ships or aircraft may be taxed in the other Contracting State to the extent that they are profits derived directly or indirectly from ship or aircraft operations confined solely to places in that other State.

3. The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pool service or other profit sharing arrangement.

4. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers or cargo (including mail) which are taken on board in a Contracting State for discharge at a place in that State shall be treated as profits from ship or aircraft operations confined solely to places in that State.

Article 9

ASSOCIATED ENTERPRISES

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions operate, or are made or imposed, between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate or be made between independent enterprises, dealing wholly independently with one another then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regard the amount, shall make an appropriate adjustment to the amount of the taxes charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. No adjustments to the profits of an enterprise for a year of income shall be made by a Contracting State after the expiration of seven years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of seven years, an audit into the profits of the enterprise has been initiated by either State.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the

dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not limit the application of the Additional Tax payable in Chile provided that the First Category Tax is fully creditable in computing the amount of Additional Tax.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company’s undistributed profits even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of interest derived by a financial institution which is unrelated to and dealing wholly independently with the payer. The term "financial institution" means a bank or

other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance; and

b) 10 per cent of the gross amount of interest in all other cases.

3. Notwithstanding paragraph 2, interest referred to in subparagraph *a)* of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if the interest is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

4. Notwithstanding the rate limits specified in subparagraph 2 *b)* and paragraph 3, Chile may impose tax on interest arising in Chile to which those provisions apply at a rate not exceeding 15 per cent of the gross amount of the interest. However, if Chile agrees to limit the tax charged in Chile on interest arising in Chile to a rate less than 15 per cent in a tax treaty with any other State, the tax imposed in Chile on interest arising in Chile to which subparagraph 2 *b)* or paragraph 3 applies shall not exceed the rate provided in that treaty or 10 per cent, whichever is the greater, after the date of entry into force of that treaty.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and in particular, interest from government securities and interest from bonds or debentures. The term "interest" also includes income which is subjected to the same taxation treatment as income from money lent by the law of the Contracting State in which the income arises. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which might have been expected to have been agreed

upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment; and

b) 10 per cent of the gross amount of the royalties in all other cases.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

a)(i) the use of, or the right to use, any copyright, including motion picture films; and

(ii) the use of, or the right to use, in connection with television, radio or other broadcasting, films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission;

b) the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process or other like property or right;

c) the use of, or the right to use, industrial, commercial or scientific equipment;

d) the supply of information concerning technical, industrial, commercial or scientific experience;

e) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph *a)*, *b)* or *c)* or any such information as is mentioned in subparagraph *d)*;

f) the use of, or the right to use, some or all of the part of the spectrum specified in a spectrum licence, being spectrum of a Contracting State where the payment or credit arises; or

g) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of the royalties paid or credited having regard to what they are paid or credited for, exceeds the amount which might have been expected to have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments or credits shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

ALIENATION OF PROPERTY

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of immovable (real) property situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than immovable (real) property, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of property, other than immovable (real) property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than immovable (real) property) pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares, comparable interests or

other rights deriving more than 50 per cent of their value directly or indirectly from immovable (real) property situated in the other Contracting State may be taxed in that other State.

5. Gains of a capital nature, other than gains to which paragraph 2 or 4 apply, derived by a resident of a Contracting State (other than a pension fund) from the alienation of shares or other rights, not being debts claims, participating in profits, representing the capital of a company that is a resident of the other Contracting State, may be taxed in that other State but the tax so charged shall not exceed 16 per cent of the amount of the gain. However, nothing in this Article shall affect the right of that other State to tax such gains, in accordance with its laws, if the alienator has at any time during the twelve month period preceding such alienation owned shares or other rights representing, directly or indirectly, 20 per cent or more of the capital of that company.

6. Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

7. Where an individual who upon ceasing to be a resident of a Contracting State, is treated under the taxation law of that State as having alienated any property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to be a resident of the first-mentioned State, alienated and reacquired the property for an amount equal to its fair market value at that time. However, the individual may not make the election in respect of property situated in either Contracting State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Profits derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such profits may also be taxed in the other Contracting State:

a) if the individual has a fixed base regularly available in the other Contracting State for purpose of performing the activities; in that case, only so much of the profits as are attributable to that fixed base may be taxed in that other State; or

b) if the individual is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the income year of that other State, the individual shall be deemed to have a fixed base regularly available in that State; in that case, only so much of the profits as are derived from the activities performed in that other State may be taxed in that State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as

well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the income year of that other State, and

b) the remuneration is paid by, or on behalf of, a person being an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which that employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

4. Where, except for the application of this paragraph, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with paragraphs 1, 2 or 3 of this Article in respect of salary or wages from the employment to which the benefit relates.

5. For the purposes of this Article:

a) "fringe benefit" includes a benefit provided to an employee or to an associate of an employee by:

(i) an employer;

(ii) an associate of an employer; or

(iii) a person under an arrangement between that person and the employer, associate of an employer or another person in respect of the employment of that employee,

and includes an accommodation allowance or housing benefit so provided but does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;

b) a Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary or wages from the relevant employment is allocated to that State in accordance with paragraphs 1, 2 or 3 of this Article and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

Article 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in that person’s capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person’s personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to that person but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 18

PENSIONS

1. Pensions, including retirement annuities, paid to an individual who is a resident of a Contracting State shall be taxable only in that State.

2. The term "retirement annuity" means a stated sum payable in respect of retirement and paid periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration from funds out of a retirement savings plan.

3. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of a Contracting State to a resident of the other Contracting State,

shall, to the extent it is not allowable as a relief to the payer, be taxable only in the first-mentioned State.

Article 19

GOVERNMENT SERVICE

1. *a)* Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable (real) property, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment or performs in that other State independent personal services from a fixed based situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or

fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention from sources in the other Contracting State may also be taxed in the other Contracting State.

Article 22

SOURCE OF INCOME

1. Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19, may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to arise from sources in that other Contracting State.

2. For the purposes of determining where income arises under paragraph 7 of Article 11 or paragraph 5 of Article 12, an individual is a resident of a Contracting State, notwithstanding the provisions of paragraph 2 of Article 4, if that individual is a resident of that State in accordance with its domestic tax law.

CHAPTER IV

RELIEF FROM DOUBLE TAXATION

Article 23

RELIEF OF DOUBLE TAXATION

1. In Australia, double taxation shall be relieved as follows:

a) subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), Chilean tax paid under the law of Chile and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income; and

b) in the case of income referred to in Article 10, Chilean tax paid shall, for purposes of subparagraph *a)* of this paragraph, refer to the amount of the Additional Tax after the First Category Tax is deducted, or 15 per cent of the amount on which the Additional Tax is calculated, whichever is the lesser.

2. In Chile, double taxation shall be relieved as follows:

Residents in Chile, obtaining income which has, in accordance with the provisions of this Convention, been subject to taxation in Australia, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile (which shall not affect the general principle of

this Article). This paragraph shall apply to all income referred to in this Convention.

3. Where, in accordance with any provision of the Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

CHAPTER V

SPECIAL PROVISIONS

Article 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to individuals who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in similar circumstances.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for taxation purposes which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State, in similar circumstances, are or may be subjected.

6. This Article shall not apply to any provision of the laws of a Contracting State which:

a) is designed to prevent the avoidance or evasion of taxes, including measures designed to address thin capitalisation or to ensure that taxes can be effectively collected or recovered;

b) provides tax incentives to eligible taxpayers for expenditure on research or development, provided that a company that is a resident of one Contracting State and is wholly or partly owned by residents of the other State can access such incentives on the same terms and conditions as any other company that is a resident of the first-mentioned State; or

c) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

The competent authorities of the Contracting States shall notify each other of any changes to such laws, where those changes might, in the absence of this paragraph, be affected by the provisions of this Article.

7. The provisions of this Article shall apply to the taxes which are the subject of this Convention, as well as the Goods and Services Tax in the case of Australia and the Value Added Tax (*Impuesto al Valor Agregado*) in the case of Chile.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Convention, the person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the complaint appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States provided that, in the case of Chile, the case is presented under paragraph 1 within three years from the determination of the Chilean tax liability to which the case relates.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic law concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy ("*ordre public*").

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27

LIMITATIONS OF BENEFITS

1. The provisions of Articles 10, 11 and 12 shall not apply if it was the main purpose or one of the main purposes of any person concerned with the assignment of dividends, interest or royalties or with the creation or assignment of a right or debt-claim in respect of which dividends, interest or royalties are paid to take advantage of those Articles by means of that creation or assignment.

2. Considering that the main aim of the Convention is to avoid international double taxation, the Contracting States agree that, in the event the provisions of the Convention are used in such a manner as to provide benefits not contemplated or not intended, relevant authorities of the Contracting States shall consult in an expeditious manner with a view to recommending specific amendments to be made to the Convention.

3. Where under this Convention any income, profits or gains are relieved from tax in Chile and, under the law in force in Australia, an individual in respect of that income or those profits or gains is exempt from tax by virtue of being a temporary resident of Australia within the meaning of the applicable tax laws of Australia, then the relief to be allowed under this Convention in Chile shall not apply to the extent that that income or those profits or gains are exempt from tax in Australia.

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special international agreements.

CHAPTER VI

FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

The Contracting States shall notify each other through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the provisions of this Convention shall have effect:

a) in Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the Convention enters into force;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the Convention enters into force;

(iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Convention enters into force; and

b) in Chile: in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after 1 January next following the date on which the Convention enters into force.

Article 30

TERMINATION

This Convention shall continue in effect indefinitely, but either Contracting State may terminate the Convention by giving written notice of termination, through the diplomatic channel, to the other State at least six months before the end of any calendar year beginning after the expiration of five years from the date of its entry into force and, in that event, the Convention shall cease to be effective:

a) in Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following that in which the notice of termination is given;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which notice of termination is given;

(iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following that in which the notice of termination is given; and

b) in Chile: in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after 1 January next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Convention.

DONE at Santiago, this tenth day of March 2010, in duplicate in the English and Spanish languages, both texts being equally authentic.

For Australia:	**For the Republic of Chile:**
Virginia Grenville Ambassador	Andrés Velasco Brañes Minister for Finance

PROTOCOL TO THE CONVENTION BETWEEN AUSTRALIA AND THE REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION

On signing the Convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion between Australia and the Republic of Chile, the signatories have agreed that the following provisions shall form an integral part of the Convention.

