

**National Interest Analysis [2018] ATNIA 7**

**with attachment on consultation**

**Agreement between the Government of Australia and the Government of the Federative  
Republic of Brazil for Cooperation on Science, Technology and Innovation**

(Canberra, 7 September 2017)

**[2018] ATNIF 22**

# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement between the Government of Australia and the Government of the Federative Republic of Brazil for Cooperation on Science, Technology and Innovation**

(Canberra, 7 September 2017)

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

1. The proposed treaty action is to bring into force the *Agreement for Cooperation on Science, Technology and Innovation between the Government of Australia and the Government of the Federative Republic of Brazil* (the proposed Agreement).
2. For the proposed Agreement to enter into force, the Parties must notify each other in writing that their domestic requirements for entry into force have been fulfilled (Article 14(1)). The proposed Agreement will enter into force on the date of the latter notification.
3. It is proposed that Australia notify Brazil of the completion of Australia's domestic requirements as soon as practicable after the Joint Standing Committee on Treaties tables its report.

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

4. The purpose of the proposed Agreement is to strengthen the science, technology and innovation relationship between Brazil and Australia. Scientific, technological and innovation cooperation between individuals and organisations 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.
5. The proposed Agreement provides a formal framework to support the strong and productive scientific and technological relationship. It will also set out principles for the management of collaborative activities, including cost sharing and allocation of benefits.

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

6. When negotiations commenced in 2007, the proposed Agreement sought to enable Brazil to overcome legislation which limited the ability of Brazilian agencies to fund collaborative activities with individuals and organisations in Australia. While Brazil has since amended its legislation so that this requirement is no longer necessary, the proposed Agreement reaffirms Australia's commitment to further develop and strengthen the science, technology and innovation relationship with Brazil.
7. Brazil's scientific capability is not yet commensurate with its economic strength. However, it is a slowly emerging power in science and its world science ranking and impact is upward trending. Brazil and Australia share similar economic, resources and environmental challenges and opportunities. This makes Brazil an important collaboration partner for Australia in the future.
8. To date, Australia and Brazil's science, research and innovation relationship has been driven at the individual and organisational levels. According to Incites™ and Clarivate Analytics (2018), Brazil was Australia's 18<sup>th</sup> ranked joint publication partner with over 800 joint publications during the period 2011-2015. Australia was Brazil's 9<sup>th</sup> ranked partner over the same period. These publications had an above average citation impact on average. The top research fields for joint publications were clinical medicine, health sciences, basic medical research, agriculture, forestry and fisheries and psychology. Brazil also has strengths in mining and resources management.
9. Bringing the proposed Agreement into force will reinforce Australia's commitment to international cooperation in scientific and technological fields. Science and innovation are central to Australia's economic policy in delivering economic growth, productivity and job creation, as reflected in the National Innovation and Science Agenda.
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 individuals and organisations from Australia and Brazil.
11. To promote collaboration, the proposed Agreement sets out cooperative activities which individuals and organisations from Australia and Brazil may undertake. Such activities include, but are not limited to, joint research, work plans and projects, exchanges of scientific and technological information, exchanges of individual researchers, students and other appropriate personnel, conferences, seminars and workshops and other forms of cooperative activities as may be agreed.

## **Obligations**

### *Cooperation*

12. Articles 2 and 3 oblige the Parties to strengthen their overall science, technological and innovation relationship by promoting cooperation in all areas of science, technology and innovation in accordance with their respective domestic laws and regulations. A number of principles are outlined in the proposed Agreement to strengthen cooperation, including mutual benefit, comparable access to activities jointly undertaken by each Party, comparable access to and exchange of information and adequate and effective protection of any Intellectual Property.
13. While the Parties have broad discretion to agree upon priority areas for cooperation, the Proposed Agreement stipulates that cooperation focus on peaceful purposes, with Article 5 explicitly excluding defence-related science, technology and innovation activities.
14. Article 6 enables the competent authorities of the Parties to designate a Joint Committee for Cooperation on Science, Technology and Innovation (Joint Committee) to facilitate the implementation of the Agreement. The Joint Committee is to meet as required, alternately in Brazil and in Australia, on dates to be agreed in writing. Joint Committee members and co-chairs will be appointed by the respective Parties. The Joint Committee's functions will include, but are not limited to, analysing and evaluating issues related to implementing the Agreement and developing a Memorandum of Understanding on Intellectual Property for the protection and use of Intellectual Property.

