

Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing

Background

- 2.1 The *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* ('the ACSA') updates the framework for the reciprocal provision of logistic support, supplies and services between the military forces of Australia and the United States. It replaces a highly similar Agreement signed in 1998,¹ reviewed and supported by JSCOT in 1999.²
- 2.2 The ACSA was tabled in the 42nd Parliament on 12 May 2010. The accompanying National Interest Analysis noted the Government's intention to take binding action prior to the expiry of the 1998 Agreement on 22 September 2010.³ Following the announcement of the federal election on 17 July, the Committee resolved to table its recommendations on the ACSA prior to the dissolution of Parliament. The Committee expressed its concern to ensure the continuation of critical logistics

1 *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing*, done at Canberra on 9 December 1998.

2 JSCOT Report 21, paras 2.51-2.63.

3 National Interest Analysis (NIA), para. 2.

cooperation with the United States.⁴ Binding treaty action was supported in Report 113, tabled on 19 July 2010.⁵

- 2.3 This chapter provides an overview of the ACSA and outlines the reasons for the recommendation put forward in the Committee's previous report. The Committee has reviewed the evidence received by JSCOT in the 42nd Parliament and endorses the recommendation.

Mutual logistics support under the ACSA

- 2.4 The ACSA is one of several bilateral Mutual Logistics Support Arrangements Australia has entered to facilitate cooperation with foreign military forces.⁶ It enables support, supplies and services to be transferred between Australia and the United States in exchange for cash payment, or payment-in-kind.⁷ Each Party is obliged to make its best efforts, consistent with national priorities, to satisfy requests made pursuant to the Agreement.⁸
- 2.5 Certain items cannot be transferred under the ACSA, including weapons systems and major end items of equipment.⁹ Items which are prohibited from transfer under national laws or regulations are also excluded.¹⁰
- 2.6 The method and quantum of payment must be mutually determined by the Parties, subject to three reciprocal pricing principles.¹¹ The Parties also agree that taxes and similar charges will not be imposed, to the extent permitted by national laws and regulations.¹²

4 JSCOT Report 113, para. 1.

5 JSCOT Report 113, Recommendation 1.

6 See T, Foster, 'Mutual Logistics Support Arrangements', *The Link: Defence Logistics Magazine*, Issue 5, July 2009, pp. 29-30.

7 National Interest Analysis (NIA), para 4.

8 Art IV; NIA para. 8.

9 Art III; NIA para. 10.

10 Art III; NIA para. 10.

11 Art V; NIA para. 16.

12 Art VI; NIA para. 17.

Updating the ACSA

- 2.7 The Department of Defence described the 1998 Agreement to the Committee as a 'mutually beneficial arrangement'.¹³ Air Vice Marshal Staib gave evidence that the Agreement was used on a daily basis as the authority for the transfer of logistic support to the Australian Defence Force in Afghanistan, and other areas where Australian and American forces are operating together.¹⁴ The Agreement also functioned effectively in joint training exercises, such as the recent major exercise Talisman Sabre.¹⁵ Air Vice Marshal Staib was not able to recall any Australian requests which had been refused by the United States.¹⁶
- 2.8 The new ACSA preserves the basic structure established by the 1998 Agreement, incorporating a number of modifications. The Committee sought clarification of the nature and purpose of these changes, in light of the effectiveness of existing arrangements. The Department of Defence advised that the modifications are minor and create no new obligations for Australia.¹⁷ They reflect organisational changes in both the United States and Australia, and other matters necessary to satisfy current domestic legal and financial requirements.¹⁸
- 2.9 The Committee sought evidence of matters raised by the Parties in the course of negotiations. It has previously noted that the United States negotiates mutual logistic support agreements subject to a standard template.¹⁹ There is limited scope for partner States such as Australia to propose variations.²⁰
- 2.10 The Department of Defence provided written advice that most questions raised by Australia had been agreed.²¹ These proposals adapted the United States' template text to accommodate the role of standing Implementation Arrangements in Australia.²² Liability and claims

13 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 11.

14 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 8.

15 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 11.

16 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 11.

17 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, pp. 7-8; NIA, para. 11.

18 Air Vice Marshal Margaret Staib, *Transcript of Evidence*, 21 June 2010, p. 8.

19 JSCOT Report 21, para. 2.61.

20 JSCOT Report 21, para. 2.61.

21 Department of Defence, *Submission No. 3*, Attachment A.

22 Department of Defence, *Submission No. 3*, Attachment A.

provisions which have become a standard feature of logistic support agreements were also inserted at Australia's request.²³

- 2.11 Australia unsuccessfully sought the removal of an annexed Mutual Logistic Support order form and related explanatory notes.²⁴ These documents were regarded as superfluous to need. The Committee is advised that their inclusion carries no negative implications.²⁵

Conclusion and recommendation

- 2.12 The Committee is conscious that the terms of mutual logistic support arrangements with the United States are largely predetermined. Nevertheless, there is widespread agreement that the 1998 Agreement has effectively facilitated logistics cooperation of critical importance to Australia's military forces. It continues to stand the test of diverse operations, deployments, and training exercises. The new ACSA will ensure this stable and mutually beneficial framework is maintained. On the evidence presented, the Committee is satisfied that matters raised by Australia in the course of negotiations have been satisfactorily resolved.

Recommendation 1

The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America concerning Acquisition and Cross-Servicing* and recommends that binding treaty action be taken.

23 Department of Defence, *Submission No. 3*, Attachment A.

24 Department of Defence, *Submission No. 3*, Attachment A.

25 Department of Defence, *Submission No. 3*, Attachment A.