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THE CLERK OF THE PARLIAMENT



Queensland
Government

Premier of Queensland

For reply please quote: MN110103/PM17/IGR

12 JUL 2006

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



Dear Neil

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

The attached material for tabling includes:

- a copy of a letter from the Chair of the JSCOT regarding three proposed international treaty actions tabled in both houses of the Federal Parliament on 20 June 2006; and
- National Interest Analyses for the proposed treaty actions listed in the letter.

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

Yours sincerely

PETER BEATTIE MP
PREMIER OF QUEENSLAND

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PARLIAMENT of AUSTRALIA

JOINT STANDING COMMITTEE ON TREATIES

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21 June 2006

The Hon Peter Beattie MP
Premier of Queensland
Parliament House
BRISBANE QLD 4002

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Peter

Treaties tabled on 20 June 2006

Dear Premier

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 20 June 2006

- *Amendments to the Convention on the Physical Protection of Nuclear Material (Vienna on 8 July 2005)*
- *Agreement between the Government of Australia and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol (Mexico City, 23 August 2005)*
- *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of United States of America (Canberra, 28 February 2006)*

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/20june2006/tor.htm>.

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE
PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS,
AND PROTOCOL,
DONE AT MEXICO CITY ON 23 AUGUST 2005**

[2005] ATNIF 16

Documents tabled on 20 June 2006:

National Interest Analysis [2006] ATNIA 24

with attachment on consultation

Text of the Proposed Treaty Action

Background Information:

Country Political Brief and Fact Sheet

List of Other Treaties with Mexico

List of Treaties of the Same Type with Other Countries

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

**Agreement between the Government of Australia and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol, done at Mexico City on 23 August 2005
[2005] ATNIF 16**

Nature and timing of proposed treaty action

1. It is proposed that Australia bring into force, by an exchange of notes, the Agreement between the Government of Australia and the Government of the United Mexican States (the “Parties”) on the Promotion and Reciprocal Protection of Investments (the “Agreement” or the “IPPA”).
2. In accordance with Article 23, the Agreement will enter into force 60 days after the date on which the last notification referred to in paragraph 1 of the article has been received by the Party in question. The Mexican Government has sent its Note to the Australian Government, and it is proposed to send the Australian note as soon as practicable after consideration by JSCOT.
3. The Agreement was signed on 23 August 2005 in Mexico City.

Overview and national interest summary

4. The Australian Government recognises the importance of promoting the flow of capital for economic activity and its role in expanding economic relations and technical cooperation between countries. The Agreement, by guaranteeing certain treatment for investments, will encourage and facilitate bilateral investment by citizens, permanent residents and companies of Australia and Mexico, in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence. The Agreement will put Australian investors in a better position to benefit from the investment opportunities in Mexico by providing them with a range of guarantees relating to non-commercial risk.
5. Mexico is Australia’s largest trading partner in Latin America with potential for significant expansion given the complementary trade profiles of both countries. While bilateral direct investment between Mexico and Australia is modest at present, Mexico attracts significant direct investment due to its North American Free Trade Agreement (NAFTA) membership and its generally liberal and transparent investment laws. Mexico is keen to increase the level of Australian investment in Mexico (in particular in its mining sector) and the Agreement will assist this process.
6. The Agreement will assist in promoting Australia as a destination for Mexican investment, possibly as an entry point into the Asian markets. Mexican investment in Australia is negligible at present.

Reasons for Australia to take the proposed treaty action

7. The Agreement is intended to encourage and facilitate bilateral investment by citizens, permanent residents and companies registered in Australia and Mexico, consistent with the Australian Government's foreign investment policy. The Agreement applies at the post-establishment stage of the investment cycle - that is, Australia's sovereign right to admit investments (either through acquisitions or new businesses) is unaffected by the provision of the Agreement.

8. The Agreement would be an important safeguard for Australian companies that wish to participate in major projects in Mexico. It would send a positive message to Australian business about investing in Mexico by offering most-favoured-nation status and national treatment in regard to the treatment of Australian investments, by providing guarantees about expropriation/nationalisation and by establishing mechanisms for resolving investment disputes. The Investor-State Dispute Settlement provisions provide an avenue by which Australian investors can choose to take alleged breaches of the obligations of this Agreement to international arbitration, instead of relying on the local legal system (for example, by recourse to the International Centre for the Settlement of Investment Disputes). No formal dispute resolution procedures have ever been invoked against Australia in relation to the nineteen investment protection and promotion agreements (IPPAs) currently in force for Australia.

9. Mexico is considered to have a relatively open and transparent investment regime. The prospect of consistent economic growth and ongoing political stability in Mexico is likely to lead to increased export and investment opportunities. Australian investors would benefit significantly and therefore be encouraged to invest in Mexico by the establishment of rules and a framework for investment promotion and protection between Australia and Mexico.

10. The IPPA would lead to greater Australian investor confidence and interest in the Mexican market. The absence of an IPPA leaves Australian investments more vulnerable to the effect of changes in Mexican investment policies. Experience has shown that the introduction of a set of investment rules, such as that under NAFTA in 1994, has led to greater predictability in the Mexican investment environment. Hence, a sizable benefit to Australian investors arising from the IPPA would be the continuity and stability of Mexican investment policies.

11. There is a relatively low level of two-way investment between Mexico and Australia, with Australian direct investment in Mexico at approximately A\$285 million and Mexican investment in Australia at A\$10 million. Investment agreements have been used by a number of countries as a means to increase their business and trade presence in the Mexican (and NAFTA) market. Potential exists for greater Australian investment in Mexico, especially in the mining, resources, energy and agribusiness sectors. While Mexico can be seen as a gateway to NAFTA markets for Australian investors, similarly Australia can be seen as a base for accessing South-East Asian markets for Mexican investors.

12. An IPPA would give Australian investors parity with Mexico's other bilateral investment treaty partners.

Obligations

13. This Agreement closely follows the Australian model IPPA text. It provides a clear set of obligations relating to the promotion and protection of investments and takes full account of each Party's laws and investment policies. It covers only the post-establishment treatment of investments. Decisions to admit new investments (either through acquisitions or new businesses) remain the sole purview of the host government.

14. Parties are obliged to encourage, promote, and to the extent possible by law and existing investment policies, admit investments by investors (including citizens and permanent residents) and companies of the other Party (Article 3). Parties must ensure that investments and associated activities of investors of the other Party receive most-favoured-nation treatment (i.e. investments of investors of a Party will be treated on a basis no less favourable than investments of investors from third countries) and national treatment (investments of investors of the other Party will be treated no less favourably than investments of domestic investors), subject to existing law and policy. This extends to procedural rights for dispute settlement and enforcement of judgments (Article 22). In addition, a minimum standard of treatment (consistent with customary international law) applies to investments of either Party at all times. This means that investments and associated activities will be accorded fair and equitable treatment and enjoy full security and protection in the territory of the other Party (Article 4 and Protocol). These obligations do not apply to special advantages given within free trade areas or regional trading arrangements, to taxation measures or double taxation agreements.

15. Article 5 requires the Parties to give sympathetic consideration to applications by investors of the other Party and their employees to enter and remain in their territory for the purpose of engaging in investment activities (subject to its laws and policies applicable from time to time).

16. Article 6 relates to the transparency of the investment regime – Parties must make public and readily accessible those laws, regulations and policies which pertain to or affect investments.

17. Articles 7 and 8 relate to circumstances in which a Party must pay compensation for actions that affect investments. Article 7 prohibits Parties from expropriating or nationalising investments of the investors of the other Party unless it is for a public purpose, under due process of law, non-discriminatory, and compensated promptly, adequately and in the currency in which the investment was originally made or any other freely transferable and realisable currency. Article 8 provides that where an investor suffers loss due to war or other armed conflict, revolution, a state of national emergency, civil disturbance or other similar event, they will be accorded treatment which is no less favourable than that accorded to its own investors or those of any third country.

18. Article 9 requires Parties to permit all financial transfers (including profits, dividends and proceeds from the sale of investments) related to investments to be freely made and without unreasonable delay. This does not affect a Party's ability to prevent transfers where such action is required for enforcement of bankruptcy, insolvency, criminal or securities laws or to ensure satisfaction of court judgements. A Party's right to temporarily restrict transfers where there are serious balance of payment difficulties is also preserved.