1. In general,

a) If, after the date on which the Convention enters into force, either Contracting State introduces a tax on capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Convention by extending its scope to include any tax on capital so introduced. The terms of any such Protocol shall have regard to any arrangements between either Contracting State and a third State for the relief of double taxation on capital.

b) With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N°18.657), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.

c) Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation Decree Law No. 600 (Foreign Investment Statute) as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

d) A regulated pension fund which is established in a Contracting State primarily for the benefit of residents of that State shall be treated as a resident of that State and the beneficial owner of the income it receives. For the purposes of this Convention the term "regulated pension fund" means, in the case of Australia, an Australian Superannuation Fund, Approved Deposit Fund or Pooled Superannuation Trust within the meaning of the tax laws of Australia and, in the case of Chile, a pension fund established under the pension system of Decree Law No. 3500, and such other similar funds

as may be agreed by the competent authorities of the Contracting States.

2. With reference to Article 5,

a) A person who substantially negotiates the essential parts of a contract on behalf of an enterprise will be regarded as exercising an authority to conclude contracts on behalf of that enterprise within the meaning of paragraph 7, even if the contract is subject to final approval or formal signature by another person.

b) A person will come within the scope of paragraph 8 of Article 5 only if that person is independent of the enterprise referred to in that paragraph, both legally and economically, and acts in the ordinary course of that person´s business as such a broker or agent when acting on behalf of the enterprise.

c) The principles set forth in Article 5 also apply in determining, for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12, whether there is a permanent establishment outside both Contracting States and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

3. With reference to Article 7,

When computing the taxable income of a permanent establishment situated in a Contracting State, the deductibility of expenses which are attributable to that permanent establishment shall be determined under the domestic law of that State.

4. With reference to Articles 7 and 9,

Nothing in Articles 7 and 9 shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment or accruing to an enterprise as the case may be, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles applicable under Articles 7 and 9.

5. With reference to paragraph 2 of Article 10,

If,

a) Chile agrees in a tax treaty with any other State to limit the Additional Tax charged in Chile; or

b) in either Contracting State the tax imposed on dividends and on profits out of which such dividends are paid exceeds in the aggregate 42 per cent,

the Contracting States shall consult each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

6. With reference to paragraph 2 of Article 11,

If, in a tax treaty with any other State, Chile agrees to limit the tax charged in Chile on interest arising in Chile and derived by a financial institution to a rate lower than that specified in subparagraph 2*a)*, or derived by a government to a rate lower than that specified in subparagraph 2*b)*, Chile shall without delay enter into negotiations with Australia with a view to making a comparable adjustment.

7. With reference to paragraph 2 of Article 12,

If, in a tax treaty with any other State, Chile agrees that payments for industrial, commercial or scientific equipment will not be treated as royalties for the purposes of that treaty, or limits the tax charged in Chile on royalties arising in Chile to a rate below that provided for in paragraph 2 of Article 12 of this Convention, Chile shall without delay enter into negotiations with Australia with a view to providing the same treatment for Australia.

8. With reference to Article 17,

Income referred to in paragraph 1 of Article 17 shall include any income derived from any personal activity exercised in the other State related to performances or appearances in that State.

9. With reference to Article 26,

Notwithstanding Article 29 of this Convention, in the case of Chile, information to which paragraph 5 of Article 26 applies, to the extent that such information is covered by Article 1 of Decree Law No. 707 and Article 154 of Decree Law No. 3, will be available with respect to bank account transactions that take place on or after 1 January 2010. Nothing in the Convention shall prevent the application of Article 26 to the exchange of other information that existed prior to the date of entry into force of the Convention.

IN WITNESS WHEREOF the signatories, duly authorised to that effect, have signed this Protocol.

DONE at Santiago, this 10th day of March 2010,
in duplicate in the English and Spanish languages, both texts being equally authentic.

For Australia:	**For the Republic of Chile:**
H E Virginia Grenville Ambassador	Andrés Velasco Brañes Minister for Finance

CONVENIO ENTRE AUSTRALIA Y LA REPÚBLICA DE CHILE PARA EVITAR LA DOBLE IMPOSICIÓN CON RELACIÓN A LOS IMPUESTOS A LA RENTA Y A LOS “BENEFICIOS OTORGADOS EN VIRTUD DE UN EMPLEO”, “FRINGE BENEFITS”, Y PARA PREVENIR LA EVASIÓN FISCAL

Australia y la República de Chile, deseando concluir un Convenio para evitar la doble

imposición con relación a los impuestos a la renta y a los “beneficios otorgados en virtud de un empleo”, “fringe benefits”, y para prevenir la evasión fiscal,

Han acordado lo siguiente:

CAPÍTULO I

ÁMBITO DE APLICACIÓN DEL CONVENIO

Artículo 1

PERSONAS COMPRENDIDAS

Este Convenio se aplica a las personas residentes de uno o de ambos Estados Contratantes.

Artículo 2

IMPUESTOS COMPRENDIDOS

1. Los impuestos actuales a los que se aplica este Convenio son:

a) en Australia:

(i) el impuesto a la renta, incluyendo el impuesto sobre la renta de recursos en relación con proyectos extra costeros de exploración o explotación de recursos petrolíferos; y

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with attachment on consultation

Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol,
Santiago, 10 March 2010

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Regulation Impact Statement

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol,
done at Santiago on 10 March 2010
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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol* (the proposed Convention).

2. The proposed Convention was signed on 10 March 2010. The proposed Convention will enter into force, pursuant to Article 29, on the date of the last notification through the diplomatic channel between the Contracting States confirming that each State has completed their domestic requirements to bring the proposed Convention into force.

3. The provisions of the proposed Convention will take effect in Australia in four stages, namely:

a) in respect of withholding tax, on income derived on or after the first day of the second month following entry into force;
b) in respect of fringe benefits tax, on fringe benefits derived on or after 1 April in the year following entry into force;
c) in respect of other tax, on income derived in the year beginning 1 July following entry into force; and
d) in respect of administrative provisions, upon entry into force.

Overview and national interest summary

4. The key objectives of the proposed Convention are to:

a) promote closer economic cooperation between Australia and Chile by reducing taxation barriers caused by the double taxation of income derived by residents of either Contracting State; and
b) improve the integrity of the tax system by providing the framework through which the tax administrations of Australia and Chile can prevent international fiscal evasion.

5. The proposed Convention also aims to improve certainty for Australian businesses looking to expand into Chile and for other Australian taxpayers by establishing an internationally accepted framework for the taxation of cross-border transactions which is based upon the OECD *Model Tax Convention on Income and on Capital*.

6. In this manner the proposed Convention is expected to promote trade and investment between Australia and Chile and enhance the taxation arrangements for Australians engaged in cross-border transactions, thereby improving the wellbeing of the Australian people.

Reasons for Australia to take the proposed treaty action

Reducing barriers to bilateral investment and trade

7. The proposed Convention is expected to reduce barriers to bilateral trade and investment, primarily by reducing withholding taxes on dividend, interest and royalty payments between the two countries. Rather than taking unilateral action to reduce withholding taxes under domestic law, Australia has adopted the approach of agreeing to any such reductions on a bilateral basis. This approach 'locks in' the withholding tax limits in both countries, ensuring a steady financial framework for business between the proposed Convention partner countries.

8. In particular, the proposed Convention reduces Australian dividend withholding tax rate limit from 30 per cent to 5 per cent on intercorporate dividends on holdings of at least 10 per cent (Article 10). This will promote direct investment into Australia by reducing tax impediments and thus making Australia a more attractive location for investment by Chilean multinationals.

9. In the case of Australian investment in Chile, the proposed Convention, while preserving the application of Chile's Additional Tax payable, establishes a framework to address business concerns about the lack of competitiveness for Australian investments in Chile compared to investments in Chile by our competitors.

10. The proposed Convention locks in reduced rates of interest withholding tax on Chilean sourced interest paid to Australian lenders (Article 11). It also contains most favoured nation clauses that either reduce the rate of tax Chile may charge to a rate between 15 and 10 per cent or oblige Chile to inform Australia if it provides more favourable treatment of interest derived by financial institutions and governments in a subsequent treaty with another country and to enter into negotiations with a view to providing Australia with the same treatment (Article 11(4)) and Protocol Item 6 respectively). These clauses will assist in maintaining the competiveness of Australian lenders and their dealings in Chile into the future.

11. The proposed Convention reduces royalty withholding tax in both countries from 30 per cent to 5 per cent for equipment royalties and 10 per cent for other royalties (Article 12). Reduced Chilean withholding taxes on royalty payments are likely to encourage Chilean businesses to source intellectual property from Australia. While the Australian company remains legally liable for tax on royalty income earned in Chile, contracts will often include provisions (known as 'gross up clauses') requiring the Chilean company to absorb this tax. Consequently, lower withholding taxes on royalties are expected to reduce the costs for Chilean businesses of accessing Australian intellectual property. Likewise the lower royalty withholding tax rate is expected to reduce the costs for Australian businesses of accessing Chilean intellectual property. It also contains a 'most favoured nation' obligation with respect to Chilean withholding tax rates on royalties (Protocol Item 7). This will assist in maintaining the competiveness of Australian business and their dealings in Chile into the future.

12. The proposed Convention also provides an agreed basis for determining the allocation of profits within a multinational company and whether the profits on related party dealings by members of a multinational group operating in both countries reflect the pricing that would be adopted by independent parties (Articles 7 and 9). Tax treaties are therefore an important tool in dealing with international profit shifting through transfer pricing.

13. More generally, the proposed Convention will provide important benefits to Australians looking to expand into Chile. It will establish an internationally accepted framework for the taxation of cross-border transactions. Thus reducing investor risk and providing some degree of legal and fiscal certainty – unlike domestic laws which can be amended unilaterally. It also includes rules to prevent tax discrimination of nationals.

Establishing a framework to prevent international fiscal evasion

14. The proposed Convention establishes a framework to prevent international tax evasion through the inclusion of rules to allow the tax administrations to exchange taxpayer information. These rules meet the internationally agreed tax standard for exchange of information which was developed by the OECD. This standard has been endorsed by the G20 and the United Nations Committee of Experts on International Cooperation in Tax Matters. This framework will support global action on improving information exchange and transparency.

Compliance and administrative cost reduction benefits

15. The proposed Convention does not impose any greater obligations on the residents of Australia than Australian domestic tax laws would otherwise and in some cases reduces the obligations of Australians operating or investing in Chile (for example Article 7 concerning business profits). Given this and the fact that the proposed Convention is broadly consistent with international norms, it is expected to reduce compliance costs for those taxpayers with cross-border dealings between the Contracting States.

