

**National Interest Analysis [2017] ATNIA 16**

**with attachment on consultation**

**Agreement relating to Scientific and Technical Cooperation between the Government of  
Australia and the Government of the United States of America**

(Washington D.C., 29 November 2016)

**[2017] ATNIF 17**

# 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**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is to bring into force the *Agreement relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America* (the proposed Agreement).
2. For the proposed Agreement to enter into force, the Parties must notify each other in writing that their domestic legal requirements for entry into force have been fulfilled (Article XI(1)). The proposed Agreement will enter into force on the first day following the date on which both Parties have notified each other of the completion of their domestic requirements (Article XI(1)).
3. It is proposed that Australia notify the United States of the completion of Australia's domestic requirements as soon as practicable after the Joint Standing Committee on Treaties tables its report.
4. The proposed Agreement replaces the *Agreement Relating to Scientific and Technical Cooperation between the Government of Australia and the Government of the United States of America*, signed on 28 February 2006, which terminated on 1 March 2017 (the 2007 Agreement).

#### **Overview and national interest summary**

5. The purpose of the proposed Agreement is to further strengthen the long-standing science and technology relationship between Australia and the United States, building on past iterations of the proposed Agreement. Scientific and technological cooperation between scientists of both countries contributes to Australia's ability to conduct world leading research and technology development. The commercialisation of such research, in turn, contributes to economic growth, innovation and industrial development for each country.
6. The proposed Agreement will strengthen and encourage bilateral cooperation through the continuation of a formal framework for the conduct of the overall science and technology relationship with the United States (which includes science and technology-based innovation). It will also set out principles for the management of collaboration, including cost sharing and allocation of benefits.

## **Reasons for Australia to take the proposed treaty action**

7. The United States is a key partner for Australia in international science and technology collaboration. Australia cooperates with the United States to boost our science and innovation system and to benefit from the United States' high level investment in world class science and research. Innovation and science are central to Australia's economic policy in delivering economic growth, productivity and job creation. This is clearly reflected in Australia's National Innovation and Science Agenda.
8. According to Incites™ and Clarivate Analytics (2017) the United States was Australia's top publications partner over the period 2011-2015, with nearly 44,000 co-publications. Over the same period, the United States was ranked first in the world in terms of publication output, with United States researchers contributing to more than 2 million scientific publications (27.7 per cent of world output).
9. The proposed Agreement acknowledges the benefits from the long and highly successful bilateral scientific and technological relationship and aims to strengthen it further. Australia first entered into a formal *Agreement with the Government of the United States for Cooperation in Scientific Research and Technological Development* on 16 October 1968 ([1968] ATS 22).
10. 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 proposed Agreement will expand opportunities for collaboration and will be important for enhancing formal links between researchers from Australia and the United States.
11. To assist researchers to undertake collaboration, the proposed Agreement retains the enabling framework established under the 2007 Agreement, to expand the opportunities for agency-to-agency collaboration. It does so by setting out the cooperative activities which researchers from Australia and the United States might undertake. Such activities include joint research projects, joint task forces, joint studies, joint 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.
12. Bringing the proposed Agreement into force would confirm Australia's strong commitment to continued cooperation on scientific research and technological development with the United States.

## **Obligations**

### *Cooperation*

13. The proposed Agreement obliges the Parties to strengthen their overall science and technology relationship and to conduct that relationship on the basis of a number of principles, including shared responsibilities and mutual contributions and benefits, comparable access to programs and facilities and exchange of information, effective

intellectual property protection, and cooperation in the promotion of research and development results (Article II).

14. The proposed Agreement obliges the Parties to support cooperative science and technology activities for peaceful purposes, encourage the timely application of research results for economic, social and industrial benefits, and encourage researchers and organisations from all sectors (including universities, national laboratories and the private sector) to participate in cooperative activities (Article IV).
15. The proposed Agreement obliges the Parties to each designate an Executive Agent to coordinate and facilitate cooperative activities under the proposed Agreement (Article III(1)). The Executive Agents will discuss and review, on a regular basis, the implementation of the proposed Agreement and the overall science and technology relationship between the Parties (Article III(2)).

#### *Confidentiality of information*

16. The proposed Agreement obliges the Parties to protect business-confidential information created under the proposed Agreement, in accordance with their domestic laws (Annex I(4)). Information may be business-confidential if a person may derive economic benefit or competitive advantage from it and it is not generally known or publicly available (Annex I(4)).

#### *Personnel and equipment*

17. The proposed Agreement obliges the Parties to facilitate the entry into and exit from their territory of personnel, material and equipment of the other Party engaged on cooperative activities under the proposed Agreement (Article IX).