19. Where a Party makes a payment to an investor under a guarantee, contract of insurance or other indemnity in respect of an investment, Article 10 requires the other Party to

recognise the resulting subrogation or transfer of any rights or title. It should be noted that these rights are restricted to non-commercial risks.

20. Machinery for the settlement of disputes between the Parties is established under Article 21. This follows the model IPPA text and requires Parties to consult on matters concerning the review, interpretation or application of the Agreement and endeavours to resolve any disputes connected with it by prompt consultations and negotiations (pursuant to Articles 11 and 21). If consultations fail, the Parties may submit the dispute to international arbitration.

21. Formal procedures for the initiation, conduct and settlement of disputes concerning investments between a Party and an investor of the other Party are established under Articles 12 to 20 and 22 (referred to as investor-State dispute settlement or "ISDS"). Parties are required to seek to settle the dispute in the first instance by negotiation and consultation (Article 12). If resolution is not achieved, a Party may be required to proceed to arbitration.

22. Parties are required to provide investors with several avenues of redress for damage suffered as a result of a Party's breach of this Agreement.

23. Investors may, either on their own or on behalf of an enterprise it owns or controls, bring an action under the domestic courts and tribunals of the Party responsible for the breach, or submit the matter to arbitration under the Agreement. Where the relief sought is payment of monetary damages, investors must give up their rights to pursue or continue actions in respect of the same measure under any other dispute settlement process (including domestic courts) before they will be permitted to initiate an action in an arbitral tribunal. Where the relief sought is non-monetary (eg injunctive or declaratory relief), investors are not required to provide this waiver. This means that Parties are obliged to provide investors unlimited access (subject to law) to domestic courts for the purpose of obtaining interlocutory orders.

24. An investor may refer a dispute to international dispute settlement provided that six months has elapsed from the date the events giving rise to the dispute occurred. There is a four year limitation period for the pursuit of actions starting from the day that the investor first acquired knowledge of the events giving rise to the dispute (Article 13).

25. Investors are provided with two alternatives. The dispute may be referred to the International Centre for Settlement of Investment Disputes (ICSID). This would be made pursuant to the Additional Facility Rules of ICSID since Mexico is not a party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention") (Article 13.4(b)). Alternatively, the dispute may be submitted to arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. The latter rules will apply to all consolidated cases - ie where two or more claims are heard together because they arise from the same legal or factual issues. If investors do not comply with the respective rules, the Parties are entitled to challenge jurisdiction of the tribunal on the basis of procedural irregularity.

26. Arbitral awards are binding and enforceable (Article 19 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which Australia is a signatory). They may take the form of a declaration, monetary compensation, restitution in kind or other form of relief if the Parties agree.

Implementation

27. The Agreement complies with existing Australian legislation. The Agreement will be implemented within the framework of Australia's existing laws and policies relating to foreign investment.

Costs

28. Compliance with the Agreement has few foreseeable direct financial costs for Australia. Costs may be incurred in the event of a dispute between the Parties, should the dispute be submitted to an Arbitral Tribunal at the request of either Party. Under these circumstances each Party bears the cost of the arbitrator it has appointed and of its representation in arbitrating proceedings, while the cost of the Chairman and the remaining costs of arbitration are borne in equal parts by the Parties unless otherwise decided by the Tribunal (Article 21).

29. Costs may be incurred should it be necessary to defend disputes brought by Mexican investors. If a claim is brought in Australian courts or tribunals, Australia will incur the ordinary costs associated with litigating domestic disputes (including payment of any award) as determined by the court. If a claim is brought in an international tribunal, costs will be determined by ICSID and UNCITRAL rules respectively depending on the forum in which the claim is prosecuted.

30. In relation to ICSID disputes, only Australia is a party to the ICSID Convention. Mexican investors may nevertheless refer a dispute relating to an investment in Australia to the ICSID pursuant to the Additional Facility Rules of ICSID. In this case, the Australian Government may be required to bear all or part of the cost of arbitration and any relevant ICSID fees, subject to the discretion of the tribunal. The Government would also have to pay the cost of any award handed down in favour of the Mexican investor. To date, no case has been referred to the ICSID in relation to Australia's existing investment promotion and protection agreements. If the dispute is governed by UNCITRAL rules, Australia would in principle be liable for the costs of arbitration if it were unsuccessful. The tribunal can apportion costs if this is deemed reasonable. Costs of legal representation will be determined by the tribunal.

31. Finally, Australia may be liable to pay compensation for losses owing to war or other armed conflict, revolution, a state of national emergency, civil disturbance or similar events in its territory (Article 8), or in the event that an investment is expropriated or nationalised (Article 7). Again, while this is a potential cost, it is highly unlikely to eventuate in the Australian political and investment environment.

Regulation Impact Statement

32. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

33. The text of the Agreement has no explicit reference to the negotiations of future legally binding instruments or a procedure for its amendment. It may nevertheless be amended

at any time by agreement between the Parties in accordance with the Vienna Convention on the Law of Treaties. Such amendments would be subject to the domestic treaty process.

Withdrawal or denunciation

34. Article 24 provides that the Agreement will remain in force for a period of ten years. After that period, either Party may give twelve months written notice of termination to the other Party. Any such decision to terminate would be subject to the domestic treaty process.

35. Article 24 provides that the Agreement will continue to be effective in respect to investments made or acquired before the date of termination for a further period of ten years after the date of termination.

Contact details

Latin America and Caribbean Section
Americas and Europe Division
Department of Foreign Affairs and Trade.

**Agreement between the Government of Australia and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol,
done at Mexico City on 23 August 2005
[2005] ATNIF 16**

CONSULTATION

1. The Agreement negotiations with Mexico were announced on the website of the Department of Foreign Affairs and Trade. While no formal submissions were received, negotiations of this Agreement had been encouraged by industry representatives. The Agreement was also placed on the Internet Treaties Library after it was signed.
2. The Agreement was negotiated by the Department of Foreign Affairs and Trade, the Attorney-General's Department and Treasury. All relevant agencies have been consulted during negotiations and have given their approval to the final text of the Treaty, including Treasury and the Attorney-General's Department.
3. The State and Territories Governments were advised of the proposed Agreement with Mexico when negotiations commenced in 2001, through the Commonwealth-State/Territories Standing Committee on Treaties (SCOT). Updated information on the Agreement has been included on the Schedule of Treaties under negotiation, consideration or review by the Australian Government, which is distributed to the SCOT representatives twice a year. No objections or concerns have been raised by the States or Territory Governments as a result of this notification.

Political brief on Mexico

1. Mexico is a significant player in international affairs. It is a regional leader in both political and economic contexts, and has a close relationship with the United States of America. Mexico is the world's 13th largest economy, with a GDP of US\$740 billion. Its population of 106 million people makes it a significant market in its own right.
2. Mexico is Australia's largest trading partner in Latin America. Two-way trade exceeded A\$1.6 billion in 2005. Mexico is Australia's second largest export market in Latin America, just behind Brazil, with exports to Mexico amounting to approximately A\$830 million in 2005. Australian direct investment in Mexico is modest at around A\$285 million (2004 figures), while Mexican investment in Australia is negligible. Our key exports to Mexico are coal, other ores, leather, meat and livestock. The main imports from Mexico are automotive parts, base metals, telecommunications equipment, medical equipment and medicines.
3. The Australia - Mexico bilateral relationship is strong and growing. An increased level of cooperation in recent years has resulted in several commercially focused outcomes, including a bilateral Double Taxation Agreement, a Memorandum of Understanding (MOU) on Mining, an MOU on Energy and an MOU on Education and Training. The Double Taxation Agreement entered into force on 1 January 2004. The DTA clarifies the taxation rights of the two countries by introducing measures to relieve double taxation, and prevents fiscal evasion. A bilateral Air Services Agreement was signed in March 2005. In March 2006 Australia and Mexico agreed to commence a Joint Experts' Group process which will look at ways to strengthen the bilateral economic relationship, including the negotiation of a possible FTA at some point in the future.
4. Mexico has transformed itself from a highly protected economy in the early 1980s to a more open, regionalised and market-based economy today. Economic activity is characterised by modern, export-oriented industry and agriculture, alongside more outmoded sections of the domestic economy. Much of the modern economy has been driven by competition and export opportunities stemming from Mexico's extensive network of Free Trade Agreements (FTAs), covering more than 90 per cent of the country's trade. Mexico has the largest FTA network in the world, with 12 FTAs involving 43 countries.
5. In recent years, Mexico's economic policy has been characterised by sound fiscal management and efforts to build the confidence of international markets in the Mexican economy. Windfall profits from the sale of Mexico's oil reserves have enabled the retirement of considerable foreign debt. Mexico is one of only two Latin America countries that has an investment grade rating from Standard and Poor's, the globally recognised provider of credit ratings.
6. Mexico will need to implement structural reforms in order to continue attracting the high levels of foreign direct investment that have driven economic growth since the conclusion of NAFTA. Mexican business strongly supports structural reform. The speed and scope of reform, however, will be determined by the new administration. Notwithstanding these challenges, the Mexican economy has continued to grow since moving out of recession in 2002. Mexico's GDP grew by 3.5 per cent in 2005, and is predicted to maintain 3.5 per cent growth in 2006.
7. Mexico has a democratically elected government. Presidential and Congressional elections are due on 2 July 2006. Key candidates in the election include Andrés Manuel López Obrador of the Party of the Democratic Revolution (PRD), Roberto Madrazo for the Institutional Revolutionary Party (PRI) and Felipe Calderón of the ruling National Action Party (PAN).