Obligations

16. Articles 6 to 21 allocate taxing rights in respect of certain types of income and fringe benefits between the two countries. To reduce or eliminate double taxation Australia and Chile have agreed in certain situations to limit taxing rights over various types of income dealt under these Articles. For example Articles 10 to 12 impose limits on the rate of tax which may be imposed by the country of source (ie, the country where the payment arises) on dividends, interest or royalties. However, the limits in Articles 10 and 11 concerning dividends and interest respectively, do not apply in a reciprocal manner. For example, Chile does not impose dividend withholding tax on foreign investors. Rather it has a unique two tiered system of taxing profits, comprising the First Category Tax and the Additional Tax. The proposed Convention preserves this system of taxation in Chile. In the case of pension income, the proposed Convention allocates an exclusive right to tax to the country of residence of the pensioner (Article 18). It also provides an agreed basis for determining the allocation of profits within a multinational company and whether the profits on related party dealings by members of a multinational group operating in both countries reflect the pricing that would be adopted by independent parties (Article 9).

17. Article 23 of the proposed Convention sets out a general obligation for both countries to relieve double taxation on cross-border income by permitting tax paid under the other country's laws and in accordance with the proposed Convention, to be allowed as a credit against tax payable under their own laws.

18. Article 24 contains a general non-discrimination principle, requiring each country to treat nationals of the other country no less favourably than it treats its own nationals regarding taxation and any connected requirements. There is a general exception where laws are intended to prevent tax evasion or aid research or development. This article can be amended via an Exchange of Notes.

19. Article 25 establishes procedures for dispute resolution, including a mechanism for taxpayers to present complaints to their country of residence, irrespective of the remedies provided by the domestic laws of those States, where they consider that they have been taxed not in accordance with the proposed Convention. The country receiving a complaint that appears to be justified must endeavour to resolve it, either unilaterally or by mutual agreement with the other country. Difficulties or doubts regarding interpretation or application of the proposed Convention shall be resolved by mutual agreement between the Contracting States. A dispute between the Contracting States which may also involve the application of the General Agreement on Trade in Services may be brought before the Council for Trade in Services by consent of both States.

20. Article 26 provides obligations for the exchange of information between both countries, including a specific obligation to gather and provide information upon request. Article 26(2) imposes a correlative obligation on the country receiving any such information to treat it as secret in the same manner as information obtained under its domestic laws. Article 26(3) allows either country to decline to supply information in certain circumstances. Specifically, a request may be denied where: (i) it would require implementation of administrative measures at variance with Contracting States' domestic law or administrative practice; (ii) the information requested is not obtainable under the laws or in the normal course of administration of the Contracting State; or (iii) it would involve disclosure of a trade or business secret or would be contrary to public policy (for example, if it would breach human rights obligations). These circumstances, which act as a safeguard to protect Australia's interests and taxpayer's rights, accord with the OECD Model Tax Convention on Income and on Capital.

21. Article 27 provides rules to ensure that benefits conferred by the proposed Convention will only apply in appropriate circumstances. It also allows for consultation between the Contracting States where it is perceived that benefits may not be within those contemplated or intended under the proposed Convention.

22. Item 5 of the Protocol obliges the two countries to consult if Chile agrees in a treaty to limit the Additional Tax charged in Chile, or if either country imposes tax in excess of 42 per cent on dividends and the underlying profits out of which such dividends are paid, with a view to amending the taxation of dividends. Article 2(2) of the proposed Convention requires each country to notify the other of any significant changes to laws relating to the taxes to which the proposed Convention applies.

23. Items 6 and 7 of the Protocol impose a most favoured nation obligation on Chile, requiring Chile to inform Australia if it provides more favourable treatment of (i) interest derived by a financial institution or by a government (ii) royalties or (iii) excludes payments for industrial, commercial or scientific equipment from the meaning of royalties, in any subsequent tax treaty with another country, with the view to renegotiating the proposed Convention to provide the same treatment for Australia. The effect of the most favoured nation clause is also discussed above at paragraph 10.

Implementation

24. Amendments to the *International Tax Agreements Act 1953* will be made prior to the proposed Convention entering into force, to give the proposed Convention the force of law in Australia. No action is required by the States or Territories. There will be no change to the existing roles of the Commonwealth, or the States and Territories, in tax matters as a consequence of implementing the proposed Convention.

Costs

25. Treasury has estimated the impact of the first round effects on forward estimates as 'not zero but rounded to zero'.

26. No other material costs have been identified as likely to arise from the implementation of the proposed Convention. In contrast the establishment of a treaty between Australia and Chile which is broadly consistent with international norms would generally be expected to reduce compliance costs for taxpayers.

27. There would be a small, unquantifiable cost in administering the changes made by the proposed Convention, including minor implementation costs to the Australian Taxation Office (ATO) in educating the taxpaying public and ATO staff concerning the new arrangements. There are also 'maintenance' costs to the ATO and the Department of the Treasury in terms of dealing with inquiries, rulings and other interpretative decisions and mutual agreement procedures (including advance pricing arrangements). However, these costs will continue to be managed within existing agency resources.

Regulation Impact Statement

28. A Regulation Impact Statement is attached.

Future treaty action

29. The proposed Convention does not provide for the negotiation of future legally binding instruments, although it does require both countries to consult on amendment to the dividend provisions as discussed in paragraph 19.

30. The proposed Convention does not contain specific amendment procedures, however it may be amended from time to time by mutual consent of both countries.

31. Items 6 and 7 of the Protocol oblige Chile to enter into negotiations with Australia if Chile has provided more favourable treatment of certain interest or royalties in a tax treaty with any other country, with a view to providing at least the same treatment to Australia (see paragraph 23).

32. As discussed at paragraph 21 above, Article 27 allows the relevant authorities of the Contracting States to consult and recommend amendments to ensure that the proposed Convention fulfils aims of avoiding international double taxation. Any such amendments would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

33. Either country can terminate the proposed Convention after a period of five years from the date of its entry into force, provided written notice of termination is given at least six months prior to the end of a calendar year (Article 30). Termination by Australia would be subject to Australia's domestic treaty-making process. The proposed Convention would then cease to be effective, in the case of Australia, from either the first day of the second month after the termination notice is given (in respect of withholding tax on income derived by a non-resident), or 1 April or 1 July next following the date on which the notice of termination is given (in respect of fringe benefits tax or other Australian tax respectively).

Contact details

Tax Treaties Unit
International Tax & Treaties Division
Department of the Treasury.

ATTACHMENT ON CONSULTATION

Convention between Australia and the Republic of Chile for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion, and Protocol,
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CONSULTATION

34. The then Prime Minister and Chilean President issued a joint communiqué announcing the commencement of negotiations for a tax treaty between Australia and Chile on 14 July 2005. Following this announcement Treasury invited submissions from stakeholders and the wider community on the proposed Convention. Treasury also sought comments from the business community through the Tax Treaties Advisory Panel, members of which include:

a) Australian Bankers' Association
b) Australian Chamber of Commerce and Industry
c) Australian Financial Markets Association.
d) Business Council of Australia
e) CPA Australia
f) Corporate Tax Association
g) Institute of Chartered Accountants in Australia
h) International Fiscal Association
i) Investment and Financial Services Association
j) Law Council of Australia
k) Minerals Council of Australia
l) Taxation Institute of Australia
m) Property Council of Australia

35. In general, business and industry groups recognised that Australia has strong and growing business interests in Chile and endorsed the conclusion of a tax treaty. In particular, business and industry groups strongly supported reductions in withholding taxes on dividends, royalties, interest and payments for services.

36. The State and Territory Governments have been consulted through the Commonwealth-State Standing Committee on Treaties. Information on the negotiation of the proposed Convention was included in the schedule of treaties to State and Territory representatives from July 2005.

Regulation impact statement

Background

How tax treaties operate

1.1 Tax treaties facilitate international investment by removing or reducing tax barriers to cross-border movement of people, capital or technology.

1.2 International taxation is based on concepts of residency and source. Countries generally tax their residents on their world wide income. Countries also seek to tax non-residents on the income that is earned (or sourced) within their borders.

1.3 Double taxation can therefore arise when the country of residence and the country where the income is sourced both seek to tax the same income.

1.4 Tax treaties reduce or eliminate double taxation by treaty partners agreeing in certain situations to limit taxing rights over various types of income. The respective countries also agree on methods of reducing double taxation where both countries exercise their right to tax. For instance, countries agree to reduce withholding tax imposed on dividends, interest and royalties by the source state. In the absence of rules to relieve the resulting double taxation, international commerce would be seriously inhibited.

1.5 In addition, tax treaties provide an agreed basis for determining the allocation of profits within a multinational company and whether the profits on related party dealings by members of a multinational group operating in both countries reflect the pricing that would be adopted by independent parties. Tax treaties are therefore an important tool in dealing with international profit shifting through transfer pricing.

1.6 To prevent fiscal evasion, tax treaties include provision for exchange of information held by the respective revenue authorities. Treaties may also provide for cross border collection of tax debts and may preclude certain types of tax discrimination. Taxpayers can also avail themselves of the mutual agreement procedures provided for in treaties which allow the two revenue authorities to consult with a view to developing a common interpretation and to resolving differences arising out of application of the treaty.

1.7 Australia seeks an appropriate balance between source and residence country taxing rights. Generally, the allocation of taxing rights under Australian tax treaties is similar to international practice as set out in the

Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital (OECD Model) (Australia being a member of the OECD and involved in the development of that Model). There are however, a few instances where Australian practice favours source country taxing rights rather than the residence approach of the OECD Model.

Australia's investment and trade relationship with the Republic of Chile

1.8 Chile and Australia share a healthy and growing economic and trade relationship. Chile is Australia's third largest trading partner in Latin America, with two way trade totalling $1.275 billion in 2008-09. Total merchandise trade reached $883 million in 2008-09 (up 14.2 per cent from 2007-08). Major exports to Chile include coal ($136 million in 2008-09), beef, civil engineering equipment, and specialised machinery and parts. Australia's imports from Chile totalled $552 million in 2008-09 and included copper ($295 million), lead ores and concentrates, pulp and waste paper and wood. Two-way trade in services in 2008 totalled $392 million, of which Australian exports of services to Chile were $157 million.

1.9 Australian companies are significant investors in Chile, and its relatively open business environment has made it an ideal base for Australian companies looking to expand into Latin America. There are approximately 120 Australian companies actively trading with Chile. More than half of the Australian or Australian affiliated companies with offices in Chile are related to the mining industry, though this has diversified in recent years. Australian Bureau of Statistics figures show that in 2008, total Australian investment in Chile was $2 billion. Significant Australian private sector investors include BHP Billiton (mining) and Pacific Hydro (power generation).

Policy objective

1.10 The objective of this measure is to:

- promote closer economic cooperation between Australia and Chile by reducing taxation barriers; in particular avoiding double taxation of income arising from overlapping tax jurisdictions; and
- improve the integrity of the tax system by providing the framework through which the tax administrations of Australia and Chile can prevent international fiscal evasion.

