

No. 13362

**UNITED STATES OF AMERICA
and
AUSTRALIA**

**Exchange of notes constituting an agreement relating to
disposal of excess property in Australia. Canberra,
9 November 1973**

Authentic text: English.

Registered by the United States of America on 30 May 1974.

**ÉTATS-UNIS D'AMÉRIQUE
et
AUSTRALIE**

**Échange de notes constituant un accord relatif à la
liquidation de surplus en Australie. Canberra,
9 novembre 1973**

Texte authentique: anglais.

Enregistré par les États-Unis d'Amérique le 30 mai 1974.

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND AUSTRALIA RELATING TO DISPOSAL OF EXCESS PROPERTY IN AUSTRALIA

I

The American Embassy to the Australian Department of Foreign Affairs

Note No. 199

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and has the honor to refer to discussions regarding the disposal of United States Government excess property in Australia. The Embassy wishes to propose that an agreement on this matter between the Government of Australia and the Government of the United States of America be concluded in the following terms:

1. The United States Government may remove from Australia all of its property which it desires to retain to the extent that it is not precluded from doing so by other agreements or arrangements governing defense facilities in Australia.

2. The United States Government shall arrange to notify the appropriate co-operating agency of the Australian Government of the property remaining for disposal. The Australian Government may arrange through its appropriate Governmental agency for the purchase from the United States Government of any remaining property which the Australian Government may wish to obtain for its own use and disposition, such purchase being made directly by the Australian Government agency concerned.

3. All other excess property shall be sold or disposed of by the Department of Supply, an agency of the Australian Government, in accordance with the following procedures:

(a) The United States reporting agencies shall provide reports of excess property on Department of Supply designated forms. These reports of excess property shall contain details of condition and age of equipment, and such other information as may be agreed.

(b) The United States reporting agencies will on the report of excess property transfer all right, title and interest in the property to the Department of Supply, which will accept the transfer of such right, title and interest subject to physical inspection. The Department of Supply may, at any time and at its discretion, refuse or defer the sale of any article or any class or kind of article of excess property reported to it if the sale thereof is deemed by it not to be in the Australian public interest or is in a condition or location which would make economic disposal impracticable. Prior to exercising the right of refusing or deferring the sale of any article, the Department of Supply shall consult with the United States reporting agency or agencies concerned. Due consideration shall be given by the Department of Supply to sale or disposal of the property in question on the condition that it will be exported from Australia. If, after such consultation, it is decided by the Department of Supply not to proceed with the sale, right, title and interest in the article or articles in question shall be returned to the United States reporting agency or agencies concerned. Such property shall be destroyed to the satisfaction of the Australian Government, abandoned under conditions to be mutually agreed upon, removed from Australia by the United States Government, donated to an agency or

¹ Came into force on 9 November 1973, the date of the note in reply, in accordance with the provisions of the said notes.

social, educational or cultural organization designated by the Australian Government, or otherwise disposed of under such arrangements as may be made by the Department of Supply and the United States reporting agency or agencies.

(c) After the property has been accepted for sale by the Department of Supply and subject to the provisions of sub-paragraph (b) above, reports of excess property shall not be modified, cancelled or withdrawn except by consent of the United States reporting agency and the Department of Supply.

(d) By arrangement between the United States reporting agency and the Department of Supply, excess property shall be assembled at the expense of the United States reporting agency at locations to be determined by mutual consent.

(e) The United States Government agencies or their appointed agent shall retain and be responsible for excess property until they surrender the custody and control thereof to purchasers pursuant to the release order of the Department of Supply. In the event that excess property should be lost, stolen, destroyed or become deteriorated after being reported to the Department of Supply and prior to its being sold by the Department of Supply or being removed by a purchaser from the Department of Supply, the United States Government waives all claims to compensation from the Department of Supply for any resulting loss and the Department of Supply shall, through its contracting arrangements with its purchasers, hold the United States Government free from liability arising from such eventualities.

(f) Sales shall be conducted in accordance with normal Australian Government procedures designed to promote favorable prices through the maximum use of competition among prospective purchasers.

(g) The manner of accounting for the receipts from sales shall be as follows: The Department of Supply shall retain and be accountable to the Australian Government for that amount of the receipts collected on behalf of the Australian Government as to any duties and taxes which may be required to be paid by the purchaser in accordance with Australian law, and the amount equal to the remainder of the receipts, less

- (i) appropriate deductions for operational costs, and
- (ii) ten per cent of the remainder after the above deductions, to cover costs of administration,

shall be paid to the Treasurer of the United States of America through the appropriate United States reporting agency as proceeds to the United States from sales of property hereunder. Settlement between the Department of Supply and each reporting agency of the United States shall be made at such time as may be arranged between the Department of Supply and such agency, but at least once every three months. Settlement shall be calculated in Australian funds, which shall be converted into United States funds at the rate of exchange prevailing at the time of settlement.

4. Sales by the Department of Supply of United States excess property shall be subject to the condition that the property may not be imported or resold for importation into the United States, unless the Secretary of Agriculture of the United States (in the case of agricultural commodity, food, cotton, woolen goods) or the Secretary of Commerce of the United States (in the case of other property) determines that the importation of such property would relieve United States domestic shortages or otherwise be beneficial to the economy of the United States.

5. This Agreement shall extend to all United States Government owned property now or hereafter located in Australia determined to be excess property by the United States Government except real property, including any right, title or interest in buildings, fixed improvements, non-removable utilities or other permanent-type additions to land or any interest in land, or property of the United States Government used in connection with diplomatic or consular functions.

6. This Agreement shall apply to the excess property of the United States Government located in territories for the international relations of which Australia is

responsible, to the extent as may, from time to time, be agreed between the two Governments.

7. This Agreement may be terminated by either Government on thirty days' written notice to the other, with the understanding that, in the event of such termination, the Department of Supply will continue with the sale or disposal of the property to which it may then have accepted transfer of right, title and interest.

The Embassy has the honor to propose that, if the foregoing provisions are acceptable to the Government of Australia, this note and the Department's confirmatory reply should together constitute an agreement on the matter between the two Governments which shall enter into force on the date of the Department's reply.

The Embassy avails itself of this opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.

Embassy of the United States of America
Canberra, A.C.T., November 9, 1973.

II

The Australian Department of Foreign Affairs to the American Embassy

The Department of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honour to acknowledge receipt of the Embassy's note No. 199 of 9 November 1973, reading as follows:

[*See note I*]

The Department of Foreign Affairs has the honour to confirm that the Government of Australia concurs in the proposals outlined in the Embassy's note and agrees that the Embassy's note and the present reply shall together constitute and evidence an agreement between the Government of Australia and the Government of the United States of America on the matter which shall enter into force on the date of this reply.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Canberra, A.C.T., 9 November 1973.