MEXICO

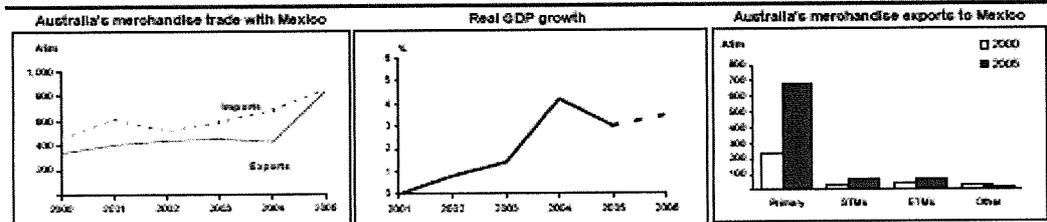
Fact Sheet

General information:

Fact sheets are updated biannually, May and September

Capital:	Mexico City	Head of State and Head of Government:	
Surface area:	1,958 thousand sq km	H.E. President Mr Vicente Fox Quesada	
Official language:	Spanish		
Population:	107.4 million (2006)		
Exchange rate:	A\$1 = 7.9166 New Pesos (Jan 2006)		

Recent economic indicators:	2001	2002	2003	2004	2005(a)	2006(b)
GDP (US\$bn) (current prices):	622.1	649.1	639.1	683.5	768.4	846.8
GDP PPP (US\$bn) (c):	893.5	918.6	948.4	1,015.8	1,072.6	1,132.9
GDP per capita (US\$):	6,260	6,438	6,248	6,586	7,298	7,926
GDP per capita PPP (US\$) (c):	8,991	9,092	9,272	9,788	10,186	10,604
Real GDP growth (% change YOY):	0.0	0.8	1.4	4.2	3.0	3.5
Current account balance (US\$m):	-17,845	-13,524	-8,621	-7,180	-5,708	-5,488
Current account balance (% GDP):	-2.8	-2.1	-1.3	-1.1	-0.7	-0.6
Goods & services exports (% GDP):	27.6	26.8	27.8	29.6	29.9	31.2
Inflation (% change YOY):	6.4	5.0	4.5	4.7	4.0	3.5



Australia's trade relationship with Mexico:

Australian merchandise trade with Mexico, 2005:		Total share:	Rank:	Growth (yoY):
Exports to Mexico (A\$m):	830	0.6%	27th	94.3%
Imports from Mexico (A\$m):	847	0.5%	30th	24.1%
Total trade (exports + imports) (A\$m):	1,676	0.6%	28th	51.1%
Major Australian merch. exports, 2005 (A\$m):		Major Australian merch. imports, 2005 (A\$m):		
Coal	518	Motor vehicle parts	93	
Meat (excl. bovine)	49	Manufactures of base metals	65	
Leather	42	Telecommunications equipment	52	
Manganese ore and concentrates	30	Computers	68	
Australia's trade in services with Mexico, 2005:		Total share:		
Exports of services to Mexico (A\$m):	35	0.1%		
Imports of services from Mexico (A\$m):	24	0.1%		
Major Australian service exports, 2005 (A\$m):		Major Australian service imports, 2005 (A\$m):		
Education-related travel	20	Personal travel excl. education	18	
Personal travel excl. education	8	Business travel	2	

Mexico's global merchandise trade relationships:

Mexico's principal export destinations, 2004:		Mexico's principal import sources, 2004:	
1 United States	87.8%	1 United States	55.1%
2 Canada	1.8%	2 China	7.1%
3 Spain	1.1%	3 Japan	5.3%
22 Australia	0.2%	30 Australia	0.2%

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

(a) and (c) recent data subject to revision; (b) IMF/EIU forecast; (c) PPP is purchasing power parity.
n.a. Data not available

List of other treaties with Mexico

- Basic Agreement between the Government of Australia and the Government of the United States of Mexico on Scientific and Technological Co-operation
[1983] ATS 4
- Treaty on Extradition between Australia and the United Mexican States
[1991] ATS 13
- Treaty between Australia and the United Mexican States on Mutual Assistance in Criminal Matters
[1992] ATS 31
- Agreement between the Government of Australia and the United Mexican States Concerning Cooperation in Peaceful Uses of Nuclear Energy
[1992] ATS 32
- Trade and Investment Agreement with the Government of the United Mexican States
[1997] ATS 15
- Agreement between the Government of Australia and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income
[2004] ATS 4

List of treaties of the same type with other countries

- Agreement with the People's Republic of China on the Reciprocal Encouragement and Protection of Investments
[1988] ATS 14
- Agreement with the Socialist Republic of Vietnam on the Reciprocal Promotion and Protection of Investments
[1991] ATS 36
- Agreement with the Independent State of Papua and New Guinea for the Promotion and Protection of Investments
[1991] ATS 38
- Agreement with the Republic of Poland on the Reciprocal Promotion and Protection of Investments
[1992] ATS 10
- Agreement with Republic of Hungary on the Reciprocal Promotion and Protection of Investments
[1992] ATS 19
- Agreement with the Republic of Indonesia concerning the Promotion and Protection of Investments
[1993] ATS 19
- Agreement with Hong Kong concerning the Promotion and Protection of Investments
[1993] ATS 30
- Agreement with Romania on the Reciprocal Promotion and Protection of Investments
[1994] ATS 10
- Agreement with the Czech Republic on the Reciprocal Promotion and Protection of Investments
[1994] ATS 18
- Agreement with the Lao People's Democratic Republic on the Reciprocal Promotion and Protection of Investments
[1995] ATS 9
- Agreement with the Republic of the Philippines on the Promotion and Protection of Investments
[1995] ATS 28
- Agreement with the Argentine Republic on the Promotion and Protection of Investments
[1997] ATS 4
- Agreement with the Republic of Peru on the Promotion and Protection of Investments
[1997] ATS 8

- Agreement with the Islamic Republic of Pakistan on the Promotion and Protection of Investments
[1998] ATS 23
- Agreement with the Republic of Chile on the Reciprocal Promotion and Protection of Investments
[1999] ATS 37
- Agreement with the Republic of India on the Promotion and Protection of Investments
[2000] ATS 14
- Agreement with the Arab Republic of Egypt on the Promotion and Protection of Investments
[2002] ATS 19
- Agreement with the Republic of Lithuania on the Promotion and Protection of Investments
[2002] ATS 7
- Agreement between Australia and Uruguay on the Promotion and Protection of Investments
[2003] ATS 10
- Agreement with the Republic of Turkey on the Promotion and Protection of Investments
[2005] ATNIA 23

**AGREEMENT RELATING TO SCIENTIFIC AND TECHNICAL
COOPERATION BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
DONE AT CANBERRA ON 28 FEBRUARY 2006**

[2006] ATNIF 4

Documents tabled on 20 June 2006:

**National Interest Analysis [2006] ATNIA 25
with attachment on consultation**

Text of the proposed treaty action

Background information:

United States of America political brief and country fact sheet

List of other treaties with the United States of America

List of similar treaties with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America, done at Canberra on 28 February 2006

[2006] ATNIF 4

Nature and timing of proposed treaty action

1. On 28 February 2006 the Australian Minister for Education, Science and Training, and the United States Charge d'Affaires *ad interim*, signed the Agreement relating to Scientific and Technical Cooperation between the Government of the United States of America (USA) and the Government of Australia (Agreement).
2. Article XI of the Agreement provides that it will enter into force one day after an exchange of notes between the Parties. The exchange of notes will occur once all legal requirements for entry into force have been fulfilled by both Parties. It is proposed to send the Australian note as soon as practicable following consideration by the Joint Standing Committee on Treaties.