Implementation options

1.11 The implementation options for achieving the objectives are:

- no further action – rely on existing unilateral measures; or
- to conclude the tax treaty.

Option 1: No further action – rely on existing unilateral measures

1.12 If nothing was done, existing tax barriers, such as high withholding tax rates and significant compliance costs in meeting source country taxation obligations, will remain. This will constrain international trade and investment and the cross border movement of people, capital and technology. While domestic law measures will generally provide relief from double taxation for Australian residents deriving income from Chile, Australian tax on Chilean investment in Australia is in certain cases only deductible, and not creditable, under Chile's domestic law in the absence of a tax treaty. Tax discrimination will not be prevented and uncertainty with respect to the tax treatment of cross border income flows will remain. Tax administrations will not be able to exchange information necessary for the protection of Australia's tax base and the prevention of international fiscal evasion. Therefore this approach is not practicable in this instance.

Option 2: Conclude the tax treaty

1.13 The internationally accepted approach to meeting the above policy objectives is to conclude a bilateral tax treaty. A new tax treaty would be largely based on the current OECD Model and the United Nations *Model Double Taxation Convention between Developed and Developing Countries*, with some mutually agreed variations reflecting the economic, legal and cultural interests of the two countries.

1.14 For business and investors generally the tax treaty has the advantage of providing some degree of legal and fiscal certainty – unlike domestic laws which can be amended unilaterally.

Assessment of impacts

Difficulties in quantifying the impacts of tax treaties

1.15 Only a partial analysis of costs and benefits can be provided because all of the impacts of tax treaties cannot be quantified. While the direct cost to Australian revenue of withholding tax changes can be quantified relatively easily, other cost impacts such as compliance costs are

inherently difficult to quantify. There are also efficiency and growth gains and losses to Australia that provide estimation problems. Analysis has been conducted to establish offsetting increases in Australian revenue as a result of the other country reducing their taxes under the treaty. The revenue estimates are subject to more uncertainty than the estimates of costs but are best estimates given the technology of estimation, the availability of estimates of behavioural responses, and data.

1.16 Benefits that flow to business are generally equally difficult to quantify. The evidence from international consideration (for example, by the OECD) and from consultation with business strongly indicates, however, that while the quantum of benefits is very difficult to assess, a modern tax treaty provides a clear positive benefit to trade and investment relationships. Tax treaties provide increased certainty and reduce complexity and compliance costs for business.

Impact group identification

1.17 A tax treaty with Chile is likely to have an impact on:

- Australian resident individuals with cross-border dealings in Chile;
- Entities with cross-border dealings in Chile. It is expected that this will comprise large multinationals and Australian companies with foreign shareholdings;
- Tax practitioners who have clients with cross-border dealings in Chile;
- Software developers, financial planners and bookkeepers who have clients with cross-border dealings in Chile;
- the Australian Government; and
- the Australian Taxation Office (ATO).

Analysis of costs/benefits – Option 2: Conclude the tax treaty

Economic benefits

1.18 A new tax treaty with Chile, a country with which Australia does not currently have a treaty, would address business concerns about the lack of competitiveness for Australian investments in Chile in relation to investment in Chile by our competitors. In particular, the treaty would provide for reductions in withholding tax rates.

1.19 It is only in the context of a tax treaty that Chile would agree to limit domestic withholding tax rates on certain interest and royalties. The new treaty provides for similar rates of withholding on interest and royalties to those provided for under Chile's other tax treaties. It also includes 'most

favoured nation' obligations with respect to Chilean withholding tax rates on dividends, interest and royalties. This will assist in maintaining the competiveness of Australian business and their dealings in Chile into the future.

1.20 While a reduction in maximum withholding tax rates, insofar as those reductions affect Australian withholding taxes, will involve a cost to Government revenue, there are expected to be benefits to the revenue and to the wider economy arising out of increased business and investment activity, with the most direct benefits accruing to business.

Other benefits

1.21 Where Australians carry on business activities in Chile, the new treaty would prevent Chile from taxing the business profits of an Australian resident unless that Australian resident carries on business through a permanent establishment (such as a branch) in Chile. The tax treaty would establish an arm's length basis for allocation of profits to that permanent establishment. This principle also applies where a Chilean enterprise carries on business activities in Australia. In addition to reducing Chilean income tax payable by Australians, the treaty would limit the circumstances in which Chile could impose tax on capital gains.

1.22 Other benefits also include:

- clarifying the residency rules;
- clarifying the treatment of profits derived through trusts from business activities;
- establishing specific rules for taxation of shipping and airline profits and income from real property;
- providing anti-profit shifting (transfer pricing) rules, including time limits for initiating audit activity;
- establishing non-discrimination rules to prevent tax discrimination against Australian nationals and companies operating in Chile and vice versa;
- establishing a framework to allow the tax administrations to exchange taxpayer information. These rules meet the internationally agreed tax standard for exchange of information. Furthermore they will further enhance Australia's efforts to combat tax avoidance and evasion, and will support global action on improving information exchange and transparency;
- protecting Australia's tax base by including anti-avoidance and limitation of benefits rules; and

- special rules to preserve the application of existing tax arrangements between Chile and Australian companies under the provisions of the Chilean legislation DL 600 (Foreign Investment Statute).

Revenue benefits

1.23 While a reduction in source taxation generally involves a cost to revenue, there are expected to be benefits to revenue and to the wider economy arising out of increased business and investment activity, with the most direct benefits accruing to business.

1.24 Including exchange of information provisions in the new treaty with Chile will often result in an expansion of taxpayer information available to the Commissioner of Taxation in relation to these countries. This is expected to increase taxpayer compliance and tax revenue.

Compliance and administrative cost reduction benefits

1.25 The establishment of a treaty between Australia and Chile which is broadly consistent with international norms would generally be expected to reduce compliance costs.

Revenue costs

1.26 Treasury has estimated the impact of the first round effects on forward estimates as 'not zero but rounded to zero'.

Administration costs

1.27 The administrative impacts on the ATO from the changes made by the new treaty are considered to be minimal.

1.28 The administrative impacts on the ATO from the changes made by any new treaty arrangements are considered to be minimal. Some formal interpretive advice may be required, for example, private binding rulings, concerning the application of the treaty. Staff from the ATO, clients and tax professionals will need to be made aware of the entry into force and changes from the previous treaty. Therefore a number of ATO information products will need to be updated.

1.29 The cost of negotiation and enactment of new tax treaty arrangements with Chile is minimal and have mostly been borne by Treasury. There will also be an unquantified but small cost in terms of parliamentary time and drafting resources in enacting the proposed new tax treaty arrangements.

1.30 There are also 'maintenance' costs to the ATO associated with tax treaties and mutual agreement procedures (including advance pricing arrangements). Given that treaties are deals struck between the two

countries that reflect specific features of the bilateral relationship, some level of differential treatment or wording between Australia's normal practice and the proposed new treaty with Chile, which may require interpretation or explanation by the ATO, is inevitable.

Consultation

1.31 The then Prime Minister and Chilean President issued a joint communiqué announcing the commencement of negotiations for a tax treaty between Australia and Chile on 14 July 2005. Following this announcement Treasury invited interested parties to make submissions on the proposed tax treaty. Four submissions were received from the public with further submissions endorsing the conclusion of a tax treaty being received in response to the Government's review of Australia's tax treaty negotiation policy and program announced in the then Assistant Treasurer's Press release No. 4 of 2008.

1.32 Confidential consultation with peak industry and professional bodies is carried out on an on-going basis through the Tax Treaties Advisory Panel.

Conclusion and recommended option

1.33 While the existing unilateral rules go some way to satisfying the policy objectives of this measure by providing a measure of protection against double taxation of Australian investments in Chile, they are unable to resolve all areas of difference. For example, differences could arise over fundamental matters such as the source of the income and residence of taxpayers. Unilateral measures are also unable to remove tax barriers, such as limited or no double tax relief in the other country, high withholding tax rates and significant compliance costs in meeting source country taxation obligations. These barriers can only be addressed by a tax treaty.

1.34 By establishing an internationally accepted framework for the taxation of cross-border transactions the proposed new treaty would also reduce investor risk. In addition, a tax treaty, would address business concerns about the lack of competitiveness for their Chilean investments. The tax treaty is unlikely to result in increased compliance costs for business.

1.35 There would also be benefits to both Australia and Chile in terms of bilateral relationships and information exchange.

1.36 On balance the benefits of the proposed tax treaty outweigh the costs. The tax treaty should be enacted.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

THIRD PROTOCOL AMENDING

THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF MALAYSIA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

AS AMENDED BY THE FIRST PROTOCOL OF 2 AUGUST 1999 AND THE SECOND PROTOCOL OF 28 JULY 2002

(Canberra, 24 February 2010)

Not yet in force
[2006] ATNIF 6

THIRD PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE FIRST PROTOCOL OF 2 AUGUST 1999 AND THE SECOND PROTOCOL OF 28 JULY 2002

The Government of Australia

and

The Government of Malaysia

DESIRING to amend the Agreement between the Government of Australia and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Canberra on 20 August 1980 (as amended by the first Protocol to that Agreement, done at Sydney on 2 August

1999 and the second Protocol to that Agreement, done at Genting Highlands on 28 July 2002), in this Protocol (hereinafter referred to as “the Agreement, as amended”),

Have agreed as follows:

Article 1

Article 25 of the Agreement, as amended, is deleted and substituted with the following:

“Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

Article 2

This Protocol, which shall form an integral part of the Agreement, as amended, shall enter into force on the last of the dates on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Protocol the force of law in Australia and in Malaysia respectively, and thereupon this Protocol shall have effect.

IN WITNESS whereof the undersigned, being duly authorised, have signed this Protocol.

Done in duplicate in the English and Malay languages at Canberra,
this twenty-fourth day of February two thousand and ten, both texts being equally authentic.

FOR THE GOVERNMENT AUSTRALIA:	FOR THE GOVERNMENT OF MALAYSIA:
Hon Nicholas Sherry Assistant Treasurer	HE Dato' Salman Ahmad High Commissioner of Malaysia

National Interest Analysis [2010] ATNIA 23

with attachment on consultation

Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income,
as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002,
Canberra, 24 February 2010

[2010] ATNIF 6

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income,
as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002, done at Canberra on 24 February 2010
[2010] ATNIF 6

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (the Agreement), done at Canberra on 20 August 1980, as amended by the First Protocol signed on 2 August 1999 and the Second Protocol signed on 28 July 2002 (the proposed protocol).

