

Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended

Introduction

6.1 On 20 January 2014, the *Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended* ('the Exchange of Notes') was presented to the President of the Senate.¹ Australia and the United States first concluded an Exchange of Notes constituting an Agreement relating to Space Vehicle Tracking and Communications in 1960. This agreement was superseded in 1970 and again in 1980. Since 1980, the base Agreement document has been reviewed and amended every 10 years.² The treaty action extends the Agreement which expired on 26 February 2014.³

1 National Interest Analysis [2013] ATNIA 18 *Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities of 29 May 1980, as amended, done at Canberra, 21 November 2013, [2013] ATNIF 27* (hereafter referred to as the 'NIA'), para 1.

2 NIA, para 6.

3 NIA, para 1.

- 6.2 The Agreement consists of a base document and multiple subsequent Exchanges of Notes. In 2009, it was agreed by both Parties to conclude a new agreement to consolidate the provisions contained in previous Exchanges of Notes into one document. Both parties also agreed to extend the Agreement for two years until 2012, and then for a further two years until 2014 to allow the new agreement to be developed.⁴
- 6.3 The Parties have agreed to extend the Agreement for a further four year period or until the new consolidated agreement can be brought into force. Therefore it is proposed that Paragraph 1 of Article 13 of the Agreement be replaced with the following:
- This Agreement shall remain in force until February 26, 2018, or until a further agreement between the Government of the United States of America and the Government of Australia concerning space vehicle tracking and communication facilities is concluded and enters into force, whichever occurs first. The present Agreement may be further extended by the agreement of the two Governments.⁵
- 6.4 The Department of Industry (the Department) told the Committee ‘[w]e are seeking a further extension to the treaty to allow us to bring those consolidation discussions to a conclusion’.⁶ The proposed extension was intended to enter into force with effect from 26 February 2014, once Australia had advised the United States of America (the US) that all domestic requirements for entry into force had been met. In order to ensure continuity of the Agreement, the proposed extension may enter into force with retrospective effect.⁷

Overview and national interest summary

- 6.5 The proposed Exchange of Notes will extend the current Agreement and allows time for the development of a consolidated agreement.
- 6.6 The Agreement covers the operations of the Canberra Deep Space Communication Complex, located at Tidbinbilla. The Complex is one of three facilities which makes up the National Aeronautics and Space Administration’s (NASA) Deep Space Network, with the other two being

4 NIA, para 7.

5 Note from the Embassy of the United States of America, Canberra, to the Australian Department of Foreign Affairs and Trade, NOTE No. 13-212, November 18 2013.

6 Dr Michael Green, Acting Head of Industry Division, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 5.

7 NIA, para 2.

located in the US and Spain.⁸ Each facility is located one third of the way around the globe and as the earth rotates one station is available to continually track and command spacecraft beyond the earth's orbit.⁹

- 6.7 Since the inception of the space treaty process in the 1960s, NASA has spent approximately AUD \$800 million on space-related activities in Australia.¹⁰ Currently NASA is investing a further \$110 million in the construction of two new 34-metre antennas at the Canberra Deep Space Communication Complex. The first antenna is due to come online in late 2014, with the second scheduled to be completed in 2016.¹¹
- 6.8 The Committee was concerned as to why a consolidated agreement had not been completed by the 2014 deadline. The Department indicated that it had a draft consolidated text since May 2013, however, procedural issues had slowed the process.¹² The issues were cited as:
- the 2013 Federal Election in Australia;
 - NASA's budget negotiations in the US; and
 - the complexity of the task which involves consolidating and updating 30 years of amendments.¹³
- 6.9 The Department confirmed that there are no problems in the relationship between the Parties and it was 'really a matter of getting the legal drafting approvals on both sides through'.¹⁴ The Department indicated that political intervention would be unlikely to expedite the process.¹⁵
- 6.10 The Department stated that it aimed to have a consolidated treaty text completed within the four year timeframe, however, a further extension would be sought if necessary and this eventuality would not negatively affect the operations of the Canberra Complex.¹⁶

8 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, pp. 5-6.

9 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 6.

10 NIA, para 4.

11 NIA, para 5.

12 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 5

13 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, pp. 5-6

14 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, pp. 6-7.

15 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 7.

16 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 5-6.

Reasons for Australia to take the proposed treaty action

- 6.11 The National Interest Assessment (NIA) states that: ‘all activities conducted in Australia under the Agreement are managed to ensure that they are consistent with Australian interests’.¹⁷ The Commonwealth Scientific and Industrial Research Organisation (CSIRO) manages the facilities on behalf of NASA, with operational and maintenance activities contracted out as required to Australian industry. One hundred staff are currently employed at the Canberra Deep Space Communication Complex.¹⁸ The Department reiterated that NASA funds the total cost of the facilities, including the salaries and administrative costs of Australian Government personnel involved in the management of activities under the Agreement.¹⁹
- 6.12 The Department confirmed that the Australian Government has full access to the data gathered and that it is ‘provided routinely to a range of people in Australia’.²⁰ Australia’s role is also acknowledged in NASA’s publications.²¹

Obligations

- 6.13 As previously discussed, the proposed extension amends Article 13(1) of the Agreement to extend the period of operation of the Agreement to either 26 February 2018, or until a further agreement between the Governments of the US and Australia concerning space vehicle tracking and communication is concluded (whichever is earlier).²² The proposed extension does not otherwise increase the scope or operation of the Agreement, nor impose new obligations on Australia.²³
- 6.14 The proposed extension continues existing arrangements under the current Agreement for exchange of scientific data (Article 4), facilitation of the entry and exit of US personnel through immigration barriers (Article 7(1)), and duty-free import of personal and household effects of US personnel (Article 7(2)). In accordance with Article 8 of the Agreement, taxation of US personnel continues to be governed by the *Convention*

17 NIA, para 10.

18 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 7.

19 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 7.

20 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 7.

21 Dr Green, Department of Industry, *Committee Hansard*, Canberra, 3 March 2014, p. 7.

22 NIA, para 13.

23 NIA, para 14.

between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income ([1983] ATS 16), as amended.²⁴

- 6.15 The Agreement explicitly provides for further (non-treaty) arrangements between NASA and the CSIRO, as the cooperating agencies, in respect of the establishment and operation of the facilities (Article 3). These arrangements encompass financing, constructing and installing new facilities, and disposing of or removing infrastructure and remediation work (where a facility is surplus to requirements). NASA is currently entitled to an exemption from duties, taxes and like charges, including Goods and Services Tax (Article 9).²⁵

Implementation

- 6.16 According to the NIA, no changes are required to existing legislation to implement the proposed extension.²⁶

Costs

- 6.17 No additional costs are anticipated as a consequence of this treaty action.²⁷

Conclusion

- 6.18 The Exchange of Notes extends the Agreement's timeframe by four years to allow the Parties to reach a consolidated agreement. The Canberra Deep Space Communication Complex is the US's only space station in the Southern Hemisphere and is therefore vital to NASA's Deep Space Network. Under the Agreement, NASA funds the total cost of the facility and all associated activities. Australia benefits in a range of ways from the Agreement, including through the employment of 100 staff and access to all data collected.

24 NIA, para 15.

25 NIA, para 16.

26 NIA, para 17.

27 NIA, para 18.

- 6.19 The Committee supports Australia's ratification of the proposed Exchange of Notes and recommends that binding treaty action be taken.

Recommendation 5

- 6.20 **The Committee supports the *Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia to amend the Agreement concerning Space Vehicle Tracking and Communication Facilities* and recommends that binding treaty action be taken.**