Overview and national interest summary

3. The purpose of ratifying the Agreement is to lend further support to the long-standing and highly successful science and technology relationship between Australia and the USA. Scientific and technological cooperation between the scientists of both countries contributes to their ability to conduct world leading research and technology development. The outcomes of such research, in turn, lead to important socio-economic benefits for each country.
4. The treaty action will strengthen and encourage bilateral cooperation by providing a formal framework in which it may occur, which sets out principles for the management of, and the sharing of costs and benefits arising in the course of, collaboration.

Reasons for Australia to take the proposed treaty action

5. The USA has been for many years, and remains, the key partner country for Australia in international science and technology collaboration. A recent study commissioned by the Department of Education, Science and Training (DEST) identified that Australian collaboration with the USA constitutes nearly one quarter of all Australian Government funded international science and technology collaborations, making it Australia's single largest international partner. Further, funds provided by USA organisations account for almost half of the total funding received from overseas sources by Australian research agencies and universities. Whatever assistance the Australian Government can extend to researchers to allow this relationship to continue to flourish is likely to be valuable.

6. Australia first entered into a formal Agreement with the Government of the USA for Cooperation in Scientific Research and Technological Development on 16 October 1968 ([1968] ATS 22) (1968 Agreement). The 1968 Agreement was limited to affirming the importance of science and technology cooperation between Australia and the USA and each Government's commitment to supporting this cooperation. The 1968 Agreement expired in 1991 after which a period of consultation followed, leading to an agreement to negotiate a new and more extensive instrument which contained clearer commitments on such key matters as the equitable sharing of intellectual property.

7. The Agreement (the subject of this NIA) acknowledges the benefits from the long and highly successful bilateral scientific and technological relationship and aims to strengthen that relationship. By establishing principles to guide the conduct of the relationship, principles that provide for shared responsibility in collaborative activities, and equitable sharing of the costs and benefits associated with collaboration, the Agreement will expand opportunities for agency-to-agency collaboration and will be important for enhancing formal links between researchers from Australia and the USA.

8. To assist researchers undertake collaboration, the Agreement establishes an enabling framework which expands the opportunities for bilateral agency-to-agency collaboration. It does so by setting out the cooperative activities which researchers from Australia and the USA might undertake. Such activities include joint research projects, task forces, studies, organisation of scientific seminars, conferences, symposia and workshops, training of scientists and technical experts, visits and exchanges of individual scientists, engineers and other appropriate personnel, exchanges of information on activities, policies, practices, laws and regulations concerning research and development, and other forms of cooperative activities as may be agreed.

9. The Agreement requires Parties to ensure the adequate and effective protection and allocation of intellectual property introduced, contributed to, or created, during the course of collaboration. Unless otherwise agreed by the Parties, all provisions on allocation of intellectual property created through cooperative activities in the Agreement (primarily in Annex I) will be applicable to any subsidiary implementing arrangement or contract that governs a Cooperative Activity. Through this default application process, the Agreement aims to standardise and facilitate the allocation intellectual of property for each cooperative activity. These provisions provide protection for Australian researchers when negotiating intellectual property issues in US markets.

10. Ratification of the Agreement would confirm on a political level Australia's strong commitment to continued cooperation on scientific research and technological development with the USA. Should the Agreement not be ratified, this may negatively impact on agency-to-agency agreements, and reduce the overall level of research collaboration between

Australia and the USA. Ratification will be viewed positively by the USA and will strengthen the wider bilateral relationship.

Obligations

Scope of obligations

11. Article IV(1)) obliges the Parties to support cooperative activities for peaceful purposes in mutually agreed areas of science and technology.

12. Article IV(6) obliges the Parties to encourage researchers and organisations to participate in cooperative activities from all sectors that includes universities, national laboratories and private enterprise.

Principles for cooperation

13. Article II(2) obliges the Parties to conduct their scientific and technological cooperation relationship subject to the policies, regulations and laws of each country, and based on the following principles:

- shared responsibility, equitable contribution to collaboration and equitable sharing of the benefits of collaboration;
- shared costs of collaboration, taking into account the shares in risk, benefits and management;
- comparable access to government-supported programs and facilities;
- comparable access to and exchange of information in the field of scientific and technological research and development;
- cooperation in promoting research and development results so as to maximise the economic, social and industrial development benefits to each country;
- adequate and effective protection of intellectual property introduced or created in the course of collaboration; and
- adequate and effective distribution of intellectual property created in, or as a direct result of collaboration.

Broad obligations

14. Article II(3) obliges the Parties to, in accordance with the applicable policies, regulations and laws of both countries, strengthen their science and technology relationship.

15. Article IV(2) obliges the Parties to encourage the timely application of research results for the social and economic benefit of both countries.

Specific Obligations

16. The Parties shall each designate an Executive Agent to be responsible for coordinating and facilitating cooperative activities under the Agreement (Article III(1)). The Executive

Agents shall, on a regular basis, discuss and review the implementation of the Agreement, matters of importance in the field of science and technology and policy issues relevant to the bilateral science and technology relationship (Article III(2)).

17. Cooperative activities under the Agreement shall not be conducted without the prior mutual consent of the Parties, to be communicated through the Executive Agents (Article IV(5)).

18. Any implementing arrangements negotiated by the Parties, or their designees, to establish the terms for specific cooperative activities shall take into account the applicable laws and regulations of the jurisdiction in which activities are to take place. Further, unless agreed otherwise, the terms of this Agreement shall apply to the implementing arrangements (Article IV(3)).

19. Each Party shall bear its own costs of meeting responsibilities under particular projects or programmes, unless agreed otherwise in specific cases (Article VIII (2)).

20. Article IX obliges the Parties to facilitate the entry to and exit from each country of Australian and US personnel, materials and equipment associated with cooperative activities conducted under the Agreement.

Intellectual property

21. Article VI(1)(A) obliges the Parties to ensure the adequate and effective protection of any **existing** intellectual property introduced into a cooperative activity under the Agreement.

22. Article VI(1)(B) obliges the Parties to ensure the adequate and effective protection and allocation of any **new** intellectual property created in, or as a direct result of cooperative activities under the Agreement.

23. Article VI(2) and Annex I obliges Parties to abide by all provisions on protection and allocation of intellectual property and the protection of business confidential information created in the course of cooperative activities as set out in Annex I, unless otherwise specifically agreed by the Parties.

24. The provisions in Annex I for **protection** are as follows:

- Parties are obliged to protect business-confidential information in accordance with applicable laws, regulations and administrative practices if business-confidential information is identified in a timely fashion. "Business confidential information" is information: (a) from which a person may derive an economic benefit or obtain a competitive advantage over those who do not have it; (b) not publicly or generally known; and, (c) which has not previously been made available without the owner imposing an obligation to keep the information confidential (Annex I (IV)).

25. The provisions in Annex 1 for **allocation** are as follows:

- for **published journal articles, reports and books**, each Party shall be entitled to a non-exclusive, irrevocable, royalty-free licence in all countries to translate, reproduce and publicly distribute scientific and technical journal articles, reports and books arising from cooperative activities. Publicly distributed work will indicate the names of the authors (Annex I (III)(A)).