2. The proposed protocol was signed on 24 February 2010. Article 2 provides for entry into force on the last of the dates on which the Contracting States exchange diplomatic notes notifying each other domestic requirements necessary to give the proposed protocol the force of law have been completed.

Overview and national interest summary

3. The proposed protocol will update the Exchange of Information (EOI) provisions (Article 25) in the *Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* signed at Canberra on 20 August 1980 ([1981] ATS 15), as amended by the First Protocol signed at Sydney on 2 August 1999 ([2000] ATS 25) and the Second Protocol signed at Genting Highlands on 28 July 2002 ([2004] ATS 1) (the existing Agreement). This will align the EOI provisions in the existing Agreement with the internationally agreed standard on tax information exchange developed by the Organisation for Economic Cooperation and Development (OECD).

4. The new EOI provisions will enhance the ability of the tax authorities of Australia and Malaysia to exchange tax information. In particular, the new provisions provide that neither tax authorities can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar financial institution holds the information. The new provisions also expand the taxes in respect of which information may be exchanged to include all federal taxes, rather than just income taxes covered under the existing Agreement. They also provide that information received by a tax authority may be used for other purposes when the laws of both countries permit this and the tax authority supplying the information authorises such use. At the same time, the enhanced EOI provisions maintain important safeguards to protect the legitimate interests of taxpayers.

5. Australia enjoys a positive and constructive relationship with Malaysia, with a growing bilateral commercial relationship. The proposed protocol will help protect Australia's revenue base by expanding the scope of taxpayer information available to the Australian Taxation Office (ATO). This is expected to improve the integrity of the tax system by increasing taxpayer compliance and tax revenue.

Reasons for Australia to take the proposed treaty action

6. The enhanced EOI provisions in the proposed protocol will be an important tool in Australia's efforts to combat offshore tax evasion. They will make it harder for taxpayers to evade Australian tax and will discourage taxpayers from participating in abusive tax arrangements by increasing the probability of detection. The provisions will improve the ability of the ATO to exchange tax information by:

- expanding the taxes in respect of which information may be exchanged to all federal taxes, rather than just the income taxes covered under the existing Agreement; and

- ensuring that neither Malaysia nor Australia's tax administration can refuse to provide the information solely because they do not have a domestic interest in such information, or because a bank or similar financial institution holds the information.

Accordingly the proposed protocol will enhance Australia's ability to administer and enforce its domestic tax laws.

7. The proposed protocol aligns the EOI provisions with the internationally agreed standard on tax information exchange, which was developed by the OECD. This standard was endorsed by G20 Finance Ministers at their Berlin meeting in 2004 and by the United Nations Committee of Experts on International Cooperation in Tax Matters at its October 2008 meeting. It is in Australia's interest to utilise EOI treaty provisions that meet the internationally agreed standard to combat tax avoidance and evasion and to continue the Government's support of global action to improve information exchange and transparency.

Obligations

8. Article 1 of the proposed protocol provides for the replacement of Article 25 of the existing Agreement with new text. Article 25(1) will create reciprocal obligations for the exchange of information that is foreseeably relevant for carrying out the provisions of the Agreement or to the administration and enforcement of domestic law concerning all taxes of the Contracting States imposed consistently with the existing Agreement (in Australia's case, all federal taxes).

9. Article 25(2) will oblige the Contracting States to treat information received through exchange as secret in the same manner as information obtained under their domestic laws. This is an essential feature which ensures that adequate protection is provided to information exchanged between the two countries. The respect for confidentiality of information is necessary to protect the legitimate interests of taxpayers.

10. Either Contracting State may decline to supply information in certain circumstances. Specifically, Article 25(3) will provide that a request may be denied where: (a) it would require implementation of administrative measures at variance with the Contracting State's domestic laws or administrative practice; (b) the information requested is not obtainable under the laws or in the normal course of administration of the Contracting State; or (c) it would involve disclosure of a trade or business secret or would be contrary to public policy (for example, if it would breach human rights obligations). These circumstances, which act as a safeguard to protect Australia's interests and taxpayers' rights, accord with the OECD Model Tax Convention on Income and on Capital.

11. These obligations are generally equivalent to Australia's current obligations under Article 25 of the Agreement. However, Article 1 of the proposed protocol expands on the requirements of the existing Article 25 by specifically providing that neither Contracting State may decline to provide requested information solely on the grounds that the information is not required for its domestic law purposes or because the information is held by a bank or financial institution.

Implementation

12. The implementation of the proposed protocol will require amendment to the *International Tax Agreements Act 1953* to give it the force of law in Australia.

13. The legislative framework required for Australia to fulfil its obligations under the enhanced EOI provisions in the proposed protocol is contained in section 23 of the *International Tax Agreements Act 1953.*

14. The implementation of the proposed protocol will not affect the existing roles of the Commonwealth or the States and Territories with respect to tax matters.

Costs

15. Treasury has estimated the revenue impact of the updated EOI provisions in the proposed protocol as unquatifiable. However, since the proposed protocol seeks to expand the scope of taxpayer information available to the ATO, the proposal is expected to increase taxpayer compliance and therefore tax revenue.

16. The section of the ATO dealing with international issues already has an Exchange of Information Unit which handles EOI requests with Australia's tax treaty partners, including Malaysia. It is envisaged that there will only be minimal increases in administrative costs to the ATO as a result of the enhanced information exchange between Australia and Malaysia flowing from the proposed protocol.

17. There is expected to be little or no change in ongoing compliance costs for Australian taxpayers from the proposed protocol.

Regulation Impact Statement

18. The Office of Best Practice Regulation in the Department of Finance and Deregulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

19. The proposed protocol does not provide for the negotiation of future legally binding instruments. Neither the proposed protocol nor the existing Agreement contain formal amendment procedures. However, Article 39 of the *Vienna Convention on the Law of Treaties* provides that a treaty may be amended by agreement between the parties. Any such amendment to the existing Agreement would constitute a treaty action and would therefore be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

20. Article 2 of the proposed protocol provides that this proposed protocol shall form an integral part of the existing Agreement and that it shall remain in force as long as the existing Agreement remains in force and shall apply as long as the Agreement itself is applicable. The Agreement may be terminated by either Contracting State by written notice (Article 29).

Contact details

Tax Treaties Unit
International Tax and Treaties Division
Department of the Treasury.

ATTACHMENT ON CONSULTATION

Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income,
as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002, done at Canberra on 24 February 2010
[2010] ATNIF 6

CONSULTATION

21. The proposed protocol addresses only administrative matters, namely facilitating the full exchange of information between tax authorities. Accordingly, the public consultation has not been required.

22. The ATO was consulted about the proposed protocol and will administer the Exchange of Information provisions. Given that the proposed protocol upgrades those provisions to align with the international standard on tax information exchange and with Australia's recent bilateral tax treaty practice, the ATO were supportive of the proposed action to update the existing Australia-Malaysia Agreement.

23. The proposed protocol was proposed by Malaysia soon after it endorsed the Organisation for Economic Cooperation and Development's (OECD) 2008 standard for the effective exchange of information in March 2009. As the proposed treaty text was able to be agreed quickly, the proposed treaty action has not appeared on the schedules of treaties to State and Territory representatives, which is updated six-monthly.

24. In addition to the Assistant Treasurer, the Minister for Foreign Affairs and the Minister for Trade approved the treaty action.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA

CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

Done at New York on 4 May 2010

Not yet in force

[2010] ATNIF 26

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA,

CONSIDERING their close cooperation in the development, use and control of peaceful uses of nuclear energy pursuant to the *Agreement for Cooperation between the Government of the Commonwealth of Australia and the Government of the United States of America concerning* the *Civil Uses of Atomic Energy*, signed on 22 June 1956, as amended (hereinafter referred to as "the *1956 Agreement*"), and the *Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy*, signed on 5 July 1979 (hereinafter referred to as "the *1979 Agreement"*);

REAFFIRMING their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements which will, to the maximum possible extent, further the objectives of the *Treaty on the Non-Proliferation of Nuclear Weapons* done on 1 July 1968 and entering into force on 5 March 1970 (hereinafter referred to as "the Treaty");

MINDFUL that both Australia and the United States are Parties to the Treaty;

RECOGNIZING that Australia, a non-nuclear-weapon State, has, under the Treaty, undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, and that it has entered into the *Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons*, signed on 10 July 1974, and the *Protocol Additional to the Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968*, signed on 23 September 1997 (hereinafter collectively referred to as "the *Australia-IAEA Safeguards Agreement*");

RECOGNIZING that the United States, a nuclear-weapon State, entered into the *Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America*, signed on 18 November 1977, and the *Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America*, signed on 12 June 1998, hereinafter collectively referred to as "the *United States-IAEA Safeguards Agreement*";

AFFIRMING their support for the objectives of the *Statute of the International Atomic Energy Agency* done on 26 October 1956, and their desire to promote universal adherence to the Treaty;

RECOGNIZING the ongoing mutual obligations of the Parties contained in the *Exchanges of Notes between the Parties of 2 August 1985* (Embassy of Australia's Notes number 336, 337, 338, 339, 340 and 341 of 2 August 1985, and Department of State Note of 2 August 1985 in response, hereinafter referred to as "the *1985 Exchanges of Notes*") and the *Exchange of Notes between the Parties of 13 December 1989* (Embassy of Australia's Note number 366 of 13 December 1989, and Department of State Note of 13 December 1989 in response, hereinafter referred to as "the *1989 Exchange of Notes*"); and

DESIRING to continue their close cooperation in the development, use and control of peaceful uses of nuclear energy under the 1979 Agreement;

HAVE AGREED as follows:

Article 1

Scope of cooperation

1. Australia and the United States shall cooperate, by the transfer of information, material, equipment and components and by assignment of experts, in the use of nuclear energy for peaceful purposes in accordance with the provisions of this Agreement and their applicable treaties, national laws, regulations and license requirements.

2. Cooperation under this Agreement may be undertaken directly between the Parties or through authorized persons under their jurisdiction. Such cooperation shall be subject to this Agreement and to such additional terms and conditions as may be determined by the Parties.

3. Cooperation under this Agreement shall require the application of safeguards by the International Atomic Energy Agency (hereinafter referred to as "the Agency"):

(a) with respect to all nuclear activities within the territory of Australia, under its jurisdiction or carried out under its control anywhere, in accordance with the provisions of the *Australia-IAEA Safeguards Agreement*;

(b) within the territory of the United States, in accordance with the provisions of the *United States-IAEA Safeguards Agreement*.