#### *Intellectual property*

18. The proposed Agreement obliges the Parties to ensure the adequate and effective protection of any intellectual property introduced into, or created in the course of, a cooperative activity under the proposed Agreement (Article VI(1) and Annex I(1)).
19. The proposed Agreement obliges the Parties to ensure that the other Party can obtain the rights to intellectual property allocated in accordance with Annex I of the proposed Agreement (Annex I(2)(C)).
20. The proposed Agreement provides that each Party is entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce and distribute scientific and technological articles, reports and books arising from cooperation under the proposed Agreement (Annex I(3)(A)). The proposed Agreement further provides that visiting researchers are entitled to any intellectual property they create, rights, awards, bonuses and royalties in accordance with policies of the host institution (Annex I(3)(B)). For all other forms of intellectual property, the proposed Agreement provides that the Parties or their participants will jointly develop a technology management plan regarding ownership and exploitation rights to intellectual property created in the course of cooperative activities under the proposed Agreement (Annex I(3)(B)(2)(a)).

21. The proposed Agreement obliges the Parties to immediately discuss allocation of intellectual property rights if they believe a particular project may lead to the creation of intellectual property not protected by the laws of the other Party (Annex I(3)(B)(2)(c)).
22. The proposed Agreement obliges the Parties to promptly disclose each invention made under any cooperative activity under the proposed Agreement to the other Party (Annex I(3)(B)(2)(d)).
23. The proposed Agreement obliges Parties to resolve disputes concerning intellectual property arising under the proposed Agreement through discussions between the concerned participants or between the Parties (Annex I(2)(D)). The proposed Agreement also provides for intellectual property disputes to be submitted to an arbitral tribunal for binding arbitration (Annex I(2)(D)).
24. The proposed Agreement provides that termination of the proposed Agreement will not affect rights or obligations for the protection and allocation of intellectual property or business-confidential information under the proposed Agreement (Article VI(3) and Annex I(2)(E)).

#### *Security obligations*

25. The proposed Agreement requires that reciprocal security obligations related to cooperative activities under the proposed Agreement be observed in accordance with Annex II of the proposed Agreement (Article VII).
26. The proposed Agreement provides that information or equipment requiring protection in the interests of national defence or foreign relations of either Party, and classified in accordance with applicable domestic laws and regulations, will not be provided under the proposed Agreement (Annex II(1)). If such information or equipment is identified in the course of cooperative activities, the Parties are obliged to immediately bring it to the attention of the appropriate officials and consult concerning the need for and level of appropriate protection (Annex II(1)).
27. The proposed Agreement provides that transfer of export-controlled information and equipment between the Parties under the proposed Agreement will be in accordance with relevant laws and regulations of each Party, to prevent the unauthorised transfer or re-transfer of such information and equipment (Annex II(2)).

#### **Implementation**

28. Australia's obligations under the proposed Agreement can be implemented without new domestic legislation or amendment to existing legislation. Australian practice is already consistent with the provisions of the proposed Agreement.

#### **Costs**

29. The proposed Agreement does not commit Australia to any financial outlays. Activities under the proposed Agreement are subject to the availability of funds (Article VIII(1)) and each Party will bear the costs of discharging their own responsibilities under

particular projects or programs, or jointly decide on bearing of costs in specific cases (Article VIII(2)).

### **Regulation Impact Statement**

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

### **Future treaty action**

31. The proposed Agreement may be amended by mutual written agreement between the Parties (Article XI(1)). Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making requirements.

### **Withdrawal or denunciation**

32. The Agreement provides that either Party may terminate the proposed Agreement at any time by providing the other Party with six months' written notice (Article XI(2)). Termination will not affect the validity or duration of any implementing arrangement made under the proposed Agreement or the rights and obligations under Annex I of the proposed Agreement (relating to intellectual property) (Article XI(2)).

### **Contact Details**

International Negotiation – Science and Innovation Section  
Science and Commercialisation Policy Division  
Department of Industry, Innovation and Science

## **ATTACHMENT ON CONSULTATION**

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## **CONSULTATION**

### **State and Territory Consultation**

1. The State and Territory Governments were consulted on the proposed Agreement through the Commonwealth-State-Territory Standing Committee on Treaties. No comments were received from the State and Territory Governments. No action will be required from the State and Territory Governments to implement the proposed Agreement.

### **Public Consultation**

2. As this proposed Agreement represents a largely unchanged renewal of an earlier agreement, no additional consultation was undertaken with the Australian science community. Extensive consultation had been undertaken during the development of the previous Agreement.