National Interest Analysis [2019] ATNIA 2

with attachment on consultation

Agreement between the Government of Australia and the Government of Hungary concerning Oil Stock Contracts

(Canberra, 30 October 2018)

[2019] ATNIF 2

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is the entry into force of the *Agreement between the Government of Australia and the Government of Hungary concerning oil stock contracts* (the Agreement). The Agreement was signed on 30 October 2018 in Canberra, Australia.

2. The Agreement will enter into force after Australia and Hungary exchange diplomatic notes confirming that their domestic requirements to give effect to the treaty have been met. The Agreement will enter into force on the thirtieth day following the date of receipt of the later of these two notifications, pursuant to Article 11(1). Hungary has notified Australia that its domestic requirements to give effect to the treaty have been met. It is anticipated that Australia will provide its notification as soon as practicable after consideration of the Agreement by the Joint Standing Committee on Treaties (JSCOT).

Overview and national interest summary

3. The Agreement will assist Australia's return to compliance with its obligation as a member of the International Energy Agency (IEA) to maintain oil stockholdings sufficient to sustain national consumption for at least 90 days with no net oil imports (the 90-day obligation).

4. The Agreement will achieve this by allowing oil stocks held in Hungary under oil stock reservation contracts, also known as 'tickets', to be credited towards Australia's 90-day obligation. The oil stocks held under these contracts could be released into the international market in the event of a global oil supply emergency.

Reasons for Australia to take the proposed treaty action

IEA obligations

5. The IEA was established in 1974 in response to the 1973-74 global oil crisis. The IEA currently has 30 members including Australia, which became a member in 1979. The IEA's objective is to promote energy security amongst its member countries through coordinating a collective response to physical disruptions in global oil supply, and in providing authoritative research and analysis on ways to ensure reliable, affordable and clean energy.

6. As a member of the IEA, Australia is a party to the *Agreement on an International Energy Program* (IEP Treaty). Article 2 of the IEP Treaty requires Australia to fulfil the 90-day obligation. Australia has been non-compliant with this obligation since March 2012. Australia's non-compliance has been driven by falling domestic crude oil production, along with rising product demand and imports. This has increased Australia's net imports under the IEA statistical methodology. Physical stock levels held in Australia have remained relatively stable.

Australia's plan to return to compliance

7. Australia submitted a phased plan to return to compliance to the IEA's Governing Board in June 2016. Under Phase 1 of the plan, Australia will procure up to 400 kilotonnes of tickets in each of the financial years 2018-19 and 2019-20. Phase 2 will see a long-term and least-cost approach to return to full compliance by 2026. Policy options for Phase 2 are currently under consideration.

Oil stock reservation contracts

8. Part of Australia's plan to return to compliance with its obligations under the IEP Treaty is to purchase oil stock reservation contracts (tickets). Under Article 3 of the Annex to the IEP Treaty, Australia can credit stocks held overseas towards its 90-day obligation under the IEP Treaty, provided there is an arrangement in place stating that the country hosting the stocks will not impede stock transfer during an emergency. Hungary requested a treaty-level agreement to govern the purchase of tickets in order to comply with its domestic legal requirements.

9. Oil tickets give the ticket holder (Australia) a right either to purchase reserved oil stock outright, or to release the stock back to the host market. Both of these options would operate in accordance with the terms and conditions in each ticketing contract. In the event that the IEA declares a global oil supply emergency, oil could either be transferred to Australia for use, or released into the Hungarian market to help alleviate the economic consequences of a supply disruption, depending on the nature of the emergency.

10. The Government intends to purchase tickets through a competitive multi-staged procurement. This Agreement will allow entities in Hungary to participate in the tender. If entities in Hungary are successful in the procurement process, these tickets can be counted towards Australia's 90-day obligation.

11. The Government of Hungary directly offered Australia the opportunity to purchase tickets in its territory to assist in Australia's return to compliance, which has resulted in this Agreement.

12. It is important for the success of the procurement process that Australia has access to as many ticket sellers as possible to help improve the competitiveness of Australia's available pool of sellers, including Hungary. This will help to ensure value for money can be achieved in the procurement.

13. Australia is seeking the widest possible range of tenders. In addition to Hungary, Australia has concluded an agreement with the Netherlands and bilateral arrangements with the

United Kingdom, United States, Germany and Denmark. Australia is negotiating or exploring bilateral arrangements with a further five countries. Several of these are at the final stages.

Obligations

Right to purchase oil stock reservation contracts with entities of Hungary

14. Article 5 of the Agreement sets out the right of the Australian Government or Australian entities to negotiate and conclude ticket contracts with private or public entities operating in Hungary.

15. Under Article 7, Australia would be able to call on tickets held in Hungary in the event the IEA calls for members to take collective action under the IEP Treaty during a global oil supply disruption.

16. Commercial contracts will sit under the Agreement. These will generally give two options to Australia during such a disruption: an option to purchase and an option to release. An option to purchase will involve Australia buying all or part of the previously reserved oil stock outright. The option to release will likely see the cancellation of all or part of the contract, making the oil available again to the market within the host country to help ease the supply issue. The exact operation of these options will be set out in the terms and conditions of contracts entered into with each entity.