Article 2

Definitions

For the purposes of this Agreement:

(a) "by-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) "component" means a component part of equipment or other item, as mutually determined by the Parties;

(c) "equipment" means any production or utilization facility (including uranium enrichment and nuclear fuel reprocessing facilities), or any facility for the production of heavy water or the fabrication of nuclear fuel containing plutonium, or any other item as mutually determined by the Parties;

(d) "high enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235;

(e) "intellectual property" shall have the meaning set out in Article 2 of the *Convention Establishing the World Intellectual Property Organization*, done at Stockholm on 14 July 1967, as amended on 28 September 1979, and may include other subject matter as mutually determined by the Parties;

(f) “low enriched uranium” means uranium enriched to less than twenty percent in the isotope 235;

(g) “major critical component” means any part or group of parts essential to the operation of a sensitive nuclear facility;

(h) “material” means source material, special nuclear material or by-product material, radioisotopes other than by-product material, moderator material, or any other such substance as mutually determined by the Parties;

(i) “moderator material” means any heavy water, or graphite or beryllium of purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material as mutually determined by the Parties;

(j) “parties” means the Government of Australia and the Government of the United States of America;

(k) “peaceful purposes” includes the use of information, material, equipment and components in such fields as research, energy and power generation, medicine, agriculture and industry but does not include use in, research on or development of any nuclear explosive device, or any military purpose;

(l) “person” means any individual or any entity subject to the jurisdiction of either Party but does not include the Parties to this Agreement;

(m) “production facility” means any nuclear reactor designed or used primarily for the formation of plutonium or uranium 233, any facility designed or used for the separation of the isotopes of uranium or plutonium, any facility designed or used for the processing of irradiated materials containing special nuclear material or any other item as mutually determined by the Parties;

(n) “reactor” means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilising uranium, plutonium or thorium, or any combination thereof, or any other apparatus as mutually determined by the Parties;

(o) “restricted data” means all data concerning:

(i) design, manufacture or utilization of nuclear weapons;

(ii) the production of special nuclear material; or

(iii) the use of special nuclear material in the production of energy;

but shall not include data of a Party which it has declassified or removed from the category of restricted data;

(p) “sensitive nuclear facility” means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production or fabrication of nuclear fuel containing plutonium;

(q) “sensitive nuclear technology” means any information (including information incorporated in equipment or an important component) which is not in the public domain and which is important to the design, construction, fabrication, operation or maintenance of any sensitive nuclear facility, or such other information as mutually determined by the Parties;

(r) “source material” means;

(i) uranium, thorium, or any other material as mutually determined by the Parties; or

(ii) ores containing one or more of the foregoing materials, in such concentration as mutually determined by the Parties from time to time;

(s) “special nuclear material” means:

(i) plutonium, uranium 233, or uranium enriched in the isotope 235; or

(ii) any other material as mutually determined by the Parties;

(t) “uranium enriched in the isotope 235 or 233” means uranium containing the isotopes 235 or 233, or both, in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(u) “utilization facility” means any reactor other than one designed or used primarily for the formation of plutonium or uranium 233.

Article 3

Transfer of information

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred. The transfer of information may be accomplished through various means, including reports, data banks, computer programs, conferences, visits and assignments of experts and staff to facilities. Fields which may be covered include, but shall not be limited to, the following:

(a) development, design, construction, operation, maintenance and use of reactors and reactor experiments;

(b) the production, preparation and use of materials in physical and biological research, medicine, agriculture and industry;

(c) the nuclear fuel cycle, including mining, mineral exploration, ore processing, processing and use of special nuclear material and by-product material and management of waste material, and studies of the ways to meet future worldwide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply;

(d) safeguards and physical security of materials and equipment;

(e) health, safety and environmental considerations;

(f) assessing national energy needs and the role that nuclear energy may play therein; and

(g) nuclear forensics.

2. This Agreement does not require the transfer of any information which the Parties are not permitted to transfer.

3. Restricted data shall not be transferred under this Agreement.

4. Sensitive nuclear technology shall not be transferred under this Agreement unless specifically provided for by an amendment to this Agreement or by a separate agreement.

Article 4

Transfer of material, equipment and components

1. Material, equipment and components may be transferred pursuant to this Agreement for applications consistent with this Agreement. However, such transfers shall not include sensitive nuclear facilities or major critical components unless specifically provided for by an amendment to this Agreement or by a separate agreement.

2. Source material and low enriched uranium may be transferred for use as fuel in reactors and reactor experiments, for enrichment, conversion or fabrication, and for production of radioisotopes.

3. Special nuclear material other than low enriched uranium and material covered by paragraph 8 may, if the Parties agree, be transferred for specified applications where technically and economically justified or where justified for the development and demonstration of reactor fuel cycles to meet energy security and non-proliferation objectives.

4. The quantity of nuclear material transferred under this Agreement shall not at any time be in excess of the quantity which the Parties mutually determine is necessary for any of the following purposes: the loading of reactors or use in reactor experiments; the efficient and continuous operation of such reactors or conduct of such reactor experiments; the production of radioisotopes; and the accomplishment of such other purposes as may be mutually determined by the Parties.

5. If high enriched uranium which is in excess of the quantity required for the purposes described in paragraph 4 exists in Australia, the United States shall have the right to recover any high enriched uranium transferred pursuant to this Agreement (including irradiated high enriched uranium) which contributes to that excess. Should this right be exercised, the Parties shall make mutually satisfactory commercial arrangements therefore. Recovery of such high enriched uranium shall not be contingent on prior agreement to such arrangements.

6. The Parties shall consult in advance of the exercise of the right referred to in paragraph 5 on the methods of implementation of any such recovery.

7. Any high enriched uranium transferred pursuant to this Agreement shall not be at a level of enrichment in the isotope 235 in excess of levels which the Parties mutually determine are necessary for the purposes described in paragraph 4.

8. Small quantities of material, including special nuclear material, may be transferred for use as samples, detectors, targets, radiation sources and for such other purposes as mutually determined by the Parties. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 4.

Article 5

Storage and retransfers

1. Plutonium or uranium 233 (except as contained in irradiated fuel elements) or high enriched uranium transferred pursuant to this Agreement or used in or produced through the use of any material or equipment so transferred, and over which a Party has jurisdiction, shall only be stored in a facility which has been mutually determined in advance by the Parties.

2. Material, equipment or components transferred pursuant to this Agreement and special nuclear material produced through the use of such material or equipment, over which the recipient Party has jurisdiction, shall not be retransferred:

(a) to any unauthorized persons within its jurisdiction; or

(b) beyond its territorial jurisdiction unless mutually determined by the Parties.

Article 6

Reprocessing and enrichment

1. Material transferred pursuant to this Agreement to, and which is under the jurisdiction of, a Party and material used in or produced through the use of any material or equipment so transferred, and which is under the jurisdiction of a Party, shall not be reprocessed unless mutually determined by the Parties.

2. Uranium transferred pursuant to this Agreement to, and which is under the jurisdiction of, a Party shall not be enriched after transfer to twenty percent or greater in the isotope 235 unless mutually determined by the Parties.

3. Plutonium, uranium 233, high enriched uranium or irradiated source or special nuclear material transferred pursuant to this Agreement or produced through the use of any material or equipment so transferred, and which is under the jurisdiction of a Party, shall not, unless mutually determined by the Parties, be altered in form or content, except by irradiation, further irradiation, or post-irradiation examination.

Article 7

Physical security

1. Each Party shall maintain adequate physical security with respect to all material and equipment which is under its jurisdiction and is subject to the relevant Agreement specified in paragraph 3 of Article 1.

2. In addition to its obligations under the *Convention on the Physical Protection of Nuclear Material* done at Vienna and New York on 3 March 1980, including any amendments that are in force for each Party, each Party shall apply measures of physical protection in accordance with its national legislation which meet levels not less than the recommendations of Agency document INFCIRC/225/Rev.4 (corrected) or in any revision or replacement of that document. Any revision or replacement of INFCIRC/225/Rev.4 (corrected) shall have effect under this Agreement only when the Parties have informed each other in writing that they accept such revision or replacement.

3. The adequacy of physical security measures maintained pursuant to this Article with respect to material and equipment transferred pursuant to this Agreement and with respect to any special nuclear material used in or produced through the use of any material or equipment so transferred, shall be subject to review and consultation by the Parties periodically and whenever either Party is of the view that revised measures may be required to maintain adequate physical security.

4. Each Party shall identify those agencies or authorities responsible for ensuring that levels of physical security are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorized use or handling of material subject to this

Article. Each Party shall also designate points of contact within its national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

5. The provisions of this Article shall be implemented in such a manner as to avoid hampering, or delay or undue interference in, the Parties' respective nuclear activities and so as to be consistent with prudent management practices required for the economic and safe conduct of the Parties' respective nuclear programs.

Article 8

No explosive or military application

1. Material, equipment or components transferred pursuant to this Agreement to, and which are under the jurisdiction of, a Party and material used in or produced through the use of any such material, equipment or components so transferred, which are under the jurisdiction of a Party, shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, including but not limited to the production of tritium for use in such a device, or for any military purpose.

2. For the purposes of this Agreement, "military purpose" shall include but is not limited to the following: military nuclear propulsion; munitions, including depleted uranium munitions, and other direct military non-nuclear applications as mutually determined by the Parties; but shall not include the supply of electricity to a military base from any power network, the production of radioisotopes to be used for medical purposes in military hospitals, and such other similar purposes as may be mutually determined by the Parties.

Article 9

Safeguards

1. Material transferred to Australia pursuant to this Agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components so transferred shall be subject to safeguards in accordance with the provisions of the Agreement referred to in paragraph 3(a) of Article 1.

2. Material transferred to the United States pursuant to this Agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components so transferred shall be subject to safeguards in accordance with the provisions of the Agreement referred to in paragraph 3(b) of Article 1.

3. If Australia or the United States becomes aware of circumstances which demonstrate that the Agency for any reason is not or will not be applying safeguards in accordance with the appropriate Agreement referred to in paragraph 1 or 2 to ensure effective continuity of safeguards, the Parties shall immediately enter into arrangements which conform with Agency safeguards principles and procedures and to the coverage required pursuant to those paragraphs, and which provide assurance equivalent to that intended to be secured by the system they replace.

4. Each Party shall establish and maintain a system of accounting for and control of all material transferred pursuant to this Agreement and any material used in or produced through the use of any material, equipment or components so transferred. The administrative arrangements referred to in paragraph 2 of Article 13 shall include the details of such a system of accounting and

control, the procedures of which shall be comparable to those set forth in Agency document INFCIRC/153 (corrected) or in any revision or replacement of that document. Any revision or replacement of INFCIRC/153 (corrected) shall have effect with respect to the procedures referred to in this paragraph only when the Parties have informed each other in writing that they accept such revision or replacement.