- for **intellectual property created by visiting researchers**, the visiting researcher shall receive, for any intellectual property they create, rights, awards, bonuses and royalties in accordance with the policies of the host institution (Annex I (III)(B)(1)).
- for **all other forms of intellectual property**:
 - the Parties and their participants must jointly develop a technology management plan which shall consider the relative contributions of the participants, the degree of commitment in obtaining legal protection and licensing of intellectual property and other facts deemed appropriate (Annex I (III)(B)(2)(b)).
 - should a technology plan not be agreed within six months from the time a Party becomes aware that intellectual property is created, Parties must submit to dispute resolution (see below) (Annex I (III)(2)(b)).
 - if there is no technology management plan, both Parties must immediately hold discussions on allocation of intellectual property if one Party believes that a cooperative activity may lead to or has led to the creation of intellectual property (Annex I(III)(B)(2)(c)).
 - if no agreement on allocation is reached within three months, the cooperative activity shall be terminated (Annex I(III)(B)(2)(c)).
- each Party must disclose (with any relevant documentation) any invention made under a cooperative activity promptly to the other Party (Annex I(III)(B)(2)(d)).
- each Party must ensure the other Party can obtain the allocated rights to intellectual property, if necessary, through contracts or other legal means with its own participants (Annex I (II)(C)).

26. The provisions in Annex I for the **settlement of disputes** concerning protection or allocation of intellectual property are as follows:

- Parties must resolve disputes through discussions between the participants in a cooperative activity or, if necessary, between the Parties or designees.
- subject to the mutual agreement of the Parties, a dispute shall be submitted to an arbitration tribunal for binding dispute resolution (Annex I (II)(D)).

27. The termination or expiration of the Agreement shall not affect rights or obligation for the protection and allocation of intellectual property or business-confidential information under the Agreement (Article VI(3)).

Security obligations

28. Article VII and Annex II establish the reciprocal security obligations with respect to information and equipment requiring protection.

29. Information or equipment that is classified or requiring protection in the interests of national defence and/or foreign relations must not be provided under this Agreement. If such information or equipment is identified in the course of cooperative activities, it must be brought to the attention of the appropriate officials, and the Australian and USA Governments shall consult concerning the need for and level of appropriate protection (Annex II(I)).

30. The transfer of export-controlled information or equipment must be in accordance with relevant laws and regulations (Annex II(II)).

Implementation

31. No new implementation measures are required to bring the Agreement into force. Australian practice is already consistent with the provisions of the Agreement and no new domestic legislation would be required for it to enter into force.

Costs

32. While there will be some costs associated with implementing the Agreement through the need for an Executive Agent, these costs will be absorbed by the Department of Education, Science and Training. No additional costs are anticipated as a consequence of this treaty action.

Regulation Impact Statement

33. The Office of Regulation Review (Productivity Commission) has been consulted and advised that a Regulation Impact Statement is not required.

Future treaty action

34. Article XI(1) of the Agreement specifies that amendments can be made at any time by mutual written agreement between the Parties. Any amendment to the Agreement would be subject to Australia's domestic treaty-making process.

Withdrawal or denunciation

35. Once in force, Article XI(2) of the Agreement will allow either Party to terminate the Agreement upon six months' written notice. Expiration or termination of the Agreement would not affect the validity or duration of any Implementing Arrangement made under the Agreement, or the rights and obligations under Annex I.

Contact Details

International Science and Technology Relations Section
International Science Branch
Department of Education, Science & Training.

**Agreement relating to Scientific and Technical Cooperation between the
Government of Australia and the Government of the United States of America,
done at Canberra on 28 February 2006
[2006] ATNIF 4**

CONSULTATION

Federal Consultation

1. In 2001 the Minister responsible for Science sought approval from the Prime Minister and Cabinet Ministers to commence negotiations with the Government of the United States of America on a new bilateral agreement on science and technology cooperation.
2. Federal Government Departments and science portfolio and funding agencies were consulted during negotiations, and although clarification was sought on some points, no substantial concerns were raised, and all agencies were broadly supportive of the Agreement.
3. When draft final text was again provided to Federal Government Departments and science portfolio and funding agencies prior to being initialed by the Australian Minister for Education, Science and Training and the USA White House Science Advisor, all parties were broadly supportive of the text.
4. During negotiations and drafting, the Agreement text was also provided to the Department of Foreign Affairs and Trade and the Attorney-General's Department for legal clearance. The Attorney-General's Department was further consulted on the legislative implications of the agreement. Attorney-General's Department advised that no new legislation or modifications to existing legislation would be required for the Agreement to enter into force.
5. Approval for Australia to ratify the Agreement has been received from the following Australian Government Ministers: the Treasurer; the Attorney-General; the Ministers for Foreign Affairs; Agriculture, Fisheries and Forestry; Trade; Communications, Information Technology and the Arts; Transport and Regional Services; Immigration and Multicultural and Indigenous Affairs; Finance and Administration; Industry, Tourism and Resources; Environment and Heritage; Defence; Health and Ageing; and Justice and Customs. The Prime Minister has been informed of the process to bring the Agreement into force.

State/Territory Consultation

6. State and Territory Governments have been advised of the Agreement through the Standing Committee on Treaties' Schedule of Treaty Action. The Agreement has been on the list of current and forthcoming negotiations since November 2000. No objections or concerns were raised by the States or Territory Governments as a result of this notification.

Science Community Consultation

7. In 1999, prior to the commencement of negotiations with the USA, Australia's science portfolio and funding agencies, major universities and science and industry stakeholder representative bodies were consulted regarding the level and extent of their collaborative activity with their USA counterparts. Their views were also sought on problems they had encountered in collaboration with the USA – specifically allocation of intellectual property

rights - and other matters that could be advanced through a new science and technology agreement . Thirty eight parties were consulted, drawn from the following groups:

- Australian Universities;
- Government research and funding agencies;
- Cooperative Research Centres (CRC's);
- Learned science academies; and
- various other prominent scientific, research and industry bodies, such as the Australian Mineral Industries Research Association.

8. In early 2005, nearing the conclusion of the drafting process, the benefits of this Agreement were again discussed with the key Australian agencies for science and technology research. These agencies included the Australian Research Council (ARC), the National Health and Medical Research Council (NHMRC), Australian Nuclear Science and Technology Organisation (ANSTO), Defence Science Technology Organisation (DSTO) and the Commonwealth Science Industry Research Organisation (CSIRO). All agencies indicated their support for the provisions proposed under the Agreement.

AUSTRALIA-UNITED STATES BILATERAL BRIEF

Bilateral Relations Overview

Vital Australian national interests are advanced through our strong and robust relationship with the United States. Australia engages with the United States closely, advocating our views across a broad range of international issues. While Australian and American interests converge on a majority of international policy issues, we do not agree on everything. Where this is the case, Australia pursues its interests separately from the United States.

Defence and Security

At the heart of government relations between Australia and the United States is the ANZUS Treaty, signed in 1951. Defence cooperation increases Australia's ability to protect itself and its interests by providing access to world-leading defence hardware and technologies and to vital intelligence capabilities. Interoperability with US forces and the ability to contribute to multinational coalitions are central to Australia's defence policies, acquisition and training.

Trade and Investment

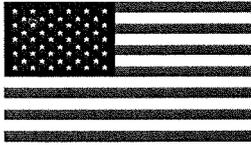
The United States is Australia's single most important economic partner. It is one of our top merchandise trading partners, our largest services trading partner and the largest source of foreign direct investment. The Australia-United States Free Trade Agreement (AUSFTA) builds on our A\$41.6 billion two-way trading relationship and delivers significant gains across all sectors of the economy.

US Economy

The United States is by far the world's largest economy and US GDP represents more than one quarter of global GDP. Real GDP growth is forecast to slow from 3.5 per cent in 2005 to 3.3 per cent in 2006, and 2.9 per cent in 2007. US unemployment is below five per cent, higher interest rates are slowing the housing boom and high oil prices will also squeeze growth. Predictions are for the current account deficit (USD225 billion in the December quarter 2005, equal to around 7 per cent of GDP) to expand over the next two fiscal years as government spending on defence and homeland security remains strong and the pace of economic growth moderates. The US dollar is predicted to remain robust in the short term.