### *Implementing Arrangements*

15. Article 7 obliges the Cooperating Entities (defined in Article 1) to negotiate and conclude arrangements to implement Cooperative Activities as necessary. These arrangements will include, among other aspects, the area of cooperation, participants involved, financial arrangements and duration of the activity. All of these arrangements are to be agreed upon in accordance with the respective domestic laws and regulations of the jurisdiction in which the cooperative activity is to be undertaken.

### *Personnel and equipment*

16. Article 8 obliges each Party to facilitate the entry to and exit from their territory personnel, material and equipment of the other Party involved in cooperative activities under the Agreement, subject to its international obligations and domestic laws and regulations.
17. Article 12 obliges each Party to provide citizens of the other Party who stay in its territory assistance with the fulfilment of tasks entrusted to them, as detailed in the proposed Agreement and Implementing Arrangements.

### *Sharing of information and Intellectual Property*

18. Article 6(3)(d) states that matters on intellectual property will be dealt with in further detail by a Memorandum of Understanding on Intellectual Property, to be developed by the Joint Committee.
19. Article 7(2) of the Agreement provides that any Implementing Arrangements are to address the handling of Confidential Information and provisions for Intellectual Property. Both terms are defined in Article 1. The amount of confidential information generated and handled by the Parties is expected to be minimal. In managing Confidential Information the usual domestic legal instruments, namely contracts between the Cooperating Entities, will apply. This approach is consistent with how researchers and businesses currently collaborate with international partners. Article 7(4) makes clear that any provisions for the use and protection of intellectual property and confidential information within Implementing Arrangements are to be consistent with that Memorandum of Understanding.
20. Article 9 entitles the Parties to a non-exclusive, irrevocable, royalty-free, world-wide licence to adapt, reproduce, and publically distribute scientific and technical materials including journal articles and reports directly arising from cooperative activities. This will be subject to the Parties' respective domestic laws and regulations and any Implementing Arrangements.
21. Article 9 also provides that each Party shall not disclose information obtained by it or its personnel under the Agreement to any third parties, unless they receive permission to disclose the information from the other Party. The Parties must make non-proprietary information arising from Cooperative Activities available to the scientific and technological communities of both countries, unless otherwise stipulated in Implementing Arrangements (Article 9(4)).

### *Costs to Cooperating Entities*

22. The proposed Agreement does not commit Australia to any financial outlays. Pursuant to Article 10, Cooperative Activities undertaken by Cooperating Entities will be subject to the availability of funds and subject to the applicable laws, policies and regulations of each Party.
23. Personnel travel will be borne by the sending Party, or the Cooperative Entities (Article 10). Other expenses related to Cooperative Activities are to be borne according to terms determined in writing by the Cooperating Entities (Article 10). The Cooperating Entities are to ensure that all of their personnel will have the resources to cover any expenses related to medical matters (Article 11).

### *Dispute resolution*

24. Article 14 obliges the Parties to settle any disputes between them arising out of the interpretation or implementation of the proposed Agreement amicably through consultation or negotiation.

### **Implementation**

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

### **Costs**

26. It is not expected that the designation of a Joint Committee will commit Australia to any financial outlays. The group of representatives from each of the Parties may meet as required alternately in Brazil and Australia, or via electronic communication on dates to be mutually agreed by the Parties. Related costs will be absorbed by the Parties for example through existing departmental budgets.

### **Regulation Impact Statement**

27. The Office of Best Practice Regulation has determined that a Regulation Impact Statement is not required.

### **Future treaty action**

28. Pursuant to Article 13, the proposed Agreement may be amended by mutual written consent between the Parties. Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making requirements.

### **Withdrawal or denunciation**

29. Article 14 provides for the proposed Agreement to be terminated at any time by either Party providing written notice. Termination will take effect six months after the date of receipt of the notification. Termination will not affect the validity or duration of any ongoing Implementing Arrangements, or Cooperative Activities under the proposed Agreement unless otherwise agreed by the Parties or Cooperating Entities.

### **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 have been 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.