5. Upon the request of either Party, the other Party shall report or permit the Agency to report to the requesting Party on the status of all inventories of any materials subject to paragraph 1 or 2, as applicable.

6. The Parties shall consult and assist each other in, and shall facilitate, the application of safeguards required by this Agreement.

Article 10

Overlapping controls

1. Neither Party shall exercise any rights it has to approve the retransfer or enrichment to twenty percent or greater in the isotope uranium 235 by another nation or group of nations of material transferred pursuant to this Agreement or otherwise identified as being subject to similar rights of approval by the other Party, and shall not exercise any rights it has to approve the retransfer or reprocessing of irradiated fuel elements containing special nuclear material produced through the use of such materials, unless otherwise mutually determined by the Parties. This obligation applies only where the Party whose approval has been sought has been notified by the nation or group of nations requesting approval that the other Party has such rights of approval or their equivalent. In the event no such notification is received, the Parties shall consult prior to granting approval.

2. This Article applies only to material transferred after 7 August 1978, except as otherwise mutually determined by the Parties.

Article 11

Cessation of cooperation

1. If either Party at any time following entry into force of this Agreement does not comply with the provisions of Articles 5, 6, 7, 8 or 9 or materially breaches, terminates or abrogates a safeguards agreement with the Agency, the other Party shall have the rights:

(a) to cease further cooperation under this Agreement including suspension or cancellation of further transfers of nuclear material; and

(b) to require the return of any material, equipment or components transferred under this Agreement and any special nuclear material produced through the use thereof.

2. If Australia, at any time following entry into force of this Agreement, detonates a nuclear explosive device, the United States shall have the same rights as specified in subparagraphs (a) and (b) of paragraph 1.

3. If either Party exercises its rights under this Article to require the return of any material, equipment or components, it shall, after removal, reimburse the other Party for the fair market value of such material, equipment or components.

Article 12

Ongoing cooperation

1. The *1979 Agreement*, including paragraph 2 of Article 14 thereof, shall terminate on the date this Agreement enters into force.

2. Cooperation under the *1979 Agreement* shall continue in accordance with the provisions of this Agreement. All the provisions of this Agreement shall apply to material, equipment and components which were subject to the *1979 Agreement* immediately prior to its termination.

3. The mutual obligations of the Parties contained in the *1985 Exchanges of Notes* and the *1989 Exchange of Notes* shall continue *mutatis mutandis* under the provisions of this Agreement, unless the Parties agree otherwise.

Article 13

Consultations, arrangements and confidentiality

1. The Parties shall consult at the request of either Party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The appropriate governmental authorities of both Parties shall establish administrative arrangements to ensure the effective implementation of this Agreement. Such arrangements may be changed by the mutual determination of the appropriate governmental authorities of both Parties.

3. Agreed classification, patent and security policies and practices shall continue to be maintained with respect to any classified information (including any inventions or discoveries employing such information), material and equipment that may have been transferred under the *1979 Agreement* or the *1956 Agreement*. In the case of classified information, the foregoing requirement to continue to maintain classification and security policies and practices shall cease to apply if the supplier Party has declassified the information, made it public or authorized its release. Any classified information transferred in connection with cooperation under this Agreement shall be treated in accordance with the Agreement between the Government of Australia and the Government of the United States of America concerning Security Measures for the Protection of Classified Information, signed on 25 June 2002, unless otherwise agreed by the Parties.

4. The Parties agree that any information transferred or otherwise received as a result of the operation of this Agreement which at the time of transfer or receipt is designated by the supplier Party to be proprietary or confidential shall be accorded protection commensurate with the importance assigned to it by the supplier Party as allowed by law within the jurisdiction of the recipient Party.

Article 14

Intellectual Property

Transfer of information pursuant to Article 3 of this Agreement may be carried out by virtue of a written specific instrument between the Parties, the authorities designated by the Parties or institutions nominated by the designated authorities. These instruments shall adopt the form

decided by the Parties in accordance with their legal requirements, and shall include provisions dealing with intellectual property rights protection where such rights exist or arise.

Article 15

Settlement of disputes

Any dispute between the Parties concerning the interpretation or implementation of the provisions of this Agreement shall be settled by consultation or negotiation.

Article 16

Entry into force and duration

1. This Agreement shall enter into force on the date upon which the Parties exchange diplomatic notes informing each other that they have complied with all applicable requirements for its entry into force, and shall remain in force for an initial period of thirty years. This Agreement shall continue in force thereafter for additional periods of five years each. Either Party may terminate this Agreement at the end of the initial 30 year period or at the conclusion of any additional five year period by giving six months advance written notice to the other Party.

2. Notwithstanding the suspension, termination or expiration of this Agreement or any cooperation hereunder for any reason, the guarantees in Articles 5, 6, 7, 8 and 9 and the provisions of Article 11 shall continue in effect so long as any material, equipment or components subject to these articles remain in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties mutually determine that such material, equipment or components are no longer usable for any nuclear activity relevant from the point of view of safeguards.

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

DONE at on the day of two thousand and ten, in two originals.

FOR THE GOVERNMENT OF AUSTRALIA:	**FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:**
……..	**……..**
Hon Robert McClelland	**Hilary Clinton???**
Attorney-General	

AGREED MINUTE

This revised *Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy* ("the Agreement") facilitates the ongoing cooperation of the Parties in the development, use and control of peaceful uses of nuclear energy under the *Agreement between Australia and the United States of America concerning Peaceful Uses of Nuclear Energy*, signed on 5 July 1979. During the negotiation of the Agreement, the following understandings, which shall be an integral part of the Agreement, were reached.

Paragraph 1

Return of material, equipment or components

The exercise of the rights of a Party under paragraph 5 of Article 4 of the Agreement and under Article 11 of the Agreement is not in any way qualified by the provisions of Articles 5 or 6 of the Agreement relating to prior determination between the Parties on storage, retransfer, high enrichment and reprocessing.

Paragraph 2

Coverage of the Agreement

(a) Unless specifically agreed to the contrary, all source material, special nuclear material and equipment hereafter transferred from the territory of one Party to the territory of the other Party for peaceful purposes, whether directly or through a third country, shall be regarded as having been transferred pursuant to the Agreement. The appropriate governmental authority of the supplier Party shall, before shipment, notify the appropriate governmental authority of the recipient Party of any such transfer.

(b) The Parties will mutually determine which material other than source or special nuclear material and which components, transferred from the territory of one Party to the territory of the other Party for peaceful nuclear purposes, whether directly or through a third country, shall be regarded as having been transferred pursuant to the Agreement.

(c) Certain other items that are not material, equipment or components and certain quantities of materials that lack significance for nuclear explosive purposes have been and will continue to be transferred in accordance with the applicable laws of the Parties, both between the Parties and through persons under their jurisdiction. As appropriate and as the Parties may mutually determine, these transfers may be deemed to be authorized under the Agreement.

(d) The Parties have been engaging and will continue to engage actively in international cooperation on international environmental considerations relevant to peaceful nuclear activities.

(e) For the purposes of implementing the rights specified in Articles 5, 6 and 7 with respect to special nuclear material produced through the use of material transferred and not used in or produced through the use of equipment transferred pursuant to the Agreement, such rights shall, in practice, be applied to that proportion of special nuclear material produced which represents the ratio of transferred material used in the production of the special nuclear material to the total amount of material so used, and similarly for subsequent generations.

(f) The quantity limitations referred to in paragraph 4 of Article 4 of the Agreement will not apply to material undergoing toll processing in the United States (i.e. conversion, enrichment or

fuel fabrication of such material for use in a third country) or material that remains in the United States after toll processing.

Paragraph 3

Safeguards

Any safeguards arrangements referred to in paragraph 3 of Article 9 shall include the following characteristics:

(a) the review in a timely fashion of the design of any equipment transferred pursuant to the Agreement or of any facility which is to use, fabricate, process or store any material so transferred or any special nuclear material used in or produced through the use of such material or equipment;

(b) the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the Agreement and any source or special nuclear material used in or produced through the use of any material, equipment or components so transferred;

(c) the designation of personnel acceptable to the safeguarded Party who, accompanied, if either Party so requests, by personnel designated by the safeguarded Party, shall have access to all relevant places and data (the safeguarded Party will not unreasonably withhold acceptance of such personnel designated by the safeguarding Party);

(d) the inspection of any relevant equipment or facility;

(e) the installation of any relevant devices; and

(f) the provisions for such relevant independent measurements as deemed necessary by the safeguarding Party.

National Interest Analysis [2010] ATNIA 25

with attachment on consultation

Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy, New York, 4 May 2010

[2010] ATNIF 26

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy, done at New York on 4 May 2010
[2010] ATNIF 26

Nature and timing of proposed treaty action

1. It is proposed that Australia enter into a nuclear cooperation agreement (the proposed Agreement) with the United States of America. Under the terms of the proposed Agreement, upon entry into force it would terminate and succeed the *Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy* (the 1979 Agreement) done on 5 July 1979 ([1981] ATS 4) which will expire on 15 January 2011. The proposed Agreement was signed by the Minister for Foreign Affairs and the United States Under-Secretary for Arms Control and International Security in New York on 4 May 2010.

2. Pursuant to Article 16 of the proposed Agreement, the proposed Agreement will enter into force on the date upon which the Parties exchange diplomatic notes informing each other that they have complied with all applicable requirements for its entry into force. It is anticipated that Australia will advise the United States of its readiness to ratify as soon as practicable after consideration of the proposed Agreement by the Joint Standing Committee on Treaties (JSCOT). It is proposed that an exchange of diplomatic notes will be arranged to coincide as closely as possible with, but before, expiry of the 1979 Agreement.

Overview and national interest summary

3. Nuclear cooperation agreements such as the proposed Agreement serve Australia's national interests by enhancing our commercial position as a supplier of an important energy resource commodity and by setting high international standards for its use through the application of strict conditions. All of Australia's bilateral nuclear agreements, including this proposed Agreement with the United States, provide stringent safeguards and security arrangements designed to ensure Australian uranium is used exclusively for peaceful purposes. By virtue of our extensive network of such agreements, Australia's strict conditions apply to a significant proportion of uranium in peaceful use worldwide, hence contributing to raising overall standards.

4. The proposed Agreement would govern cooperation in peaceful uses of nuclear energy between the Parties, including the transfer and use of and application of non-proliferation safeguards to, nuclear material supplied by the Parties. It retains most provisions contained in the 1979 Agreement and where necessary the provisions have been updated in accordance with Australia's current policies and practices concerning nuclear safeguards. The proposed Agreement is consistent with Australia's other bilateral nuclear agreements with nuclear-weapon states.