17. Article 9 places an obligation on Hungary not to impose any impediment (legislative, physical, or by other means) on the removal and transfer of oil stocks held under a ticket contract to Australia from its territory.

Approval and Notification process

18. Article 4 of the proposed Agreement provides that the Agreement shall be administered by the Competent Authorities of Australia and Hungary. For Australia, the Competent Authority is the agency responsible for implementing the Agreement, being the Department of the Environment and Energy, or its successor. For Hungary, it is the Hungarian Ministry of Innovation and Technology, or its successor responsible for energy policy.

19. Article 5(2) requires contracts for holding oil stocks in Hungary to be approved by the Competent Authority of Hungary.

20. A process of government-to-government notification and approval is set out in Articles 6 to 8. This is to ensure Hungary can manage its own stockholding obligations and ensures the ticketed stock is only reported to the IEA as stock credited to Australia (and is not double counted by two countries within the IEA's stockholding system).

21. Australia must seek prior approval from Hungary as to any applicable maximum thresholds of oil stocks to contract on an annual basis, pursuant to Article 6(1) of the Agreement.

22. Australia must then seek Hungary's approval for ticket contracts that Australia has concluded one month before the contract's intended start date. This notification is to include information relating to the ticket seller, the nature, quantity and location of the

ticketed stock, and the term of the ticket contract (Article 6(2)). Hungary shall notify Australia of its approval no later than two weeks before the contract's intended start date (Article 6(3)).

23. Under Article 6(4), Australia is under an obligation to notify Hungary if there is any significant change in the information supplied in accordance with Article 6(2).

24. Hungary has the right to withdraw its approval if it identifies a significant inaccuracy in the information provided by Australia under Article 6(2). However, it must first give Australia a reasonable opportunity to have the inaccuracy rectified, and if Australia does so, Hungary cannot withdraw its approval (Article 6(5)).

25. If Australia calls on tickets held in Hungary (as set out under Article 7 of the Agreement), it must notify Hungary of that decision at least two weeks in advance (Article 8).

26. Article 6(6) permits Australia and Hungary to agree to vary the time limits for notification and approval outlined above.

Consultation

27. Article 10 requires the Competent Authorities to consult as soon as reasonably practicable: where either Australia or Hungary faces a supply emergency; to resolve difficulties in the interpretation of the Agreement; or if circumstances arise which may be taken into consideration in the exercise of Australia's purchase options under oil stocks contracts.

Implementation

28. No new legislation is needed for the Agreement to enter into force. The Agreement will not bring about any changes to the existing roles of the State and Territory Governments.

29. The legislative authority for the Australian Government to spend funds on entering into and purchasing oil stocks under a ticket contract exists under section 40A of the *Liquid Fuel Emergency Act 1984*.

30. A multi-stage procurement process is being implemented to enable the Australian Government to run a competitive process for the purchase of tickets. This Agreement will allow entities of Hungary to participate in the procurement process.

Costs

31. The Australian Government has provided both departmental and administered funding of $23.8 million over four years to implement Australia's oil stockholding compliance plan. This includes funding for the purchase of up to 400 kilotonnes of tickets in each of the 2018/19 and 2019/20 financial years. Further ticketing commitments may be made under Phase 2 of the compliance plan; options for Phase 2 are currently being investigated.

32. A multi-stage procurement process will be implemented to ensure value for money is achieved when acquiring ticketing contracts. The Agreement will give entities in Hungary the opportunity to compete in the tender but does not guarantee they will be successful. Due to the proposed nature of the procurement process, it cannot be specified how much, if any, spending would occur with entities in Hungary under the Agreement.

33. The price of oil or product purchased under any ticket contract will be determined by the market price of the type of oil at the time of purchase and the terms and conditions contained in the specific ticket contract. Details of contracts will be commercial-in-confidence.

Future treaty action

34. Article 10 requires parties to consult as soon as reasonably practicable if either party wishes to amend the Agreement. The Agreement can be amended by mutual agreement in writing, under Article 11(2).

35. Any future amendments to the Agreement would be subject to Australia's domestic treaty-making requirements.

Withdrawal or Termination

36. The Agreement may be terminated by either party giving 12 months written notice to the other party (Article 11(3)).

37. The termination of the Agreement by Australia would be subject to Australia's domestic treaty-making requirements.

Contact Details

International Energy Implementation Branch
Energy Security and Efficiency Division
Department of the Environment and Energy

ATTACHMENT ON CONSULTATION

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CONSULTATION

38. The Agreement concerns reserving oil stocks in the Hungarian market, so will not directly impact businesses in Australia.

39. The oil industry in Australia was consulted as Australia's plan to return to compliance with its IEA obligations was developed, and at appropriate junctures throughout its implementation, including on onshore oil ticketing.

40. This included a roundtable with oil industry associations, oil companies, importers and major oil users (or representatives of major users) on 10 March 2016 to discuss options and strategies to return Australia to compliance with its IEA obligations. This was followed by informal consultations conducted by the Department of the Environment and Energy.

41. In February 2018, key oil industry associations (the Australian Institute of Petroleum, the Australian Convenience and Petroleum Marketers Association, and the Australian Petroleum Production and Exploration Association) were consulted regarding the implementation of onshore ticketing.

42. State and Territory Governments were consulted through the biannual meeting of the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). No requests for further information or comments on the Agreement were received.