US Politics

Presidential and congressional elections took place on 2 November 2004. President Bush prevailed over Senator Kerry with 286 Electoral College votes to 252 and also took the popular vote (51.1 per cent to 48 per cent). Republicans currently hold a majority in both the Senate (55-44-1) and the House (233-201-1), but Democrats retain blocking power in the Senate. Mid-term elections will take place on 7 November 2006. All 435 seats in the House of Representatives will be up for election. With Republicans currently holding a 30 seat advantage, Democrats would need to gain 16 seats to take control of the House. In the Senate, with 18 Democratic seats up for re-election and 15 Republican, the Democrats would need a six-seat gain to take control of the Senate.



UNITED STATES

Fact Sheet

General information:

Fact sheets are updated biannually; May and September

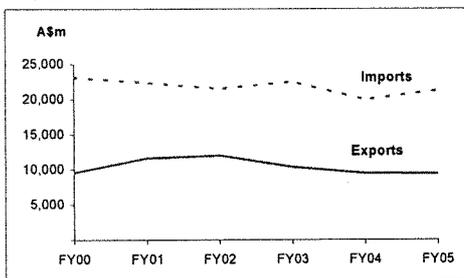
Capital	Washington D.C.
Surface area:	9,364 thousand sq km
Official language:	English
Population:	293.0 million (2004)
Exchange rate:	A\$1 = US\$0.7666 (Jun 2005)

Head of State and Head of Government:
President George W Bush

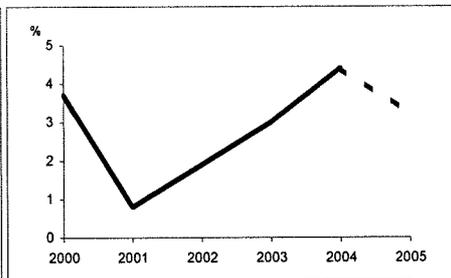
Recent economic indicators:

	2000	2001	2002	2003	2004(a)	2005(b)
GDP (US\$bn):	9,817.0	10,127.9	10,487.0	11,004.0	11,734.9	12,365.9
GDP per capita (US\$):	34,770	35,534	36,454	37,900	40,047	41,815
Real GDP growth (% change YOY):	3.7	0.8	1.9	3.0	4.4	3.2
Current account balance (US\$m):	-416,000	-389,500	-475,200	-519,700	-668,100	-857,000
Current account balance (% GDP):	-4.2	-3.8	-4.5	-4.7	-5.7	-6.9
Goods & services exports (% GDP):	8.9	8.2	7.7	7.5	7.6	10.6
Inflation (% change YOY):	3.4	2.8	1.6	2.3	2.7	3.2
Unemployment rate (%):	4.0	4.8	5.8	6.0	5.5	5.1

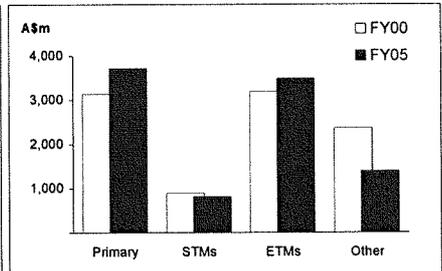
Australia's merchandise trade with the United States



Real GDP growth



Australia's merchandise exports to the United States



Australia's trade relationship with the United States:

Major Australian exports, 2004-05 (A\$m):

Bovine meat	1,449
Alcoholic beverages	868
Crude petroleum	462
Meat (excl. bovine)	389
Passenger motor vehicles	381

Major Australian imports, 2004-05 (A\$m):

Aircraft & parts	1,908
Medicaments (incl. veterinary)	834
Measuring and controlling instruments	821
Telecommunications equipment	708
Internal combustion piston engines	633

Australian merchandise trade with the United States, 2004-05:

Exports to the United States (A\$m):	9,433
Imports from the United States (A\$m):	21,273
Total trade (exports + imports) (A\$m):	30,705
Merchandise trade deficit with the United States (A\$m):	11,840

Total share:	Rank:	Growth (yoy):
7.4%	4th	-0.5%
14.2%	1st	6.7%
11.1%	3rd	4.4%

Australia's trade in services with the United States, 2004-05:

Exports of services to the United States (A\$m):	4,414
Imports of services from the United States (A\$m):	6,366
Services trade deficit with the United States (A\$m):	1,952

Total share:
12.1%
16.7%

United States' global merchandise trade relationships:

United States' principal export destinations, 2004:

1	Canada	23.1%
2	Mexico	13.5%
3	Japan	6.7%
4	United Kingdom	4.4%
5	China	4.2%
14	Australia	1.7%

United States' principal import sources, 2004:

1	Canada	17.4%
2	China	13.4%
3	Mexico	10.6%
4	Japan	8.8%
5	Germany	5.3%
30	Australia	0.5%

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

(a) all recent data subject to revision; (b) EIU forecast.

LIST OF OTHER TREATIES WITH THE UNITED STATES OF AMERICA

- Air Transport Agreement
[1946] ATS 8
- Exchange of Notes constituting an Agreement regarding the Extension of Time for Copyright
[1949] ATS 17
- Exchange of Notes constituting an Agreement regarding Reciprocal Waiver of Visa Fees
[1950] ATS 2
- Exchange of Notes constituting an Agreement relating to Mutual Defence Assistance
[1951] ATS 22
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Gifts
[1953] ATS 4
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on the Estates of Deceased Persons
[1953] ATS 4
- Exchange of Notes constituting an Agreement relating to Non-Immigrant Passport Visas
[1955] ATS 18
- Agreement concerning Cooperation regarding Atomic Information for Mutual Defence Purposes
[1957] ATS 13
- Agreement to Facilitate the Interchange of Patent Rights and Technical Information for Defence Purposes, and Exchange of Notes
[1958] ATS 2
- Exchange of Notes constituting an Agreement relating to Non-Immigrant Visa Procedures
[1959] ATS 32
- Mutual Weapons Development Program Agreement
[1960] ATS 11

- Exchange of Notes constituting an Agreement concerning a Program of Cooperation to Facilitate Space Flight Operations contributing to the advancement of Mutual Scientific Knowledge of Man's Spatial Environment and Its Effects
[1961] ATS 9
- Exchange of Notes constituting an Agreement for Co-operation in a Transit Navigational Satellite Programme
[1961] ATS 10
- Exchange of Notes constituting an Agreement relating to Procedures for the Reciprocal Filing of Classified Patent Applications under the Agreement to Facilitate the Interchange of Patent Rights and Technical Information for Defence Purposes of 24 January 1958
[1961] ATS 25
- Agreement concerning the Status of United States Forces in Australia, and Protocol
[1963] ATS 10
- Agreement for the Funding of Certain Education and Cultural Programs [Fulbright Agreement]
and
Exchange of Notes amending the Agreement for the Financing of Certain Educational and Cultural Exchange Programmes of 28 August 1964 (Canberra, 27 May 2003)
[1964] ATS 15
- Exchange of Notes constituting an Agreement regarding the Reciprocal Granting of Authorisations to Permit Licensed Amateur Radio Operators of Either Country to Operate their Stations in the Other Country
[1965] ATS 8
- Agreement relating to the Establishment of a Joint Defence Space Research Facility [Pine Gap, NT]
[1966] ATS 17
- Exchange of Notes constituting an Agreement to amend the Agreement for the Funding of Certain Education and Cultural Programs of 28 August 1964 [Fulbright Agreement]
[1967] ATS 12
- Exchange of Notes constituting an Agreement relating to Reciprocal Acceptance of Airworthiness Certifications
[1975] ATS 21

- Treaty on Extradition
[1976] ATS 10
- Exchange of Notes extending the Agreement relating to the Establishment of a Joint Defence Space Research Facility [Pine Gap]
[1977] ATS 24
- Exchange of Notes constituting an Agreement concerning the Establishment, Maintenance and Operation of a Solar Observatory
[1977] ATS 25
- Exchange of Notes constituting an Agreement regarding the Management and Operation of the Joint Geological and Geophysical Research Station at Alice Springs
[1978] ATS 3
- Exchange of Notes constituting an Agreement concerning Space Vehicle Tracking and Communication Facilities, 1980
[1980] ATS 15
- Agreement concerning Peaceful Uses of Nuclear Energy
[1981] ATS 4
- Agreement relating to Cooperation on Antitrust Matters
[1982] ATS 13
- Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
[1983] ATS 16
- Exchange of Notes constituting an Agreement to amend the Agreement regarding Management and Operation of the Joint Geological and Geophysical Research Station at Alice Springs of 28 February 1978
[1984] ATS 9
- Exchange of Notes constituting an Agreement on Employment Opportunities for Dependants of Officials Overseas
[1984] ATS 33
- Exchange of Notes constituting Agreements concerning the Application of the Agreement concerning Peaceful Uses of Nuclear Energy of 5 July 1979
[1985] ATS 22
- Exchange of Letters constituting an Agreement to amend the Air Transport Agreement of 3 December 1946
[1987] ATS 24