5. In addition to amendments to extend safeguards and security arrangements under the 1979 Agreement, the proposed Agreement: refines the scope for technical cooperation

between the Parties to more closely align with current activities; clarifies the prohibition on use for military purposes of material, equipment or components transferred pursuant to the proposed Agreement; and adds provisions for the protection of intellectual property and settlement of disputes.

Reasons for Australia to take the proposed treaty action

6. The purpose of the proposed Agreement is to replace the 1979 Agreement, which expires on 15 January 2011. In negotiating the proposed Agreement, Australian and United States officials reviewed the provisions of the 1979 Agreement and identified updates and revisions to improve their operation.

7. In addition to maintaining strict safeguards and security arrangements concerning nuclear material and equipment already transferred under the 1979 Agreement, the Government considers that continued cooperation with the United States under the proposed Agreement would provide clear economic benefits to Australia. The United States has a central place in Australia's network of nuclear cooperation agreements. Of Australia's total uranium exports, currently worth more than $1 billion a year, Australia supplies 36 per cent to the United States. The United States is also a major processor of uranium that Australia supplies to other countries. Forecast growth in nuclear power in the United States and worldwide is likely to see further increases in the export of Australian uranium to the United States for use or processing, throughout the life of the proposed Agreement. The proposed Agreement will also strengthen the international legal framework supporting ongoing technical cooperation with United States agencies by the Australian Nuclear Science and Technology Organisation.

8. More broadly, the proposed Agreement adds to the strong joint commitment of Australia and the United States to nuclear non-proliferation and to nuclear security. The proposed Agreement refers explicitly to the International Atomic Energy Agency's (IAEA) Additional Protocol (AP) as part of the proposed Agreement's safeguards framework. This underscores the diplomatic efforts of both Australia and the United States to promote the AP as part of the internationally recognised safeguards standard.

Nuclear safeguards

9. Australian uranium and nuclear material derived from its use (such as plutonium) is termed Australian Obligated Nuclear Material (AONM). Australia's bilateral safeguards agreements provide assurance that AONM is used solely for peaceful purposes and is not diverted to nuclear weapons or other military uses. At present, Australia has 22 bilateral safeguards agreements in place, providing for the transfer of AONM to up to 39 countries, plus Taiwan. These agreements complement the IAEA's safeguards system in order to assure the peaceful and non-explosive use of AONM. The agreements also serve Australia's nuclear non-proliferation security interests by establishing a high standard of bilateral safeguards conditions and controls over a significant proportion of the world's uranium in peaceful use. These bilateral agreements require that AONM be subject to IAEA safeguards for the full life of the AONM.

10. The proposed Agreement includes all the essential elements of Australia's policy for the control of nuclear materials. These elements are:

a) an assurance that AONM supplied to the United States will be used exclusively for peaceful purposes and will not be used for any military purpose (Article 8);

b) assurance that AONM supplied to the United States will be subject to the *Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America*, signed on 18 November 1977 (the United States-IAEA Safeguards Agreement), for

the full life of the material (Article 9), or until the material is re-transferred in accordance with Article 5 of the proposed Agreement;

c) the provision for fallback safeguards which will apply in the event that, for any reason, IAEA safeguards no longer apply (Article 9 and the Agreed Minute);

d) the requirement for prior Australian consent before any transfer by the United States of AONM to a third party (Article 5) and for any enrichment to 20% or more in the isotope uranium-235, or reprocessing of AONM (Article 6);

e) an assurance that adequate and effective physical protection measures which satisfy accepted international standards are applied to all AONM during use, storage and transport (Article 7);

f) the rights for the supplier Party to cease further cooperation under the proposed Agreement including suspension or cancellation of further transfers of nuclear material and to require the return of material, equipment or components in the event of the receiver Party not complying with certain key provisions of the proposed Agreement, for example not complying with IAEA safeguards (Article 11);

g) the provision for administrative arrangements to be established between the appropriate governmental authorities of the Parties to set out a system of accounting and control for material, equipment and components subject to the proposed Agreement (Article 13). Arrangements established under the 1979 Agreement between the Australian Safeguards and Non-Proliferation Office (ASNO) and the United States Department of Energy would continue; and

h) the provision for consultation between the Parties on implementation of the proposed Agreement (Article 13).

11. The Australian Government regards these aspects of the proposed Agreement as integral elements of its broader policy against the proliferation of nuclear weapons. The maintenance of multilateral, regional and bilateral arrangements that operate to counter nuclear proliferation is a matter of high priority for Australia.

Obligations

12. Under Article 1, cooperation between the Parties in the peaceful uses of nuclear energy would be in accordance with the provisions of the proposed Agreement and other applicable treaties, national laws and regulations and subject to the application of safeguards in accordance with the Parties' respective agreements with the IAEA, being the United States-IAEA Safeguards Agreement and the *Agreement between Australia and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons,* signed on 10 July 1974 (the Australia-IAEA Safeguards Agreement).

13. Article 3 outlines the fields of cooperation under which information may be transferred pursuant to the proposed Agreement. Article 14 provides that such transfer of information may be carried out pursuant to written instruments that include provisions to protect intellectual property rights.

14. Article 4 of the proposed Agreement would oblige the Parties to limit the quantities

and types of nuclear material transferred between them to that necessary for peaceful purposes as specified in the Article. Such transfers would not include sensitive nuclear facilities or major critical components thereof unless provided for through separate treaty action. If excess quantities of high enriched uranium transferred under the Agreement exist in Australia, Australia would be obliged to cooperate with recovery by the United States of such excess on a commercial basis.

15. Article 5 would require Australia and the United States to store plutonium, uranium-233 or high enriched uranium transferred pursuant to the proposed Agreement, or used in or produced through the use of any material or equipment so transferred, only in facilities mutually determined by the Parties. Retransfer of nuclear material, equipment or components beyond the territorial jurisdiction of a Party would require the consent of both Parties.

16. Article 6 would require Australia and the United States to obtain consent from the other Party before: enriching uranium to 20% or greater in the isotope uranium-235; or reprocessing spent nuclear material for the separation of plutonium. These provisions are included in all of Australia's safeguards agreements to provide additional controls on these proliferation-sensitive activities.

17. Article 7 would oblige the Parties to apply physical protection measures, consistent with international standards, to nuclear material and equipment that is subject to the proposed Agreement within their jurisdiction. This includes the application of measures pursuant to the *Convention on the Physical Protection of Nuclear Material* and which meet levels not less than the recommendations of relevant IAEA guidelines.

18. Article 8 would oblige the Parties not to use nuclear material, equipment or components subject to the proposed Agreement for any nuclear explosive device or for related research, or for any military purpose. Use for military nuclear propulsion and for munitions would be prohibited. Use in relation to supply of electricity to a military base, or supply of radioisotopes to a military hospital for medical purposes, would not be prohibited.

19. Article 9 would oblige the Parties to place all nuclear material subject to the proposed Agreement under their respective safeguards agreements with the IAEA. In the event that IAEA safeguards cease to apply in either Party's jurisdiction, the Parties would be required to arrange immediately for the application of alternative ('fallback') safeguards which conform to IAEA principles and procedures to provide reassurance equivalent to that of the IAEA safeguards system. Article 9 would further oblige the Parties to establish and maintain a system of accounting for and control of all nuclear material subject to the proposed Agreement.

20. Article 10 would oblige each Party to seek the consent of the other before consenting to the retransfer to, or reprocessing of nuclear material or enrichment to 20% or greater of uranium in the isotope 235 by, a third country where the consent applies to material subject to the proposed Agreement.

21. Article 13 would require each Party to consult, at the request of the other, on the implementation of the proposed Agreement. The appropriate governmental authorities would be required to establish administrative arrangements to ensure the effective implementation of the proposed Agreement. Article 13 also obliges each Party to protect proprietary or confidential information transferred under the proposed Agreement.

Implementation

22. The legislative framework already in place in relation to nuclear transfers will be sufficient to provide for the terms of the proposed Agreement. However, it will be necessary to promulgate regulations pursuant to the *Nuclear Non-Proliferation (Safeguards) Act 1987* to add the proposed Agreement to the list of 'prescribed agreements' under that Act and to take similar action under the *Australian Radiation Protection and Nuclear Safety Act 1998*. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the proposed Agreement.

Costs

23. The costs associated with the proposed Agreement would be limited to travel to the United States by ASNO officers to facilitate proper operation of the nuclear material accounting system. ASNO expects to be able to manage these costs within its departmental allocation by the Department of Foreign Affairs and Trade.

Regulation Impact Statement

24. The Office of Best Practice Regulation, Department of Finance and Deregulation, has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

25. The proposed Agreement may be amended by agreement between the Parties. Such amendments would be subject to Australia's domestic treaty-making processes, including tabling in Parliament and consideration by JSCOT.

26. No future legally binding instruments connected with the proposed Agreement are envisaged at this stage. As noted at paragraph 21 above, the proposed Agreement contains provision for the conclusion of administrative arrangements to deal with the details of implementing the proposed Agreement. This provision is standard Australian practice where bilateral safeguards agreements are in place.

Withdrawal or denunciation

27. Article 16 of the proposed Agreement provides that it will remain in force for an initial period of thirty years and will continue in force thereafter for additional periods of five years each. Either Party is able to terminate the proposed Agreement at the end of the initial 30 year period, or at the conclusion of any additional five year period, by six months advance written notification to the other Party. Any decision to terminate the proposed Agreement would be subject to Australia's domestic treaty processes. Termination would not release either Party from obligations in respect of nuclear material transferred while the proposed Agreement was in force.

Contact details

Nuclear Accountancy and Control Section
Australian Safeguards and Non-Proliferation Office
Department of Foreign Affairs and Trade.

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the Government of the United States of America concerning Peaceful Uses of Nuclear Energy, done at New York on 4 May 2010
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CONSULTATION

28. The proposed Agreement would not have any general impact on businesses or Commonwealth Government agencies in Australia. There is a possibility that this proposed Agreement could result in an increase in the volume of uranium exported from Australia over time.

29. A pre-meeting briefing was provided to the States and Territories through the Commonwealth-State/Territory Standing Committee on Treaties for its meeting on 12 October 2009. No comments with respect to this proposed Agreement were registered by the Committee.

30. Commonwealth Government agencies consulted prior to and during the negotiations for the proposed Agreement (one formal round in December 2009) included the Attorney-General's Department, the Australian Nuclear Science and Technology Organisation, the Department of Prime Minister and Cabinet and the Department of Resources, Energy and Tourism. Other relevant Commonwealth Government agencies were also briefed through the Nuclear Agencies Consultative Committee meetings on 13 November 2009 and 19 February 2010. No objections to the proposed Agreement were raised.