- Exchange of Notes constituting an Agreement Amending and Further Extending in force the Agreement on the Establishment of a Joint Space Research Facility of 9 December 1966 [Pine Gap]
[1988] ATS 36
- Exchange of Notes constituting an Agreement regarding access to the Australian Fishing Zone
[1988] ATS 44
- Exchange of Notes constituting an Agreement to amend the Air Transport Agreement of 3 December 1946
[1989] ATS 6
- Exchange of Notes constituting an Agreement concerning Airline Capacity
[1989] ATS 7
- Agreement concerning Cooperation in Defence Logistic Support
[1989] ATS 28
- Exchange of Notes constituting an Agreement concerning the Transfer of Australian Ores containing Uranium, Thorium, Monazite and Xenotime
[1989] ATS 31
- Exchange of Notes constituting an Agreement to further Amend and Extend the Agreement concerning Space Vehicle Tracking and Communications Facilities of 29 May 1980
[1990] ATS 15
- Agreement concerning NAVSTAR Global Positioning System
[1991] ATS 11
- Exchange of Notes constituting an Agreement to bring International Obligation Exchanges under the Coverage of the Agreement concerning Peaceful Uses of Nuclear Energy, and Agreed Minute, of 5 July 1979
[1991] ATS 48
- Exchange of Notes constituting an Agreement to amend the Agreement for the Funding of Certain Education and Cultural Programs of 28 August 1964 [Fulbright Agreement]
[1992] ATS 8
- Protocol amending the Treaty on Extradition of 14 May 1974
[1992] ATS 43

- Exchange of Notes constituting an Agreement to amend the Air Transport Agreement of 3 December 1946 and the Agreement concerning Capacity of 23 March 1989
[1994] ATS 8
- Agreement concerning Cooperative and Collaborative [Defence] Research, Development and Engineering
[1994] ATS 35
- Memorandum of Agreement concerning Reciprocal Defence Procurement
[1995] ATS 20
- Exchange of Notes constituting an Agreement concerning Certain Mutual Defence Commitments [Chapeau Defence Agreement]
[1995] ATS 35
- Agreement concerning [Defence] Acquisition and Cross-Servicing
[1999] ATS 18
- Treaty on Mutual Assistance in Criminal Matters
[1999] ATS 19
- [Supplementary] Agreement on Mutual Antitrust Enforcement Assistance
[1999] ATS 22
- Agreement for Cooperation concerning Technology for the Separation of Isotopes of Uranium by Laser Excitation (SILEX Agreement), Agreed Minutes and Exchange of Notes
[2000] ATS 19
- Exchange of Notes Constituting an Agreement to further extend in force the Agreement relating to the Establishment of a Joint Defence Facility at Pine Gap of 9 December 1996, as amended
[2000] ATS 27
- Exchange of Notes constituting an Agreement to further Amend and Extend the Agreement concerning Space Vehicle Tracking and Communications Facilities of 29 May 1980, as amended
[2000] ATS 32
- Agreement by Exchange of Notes to Amend and Extend the Agreement on Cooperation in Defence Logistics Support [CDLSA] of 4 November 1989
[2001] ATS 13

- Exchange of Notes constituting an Agreement concerning Cooperation in the Application of Non-Proliferation Assurances on Retransfer to Taiwan
[2002] ATS 9
- Agreement on Social Security
[2002] ATS 18
- Agreement for the Enforcement of Maintenance (Support) Obligations
[2002] ATS 24
- Agreement concerning Security Measures for the Protection of Classified Information
[2002] ATS 25
- Protocol Amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 6 August 1982
[2003] ATS 14
- Australia-USA Free Trade Agreement
[2005] ATS 1
- Agreement on the Promotion of Aviation Safety
[2005] ATNIF 8
- Implementation Procedures for Airworthiness covering Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities
[2005] ATNIF 17
- Agreement on Cooperation in Science and Technology for Homeland/Domestic Security Matters
[2005] ATNIF 34

June 2006

LIST OF SIMILAR TREATIES WITH OTHER COUNTRIES

1. Agreement between the Government of Australia and the Government of the People's Republic of China on Cooperation in Science and Technology
[1980] ATS 14
2. Agreement between Australia and the European Community relating to Scientific and Technical Cooperation
[1994] ATS 24
3. Agreement between Australia and the European Community amending the Agreement relating to Scientific and Technical Cooperation of 23 February 1994
[1999] ATS 29
4. Agreement between the Government of Australia and the Government of the Federal Republic of Germany on Scientific and Technological Cooperation
[1976] ATS 28
5. Agreement between the Government of Australia and the Government of Japan on Cooperation in Research and Development in Science and Technology
[1980] ATS 28
6. Exchange of Notes Constituting an Agreement to extend the Agreement between the Government of Australia and the Government of Japan on Cooperation in Research and Development in Science and Technology
[1985] ATS 28
7. Agreement between the Government of Australia and the Government of the Republic of Korea on Scientific and Technical Cooperation
[2000] ATS 13
8. Agreement between the Government of Australia and the Government of Russia [originally with the Union of Soviet Socialist Republics] on Scientific-Technical Cooperation
[1975] ATS 3
9. Agreement between the Government of Australia and the Government of the Republic of Indonesia for Cooperation in Scientific Research and Technological Development
[2005] ATNIF 11

**AMENDMENTS TO THE CONVENTION ON THE PHYSICAL
PROTECTION OF NUCLEAR MATERIAL,
DONE AT VIENNA ON 8 JULY 2005**

[2006] ATNIA 14

Documents tabled on 20 June 2006

National Interest Analysis [2006] ATNIA 23

with attachment on consultation

Text of the proposed treaty action

Background Information: Current status list

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Amendments to the Convention on the Physical Protection of Nuclear Material, done at Vienna on 8 July 2005 [2006] ATNIF 14

Nature and Timing of Proposed Treaty Action

1. On 8 July 2005 a Conference of States Parties to the 1980 Convention on the Physical Protection of Nuclear Material, ([1987] ATS 16) (the "Physical Protection Convention") reached consensus on a Final Act ("the Amendments") to amend the Convention. Pursuant to Article 20 of the Convention, the Amendments come into force for those States Parties that have ratified the Amendments 30 days after two thirds of all States Parties have deposited their instruments of ratification, acceptance or approval of the Amendments. Thereafter the Amendments shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the Amendments.
2. It is proposed that Australia will deposit its instrument of ratification for the Amendments following the passage of implementing legislation.

Overview and national interest summary

3. The Physical Protection Convention requires parties to make specific arrangements and meet defined standards for the physical protection of nuclear material in international transport, and promotes international cooperation in relation to this objective. It does not address the protection of nuclear facilities and deals only in a limited way with the domestic use, storage or transportation of nuclear material.
4. The Amendments strengthen requirements in the Physical Protection Convention for protection of nuclear material, and to extend protection to nuclear facilities and nuclear material in domestic use, storage and transport. The Amendments seek to ensure that all States Parties will apply thorough and systematic measures to protect their domestic nuclear activities against criminal or terrorist attack.
5. The Australian Government is committed to addressing international concerns about nuclear terrorism, smuggling and sabotage, and to protecting people and the environment from any impacts associated with such activities. The amended Physical Protection Convention aims to address these issues more comprehensively than the existing convention. Australia has played a leading role in developing these changes, and to encourage universal adherence should be among the first to ratify and implement them.

Reasons for Australia to take the proposed treaty action

6. A key factor in the successful development of nuclear technology for peaceful purposes is commitment and adherence to internationally accepted standards of nuclear safety and security. The Physical Protection Convention is an essential element of international arrangements in this respect, and is adhered to by most countries with nuclear technology.

7. Effective physical protection is a strong counter-terrorism measure, and Australia played an active role in negotiating measures, set out in the Amendments, to strengthen the Physical Protection Convention. Australia chaired the main committee at the July 2005 diplomatic conference which agreed the Amendments.

8. In addition to specifying a control and protection regime for nuclear material in international transport, the amended Physical Protection Convention applies also to domestic use, storage and transport, and criminalises *inter alia* sabotage of nuclear facilities and trafficking, thereby significantly strengthening global nuclear security.

9. The Amendments also provide for expanded cooperation between and among States regarding measures to rapidly locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences of sabotage, and prevent and combat related offences. It also provides for greater cooperation amongst states in relation to extradition for relevant offences.

10. Some key aspects of the Amendments are consistent with measures that Australia already takes to protect nuclear material and facilities. In particular, Australia has an established regime for physical protection of nuclear material and facilities - applied through permits under the *Nuclear Non-Proliferation (Safeguards) Act 1987*. In addition, that Act already includes elements of some of the new offences required by the Amendments.

Obligations

11. The Amendments build upon Australia's existing obligations under the Physical Protection Convention. In particular, the Amendments:

- (a) add a new Article 2A that requires States Parties to establish and maintain a physical protection regime to protect nuclear material against theft, to rapidly recover any missing or stolen nuclear material, to protect nuclear material and nuclear facilities against sabotage, and to mitigate or minimise the radiological consequences of any such sabotage. Article 2A establishes a series of fundamental principles to be applied as part of such a regime;
- (b) amend Article 5 of the Convention to strengthen cooperation amongst States Parties in case of actual or threatened theft of nuclear material or sabotage of nuclear material or a nuclear facility. Article 5 requires States Parties to inform any other State if: it has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in that other State; or there has been an act of sabotage of nuclear material or a nuclear facility in the State Party

which is likely to radiologically affect that other State ;

- (c) extend Article 7 of the Convention in relation to activities that States Parties must make punishable offences under national law. In particular, new offences are added for: the trafficking of nuclear material; the sabotage of nuclear facilities with intent to cause death, injury or damage by exposure to radiation or radioactive substances; acts organising or directing others to commit an offence specified by Article 7; and acts contributing to the commission of other offences specified by Article 7;
- (d) add new Articles 11A and 11B to the Convention dealing with extradition and mutual legal assistance in relation to the offences set forth in Article 7.
 - i. Article 11A requires that none of the offences in Article 7 shall be regarded as political offences for the purposes of extradition or mutual legal assistance. The purpose of Article 11A is to prevent a refusal of extradition or mutual legal assistance with respect to an offence under Article 7 on the sole ground that it is characterised as a political offence under the law of the requested State Party.
 - ii. Article 11B ensures that there is no obligation to extradite or to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request for extradition, or for mutual legal assistance, for offences set forth in Article 7 has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion.

Implementation

12. Draft legislation to implement changes to the Physical Protection Convention made by the Amendments will be included in the Non-Proliferation Legislation Amendment Bill 2006. The *Nuclear Non-Proliferation (Safeguards) Act 1987* will be amended to extend the system of permits for nuclear material and facilities. This will enable permit conditions to be developed to reflect the new physical protection framework set out in the Amendments, and to bring the scope of offences under that Act into line with the new requirements. Development of policy to implement these arrangements, in particular new permit conditions, will be developed by the Australian Safeguards and Non-Proliferation Office.

13. Regulations will be made under the *Nuclear Non-Proliferation (Safeguards) Act 1987* to incorporate amendments to the text of the Physical Protection Convention which is included in Schedule 4 of that Act.

14. Regulations will be made under the *Extradition Act 1988* and the *Mutual Assistance in Criminal Matters Act 1987* to incorporate the provisions of the Amendments dealing with extradition, in particular the new political offence exception introduced by Article 11A and the expanded mutual assistance provisions.

Costs

15. The proposed treaty action is not expected to impose any direct financial costs on Australia in complying with its obligations. The Amendments will be applied by the Australian Safeguards and Non-Proliferation Office as an extension of its existing regulation of physical protection arrangements for nuclear material and nuclear facilities. This should be manageable within existing resources.

16. The Commonwealth operates Australia's chief nuclear facility at Lucas Heights in NSW. Further strengthening of physical protection arrangements at that facility could have some cost, although arrangements developed for the new OPAL reactor already take into account key elements of the Amendments.

Regulation Impact Statement

17. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

18. Under Article 16 of the Amendments, a conference of States Parties to the Physical Protection Convention will be convened five years after entry into force of the Amendments to review the implementation of the Convention and its adequacy in light of the then prevailing situation. Any future amendment to the Physical Protection Convention will be done subject to the provisions of Article 20 of the Convention.

19. Any future treaty action would be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

20. Any State Party may denounce the Physical Protection Convention by written notice to the depository. Denunciation would take effect 180 days following the date on which the notification is received by the depository.

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

Contact Details

Australian Safeguards and Non-Proliferation Office
Department of Foreign Affairs and Trade

**Amendments to the Convention on the Physical Protection of Nuclear Material,
done at Vienna on 8 July 2005
[2006] ATNIF 14**

CONSULTATION

1. The proposed amendments to the Convention on the Physical Protection of Nuclear Material are unlikely to have any general impact on businesses or Government agencies in Australia. The changes may affect Permits (issued under the *Nuclear Non-Proliferation (Safeguards) Act 1987*) to possess or transport nuclear materials. Permit holders are already required to apply physical protection measures to nuclear materials and nuclear facilities that cover most of the new requirements.
2. States and Territories have been consulted through the Standing Committee on Treaties at its meeting on 17 May 2006. The proposed amendments were first listed on the SCOT Schedule in April 2002. Since then, States and Territories have been informed of progress and negotiating outcomes bi-annually through Schedule updates.
3. Relevant Commonwealth agencies have been briefed through the Nuclear Agencies Consultative Committee on 4 May 2006.
4. Key Commonwealth nuclear agencies, including those most likely to be affected by the proposed amendments to the Physical Protection Convention have been active contributors during their negotiation.

Background : Current status list

The following 115 States and EURATOM are Parties to the Convention on the Physical Protection of Nuclear Material. States that have deposited an instrument of ratification (R), acceptance (Ac) or approval (Ap) of the Amendment to the Convention are indicated.

Afghanistan	Greece	Norway
Albania	Grenada	Oman
Algeria	Guatemala	Pakistan
Antigua and Barbuda	Guinea	Panama
Argentina	Honduras	Paraguay
Armenia	Hungary	Peru
Australia	Iceland	Philippines
Austria	India	Poland
Azerbaijan	Indonesia	Portugal
Bangladesh	Ireland	Qatar
Belarus	Israel	Republic of Moldova
Belgium	Italy	Romania
Bolivia	Jamaica	Russian Federation
Bosnia and Herzegovina	Japan	Senegal
Botswana	Kazakhstan	Serbia and Montenegro
Brazil	Kenya	Seychelles (Ac) 09/01/2006
Bulgaria (R) 17/03/2006	Korea, Republic of	Slovakia
Burkina Faso	Kuwait	Slovenia
Cameroon	Latvia	Spain
Canada	Lebanon	Sudan
Chile	Libyan Arab Jamahiriya	Swaziland
China	Liechtenstein	Sweden
Colombia	Lithuania	Switzerland
Costa Rica	Luxembourg	Tajikistan
Croatia	Madagascar	The Frmr. Yug.Rep. of Macedonia
Cuba	Mali	Tonga
Cyprus	Malta	Trinidad and Tobago
Czech Republic	Marshall Islands	Tunisia
Democratic Rep. of the Congo	Mexico	Turkey
Denmark	Monaco	Turkmenistan (Ac) 22/09/2005
Djibouti	Mongolia	Uganda
Dominica	Morocco	Ukraine
Ecuador	Mozambique	United Arab Emirates
Equatorial Guinea	Namibia	United Kingdom
Estonia	Nauru	United States of America
Finland	Netherlands	Uruguay
France	New Zealand	Uzbekistan
Germany	Nicaragua	EURATOM ¹
Ghana	Niger	

¹ EURATOM is the European Atomic Energy Community. Several states listed individually are also EURATOM members.